

UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT
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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

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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 December 03, 2019, 12:00 a.m., and December 16, 2019, 11:59 p.m. are included in this, the January 01, 2020, issue of the *Utah State Bulletin*.

In this publication, each **PROPOSED RULE** is preceded by a **RULE ANALYSIS**. This analysis provides summary information about the **PROPOSED RULE** including the name of a contact person, anticipated cost impact of the rule, and legal cross-references.

Following the **RULE ANALYSIS**, the text of the **PROPOSED RULE** is usually printed. New rules or additions made to existing rules are underlined (example). Deletions made to existing rules are struck out with brackets surrounding them (~~example~~). Rules being repealed are completely struck out. A row of dots in the text between paragraphs (.) indicates that unaffected text from within a section was removed to conserve space. Unaffected sections are not usually printed. If a **PROPOSED RULE** is too long to print, the Office of Administrative Rules may include only the **RULE ANALYSIS**. A copy of each rule that is too long to print is available from the filing agency or from the Office of Administrative Rules.

The law requires that an agency accept public comment on **PROPOSED RULES** published in this issue of the *Utah State Bulletin* until at least January 31, 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 30, 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.):	R81-1	Filing No. 52417	

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 Okey-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:
Scope, Definitions, and General Provisions
3. Purpose of the new rule or reason for the change:
The provisions of this rule are being moved to Title R82. The new rules will condense and reorganize the administrative code to a format similar to state statute. (EDITOR'S NOTE: The proposed new rules under Title R82 were published in the December 15, 2019, issue of the Bulletin.)
4. Summary of the new rule or change:
The repealed and 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 filing does not create additional cost or savings.

B) Local governments:

This rule filing does not create additional cost or savings.

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

This rule filing does not create additional cost or savings.

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

This rule filing 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 filing does not create additional cost or savings.

F) Compliance costs for affected persons:

There are no fees associated with this process. The provisions of this rule are being moved to Title R82.

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

Regulatory Impact Table				
Fiscal Cost	FY2020	FY2021	FY2022	
State Government	\$0	\$0	\$0	
Local Governments	\$0	\$0	\$0	
Small Businesses	\$0	\$0	\$0	
Non-Small Businesses	\$0	\$0	\$0	
Other Persons	\$0	\$0	\$0	
Total Fiscal Cost	\$0	\$0	\$0	
Fiscal Benefits				
State Government	\$0	\$0	\$0	
Local Governments	\$0	\$0	\$0	
Small Businesses	\$0	\$0	\$0	
Non-Small Businesses	\$0	\$0	\$0	
Other Persons	\$0	\$0	\$0	
Total Fiscal	\$0	\$0	\$0	

Benefits				
Net Benefits	Fiscal	\$0	\$0	\$0
H) Department head approval of regulatory impact analysis:				
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:				
The provisions of this rule are being moved to Title R82. The new rules 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 201	32B-2-	Section 305	32B-1-	Section 702	32B-6-
Section 202	32B-2-	Section 304	32B-1-	Section 805	32B-6-
Section 304	32B-5-	Section 607	32B-1-	Section 204	32B-9-

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
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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:	Salvador Petilos, Executive Director	Date:	12/05/2019
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[R81. Alcoholic Beverage Control, Administration.

R81-1. Scope, Definitions, and General Provisions.

R81-1-1. Scope and Effective Date.

These rules are adopted pursuant to Section 32B-2-202(1), 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.

R81-1-2. 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) "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.

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

(5) "DIRECTOR" means the director of the Department of Alcoholic Beverage Control.

(6) "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.

(7) "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.

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

(9) "HEARING OFFICER" or "PRESIDING 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.

(10) "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.

(11) "MANAGER" means a person chosen or appointed to manage, direct, or administer the affairs of another person, corporation, or company.

(12) "POINT OF SALE" means that portion of a package agency, restaurant, limited restaurant, beer only restaurant, airport lounge, on premise banquet premises, reception center, club, 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.

(13) "REASONABLE" means ordinary and usual thinking, speaking, or acting, which is fit and appropriate to the end in view.

(14) "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.

(15) "STAFF" or "authorized staff member" means a person duly authorized by the director of the department to perform a particular act.

(16) "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.

(17) "VIOLATION REPORT" means a written report from any law enforcement agency or authorized department staff member alleging a violation of the Utah 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.

(18) "WARNING SIGN" means a sign no smaller than eight and one half inches high by eleven 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.

R81-1-3. General Policies.

(1) Labeling.

No licensee or permittee shall sell or deliver any alcoholic beverage in containers not marked, branded or labeled in conformity with regulations enacted by the agencies of the United States government pertaining to labeling and advertising.

(2) Manner of Paying Fees.

Payment of all fees for licenses, permits, certificates of approval, or renewals thereof, shall be made in legal tender of the United States of America, certified check, bank draft, cashier's check, United States post office money order, or personal check.

(3) Copy of Commission Rules.

Copies of the commission rules shall be available at the department's office, 1625 South 900 West, P. O. Box 30408, Salt Lake City, Utah 84130-0408 for an administrative cost of \$20 per copy, or on the department's website at <http://www.abc.utah.gov>.

(4) 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.

(5) Returned 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 Subsection (5)(a)

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 South 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 thirty 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 Subsection (5)(b), 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 listed in Subsections (5)(a), (b), (c) and (d), the department may pursue any legal remedies to effect collection of any returned check.

(6) Disposition of unsealable merchandise.

The department, after determining that certain alcoholic products are distressed or unsealable, but consumable, may make those alcoholic products available to the Utah Department of Public Safety for education or training purposes.

All merchandise made available to the Utah Department of Public Safety must be accounted for as directed by the Department of Alcoholic Beverage Control.

(7) Administrative Handling Fees.

(a) Pursuant to 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 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 subsections (7)(a) and (7)(b) is \$20.00.~~

~~(8) 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 Utah Code Ann. Section 32B-2-304.~~

~~(9) Listing and Delisting Product: Pursuant to 32B-2-202(1)(b) and (k), this rule authorizes the director to make internal department policies in accordance with 32B-2-206(1)(2) and (5) for department duties as defined by 32B-2-204(1) for listing and delisting products to include a program to place orders for products not kept for sale by the department.~~

R81-1-4. Employees.

~~The department is an Equal Opportunity Employer.~~

R81-1-5. Notice of Public Hearings and Meetings.

~~Notice of all department meetings and public hearings, other than disciplinary hearings, shall be done in the following manner:~~

~~(1) The public notice shall specify the date, time, agenda, and location of each hearing or meeting.~~

~~(2) In the case of public meetings, notice shall be made as provided in Section 52-4-202.~~

~~(3) In the case of hearings, other than disciplinary hearings, public notice shall be made not less than ten days prior to the hearing.~~

~~(4) The procedure for posting public notice and the definition of public meeting for purposes of these rules, shall be the same as provided in Section 52-4-202.~~

R81-1-6. Violation Schedule.

~~(1) Authority. This rule is pursuant to Sections 32B-2-202(1)(c)(i), 32B-2-202(1) and (3), 32B-2-202(2)(b) and (c), and 32B-3-101 to 207. These provisions authorize the commission to establish criteria and procedures for imposing sanctions against licensees and permittees and their officers, employees and agents who violate statutes and commission rules relating to alcoholic beverages. For purposes of this rule, holders of certificates of approval are also considered licensees. 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. The commission also may impose a fine against an officer, employee or agent of a licensee or permittee. Violations are adjudicated under procedures contained in Section 32B-3-101 to 207 and disciplinary hearing Section R81-1-7.~~

~~(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 presiding 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 Section 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 them may result in immediate suspension or forfeiture of the license or permit. Thus, they are not processed in accordance with the Administrative Procedures Act, Title 63G, Chapter 4 or Section R81-1-7. They 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.~~

~~(c) If a licensee or permittee has not received a letter of admonishment, as defined in Sections R81-1-2 and R81-1-7(2)(b), or been found by the commission to be in violation of Utah statutes 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.~~

~~(iv) require a licensee to have a written responsible alcohol service plan as provided in R81-1-24.~~

~~(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 and/or up to a \$25,000 fine. 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 ten day suspension of the employment of the officer, employee or agent, and/or a \$500 to \$25,000 fine for the licensee or permittee and up to a \$75 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 and/or the monetary penalties for each of the charges in their respective categories. 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 and/or up to a \$25,000 fine.

(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 ten day suspension of the license or permit and a three to ten 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 ten to 20 day suspension of the license or permit and a ten 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 and/or the sum of the monetary penalties for each of the charges in their respective categories.

(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 and/or up to a \$25,000 fine.

(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 ten to 90 day suspension of the license or permit and a ten 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 ten 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 and/or a \$3000 to \$25,000 fine for the licensee or permittee and up to a \$500 fine for the officer, employee or agent.

(iii) 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.

(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 section 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 section 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 presiding officers may adjust penalties within penalty ranges based upon aggravating or mitigating circumstances.

(a) Examples of mitigating circumstances are:

- (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) Examples of aggravating circumstances are:

- (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.

R81-1-7. Disciplinary Hearings.

(1) General Provisions:

(a) This rule is promulgated pursuant to Section 32B-2-202(1)(c)(i) 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 to 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 R81-1-24, 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 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. 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 South 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) Presiding Officers.~~

~~(i) The commission or the director may appoint presiding 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 presiding officer for another during any proceeding.~~

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

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

~~(v) At any time during an adjudicative proceeding the presiding 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 Sections 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 presiding 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 presiding 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 R81-1-6, 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(1)(a), 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 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 ten 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 ten 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;

(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 prior to 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 presiding 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 section (2)(b)(i);

(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 ten days, or a revocation of the license, permit, or certificate of approval for the alleged violation(s), the presiding officer shall convert the matter to a formal adjudicative proceeding.

(iv) At any time before a final order is issued, a presiding 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 presiding 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 presiding 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. _____";

(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 203 unless a presiding officer converts the matter to a formal proceeding pursuant to Sections (2)(e)(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 presiding 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 agency or department staff member making the violation report;

(II) the penalty sought, which may include assessment of costs under Section 32B-3-205(1)(c) if the respondent is found guilty of the alleged violation, and forfeiture of any compliance bond on final

revocation under Section 32B-3-205(5) 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 presiding officer.~~

~~(ii) A copy of the law enforcement agency or staff report shall accompany the notice of agency action. The presiding 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 presiding officer may permit or require pleadings in addition to the notice of agency action. All additional pleadings shall be filed with the presiding officer, with copies sent by mail to each respondent and to the department.~~

~~(vi) Amendment to Pleading. The presiding officer may, upon motion of the respondent or 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 has read the pleading and that he has taken reasonable measures to assure its truth.~~

~~(b) The Prehearing Conference.~~

~~(i) The presiding 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 presiding 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~~

~~presiding officer whether it will seek administrative fines exceeding \$3000, a suspension of the license, permit or certificate of approval for more than ten 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 ten 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 ten days, or a revocation of the license, permit, or certificate of approval for the alleged violation(s), the presiding 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 presiding officer shall notify the respondent and department in writing of the date, time and place of the hearing at least ten days in advance of the hearing. Continuances of scheduled hearings are not favored, but may be granted by the presiding 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 presiding officer shall proceed to prepare and serve on respondent an order pursuant to R81-1-7(3)(d).~~

~~(ii) All hearings shall be presided over by the presiding 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 presiding 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 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 presiding officer when requested by a respondent or the department, or may be issued by the presiding officer on his 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 presiding 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 presiding officer may take appropriate measures necessary to preserve the integrity of the hearing.

(x) Record of Hearing. The presiding 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 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 presiding officer may grant continuances or recesses as necessary.

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

(xiii) Time limits. The presiding 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 presiding officer when in the public interest.

(xv) Oral Argument and Briefs. Upon the conclusion of the taking of evidence, the presiding officer may, in his 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 presiding officer.

(d) Disposition.

(i) Presiding Officer's Order; Objections.

(A) Within a reasonable time after the close of the hearing, the presiding 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;

(VI) notice that a respondent or the department having objections to the presiding officer's order may file written objections with the presiding officer within ten 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 ten days, or a revocation of the license, permit, or certificate of approval.

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

(D) The presiding officer shall wait ten days from service of his order for written objections, if any. The presiding officer may then amend or supplement his 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 presiding 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 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 presiding officer for this final stage of the informal adjudicative proceeding pursuant to Sections 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 respondent and 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, 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;

(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 presiding 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 ten 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, 404, and 405, and 32B-3-207.~~

~~(4) The Formal Process.~~

~~(a) Conversion Procedures. If a presiding officer converts an informal adjudicative proceeding to a formal adjudicative proceeding pursuant to sections (2)(c)(iii) or (iv):~~

~~(i) the presiding 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;~~

~~(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 presiding 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 presiding officer may enter an order of default and proceed to prepare and serve his final order pursuant to R81-1-7(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. ";~~

~~(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;~~

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

~~(iv) the presiding officer may permit or require pleadings in addition to the notice of agency action and the response. All additional pleadings shall be filed with the presiding officer, with copies sent by mail to each party.~~

~~(v) the presiding officer may, 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 presiding officer. The person who wishes to intervene shall mail a copy of the petition to each party. The petition shall include:~~

~~(A) the agency'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 presiding officer shall grant a petition for intervention if the presiding 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 presiding 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 presiding officer may dismiss the intervenor from the proceeding.~~

~~(E) In the interest of expediting a hearing, the presiding officer may limit the extent of participation of an intervenor. Where two or more intervenors have substantially like interests and positions, the presiding 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.~~

~~(e) 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 presiding 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 presiding officer when requested by any party, or may be issued by the presiding officer on his own motion.~~

~~(d) The Formal Hearing.~~

~~(i) Notice. The presiding officer shall notify the parties in writing of the date, time, and place of the hearing at least ten days in advance of the hearing. The presiding 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 presiding 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 presiding officer shall proceed to prepare and serve on respondent his order pursuant to R81-1-7(4)(e).

(ii) ~~Public Hearing.~~ The hearing shall be open to all parties. It shall also be open to the public, provided that the presiding 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 presiding officer may take appropriate measures necessary to preserve the integrity of the hearing.

(iii) ~~Rights of Parties.~~ The presiding 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 presiding 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 presiding 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 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 presiding 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 presiding 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 presiding officer when in the public interest.

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

(xi) ~~Record of Hearing.~~ The presiding 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 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 Section 32B-3-203(3)(b) and (c).

(e) ~~Disposition.~~

(i) ~~Presiding 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 presiding officer, the presiding 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 R81-1-7(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;

(VI) notice that a respondent or the department having objections to the presiding officer's order may file written objections with the presiding officer within ten 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 presiding officer's order shall be promptly mailed to the parties.

(C) The presiding officer shall wait ten days from service of his order for written objections, if any. The presiding officer may then amend or supplement his 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 presiding 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 presiding officer for this final stage of the formal adjudicative proceeding pursuant to Sections 63G-4-103(1)(b)(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 Section 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 R81-1-7(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 ten days of the service of the order;~~

~~(VII) notice of the right to seek judicial review of the order within thirty 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 presiding 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 ten 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 prior to 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 twenty 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 twenty 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, and 405, and Section 32B-3-207.~~

R81-1-8. 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 32B-2-202(1)(c) and (e), and the commission's authority to adjudicate violations of Title 32B.~~

~~(2) Purpose. This rule establishes a consent calendar procedure for handling letters of admonishment issued and settlement agreements proposed pursuant to R81-1-7 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 Section (2).~~

~~(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 R81-1-6, 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 shall be paid on or before the day of the commission meeting unless otherwise provided by order of the commission.~~

R81-19. Liquor Dispensing Systems.

- ~~_____ 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.~~
- ~~_____ (1) A dispensing system is 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.~~
- ~~_____ (2) Types of systems. Dispensing systems may be of various types including: gun, stationary head, tower, insertable spout, ring activator or similar method.~~
- ~~_____ (3) Licensee Responsibility.~~
 - ~~_____ (a) The licensee is responsible for verifying that the system, when initially installed, meets the specifications which listed in subsection (1). 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.~~
 - ~~_____ (4) Operational restrictions.~~
 - ~~_____ (a) The system must be calibrated to pour a quantity of spirituous liquor not to exceed 1.5 ounces.~~
 - ~~_____ (b) 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. 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 dispensing system must be in a locked storage area. 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 31.261-31.262 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) These records must be made available for inspection and audit by the department or law enforcement.~~
 - ~~_____ (h) This rule does not prohibit the sale of pitchers of mixed drinks as long as the pitcher contains no more than 1.5 ounces of primary spirituous liquor and no more than a total of 2.5 ounces of spirituous liquor per person to which the pitcher is served.~~
 - ~~_____ (i) 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.~~
 - ~~_____ (j) 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;~~
 - ~~_____ (ii) require the licensee to clean, disinfect, or otherwise improve the sanitary conditions of any system.~~

R81-11. Multiple Licensed Facility Storage and Service.

- ~~_____ (1) For the purposes of this rule:~~
 - ~~_____ (a) A "multiple licensed facility" includes any retail license that shares a licensed premises as allowed by 32B-5-207(2), retail licensed premises that are located in the same room as allowed by 32B-5-207(6), and retail licenses that are authorized for dispensing from an adjacent retail licensed premises as allowed by 32B-6-205.2(11)(a)(iii), 305.2(11)(a)(iii) and 905.1(12)(a)(iii) and any sublicense located within the boundary of a resort building of a resort license under 32B-8 or the boundary of a hotel of a hotel license under 32B-8b.~~
 - ~~_____ (b) "cost allocation" means an apportionment of the as purchased cost of the alcoholic beverage product based on the amount sold in connection with each retail license.~~
 - ~~_____ (c) "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) The dispensing of alcoholic beverages may be made from the alcoholic beverage inventory of one retail license to patrons in premises of another retail license in a multiple licensed facility 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 connection with each retail license;~~
 - ~~_____ (b) cost allocation of the alcoholic beverage product cost must be made for each retail license 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 in connection with a retail license 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 retail 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 retail 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 retail licensed premises to the various approved retail licenses, or dispensed to each retail license through the use of a remote storage alcoholic beverage dispensing system.~~

~~(3) At a multiple licensed facility where each licensee maintains an inventory of alcoholic beverage products, the alcoholic beverages owned by each retail license may be stored in a common location in the building subject to the following guidelines:~~

~~(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 retail license 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 retail licensee premises within the facility.~~

~~(4) In accordance with 32B-5-207(5)(d) which requires that the commission establish by rule a procedure by which a licensee surrenders a retail license if they have a bar or tavern in the same room as a restaurant in violation of 32B-5-207.~~

~~(a) On May 1, 2018 a notice will be sent to all bar establishment licensees informing them that renewal of the bar license will be considered notice of intent to surrender any restaurant license in violation of 32B-5-207 unless they apply for a change in floor plan with the department.~~

~~(b) On May 1, 2018 a notice will be sent to any tavern that has both a restaurant and a tavern asking them to return a form electing whether to surrender the tavern or restaurant if they are in violation of 32B-5-207 or to apply for a change in floor plan. Failure to respond will result in surrender of restaurant license as of July 1, 2018.~~

~~(c) Those that are seeking to keep both licenses shall apply for a change in floor plan with the department outlining what will be done to comply with the requirements of 32B-5-207. If modifications are not completed by July 1, 2018 one or more of the licenses will need to cease operations in accordance with 32B-5-309 until modifications have been completed and staff has inspected the multiple premises to verify compliance with 32B-5-207.~~

R81-1-12. Alcohol Training and Education Seminar.

~~(1) The alcohol training and education seminar, as described in Section 62A-15-401, shall be completed by every individual of every new and renewing licensee under title 32B who:~~

~~(a) is employed to sell or furnish alcoholic beverages to the public within the scope of his employment for consumption on the premises;~~

~~(b) is employed to manage or supervise the service of alcoholic beverages; or~~

~~(c) holds an ownership interest in an on-premise licensed establishment and performs the duties of a manager, supervisor, or server of alcoholic beverages.~~

~~(2) Persons described in subsection 1(a) and (b) must complete the training within 30 days of commencing employment.~~

~~Persons described in subsection 1(c) must complete the training within 30 days of engaging in the duties described in subsection 1(a) and (b).~~

~~(3) Each licensee shall maintain current records on each individual indicating:~~

~~(a) date of hire, and~~

~~(b) date of completion of training.~~

~~(4) The seminar shall include the following subjects in the curriculum and training:~~

~~(a) alcohol as a drug and its effect on the body and behavior;~~

~~(b) recognizing the problem drinker;~~

~~(c) an overview of state alcohol laws;~~

~~(d) dealing with problem customers; and~~

~~(e) alternate means of transportation to get a customer safely home.~~

~~(5) Persons required to complete the seminar shall pay a fee to the seminar provider.~~

~~(6) The seminar is administered by the Division of Substance Abuse of the Utah Department of Human Services.~~

~~(7) Persons who are not in compliance with subsection (2) may not:~~

~~(a) serve or supervise the serving of alcoholic beverages to a customer for consumption on the premises of a licensee; or~~

~~(b) engage in any activity that would constitute managing operations at the premises of a licensee.~~

R81-1-12A. Department Training Programs.

~~(1) Authority and general purpose. This rule is pursuant to 32B-5-405(3) which requires that the department to make rules to develop and implement the retail manager and violation training programs described in 32B-5-405.~~

~~(2) Application of the rule.~~

~~(a) The requirements for the retail manager and violation training programs described in 32B-5-405.~~

~~(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.~~

~~(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 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.~~

R81-1-13. Utah Government Records Access and 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 Sections 63G-2-204 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 South 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 Section 63G-2-203(4). Requests for this waiver of fees must be made to the appropriate official specified in paragraph (3) above.~~

~~(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 paragraph (3) above. 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 paragraph (3) above.~~

~~(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.~~

R81-1-14. Americans With Disabilities Act Grievance Procedures.

~~(1) Authority and Purpose.~~

~~(a) This rule is made under authority of Section 32B-2-202 and 63G-3-201(3). As required by 28 CFR 35.107, the Utah 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 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, Utah Code, 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. Section 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 Subsection R81-1-14(3)(d) and (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 ten 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 prior to 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 Section R81-1-14(5) or a final decision upon appeal under Section R81-1-14(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.~~

~~_____ (a) The written decision of the division director or executive director shall be classified as "public," and all other records, except controlled records under Subsection R81-1-14(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, Section 34A-5-107, and Section 67-19-32;~~

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

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

R81-1-15. 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 work days; 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 prior to 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.~~

R81-116. Disqualification Based Upon Conviction of Crime.

~~(1) The Alcoholic Beverage Control Act disqualifies persons from being employees of the department, operating a package agency, holding a license or permit, or being employed in a managerial or supervisory capacity with a package agency, licensee or permittee if they have been convicted of:~~
~~(a) a felony under any federal or state law;~~
~~(b) any violation of any federal or state law or local ordinance concerning the sale, manufacture, distribution, warehousing, adulteration, or transportation of alcoholic beverages;~~
~~(c) any crime involving moral turpitude; or~~
~~(d) driving under the influence of alcohol or drugs on two or more occasions within the last five years.~~
~~(2) In the case of a partnership, corporation, or limited liability company the proscription under Subsection (1) applies if any of the following has been convicted of any offense described in Subsection (1):~~
~~(a) a partner;~~
~~(b) a managing agent;~~
~~(c) a manager;~~
~~(d) an officer;~~
~~(e) a director;~~
~~(f) a stockholder who holds at least 20% of the total issued and outstanding stock of the corporation; or~~
~~(g) a member who owns at least 20% of the limited liability company.~~
~~(3) As used in the Act and these rules:~~
~~(a) "convicted" or "conviction" means a determination of guilt by a judge or a jury, upon either a trial or entry of a plea, in any court, including a court not of record, that has not been reversed on appeal;~~
~~(b) "felony" means any crime punishable by a term of imprisonment in excess of one year; and~~
~~(c) a "crime involving moral turpitude" 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) Compliance with subsections (1) and (2) are fundamental licensing requirements, the violation of which will result in the issuance of an Order to Show Cause in accordance with R81-1-6 and action on the license as determined by the commission in accordance with 32B-1-304(2).~~

R81-117. Advertising.

~~(1) Authority and General Purpose. This rule is pursuant to Section 32B-4-510(4) which authorizes the commission to establish guidelines for the advertising of alcoholic beverages in this state except to the extent prohibited by Title 32B.~~

~~(2) Definitions.~~

~~(a) 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; except that such term shall not include:~~

~~(i) labels on products; or~~

~~(ii) any editorial or other reading material (i.e., news release) 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 shall govern 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 Section 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, as defined in 32B-1-102(55), by the department, state stores, or type 1, 2 or 3 package agencies as defined in R81-3-1, 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 R81-3-1 shall comply with the advertising requirements listed in Section (6) of this rule.~~

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

~~(a) May not violate any federal laws referenced in Subparagraph (3);~~

~~(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~~

~~proress, sexual proress, athletic ability, social welfare, or capacity to enjoy life's activities.~~

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

R81-1-19. Emergency Meetings.

~~(1) Purpose. The commission recognizes that there may be times when, due to the necessity of considering matters of an emergency or urgent nature, the public notice provisions of Utah Code Sections 52-4-6(1), (2) and (3) cannot be met. Pursuant to Utah Code Section 52-4-6(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. The following procedure shall govern any emergency meeting:~~

~~(a) No emergency meeting shall be held unless an attempt has been made to notify all of the members of the commission of the proposed meeting and a majority of the convened commission votes in the affirmative to hold such an emergency meeting.~~

~~(b) Public notice of the emergency meeting shall be provided as soon as practicable and shall include at a minimum the following:~~

~~(i) Written posting of the agenda and notice at the offices of the department;~~

~~(ii) If members of the commission may appear electronically or telephonically, all such notices shall specify the anchor location for the meeting at which interested persons and members of the public may attend, monitor, and participate in the open portions of the meeting;~~

~~(iii) Notice to the commissioners shall advise how they may participate telephonically or electronically and be counted as present for all purposes, including the determination of a quorum.~~

~~(iv) Written, electronic or telephonic notice shall be provided to at least one newspaper of general circulation within the state and at least one local media correspondent.~~

~~(e) If one or more members of the commission appear electronically or telephonically, the procedures governing electronic meetings shall be followed, except for the notice requirements which shall be governed by these provisions.~~

~~(d) 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 such that the ordinary public notice of meetings provisions of Utah Code Section 52-4-6 could not be followed.~~

R81-1-20. Electronic Meetings.

~~(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 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 Utah Code 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 and 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 chair 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 South 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.~~

R81-1-21. Beer Advertising in Event Venues.

~~(1) Authority. This rule is pursuant to the commission's powers and duties as the plenary policymaking body on the subject of alcoholic beverage control under 32B-2-202, and its authority to establish guidelines for the advertising of alcoholic beverages under 32B-4-510.~~

~~(2) Purpose.~~

~~(a) This rule establishes a "safe harbor" from administrative action being taken against beer manufacturers and retailers under the circumstances and conditions below. This rule is necessary to allow certain advertising relations to occur even though they have the appearance of violating the "tied house" provisions of 32B-4-703 to -705, but where the reasons and purposes for the "tied house" provisions do not apply.~~

~~(b) "Tied house" provisions have been enacted at both the federal and state level in response to historical forces and concerns. The thrust of the laws is to prevent two particular dangers: the ability and potential ability of large firms to dominate local markets through vertical and horizontal integration, and excessive sales of alcoholic beverages produced by overly aggressive marketing techniques. The principle method used to avoid these developments was the establishment of a triple tiered distribution system and licensing scheme where separate and distinct business enterprises engaged in the production, handling, and final sale of alcoholic beverages. The laws also prohibited certain economic arrangements and agreements between each of the three tiers of the distribution system.~~

~~(c) Utah's "tied house" and trade practice laws prohibit a beer industry member, directly or indirectly or through an affiliate, from inducing any beer retailer to purchase alcoholic beverages from the industry member to the exclusion in whole or in part of any of those products sold or offered for sale by other persons by furnishing the retailer signs, money or other things of value except to the extent allowed under 32B-4-703 to -705. The laws prohibit a beer industry member, directly or indirectly or through an affiliate, from paying or crediting a beer retailer for any advertising, display, or distribution service. 32B-4-704(4). This includes the purchase, by an industry member, of advertising on signs, scoreboards, programs, scorecards, and the like at ballparks, racetracks or stadiums, from the retail concessionaire. See 27 C.F.R. Sec. 6.53 as referenced in 32B-4-704(4)(a). The laws also prohibit an industry member from making payments for advertising to a retailer association or a display company where the resulting benefits flow to the individual retailers. 32B-4-704(3)(b)(i)(B).~~

~~(d) Throughout the state, there are a number of large facilities which put on or allow events to occur on their premises. This includes sports arenas, ballparks, raceways, fairgrounds, equestrian facilities and the like. These facilities have a recognized area of advertising for sale in connection with the events and which is standard for their events, e.g., fence signage at ballparks. Many of these facilities are or have associated with their on-premise beer retailer, either on an annual basis, or as a temporary event permit holder. The issue is thus raised as to the legality of the advertising of beer products as part of the general advertising where other items are advertised and the facility is or has within it an on-premise beer retailer.~~

~~(3) Application of the Rule. If the conditions listed below are met, the reasons and purposes behind the "tied house" provisions restricting relations between manufacturers and retailers do not apply or are not significantly impacted. In addition, an event facility may be unduly restricted in its ability to sell advertising and be competitive. This is based upon the facility's primary purpose being other than the sale of food and beverages, that advertising is a normal and accepted part of the business of the facility and the events that occur at the facility, that beer advertisers would be on equal footing with other advertisers, and that there is little, if any, likelihood of the purchasing of advertising space or time either having an impact on the beer retailing decisions of the retailer or of allowing the manufacturer to obtain or assert control over the retailer. Therefore, if the following conditions are met, the sale of advertising space or time to a beer manufacturer for display at the facility does not constitute the payment to a retailer for advertising, display or distribution service, and does not otherwise constitute the furnishing of any signs, money, or other things of value to a retailer in violation of the "tied house" provisions of 32B-4-704:~~

~~(a) The primary purpose of the facility is the hosting or putting on events, and not the sale or service of food and beverages, including alcoholic beverages;~~

~~(b) The retail licensee operates with a fixed seating capacity of more than 2,000 persons;~~

~~(c) The advertising space or time is purchased only in connection with events to be held on the premises, and not as point-of-sale advertising. The advertising space or time is not located near the beer concession area and does not reference the on-premise retailer or the availability of beer;~~

~~(d) Sales of event advertising space or time and retail beer sales are handled by different entities or divisions, that are separate and do not influence each other, and no preference in terms of beer sales or facilities are extended to a beer advertiser;~~

~~(e) The retail licensee serves other brands of malt beverages or beer than the brand manufactured or sold by the manufacturer purchasing advertising space or time. Unless demonstrated for sound business reasons unrelated to "tied house" laws, the percentage of taps in a facility may not exceed by 10% the actual percentage of sales, by brand, in that facility or the community in the previous year;~~

~~(f) The advertising space or time is available to all types of advertisers, is not limited to any type of product, such as beer, is pursuant to an established rate card that sets forth the advertising rates equally available to any other industry member or (and at rates substantially similar for any) non industry advertiser, and the advertising agreement does not provide for an exclusive right to an advertiser or a right to exclude other advertisers;~~

~~(g) The industry member may not share in the costs or contribute to the costs of the advertising or promotion of the beer retailer or the facility, or obtain or have any interest in the retailer or the facility; and~~

~~(h) The purchase of advertising space or time is by written agreement, a copy of which shall be provided to the department as a confidential business document, non public, and only to be used for enforcement purposes, and the term of the agreement may not be for a period in excess of three years, including any right of renewal.~~

~~(4) This "safe harbor" is limited to its express terms, does not undermine or infringe upon general "tied house" prohibitions, and shall be strictly construed against its applicability. This "safe harbor" also does not limit or abrogate any exception to "tied house" prohibitions.~~

R81-1-22. Diplomatic Embassy Shipments and Purchases.

~~(1) Purpose. The Vienna Conventions on Diplomatic and Consular Relations grant foreign diplomatic missions certain exemptions from federal, state and local taxes. The United States, by treaty, is a party to the Vienna Conventions, and is obligated under international law to grant these exemptions under these agreements to accredited diplomatic missions of those countries that grant the United States reciprocal privileges. These privileges include the purchase of alcoholic beverages duty and tax free subject to certain exceptions such as indirect taxes normally incorporated in the price of goods or services, and charges levied for specific services rendered to benefit the mission.~~

~~This rule establishes department guidelines for shipments and purchases of alcohol by a foreign diplomatic mission with an accredited embassy having full diplomatic privileges under the Vienna Conventions that establishes an embassy presence in the state of Utah (hereafter "accredited foreign diplomatic mission").~~

~~(2) Application of Rule.~~

~~(a) Shipments. An accredited foreign diplomatic mission that establishes an embassy presence in Utah may have or possess, for official diplomatic use, and not for sale or resale, alcoholic beverages that have not been purchased in the state of Utah. Such products may be shipped or transported into the state of Utah under the following conditions:~~

~~(i) The embassy must first obtain the approval of this department prior to shipping or transporting its alcoholic beverages into the state.~~

~~(ii) Alcoholic beverages shipped or transported into the state must clear U.S. Customs duty free.~~

~~(iv) The embassy shall pay the department an administrative handling fee of \$1.00 per smallest unit (bottle, can, or keg). Payment of handling fees shall be made by the embassy using an official embassy check or embassy credit card.~~

~~(v) The alcoholic beverages may be used by the embassy only for official diplomatic functions, and may not be sold or resold.~~

~~(b) Purchases.~~

~~(i) Special Orders. An accredited foreign diplomatic mission that establishes an embassy presence in Utah may special order from the department alcoholic beverage products not presently sold in the state of Utah under the following procedures:~~

~~(A) The company or importer supplying the product must submit a price quotation to the department indicating the case price (in US dollars) for which it will sell the product to the state.~~

~~(B) The quoted case price must be reasonable (a minimum of \$10.00 per case).~~

~~(C) The product will be marked up using the department's standard pricing formula (less the state sales tax).~~

~~(D) Special orders must be placed by the embassy at least two months in advance to allow the department sufficient time to purchase and receive the product for the embassy.~~

~~(E) The product must be paid for by the embassy using an official embassy check or embassy credit card.~~

~~(F) The product may be used by the embassy only for official diplomatic functions, and may not be sold or resold.~~

~~(ii) Presently Available Merchandise. An accredited foreign diplomatic mission that establishes an embassy presence in Utah may purchase alcoholic beverages that are presently sold in the state of Utah under the following procedures:~~

~~(A) Alcoholic beverage product purchases, other than large quantity purchases, may be made by the embassy at any state store. The store shall deduct state sales tax from the purchase price.~~

~~(B) Large quantity purchase orders must be placed by the embassy at the department's licensee warehouse. The warehouse shall deduct state sales tax from the purchase price.~~

~~(C) The products must be paid for by the embassy using an official embassy check or embassy credit card.~~

~~(D) The product may be used by the embassy only for official diplomatic functions, and may not be sold or resold.~~

R81-1-23. Sales Restrictions on High Demand Products of Limited Availability.

~~(1) Authority and Purpose. This rule is pursuant to Section 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 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 high demand products, including policies for a drawing, when the director determines a special procedure is appropriate.~~

R81-1-25. Sexually Oriented Entertainers and Stage Approvals.

~~(1) Authority. This rule is pursuant to:~~

~~(a) 32B-1-501 to 506 that 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 in accordance with commission rule in accordance with 32B-1-505(4).~~

~~(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 32B-1-102(102).~~

~~(b) "Sexually oriented entertainer" means a person defined in 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 32B-1-502 to 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 floor plan 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 Sections (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.~~

R81-1-26. Criminal History Background Checks.

~~(1) Authority. This rule is pursuant to:~~

~~(a) the commission's powers and duties under 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) 32B-1-301 to 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; and~~

~~(c) 32B-1-301 to 307 that allow for the department to require criminal history background check reports on certain individuals.~~

~~(2) 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.~~

~~(3) 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 (hereafter "B.C.I.") and the Federal Bureau of Investigation (hereinafter "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 32B-1-307(4)(iv)(b).~~

~~(iii) An applicant for an event permit under 32B-9 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, the license, permit, or package agency shall be immediately surrendered, and the commission may enter an order accepting the 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 prior to 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;~~

~~(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.~~

R81-1-27. Label Approvals.

~~(1) Authority. This rule is pursuant to 32B-1-606(2)(c) and (d) and 32B-1-607 which give the commission the authority to adopt rules necessary to fully implement certain aspects of the Malted Beverages Act, 32B-1-601-608.~~

~~(2) Purpose.~~

~~(a) Pursuant to 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 32B-1-604 to 606.~~

~~(c) This rule:~~

~~(i) establishes administrative fees that may be assessed by the department to process applications for the approval of malt beverage labels and packaging;~~

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

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

~~(iv) establishes the format of certain words and phrases required on the containers and packaging of certain malt beverages as required by 32B-1-606(2)(c) and (d).~~

~~(3) Application of Rule.~~

~~(a) The department shall assess a fee of \$30.00 made payable to the "Department of Alcoholic Beverage Control" for each application submitted for label and packaging approval.~~

~~(b) 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.~~

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

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

~~(e) 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.~~

~~(f) Pursuant to 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.~~

~~(g) Pursuant to 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 alcohol content 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.~~

R81-1-28. Special Commission Meetings – Fees.

~~_____ (1) Authority. This rule is pursuant to 32B-2-201(10) that gives the commission authority to hold special commission meetings; and 32B-2-202(1) that gives the commission authority to establish procedures for granting and denying permits and to prescribe fees payable for permits.~~

~~_____ (2) Purpose. This rule authorizes the commission to assess an administrative fee in addition to the regular permit fee to cover the additional administrative costs of convening a special commission meeting to consider the application of an applicant for a single event permit or temporary special event beer permit who failed to timely submit the permit application to be considered at the commission's regularly scheduled monthly meeting.~~

~~_____ (3) Application of Rule.~~

~~_____ (a) If the commission agrees to convene a special commission meeting to accommodate an applicant described in Section (2), the commission shall assess an administrative fee of \$350 in addition to the regular permit fee.~~

~~_____ (b) The administrative fee in Section (3)(a) shall be used to offset the costs of convening the special meeting including, but not limited to:~~

- ~~_____ (i) department costs associated with scheduling, arranging, and providing notice of the special meeting;~~
- ~~_____ (ii) department costs associated with any emergency or electronic meeting held pursuant to R81-1-19 and 20;~~
- ~~_____ (iii) payment of per diem and expenses to commissioners; and~~
- ~~_____ (iv) any other costs incurred.~~

~~_____ (c) The administrative fee in Section (3)(a) shall be paid prior to the convening of the special commission meeting.~~

~~_____ (d) The administrative fee in Section (3)(a) is a non-refundable fee.~~

R81-1-29. Factors for Granting Licenses.

~~_____ (1) Definition. For purposes of this rule, "license" includes a license, permit, certificate of approval, and package agency.~~

~~_____ (2) Authority. This rule is pursuant to 32B-2-202(1)(e) which gives the commission the authority to set policy by written rules that establish criteria and procedures for granting a license. It is also based on 32B-5-203(2)(f) that gives the commission the authority to consider non-statutory factors or circumstances the commission considers necessary in granting a license.~~

~~_____ (3) Purpose. This rule provides a list of non-statutory factors the commission considers in granting a license.~~

~~_____ (4) Application of Rule. In addition to any statutory factor for granting a license, the commission also may consider the following non-statutory factors:~~

- ~~_____ (a) availability of retail licenses under a quota;~~
- ~~_____ (b) length of time the applicant has waited for a retail license;~~
- ~~_____ (c) the scheduled opening date;~~
- ~~_____ (d) whether the applicant is a seasonal business;~~
- ~~_____ (e) whether the location has been previously licensed or is a new location;~~
- ~~_____ (f) whether the application involves a change of ownership of an existing location;~~

~~_____ (g) whether the applicant holds other alcohol licenses at this or other locations;~~

~~_____ (h) whether the applicant has a violation history or a pending violation;~~

~~_____ (i) projected alcohol sales as it relates to the extent to which the retail alcohol license will be utilized;~~

~~_____ (j) whether the applicant is a small or entrepreneurial business that would benefit the community in which it would be located;~~

~~_____ (k) nature of entertainment the applicant proposes; and~~

~~_____ (l) public input in support of or opposition to granting the retail license.~~

R81-1-30. Draft Beer Sales/Minors on Premises.

~~_____ A state license that authorizes the sale of beer on the premises also authorizes the licensee to sell beer on draft regardless of the nature of the business (e.g. cafe, restaurant, pizza parlor, bowling alley, golf course clubhouse, club, tavern, etc.). Minors may not be precluded from establishments based upon whether draft beer is sold. However, minors may not be employed by or be on the premises of any establishment or portion of an establishment which is a "tavern" as defined in Section 32B-1-102(1)(2). This does not preclude local authorities and licensees from excluding minors from premises or portions of premises which have the atmosphere or appearance of a "tavern" as so defined.~~

R81-1-31. Duties of Commission Subcommittees.

~~_____ (1) This rule is promulgated 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) If a quorum of the full commission is not present, a recommendation on action items can be presented to a quorum of the commission for action without discussion if:~~

- ~~_____ (a) A quorum of the subcommittee is present;~~
- ~~_____ (b) There is a unanimous vote on the recommendation; and~~
- ~~_____ (c) A member of the full commission does not request discussion on the items of recommendation.~~

~~_____ (6) A subcommittee quorum is the majority of standing members.~~

R81-1-32. Further Application.

~~_____ (1) 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.~~

~~_____ (2) 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.

~~(3) 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.~~

~~(4) 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.~~

~~(5) The commission may prescribe a time period between the denial and hearing a request for further application.~~

R81-1-33. Alcohol Content.

~~(1) This rule is made pursuant to Section 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.~~

R81-1-34. Transfer Agreements.

~~(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) 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.~~

~~(3)(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 and may create an optional form to assist licensees in providing necessary information.~~

~~(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.~~

~~(4) 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.~~

~~(5) 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.~~

~~(6) Nothing in this rule authorizes a licensee to close business without approval from the Department or Commission, as required by statute.~~

KEY: alcoholic beverages

Date of Enactment or Last Substantive Amendment: September 25, 2019

Notice of Continuation: May 2, 2016

Authorizing, and Implemented or Interpreted Law: 32B-2-201(10); 32B-2-202; 32B-2-204; 32B-2-206; 32B-3-203(3)(c); 32B-3-205(2)(b); 32B-5-304; 32B-1-305; 32B-1-306; 32B-1-307; 32B-1-607; 32B-1-304(1)(a); 32B-6-702; 32B-6-805(3); 32B-9-204(4); 32B-4-414(1)(b) and (e)

NOTICE OF PROPOSED RULE			
TYPE OF RULE: Repeal			
Utah Admin. Code Ref (R no.):	R81-2	Filing No.	52418

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:
State Stores

3. Purpose of the new rule or reason for the change:
 The provisions of this rule are being moved to Title R82. The new rules will condense and reorganize the administrative code to a format similar to state statute. (EDITOR'S NOTE: The proposed new rules under Title R82 were published in the December 15, 2019, issue of the Bulletin.)

4. Summary of the new rule or change:
 The repealed and 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 filing does not create additional cost or savings.

B) Local governments:
 This rule filing does not create additional cost or savings.

C) Small businesses ("small business" means a business employing 1-49 persons):
 This rule filing does not create additional cost or savings.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons):
 This rule filing 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 filing does not create additional cost or savings.

F) Compliance costs for affected persons:
 There are no fees associated with this process. The provisions of this rule are being moved to Title R82.

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

Regulatory Impact Table

Fiscal Cost	FY2020	FY2021	FY2022
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0

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

H) Department head approval of regulatory impact analysis:
 The executive director of the Department of 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:
 The provisions of this rule are being moved to Title R82. The new rules 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-2-202	
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Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until: 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:	Salvador Petilos, Executive Director	Date:	12/05/2019
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~~[R81- Alcohol Beverage Control, Administration.
R81-2. State Stores.
R81-2-1. Reserved.
Reserved.~~

~~**R81-2-2. Liquor Returns, Refunds and Exchanges.**~~

~~(1) Purpose. This rule establishes guidelines for accepting liquor returns, refunds and exchanges.~~

~~(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 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 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. 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 \$50.00 or more shall not be accepted without a receipt. Therefore, it is necessary for cashiers to print a~~

receipt for all purchases of \$50.00 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 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 (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.~~

~~**R81-2-3. Warning Sign.**~~

~~All state stores shall display in a prominent place a "warning sign" as defined in R81-1-2.~~

~~**R81-2-4. Identification Guidelines to Purchase Liquor.**~~

~~The department accepts only four forms of identification to establish proof of age for the purchase of liquor by customers:~~

~~(1) A current valid driver's license that includes date of birth and has a picture affixed and is issued in this state under Title 53, Chapter 3, Uniform Driver License Act, or in accordance with the laws of another state;~~

~~(2) A current valid identification card that includes date of birth and has a picture affixed issued by this state under Title 53, Chapter 3, Part 8, Identification Card Act, or issued by another state that is substantially similar to this state's identification card;~~

~~(3) A current valid military identification card that includes date of birth and has a picture affixed; or~~

~~(4) A current valid passport.~~

~~If a person's age is still in question after presenting proof of age, the department may require the person to also sign a "statement of age" form as provided in 32B-1-405. The form shall be filed alphabetically by the close of the business day, and shall be maintained on file for a period of three years.~~

~~**R81-2-5. Advertising.**~~

~~The advertising or promotion of liquor products within state stores is prohibited. An employee may inform the customer as to the characteristics of a particular brand or type of liquor, provided the information is linked to a comparison with other brands or types.~~

R81-2-6. Refusal of Service.

~~An employee of the store may refuse to sell liquor to any person whom the employee has reason to believe is purchasing or attempting to purchase liquor in violation of Utah Alcoholic Beverage Control laws. The employee may also detain the person and hold the person's form of identification in a reasonable manner and for a reasonable length of time for the purpose of informing a peace officer of a suspected violation.~~

R81-2-7. Minors on Premises.

~~No person under the age of 21 years may enter a state liquor store unless accompanied by a parent, legal guardian, or spouse that is 21 years of age or older. Signs notifying the public of this rule shall be posted in a prominent place on the doors or windows of the state liquor store.~~

R81-2-8. Payment for Liquor.

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

R81-2-9. Reserved.

~~Reserved.~~

R81-2-10. State Store Hours.

~~(1) Authority and purpose: As authorized by 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 32B-2-503(5)(a).~~

~~(3) Authorized hours of operation: Pursuant to 32B-2-202(1) (b) and (k) and in accordance 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.~~

R81-2-11. 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.~~

R81-2-12. Store Site Selection.

~~This rule is promulgated pursuant to Section 32B-2-202(1)(e)(ii) which requires that criteria and procedures be established for determining the location of a state store. Prior to the commission establishing a new state store, the Operations and Procurement Subcommittee will determine the feasibility of a new site, weigh options and consider the investigation and recommendation of the~~

~~department as outlined in 32B-2-502 then make its recommendation to the commission.~~

~~**KEY: alcoholic beverages**~~

~~**Date of Enactment or Last Substantive Amendment: December 24, 2015**~~

~~**Notice of Continuation: May 2, 2016**~~

~~**Authorizing, and Implemented or Interpreted Law: 32B-2-202**~~

NOTICE OF PROPOSED RULE			
TYPE OF RULE: Repeal			
Utah Admin. Code Ref (R no.):	R81-3	Filing No.	52419

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:
Package Agencies
3. Purpose of the new rule or reason for the change:
The provisions of this rule are being moved to Title R82. The new rules will condense and reorganize the administrative code to a format similar to state statute. (EDITOR'S NOTE: The proposed new rules under Title R82 were published in the December 15, 2019, issue of the Bulletin.)
4. Summary of the new rule or change:
The repealed and 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 filing does not create additional cost or savings.			
B) Local governments:			
This rule filing does not create additional cost or savings.			
C) Small businesses ("small business" means a business employing 1-49 persons):			
This rule filing does not create additional cost or savings.			
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):			
This rule filing 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 filing does not create additional cost or savings.			
F) Compliance costs for affected persons:			
There are no fees associated with this process. The provisions of this rule are being moved to Title R82.			
G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)			
Regulatory Impact Table			
Fiscal Cost	FY2020	FY2021	FY2022
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal	\$0	\$0	\$0

Benefits			
Net Fiscal Benefits	\$0	\$0	\$0
H) Department head approval of regulatory impact analysis:			
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:			
The provisions of this rule are being moved to Title R82. The new rules 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 202	32B-2-601	Section 32B-2-601	Section 32B-2-605

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

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Agency head or designee, and title:	Salvador Petilos, Executive Director	Date:	12/05/2019
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~~R81. Alcoholic Beverage Control, Administration.~~**~~R81-3. Package Agencies.~~****~~R81-3-1. Definitions.~~**

~~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:~~

~~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).~~

~~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.~~

~~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.~~

~~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.~~

~~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.~~

~~The commission may grant type 4 package agency privileges to a type 1 package agency.~~

~~R81-3-2. Change of Location.~~

~~Any change of package agency location must be requested in writing and approved in advance by the commission.~~

~~R81-3-3. Bonds.~~

~~(1) No part of any surety bond required in Section 32B-2-604, may be withdrawn during the time the package agency contract is in effect. If the package agent fails to maintain a valid surety bond, the package agency contract shall be immediately suspended until a valid bond is obtained. Failure to obtain a bond within 30 days of notification by the department of the delinquency shall result in an automatic rescission of the package agency contract.~~

~~(2) A bond will be issued through the department for type 2 and 3 agencies.~~

~~R81-3-4. Change of Package Agent.~~

~~Pursuant to Section 32B-2-605(2), any change of the package agent designated in the department's package agency agreement is a violation of these rules and shall result in the immediate termination of the package agency contract.~~

~~R81-3-5. Reserved.~~

~~Reserved.~~

~~R81-3-6. Liquor Returns, Refunds and Exchanges.~~

~~(1) Purpose. This rule establishes guidelines for accepting liquor returns, refunds and exchanges.~~

~~(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 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.~~

~~(v) Unsaleable product shall be held at the package agency and accounted for in the same manner as breakage.~~

~~(b) Saleable Product. 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 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 package agent.~~

~~(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 \$50.00 or more shall not be accepted without a receipt. Therefore, it is necessary for cashiers to print a receipt for all purchases of \$50.00 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 package agent has personal knowledge of how they have been handled and stored.~~

~~(iv) If the total amount of the return is more than \$500 the 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 (not listed on the department's product/price list) and discontinued products.~~

~~(iv) Merchandise purchased by catering services.~~

~~_____ (v) Unsaleable product shall be held at the package agency and accounted for in the same manner as breakage.~~

~~_____ (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.~~

R81-3-7. Warning Sign.

~~_____ All package agencies shall display in a prominent place a "warning sign" as defined in R81-1-2.~~

R81-3-8. Identification Guidelines to Purchase Liquor.

~~_____ All package agencies shall accept only four forms of identification to establish proof of age for the purchase of liquor by customers:~~

~~_____ (1) A current valid driver's license that includes date of birth and has a picture affixed and is issued in this state under Title 53, Chapter 3, Uniform Driver License Act or in accordance with the laws of another state;~~

~~_____ (2) A current valid identification card that includes date of birth and has a picture affixed issued by this state under Title 53, Chapter 3, Part 8, Identification Card Act, or issued by another state that is substantially similar to this state's identification card;~~

~~_____ (3) A current valid military identification card that includes date of birth and has a picture affixed; or~~

~~_____ (4) A current valid passport.~~

~~_____ If a person's age is still in question after presenting proof of age, the package agency may require the person to also sign a "statement of age" form as provided in 32B-1-405. The form shall be filed alphabetically by the close of business day, and shall be maintained on file for a period of three years.~~

R81-3-9. Promotion and Listing of Products.

~~_____ (1) An operator or employee of a Type 1, 2, or 3 package agency, as defined in R81-3-1, may not promote a particular brand or type of liquor product while on duty at the package agency. An operator or employee may inform a customer as to the characteristics of a particular brand or type of liquor, provided the information is linked to a comparison with other brands or types.~~

~~_____ (2) A package agency may not advertise alcoholic beverages on billboards except:~~

~~_____ (a) a Type 1 package agency, as defined in R81-3-1, 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 defined in R81-3-1, 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 defined in R81-3-1, 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 R81-1-17 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 defined in R81-3-1, 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 defined in R81-3-1, 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 defined in R81-3-1, 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.~~

R81-3-10. Non-Consignment Inventory.

~~_____ Type 1, 4 and 5 package agencies shall be on a non-consignment inventory status where the agency owns the inventory.~~

R81-3-11. Application.

~~_____ (1) 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 to 307 (qualifications to be a package agent), and 32B-2-602 and 604 and 32B-6-204 have been met (submission of a completed application, payment of application fee, written consent of local authority, evidence of proximity to certain community locations, a bond, a floor plan, and public liability insurance); and~~

~~_____ (b) the department has inspected the package agency premise.~~

~~_____ (2)(a) All application requirements of Subsection (1)(a) 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.~~

R81-3-12. Evaluation Guidelines of Package Agencies.

~~_____ (1) 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;~~

~~_____ (2) 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.~~

~~_____ (3) 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.~~

~~_____ (4) The department shall report to the commission on package agency operations as a regular agenda item at each monthly commission meeting. Any significant issues with respect to the operations of a particular package agency shall also be reported to the commission. 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.

R81-3-13. Operational Restrictions.

- _____ (1) 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, a beer-only restaurant license, or a dining club 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 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 32B-8, may operate 24 hours a day, Monday through Sunday to provide room service to guests 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 32B-2-605(13) 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 32B-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.
 - _____ (2) 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.
 - _____ (3) 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.
 - _____ (4) Access to General Public. Type 1, 2, and 3 package agencies must be easily accessible to the general consuming public.
 - _____ (5) Purchase of Inventory. All new package agencies, at the discretion of the department, will purchase and maintain their inventory of liquor.

R81-3-14. Type 5 Package Agencies.

- _____ (1) 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.

- _____ (2) Authority. 32B-2-504, 605; 32B-5-303.
- _____ (3) Definitions. Reserved.
- _____ (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/or 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) 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. The bottles for sale 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 32B-2-605(13) and R81-3-13.

R81-3-15. Refusal of Service.

_____ An employee of the package agency may refuse to sell liquor to any person whom the employee has reason to believe is purchasing or attempting to purchase liquor in violation of the Utah Alcoholic Beverage Control laws. The employee may also detain the person and hold the person's form of identification in a reasonable manner and for a reasonable length of time for the purpose of informing a peace officer of a suspected violation.

R81-3-16. Minors on Premises.

_____ No person under the age of 21 years may enter a package agency unless accompanied by a parent, legal guardian, or spouse that is 21 years of age or older. Signs notifying the public of this rule shall be posted in a prominent place on the doors or windows of the package agency.

R81-3-17. Consignment Inventory Package Agencies.

~~(1) 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 32B-2-605(5). This rule provides the procedures for such consignment sales.~~

~~(2) 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. Also, 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 agency's statement by the due date whether or not any discrepancies have been resolved.~~

~~(c) Transfers.~~

~~(i) Transfers (+ or -) 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 agency will be posted to the 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.~~

R81-3-18. Type 4 Package Agency Room Service Mini-Bottle/187 ml Wine Sales.

~~(1) Purpose. Pursuant to 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. 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. The following conditions 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/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 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/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.~~

R81-3-19. Reserved.

~~Reserved.~~

R81-3-20. Type 4 Package Agency Room Service Dispensing.

~~(1) 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 Section R81-1-9 (Liquor Dispensing Systems).~~

~~(2) 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;~~

~~(d) A Type 4 package agency held by a resort 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: ~~January 3, 2017~~
Notice of Continuation: May 2, 2016
Authorizing, and Implemented or Interpreted Law: ~~32B-2-202; 32B-2-601(4); 32B-2-605(13)(b)~~

NOTICE OF PROPOSED RULE			
TYPE OF RULE: Repeal			
Utah Admin. Code Ref (R no.):	R81-4	Filing No. 52420	

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:
Retail Licenses
3. Purpose of the new rule or reason for the change:
The provisions of this rule are being moved to Title R82. The new rules will condense and reorganize the administrative code to a format similar to state statute. (EDITOR'S NOTE: The proposed new rules under Title R82 were published in the December 15, 2019, issue of the Bulletin.)
4. Summary of the new rule or change:
The repealed and 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 filing does not create additional cost or savings.			
B) Local governments:			
This rule filing does not create additional cost or savings.			
C) Small businesses ("small business" means a business employing 1-49 persons):			
This rule filing does not create additional cost or savings.			
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):			
This rule filing 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 filing does not create additional cost or savings.			
F) Compliance costs for affected persons:			
There are no fees associated with this process. The provisions of this rule are being moved to Title R82.			
G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)			
Regulatory Impact Table			
Fiscal Cost	FY2020	FY2021	FY2022
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal	\$0	\$0	\$0

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

H) Department head approval of regulatory impact analysis:

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:

The provisions of this rule are being moved to Title R82. The new rules 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-2-202	Section 102	32B-1-	
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Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until: 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

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Agency head or designee, and title:	Salvador Petilos, Executive Director	Date:	12/05/2019
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~~**[R81. Alcoholic Beverage Control, Administration. R81 4. Retail Licenses.**~~

~~**R81 4 1. Authority.**
Reserved.~~

~~**R81 4 2. Purpose.**
Reserved.~~

~~**R81 4 3. Definitions.**~~

~~Pursuant to the authority and purpose given in 32B 6 202, 32B 8b 102(2), and 32B 1 102(46) the commission shall define the following as such:~~

- ~~(1) "Hotel" means a commercial lodging establishment:~~
 - ~~(a) that offers temporary sleeping accommodations for compensation;~~
 - ~~(b) that is capable of hosting conventions, conferences, and food and beverage functions under a banquet contract;~~
 - ~~(c) that has adequate kitchen or culinary facilities on the premises of the hotel to provide complete meals; and~~
 - ~~(d) that has at least 1000 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 75 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.~~

~~**R81 4 4. Verification of Proof of Age by Applicable Licensees.**~~

- ~~(1) Authority. 32B 1 407(4)(b) and (5) and 32B 2 202(1)(b).~~
 - ~~(2) Purpose.~~
 - ~~(a) 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; and~~
 - ~~(ii) establishes the procedures for recording identification that cannot be electronically verified; and~~
 - ~~(iii) establishes the security measures that must be used by the bar 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.~~
 - ~~(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; or~~

- ~~_____ (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.~~
 - ~~_____ (e) Any data collected either electronically or otherwise:~~
 - ~~_____ (i) shall 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) for purposes of investigating Title 32B Alcoholic Beverage Control Act, shall be provided upon request to a law enforcement officer or any other person authorized to investigate violations of Title 32B Alcoholic Beverage Control Act;~~
 - ~~_____ (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 or destroyed.~~
 - ~~_____ (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 32B-1-405.~~

KEY: alcoholic beverages
Date of Enactment or Last Substantive Amendment: December 24, 2018
Authorizing, and Implemented or Interpreted Law: 32B-8b-102(2); 32B-2-202; 32B-1-102(46)]

NOTICE OF PROPOSED RULE
TYPE OF RULE: Repeal

Utah Admin. Code Ref (R no.):	R81-4A	Filing No.	52421
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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:
Restaurant Liquor Licenses
3. Purpose of the new rule or reason for the change:
The provisions of this rule are being moved to Title R82. The new rules will condense and reorganize the administrative code to a format similar to state statute. (EDITOR'S NOTE: The proposed new rules under Title R82 were published in the December 15, 2019, issue of the Bulletin.)
4. Summary of the new rule or change:
The repealed and 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 filing does not create additional cost or savings.
B) Local governments:
This rule filing does not create additional cost or savings.
C) Small businesses ("small business" means a business employing 1-49 persons):

This rule filing does not create additional cost or savings.

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

This rule filing 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 filing does not create additional cost or savings.

F) Compliance costs for affected persons:

There are no fees associated with this process. The provisions of this rule are being moved to Title R82.

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

Regulatory Impact Table

Fiscal Cost	FY2020	FY2021	FY2022
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head approval of regulatory impact analysis:

The executive director of the Department of 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:

The provisions of this rule are being moved to Title R82. The new rules 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-1-607	Section 32B-6-202	Section 32B-1-102
Section 32B-5-303		

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: 01/31/2020

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:	Salvador Petilos, Executive Director	Date:	12/05/2019
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~~R81. Alcoholic Beverage Control, Administration.~~

~~R81 4A. Restaurant Liquor Licenses.~~

~~R81 4A 1. Licensing.~~

~~(1) Restaurant liquor licenses are issued to persons as defined in Section 32B-1-102(74). Any contemplated action or~~

transaction that may alter the organizational structure or ownership interest of the person to whom the license is issued must be submitted to the department for approval prior to consummation of any such action to ensure there is no violation of Sections 32B-5-310.

R81-4A-2. Application.

(1) No license or sublicense application will be included on the agenda of a monthly commission meeting for consideration for issuance of a restaurant license until:

(a) The applicant has first met all requirements of Sections 32B-1-304 (qualifications to hold the license), and 32B-5-201, -204, and 32B-6-204 (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 of a full service restaurant, evidence of proximity to certain community locations, a bond, a floor plan, and public liability and liquor liability insurance); 32B-6-206 (requirements for a master full service restaurant license); and

(b) the department has inspected the restaurant premise(s).

(2)(a) All application requirements of Subsection (1)(a) 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 Subsection (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 Subsection (2)(a) will not be considered by the commission that month, but will be included on the agenda of the commission meeting the following month.

(3) Subsection (1)(a) does not preclude the commission from considering an application for a conditional restaurant license under the terms and conditions of 32B-5-205.

(4) Applicants may apply for a Master Full Service Restaurant License as defined by 32B-6-206 so long as five or more locations are indicated as sublicenses on the application.

(a) The five locations must be owned by the same person or entity.

(b) Locations that do not already have a full service restaurant license must meet all requirements for licensing as a full service restaurant under subsection (1).

(c) 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 section (1).

R81-4A-3. Bonds.

No part of any corporate or cash bond required by Section 32B-5-204 and 32B-6-204(1), may be withdrawn during the time the license is in effect. If the licensee fails to maintain a valid corporate or cash bond, the license shall be immediately suspended until a valid bond is obtained. Failure to obtain a bond within 30 days of notification by the department of the delinquency shall result in the automatic revocation of the license.

R81-4A-4. Insurance.

Public liability and dram shop insurance coverage required in Section 32B-5-201(2)(j) must remain in force during the time the license is in effect. Failure of the licensee to maintain the required

insurance coverage may result in a suspension or revocation of the license by the commission.

R81-4A-5. Restaurant Liquor Licensee Liquor Order and Return Procedures.

The following procedures shall be followed when a restaurant liquor licensee orders liquor from or returns liquor to any state liquor store, package agency, or department satellite warehouse:

(1) The licensee must place the order in advance to allow department personnel sufficient time to assemble the order. 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. 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.

(2) The licensee shall allow at least four hours for department personnel to assemble the order for pick up. When the order is complete, the licensee will be notified by phone and given the total cost of the order. The licensee may pay for the product in cash, company check or cashier's check.

(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.

(b) 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.

R81-4A-6. Restaurant Liquor Licensee Operating Hours.

Allowable hours of liquor sales shall be in accordance with Section 32B-6-205(6). However, the licensee may open the liquor storage area during hours otherwise prohibited for the limited purpose of inventory, restocking, repair, and cleaning.

R81-4A-7. Sale and Purchase of Alcoholic Beverages.

(1) The restaurant shall maintain at least 70% of its total business from the sale of food pursuant to Section 32B-6-205(7).

(a) The restaurant shall maintain records separately showing quarterly expenditures and sales for beer, heavy beer, liquor, wine, set-ups, and food. These 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 70% for any quarterly period, the department shall immediately put the licensee on a probationary status and closely monitor the licensee's food sales during the next quarterly period to determine that the licensee is able to prove to the satisfaction of the department that the sales of food meet or exceed 70%. Failure of the

licensee to provide satisfactory proof of the required food percentage within the probationary period shall result in issuance of an order to show cause by the department to determine why the license should not be revoked by the commission.

R81-4A-8. Liquor Storage.

Liquor bottles kept for sale in use with a dispensing system; liquor flavorings in properly labeled unsealed containers, and unsealed containers of wines poured by the glass may be stored in the same storage area of the restaurant as approved by the department.

R81-4A-9. Alcoholic Product Flavoring.

Restaurant liquor licensees may use alcoholic products as flavoring subject to the following guidelines:

- (1) Alcoholic product flavoring may be utilized in beverages only during the authorized selling hours under the restaurant liquor license. Alcoholic product flavoring may be used in the preparation of food items and desserts at any time if plainly and conspicuously labeled "cooking flavoring".
- (2) No restaurant employee under the age of 21 years may handle alcoholic product flavorings.

R81-4A-10. Table, Counter, and "Grandfathered Bar Structure" Service.

- (1) A wine service may be performed by the server at the patron's table, counter, or "grandfathered bar structure" for wine either purchased at the restaurant or carried in by a patron. The wine may be opened and poured by the server.
- (2) Beer and heavy beer, if in sealed containers, may be opened and poured by the server at the patron's table, counter, or "grandfathered bar structure".

R81-4A-12. Menus; Price Lists.

- (1) Contents of Alcoholic Beverage Menu.
 - (a) Each licensee shall have readily available for its patrons a printed alcoholic beverage price list, or menu containing current prices of all mixed drinks, wine, beer, and heavy beer. This list shall include any charges for the service of packaged wines or heavy beer.
 - (b) Any 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 his employee may not misrepresent the price of any alcoholic beverage that is sold or offered for sale on the licensed premises.

R81-4A-13. Identification Badge.

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.

R81-4A-14. Brownbagging.

When private events, as defined in 32B-1-102(77), are held on the premises of a licensed restaurant, the proprietor may, in his or her discretion, allow members of the private group to bring onto the restaurant premises, their own alcoholic beverages under the following circumstances:

- (1) When the entire restaurant is closed to the general public for the private event, or
- (2) When an entire room or area within the restaurant such as a private banquet room is closed to the general public for the private event, and members of the private group are restricted to that area, and are not allowed to co-mingle with public patrons of the restaurant.

R81-4A-15. Grandfathered Bar Structures.

- (1) Authority 32B-1-102; 32B-6-202; and 32B-6-205.3.
- (2) The purpose of this rule is to define terms for full service restaurant licenses as required by 32B-6-Part 2.
 - (3) Definitions.
 - (a) "Actively engaged in the construction of the restaurant" for purposes of 32B-6-202(1)(a)(ii)(A)(I) 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" for purposes of 32B-6-202(1)(b) 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 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 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 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".~~

~~**KEY:** alcoholic beverages~~

~~**Date of Enactment or Last Substantive Amendment:** December 24, 2018~~

~~**Notice of Continuation:** May 2, 2016~~

~~**Authorizing, and Implemented or Interpreted Law:** 32B-1-607; 32B-2-202; 32B-5-303(3); 32B-6-202; 32B-6-206; 32B-6-205.3]~~

NOTICE OF PROPOSED RULE			
TYPE OF RULE: Repeal			
Utah Admin. Code Ref (R no.):	R81-4B	Filing No.	52422

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:
Airport Lounge Licenses
3. Purpose of the new rule or reason for the change:
The provisions of this rule are being moved to Title R82. The new rules will condense and reorganize the administrative code to a format similar to state statute. (EDITOR'S NOTE: The proposed new rules under Title R82 were published in the December 15, 2019, issue of the Bulletin.)
4. Summary of the new rule or change:
The repealed and 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 filing does not create additional cost or savings.
B) Local governments:
This rule filing does not create additional cost or savings.
C) Small businesses ("small business" means a business employing 1-49 persons):
This rule filing does not create additional cost or savings.
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):
This rule filing 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 filing does not create additional cost or savings.
F) Compliance costs for affected persons:
There are no fees associated with this process. The provisions of this rule are being moved to Title R82.
G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table			
Fiscal Cost	FY2020	FY2021	FY2022
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head approval of regulatory impact analysis:

The executive director of the Department of 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:

The provisions of this rule are being moved to Title R82. The new rules 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, 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 202	32B-2-	Section 201	32B-6-	Title 32B, Chapter 5
Section 607	32B-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: 01/31/2020

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:	Salvador Petilos, Director	Date:	12/05/2019
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[R81. Alcoholic Beverage Control, Administration.

R81 4B. Airport Lounge Licenses.

R81 4B 1. Licensing.

~~_____ Airport lounge liquor licenses are issued to persons as defined in Section 32B 1 102(74). Any contemplated action or transaction that may alter the organizational structure or ownership interest of the person to whom the license is issued must be submitted to the department for approval prior to consummation of any such action to ensure there is no violation of Sections 32B 5 310.~~

R81 4B 2. Application.

~~(1) No license application will be included on the agenda of a monthly commission meeting for consideration for issuance of an airport lounge license until:~~

~~(a) The applicant has first met all requirements of Sections 32B 1 304 (qualifications to hold the license), and 32B 5 201, 204 and 32B 6 204 (submission of a completed application, payment of application and licensing fees, written consent of local authority and airport authority, a copy of the sign proposed to be used to inform the public that alcoholic products are sold and consumed on the airport lounge premises, copy of current local business license(s) necessary for operation of a airport lounge, a bond, a floor plan, and public liability and liquor liability insurance); and~~

~~(b) the department has inspected the airport lounge premise.~~
~~(2)(a) All application requirements of Subsection (1)(a) 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 Subsection (1)(a) must be filed on the next business day after the 10th of the month.~~
~~(b) An incomplete application will be returned to the applicant.~~
~~(c) A completed application filed after the deadline in Subsection (2)(a) will not be considered by the commission that month, but will be included on the agenda of the commission meeting the following month.~~

R81-4B-3. Bonds.

~~No part of any corporate or cash bond required by Section 32B-5-204 and 32B-6-504(4) may be withdrawn during the time the license is in effect. If the licensee fails to maintain a valid corporate or cash bond, the license shall be immediately suspended until a valid bond is obtained. Failure to obtain a bond within 30 days of notification by the department of the delinquency shall result in the automatic revocation of the license.~~

R81-4B-4. Insurance.

~~Public liability and dram shop insurance coverage required in Section 32B-5-201(2)(j) must remain in force during the time the license is in effect. Failure of the licensee to maintain the required insurance coverage may result in a suspension or revocation of the license by the commission.~~

R81-4B-5. Airport Lounge Liquor Licensee Liquor Order and Return Procedures.

~~The following procedures shall be followed when an airport lounge liquor licensee orders liquor from or returns liquor to any state liquor store, package agency, or department satellite warehouse:~~

~~(1) The licensee must place the order in advance to allow department personnel sufficient time to assemble the order. 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. 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.~~

~~(2) The licensee shall allow at least four hours for department personnel to assemble the order for pick up. When the order is complete, the licensee will be notified by phone and given the total cost of the order. The licensee may pay for the product in cash, company check or cashier's check.~~

~~(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.~~

~~(b) 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.~~

R81-4B-6. Airport Lounge Liquor Licensee Operating Hours.

~~Liquor sales shall be in accordance with Section 32B-6-505(5). However, licensees may open the liquor storage area during hours otherwise prohibited for the limited purpose of inventory, restocking, repair, and cleaning.~~

R81-4B-7. Sale and Purchase of Alcoholic Beverages.

~~A patron may pay for an alcoholic beverage at the time of purchase, or, at the discretion of both the licensee and the patron, the price charged may be added to the patron's tab, provided that a written beverage tab, as provided in Section 32B-6-505(4), shall be commenced upon the patron's first purchase and shall be maintained by the airport lounge during the course of the patron's stay at the airport lounge regardless of where the patron orders and consumes an alcoholic beverage. 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.~~

R81-4B-8. Liquor Storage.

~~Liquor bottles kept for sale in use with a dispensing system, liquor flavorings in properly labeled unsealed containers, and unsealed containers of wines poured by the glass may be stored in the same storage area of the airport lounge as approved by the department.~~

R81-4B-9. Alcoholic Product Flavoring.

~~Airport lounge licensees may use alcoholic products as flavoring subject to the following guidelines:~~

~~(1) Alcoholic product flavoring may be utilized in beverages only during the authorized selling hours under the airport lounge license. Alcoholic product flavoring may be used in the preparation of food items and desserts at any time if plainly and conspicuously labeled "cooking flavoring".~~

~~(2) No airport lounge employee under the age of 21 years may handle alcoholic product flavorings.~~

R81-4B-10. Price Lists.

~~(1) Each licensee shall have available for its patrons a printed price list containing current prices of all mixed drinks, wine, beer, and heavy beer. This list shall include any charges for the service of packaged wines or heavy beer.~~

~~(2) Any printed menu, master beverage price list or other printed list is sufficient as long as the prices are current and the list is readily available to the patron.~~

~~(3) A licensee or his employee may not misrepresent the price of any alcoholic beverage that is sold or offered for sale on the licensed premises.~~

R81-4B-11. Identification Badge.

~~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.

~~KEY: alcoholic beverages~~

~~Date of Enactment or Last Substantive Amendment: April 30, 2013~~

~~Notice of Continuation: October 2, 2015~~

~~Authorizing, and Implemented or Interpreted Law: 32-1-607; 32B-2-202; 32B-5; 32B-6-201 through 505]~~

NOTICE OF PROPOSED RULE			
TYPE OF RULE: Repeal			
Utah Admin. Code Ref (R no.):	R81-4C	Filing No. 52423	

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:	Limited Restaurant Licenses
3. Purpose of the new rule or reason for the change:	The provisions of this rule are being moved to Title R82. The new rules will condense and reorganize the administrative code to a format similar to state statute. (EDITOR'S NOTE: The proposed new rules under Title R82 were published in the December 15, 2019, issue of the Bulletin.)
4. Summary of the new rule or change:	The repealed and 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 filing does not create additional cost or savings.			
B) Local governments:			
This rule filing does not create additional cost or savings.			
C) Small businesses ("small business" means a business employing 1-49 persons):			
This rule filing does not create additional cost or savings.			
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):			
This rule filing 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 filing does not create additional cost or savings.			
F) Compliance costs for affected persons:			
There are no fees associated with this process. The provisions of this rule are being moved to Title R82.			
G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)			
Regulatory Impact Table			
Fiscal Cost	FY2020	FY2021	FY2022
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0

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

H) Department head approval of regulatory impact analysis:

The executive director of the Department of 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:

The provisions of this rule are being moved to Title R82. The new rules 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, 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-2-202	Section 32B-6-301	Section 32B-6-207
Section 32B-5-303		

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: 01/31/2020

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:	Salvador Petilos, Director	Date:	12/05/2019
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~~**R81. Alcoholic Beverage Control, Administration. R81 4C. Limited Restaurant Licenses. R81 4C 1. Licensing.**~~

~~(1) Limited restaurant licenses are issued to persons as defined in Section 32B-1-102(74). Any contemplated action or transaction that may alter the organizational structure or ownership interest of the person to whom the license is issued must be submitted to the department for approval prior to consummation of any such action to ensure there is no violation of Sections 32B-5-310.~~

~~**R81 4C 2. Application.**~~

~~(1) No license or sublicense application will be included on the agenda of a monthly commission meeting for consideration for issuance of a limited restaurant license until:~~

~~(a) The applicant has first met all requirements of Sections 32B-1-304 (qualifications to hold the license), and 32B-5-201, 204 and 32B-6-304 (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 of a limited restaurant license, evidence of proximity to certain community locations, a bond, a floor plan, and public liability and liquor liability insurance); 32B-6-306 (requirements for a master limited service license); and~~

~~(b) the department has inspected the limited restaurant premise.~~

~~(2)(a) All application requirements of Subsection (1)(a) 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 Subsection (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 Subsection (2)(a) will not be considered by the commission that month, but will be included on the agenda of the commission meeting the following month.~~

~~(3) Subsection (1)(a) does not preclude the commission from considering an application for a conditional limited restaurant license under the terms and conditions of 32B-5-205.~~

~~(4) Applicants may apply for a Master Limited Service Restaurant License as defined by 32B-6-306 so long as five or more locations are indicated as sublicenses on the application.~~

~~(a) The five locations must be owned by the same person or entity.~~

~~(b) Locations that do not already have a limited service restaurant license must meet all requirements for licensing as a limited service restaurant under subsection (1).~~

~~_____ (c) 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 section (1).~~

R81-4C-3. Bonds.

~~_____ No part of any corporate or cash bond required by Section 32B-5-204 and 32B-6-304(4), may be withdrawn during the time the license is in effect. If the licensee fails to maintain a valid corporate or cash bond, the license shall be immediately suspended until a valid bond is obtained. Failure to obtain a bond within 30 days of notification by the department of the delinquency shall result in the automatic revocation of the license.~~

R81-4C-4. Insurance.

~~_____ Public liability and dram shop insurance coverage required in Section 32B-5-201(2)(j) must remain in force during the time the license is in effect. Failure of the licensee to maintain the required insurance coverage may result in a suspension or revocation of the license by the commission.~~

R81-4C-5. Limited Restaurant Licensee Wine and Heavy Beer Order and Return Procedures.

~~_____ The following procedures shall be followed when a limited restaurant licensee orders wine or heavy beer from or returns wine or heavy beer to any state liquor store, package agency, or department satellite warehouse:~~

~~_____ (1) The licensee must place the order in advance to allow department personnel sufficient time to assemble the order. 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. 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.~~

~~_____ (2) The licensee shall allow at least four hours for department personnel to assemble the order for pick up. When the order is complete, the licensee will be notified by phone and given the total cost of the order. The licensee may pay for the product in cash, company check or cashier's check.~~

~~_____ (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) 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.~~

R81-4C-6. Limited Restaurant Licensee Operating Hours.

~~_____ Allowable hours of wine and heavy beer sales shall be in accordance with Section 32B-6-305(6). However, the licensee may open the wine and heavy beer storage area during hours otherwise prohibited for the limited purpose of inventory, restocking, repair, and cleaning.~~

R81-4C-7. Sale and Purchase of Alcoholic Beverages.

~~_____ (1) The limited restaurant shall maintain at least 70% of its total business from the sale of food pursuant to Section 32B-6-305(7).~~

~~_____ (a) The limited restaurant shall maintain records separately showing quarterly expenditures and sales for beer, heavy beer, wine, and food. These 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 70% for any quarterly period, the department shall immediately put the licensee on a probationary status and closely monitor the licensee's food sales during the next quarterly period to determine that the licensee is able to prove to the satisfaction of the department that the sales of food meet or exceed 70%. Failure of the licensee to provide satisfactory proof of the required food percentage within the probationary period shall result in issuance of an order to show cause by the department to determine why the license should not be revoked by the commission.~~

R81-4C-8. Alcoholic Product Flavoring.

~~_____ (1) Limited restaurant licensees may use alcoholic product flavorings including spirituous liquor products in the preparation of food items and desserts at any time if plainly and conspicuously labeled "cooking flavoring".~~

~~_____ (2) No limited restaurant employee under the age of 21 years may handle alcoholic product flavorings.~~

R81-4C-9. Table, Counter, and "Grandfathered Bar Structure" Service.

~~_____ (1) A wine service may be performed by the server at the patron's table, counter, or "grandfathered bar structure" for wine either purchased at the limited restaurant or carried in by a patron. The wine may be opened and poured by the server.~~

~~_____ (2) Beer and heavy beer, if in sealed containers, may be opened and poured by the server at the patron's table, counter, or "grandfathered bar structure".~~

R81-4C-11. Menus; Price Lists.

~~_____ (1) Contents of Alcoholic Beverage Menu.~~

~~_____ (a) Each limited restaurant licensee shall have readily available for its patrons a printed alcoholic beverage price list, or menu containing current prices of all wine, heavy beer, and beer. This list shall include any charges for the service of packaged wines or heavy beer.~~

~~_____ (b) Any 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 his employee may not misrepresent the price of any alcoholic beverage that is sold or offered for sale on the licensed premises.~~

R81-4C-12. Identification Badge.

~~_____ 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.~~

R81-4C-13. Brownbagging.

When private events, as defined in 32B-1-102(77), are held on the premises of a licensed limited restaurant, the proprietor may, in his or her discretion, allow members of the private group to bring onto the restaurant premises, their own wine, heavy beer or beer under the following circumstances:

- (1) When the entire limited restaurant is closed to the general public for the private event, or
- (2) When an entire room or area within the limited restaurant such as a private banquet room is closed to the general public for the private event, and members of the private group are restricted to that area, and are not allowed to co-mingle with public patrons of the restaurant.

R81-4C-14. Grandfathered Bar Structures.

(1) Authority 32B-1-102; 32B-6-302; and 32B-6-305.3.
 (2) The purpose of this rule is to define terms for full service restaurant licenses as required by 32B-6 Part 3.

(3) Definitions.

(a) "Actively engaged in the construction of the restaurant" for purposes of 32B-6-302(1)(a)(ii)(A)(I) 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" for purposes of 32B-6-302(1)(b) 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 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 32B-6-305.3(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 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".

KEY: alcoholic beverages

Date of Enactment or Last Substantive Amendment: December 24, 2018

Notice of Continuation: July 3, 2018

Authorizing, and Implemented or Interpreted Law: 32B-2-202; 32B-5-303(3); 32B-6-207; 32B-6-301 through 305.1]

NOTICE OF PROPOSED RULE			
TYPE OF RULE: Repeal			
Utah Admin. Code Ref (R no.):	R81-4D	Filing 52424	No.

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	
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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:
On-Premise Banquet License
3. Purpose of the new rule or reason for the change:
The provisions of this rule are being moved to Title R82. The new rules will condense and reorganize the administrative code to a format similar to state statute. (EDITOR'S NOTE: The proposed new rules under Title R82 were published in the December 15, 2019, issue of the Bulletin.)
4. Summary of the new rule or change:
The repealed and 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 filing does not create additional cost or savings.
B) Local governments:
This rule filing does not create additional cost or savings.
C) Small businesses ("small business" means a business employing 1-49 persons):
This rule filing does not create additional cost or savings.
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):
This rule filing 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 filing does not create additional cost or savings.
F) Compliance costs for affected persons:
There are no fees associated with this process. The provisions of this rule are being moved to Title R82.
G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table			
Fiscal Cost	FY2020	FY2021	FY2022
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0
H) Department head approval of regulatory impact analysis:			
The executive director of the Department of 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:			
The provisions of this rule are being moved to Title R82. The new rules 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-2-202	Section 32B-6-601	Section 32B-6-607	Title 32B, Chapter 5
Section 32B-1-607			

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:	Salvador Petilos, Executive Director	Date:	12/05/2019
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[R81. Alcoholic Beverage Control, Administration.

R81-4D. On-Premise Banquet License.

R81-4D-1. Licensing.

(1) An on-premise banquet license may be issued only to a hotel, resort facility, sports center or convention center as defined in this rule. An on-premise banquet sublicense may be issued to a resort licensee pursuant to 32B-6-601 to 604. Any reference in the rules in this chapter 4D to an on-premise banquet license or licensee shall be interpreted as including an on-premise banquet sublicense or sublicensee.

(a) "Hotel" is a commercial lodging establishment:

(i) that offers temporary sleeping accommodations for compensation;

(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 of the hotel to provide complete meals; and

(iv) that has at least 1000 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 75 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.

(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 of the resort 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;

(iii) that is in total at least 30,000 square feet or until October 31, 2011 the facility is a "grandfathered facility" under 32B-6-603(4); and

(iv) that has at least 3000 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 counties, and towns, the commission shall have the authority to waive the minimum function space size requirements.

(2)(a) A "banquet contract" as used in this rule means an agreement between an on-premise banquet licensee and a 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.

~~(3) On-premise banquet licenses are issued to persons as defined in Section 32B-1-102(74). Any contemplated action or transaction that may alter the organizational structure or ownership interest of the person to whom the license is issued must be submitted to the department for approval prior to consummation of any such action to ensure there is no violation of Sections 32B-5-310.~~

~~R81-4D-2. Application.~~

~~(1) No license application will be included on the agenda of a monthly commission meeting for consideration for issuance of an on-premise banquet license until:~~

~~(a) The applicant has first met all requirements of Sections 32B-1-304 (qualifications to hold the license), and 32B-5-201, 204 and 32B-6-604 (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 of an on-premise banquet catering license, evidence of proximity to certain community locations, a bond, a floor plan, and public liability and liquor liability insurance); and~~

~~(b) the department has inspected the on-premise banquet premise.~~

~~(2) The application shall include a floor plan showing the locations of function space in or on the applicant's business premises that may be reserved for private banquet functions where alcoholic beverages may be stored, sold or served, and consumed. Hotels shall also indicate the number of sleeping rooms where room service will be provided and include a sample floor plan of a guest room level. No application will be accepted that merely designates the entire hotel, resort, sports center or convention center facility as the proposed licensed premises.~~

~~(3)(a) All application requirements of Subsection (1)(a) and (2) 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 Subsection (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 Subsection (3)(a) will not be considered by the commission that month, but will be included on the agenda of the commission meeting the following month.~~

~~(4) Pursuant to 32B-6-604(6) after an on-premise banquet license has been issued, the licensee may apply to the department for approval of additional locations in or on the premises of the hotel, resort, sports center or convention center that were not included in the licensee's original application. The additional locations must:~~

~~(i) be clearly defined;~~

~~(ii) be configured to ensure separation between any private banquet function and other areas of the facility that are open to the general public; and~~

~~(iii) be configured to ensure compliance with all operational restrictions with respect to the sale, storage, and consumption of alcoholic beverages required by 32B-5-301 to 308 and 32B-6-605.~~

~~R81-4D-3. Bonds.~~

~~No part of any corporate or cash bond required by Section 32B-5-204 and 32B-6-604(5)(d), may be withdrawn during the time the license is in effect. If the licensee fails to maintain a valid corporate or cash bond, the license shall be immediately suspended until a valid bond is obtained. Failure to obtain a bond within 30 days of~~

~~notification by the department of the delinquency shall result in the automatic revocation of the license.~~

~~R81-4D-4. Insurance.~~

~~Public liability and dram shop insurance coverage required in Section 32B-5-201(2)(j) must remain in force during the time the license is in effect. Failure of the licensee to maintain the required insurance coverage may result in a suspension or revocation of the license by the commission.~~

~~R81-4D-5. On-Premise Banquet Licensee Liquor Order and Return Procedures.~~

~~The following procedures shall be followed when an on-premise banquet licensee orders liquor from or returns liquor to any state liquor store, package agency, or department satellite warehouse:~~

~~(1) The licensee must place the order in advance to allow department personnel sufficient time to assemble the order. 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. 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.~~

~~(2) The licensee shall allow at least four hours for department personnel to assemble the order for pick up. When the order is complete, the licensee will be notified by phone and given the total cost of the order. The licensee may pay for the product in cash, company check or cashier's check.~~

~~(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.~~

~~(b) 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.~~

~~R81-4D-6. On-Premise Banquet Licensee Operating Hours.~~

~~Allowable hours of alcoholic beverage sales shall be in accordance with Section 32B-6-605(8). However, the licensee may open the alcoholic beverage storage area during hours otherwise prohibited for the limited purpose of inventory, restocking, repair, and cleaning.~~

~~R81-4D-7. Sale and Purchase of Alcoholic Beverages.~~

~~(1) The on-premise banquet licensee shall maintain at least 50% of its total business from the sale of food pursuant to Section 32B-6-605(9).~~

~~(a) The on-premise banquet licensee shall maintain records separately showing quarterly expenditures and sales for beer, heavy~~

beer, liquor, wine, set ups, and food. These 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 50% for any quarterly period, the department shall immediately put the licensee on a probationary status and closely monitor the licensee's food sales during the next quarterly period to determine that the licensee is able to prove to the satisfaction of the department that the sales of food meet or exceed 50%. Failure of the licensee to provide satisfactory proof of the required food percentage within the probationary period shall result in issuance of an order to show cause by the department to determine why the license should not be revoked by the commission.

(2) Liquor dispensing shall be in accordance with Section 32B-5-304 and Section R81-1-9 (Liquor Dispensing Systems) of these rules.

R81-4D-8. Liquor Storage.

Liquor bottles kept for sale in use with a dispensing system, liquor flavorings in properly labeled unsealed containers, and unsealed containers of wines poured by the glass may be stored in the same storage area of the on-premise banquet licensee as approved by the department.

R81-4D-9. Alcoholic Product Flavoring.

On-premise banquet licensees may use alcoholic products as flavoring subject to the following guidelines:

(1) Alcoholic product flavoring may be utilized in beverages only during the authorized selling hours under the on-premise banquet license. Alcoholic product flavoring may be used in the preparation of food items and desserts at any time if plainly and conspicuously labeled "cooking flavoring".

(2) No on-premise banquet licensee employee under the age of 21 years may handle alcoholic product flavorings.

R81-4D-11. Menus; Price Lists.

(1) An on-premise banquet licensee shall have readily available for any host of a contracted banquet a printed alcoholic beverage price list, or menu containing prices of all mixed drinks, wine, beer, and heavy beer. This list shall include any charges for the service of packaged wines or heavy beer.

(2) Any 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.

(3) Any host of a contracted banquet 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.

(4) The on-premise banquet licensee or an employee of the licensee may not misrepresent the price of any alcoholic beverage that is sold or offered for sale on the licensed premises.

R81-4D-12. Identification Badge.

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.

R81-4D-13. On-Premise Banquet License Room Service—Mini-Bottle/187-ml Wine Sales.

(1) Purpose. Pursuant to 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. 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 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 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/resort, and may not be used for other banquet catering services, 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.

R81-4D-14. Reporting Requirement.

(1) Authority. This rule is pursuant to the commission's powers and duties under 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 32B-6-605(3).

(2) Purpose. This rule implements the requirement of 32A-4-406(21) that 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 licensee under 32B-8 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 R81-4D-1.

(b) 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 or submitted by mail or electronically.

(c) Each report shall include the name and specific location of each 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 Section (2).

(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 63G-2-305 and -309;~~

~~(ii) any report filed shall be classified by the department as protected pursuant to 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 the quarterly reports may result in disciplinary action pursuant to 32B-3-201 to -207, and R81-1-6 and -7.~~

~~KEY: alcoholic beverages~~

~~Date of Enactment or Last Substantive Amendment: April 30, 2013~~

~~Notice of Continuation: July 3, 2018~~

~~Authorizing, and Implemented or Interpreted Law: 32-1-607; 32B-2-202; 32B-5; 32B-6-601 through 605]~~

NOTICE OF PROPOSED RULE			
TYPE OF RULE: Repeal			
Utah Admin. Code Ref (R no.):	R81-4E	Filing No.	52425

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		
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Vickie Ashby	801-977-6801	vickieashby@utah.gov	
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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:
Resort Licenses
3. Purpose of the new rule or reason for the change:
The provisions of this rule are being moved to Title R82. The new rules will condense and reorganize the administrative code to a format similar to state statute.

(EDITOR'S NOTE: The proposed new rules under Title R82 were published in the December 15, 2019, issue of the Bulletin.)

4. Summary of the new rule or change:

The repealed and 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 filing does not create additional cost or savings.

B) Local governments:

This rule filing does not create additional cost or savings.

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

This rule filing does not create additional cost or savings.

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

This rule filing 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 filing does not create additional cost or savings.

F) Compliance costs for affected persons:

There are no fees associated with this process. The provisions of this rule are being moved to Title R82.

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

Regulatory Impact Table			
Fiscal Cost	FY2020	FY2021	FY2022
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			

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

H) Department head approval of regulatory impact analysis:

The executive director of the Department of 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:

The provisions of this rule are being moved to Title R82. The new rules 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-2-202	Section 32B-6-601	Title 32B, Chapter 5
Section 32B-1-607		

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:	Salvador Petilos, Executive Director	Date:	12/05/2019
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[R81. Alcoholic Beverage Control, Administration.

R81 4E. Resort Licenses.

R81 4E 1. Licensing.

~~Resort licenses are issued to persons as defined in Section 32B 1 102(74). Any contemplated action or transaction that may alter the organizational structure or ownership interest of the person to whom the license is issued must be submitted to the department for approval prior to consummation of any such action to ensure there is no violation of Sections 32B 5 310.~~

R81 4E 2. Application.

~~(1) No license application will be included on the agenda of a monthly commission meeting for consideration for issuance of a resort license until:~~

~~(a) The applicant has first met all requirements of Sections 32B 1 304 (qualifications to hold the license), and 32B 5 201, 204 and 32B 6 204 (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 of a resort license, evidence of proximity to certain community locations, a bond, a floor plan, and public liability and liquor liability insurance); and~~

~~(b) the department has inspected the resort premise.~~

~~(2) Pursuant to 32B 5 203 and 32B 8 204, each sublicense of a resort license is not required to:~~

~~(a) submit an application or renewal application that is separate from the resort license application;~~

~~(b) carry public liability or dramshop insurance coverage that is separate from that carried by the resort licensee; or~~

~~(c) post a bond that is separate from the bond posted by the resort licensee if the aggregate of any bonds posted by the resort licensee covers each sublicense under the resort license.~~

~~(3) Pursuant to 32B 8 302, 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. If a resort licensee seeks to add a resort spa sublicense after its resort license is granted, the application shall comply with 32B 8 204(3)(b), and this rule.~~

~~(4)(a) All application requirements of Subsections (1)(a) and (3) 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 Subsection (1)(a) must be filed on the next business day after the 10th of the month.~~

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

~~_____ (c) A completed application filed after the deadline in Subsection (2)(a) will not be considered by the commission that month, but will be included on the agenda of the commission meeting the following month.~~

~~R81-4E-3. Bonds.~~

~~_____ No part of any corporate surety or cash bond required by Section 32B-5-204 and 32B-8-202(4), may be withdrawn during the time the license is in effect. If the licensee fails to maintain a valid corporate surety or cash bond, the license shall be immediately suspended until a valid bond is obtained. Failure to obtain a bond within 30 days of notification by the department of the delinquency shall result in the automatic revocation of the license.~~

~~R81-4E-4. Insurance.~~

~~_____ Public liability and dram shop insurance coverage required in Section 32B-5-201(2)(j) must remain in force during the time the license is in effect. Failure of the licensee to maintain the required insurance coverage may result in a suspension or revocation of the license by the commission.~~

~~R81-4E-5. Resort License Liquor Order and Return Procedures.~~

~~_____ The following procedures shall be followed when a resort licensee orders liquor from or returns liquor to any state liquor store, package agency, or department satellite warehouse:~~

~~_____ (1) The licensee must place the order in advance to allow department personnel sufficient time to assemble the order. 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. 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.~~

~~_____ (2) The licensee shall allow at least four hours for department personnel to assemble the order for pick up. When the order is complete, the licensee will be notified by phone and given the total cost of the order. The licensee may pay for the product in cash, company check or cashier's check.~~

~~_____ (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 served 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.~~

~~_____ (b) 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.~~

~~R81-4E-6. Resort Licensee Operating Hours.~~

~~_____ Allowable hours of liquor sales shall be in accordance with Section 32B-8-304(4) and 401(2)(b). However, the licensee may~~

~~open the liquor storage area during hours otherwise prohibited for the limited purpose of inventory, restocking, repair, and cleaning.~~

~~R81-4E-7. Sale and Purchase of Alcoholic Beverages in Locations Operated Under a Restaurant or Limited Restaurant Sublicense.~~

~~_____ (1) The restaurant sublicense shall maintain records separately showing quarterly expenditures and sales for beer, heavy beer, liquor, wine, set ups, and food. These shall be available for inspection and audit by representatives of the department, and maintained for a period of three years.~~

~~_____ (3) Liquor dispensing shall be in accordance with Section 32B-5-304; and Section R81-1-9 (Liquor Dispensing Systems); and Section R81-1-11 (Multiple Licensed Facility Storage and Service) of these rules.~~

~~R81-4E-8. Liquor Storage.~~

~~_____ With respect to restaurant, on premise banquet, resort spa, and club sublicenses, liquor bottles kept for sale in use with a dispensing system, liquor flavorings in properly labeled unsealed containers, and unsealed containers of wines poured by the glass may be stored in the same storage area as approved by the department.~~

~~R81-4E-9. Alcoholic Product Flavoring.~~

~~_____ Resort licensees may use alcoholic products as flavoring subject to the following guidelines:~~

~~_____ (1) Alcoholic product flavoring may be utilized in beverages only during the authorized selling hours allowed by law. Alcoholic product flavoring may be used in the preparation of food items and desserts at any time if plainly and conspicuously labeled "cooking flavoring".~~

~~_____ (2) No resort employee under the age of 21 years may handle alcoholic product flavorings.~~

~~R81-4E-10. Table and Counter Service.~~

~~_____ A wine service may be performed by the server at the patron's table or counter for wine either purchased at a restaurant, limited restaurant, club, or resort spa sublicensed premises or carried in by a patron. The wine may be opened and poured by the server.~~

~~R81-4E-12. Menus; Price Lists.~~

~~_____ (1) Contents of Alcoholic Beverage Menu.~~

~~_____ (a) Each restaurant, limited restaurant, on premise banquet, resort spa, and club sublicensee shall have readily available for its patrons a printed alcoholic beverage price list, or menu containing current prices of all mixed drinks, wine, beer, and heavy beer. This list shall include any charges for the service of packaged wines or heavy beer. With respect to on premise banquet sublicenses, this list or menu need only be available to the host of a contracted banquet. With respect to limited restaurant sublicenses, the list or menu may only include wine, heavy beer, and beer.~~

~~_____ (b) Any 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 sublicensee or employee of a sublicensee may not misrepresent the price of any alcoholic beverage that is sold or offered for sale on the licensed premises.~~

R81-4E-13. Identification Badge.

~~Each employee of a sublicensee 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 sublicensee 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.~~

R81-4E-14. Brownbagging.

~~When private events, as defined in 32B-1-102(77), are held on the premises of a resort license, the proprietor may, at the proprietor's discretion, allow members of the private group to bring onto the resort premises, their own alcoholic beverages under the following circumstances:~~

- ~~(1) When the entire area is closed to the general public for the private event, or~~
- ~~(2) When an entire room or area within the premises such as a private banquet room is closed to the general public for the private event, and members of the private group are restricted to that area, and are not allowed to co-mingle with public patrons of the facility.~~
- ~~(3) This section does not apply to private banquet events conducted under the on-premise banquet sublicense.~~

R81-4E-15. Resort Spa Sublicense.

- ~~(1) Definitions.~~
 - ~~(a) "Resort spa" means a facility within the boundary of a resort building that provides professionally administered personal care treatments such as, but not limited to, massages, facials, hair care, and nail care. Treatment providers must be licensed under Title 58, Division of Professional Licensing Act. The resort spa also must hold a license to conduct business as a spa or similar operation under local licensing laws.~~
 - ~~(2) Application. Pursuant to 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. If a resort licensee seeks to add a resort spa sublicense after its resort license is granted, the application shall comply with 32B-8-302(2), and this rule.~~
 - ~~(3) Minors in Lounge or Bar Areas.~~
 - ~~(a) Pursuant to 32B-8-304(5), 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.~~
 - ~~(b) "Lounge or bar area" includes:~~
 - ~~(i) the bar structure as defined in 32B-1-102(7);~~
 - ~~(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.~~
 - ~~(c) A minor who is otherwise permitted to be on the premises of a resort spa may momentarily pass through the resort spa's lounge or bar area en route to those areas of the resort spa where the minor is permitted to be. However, no minor shall remain or be seated in the resort spa's bar or lounge area.~~

R81-4E-16. Applicability of Rules.

- ~~(1) 32B-8-402 requires that a person operating under a resort sublicense comply with the operational restrictions of Title 32B for the type of license applicable to the sublicense, except where otherwise provided. For example, a club sublicensee must comply with the operational restrictions found in 32B-5-301 to -310 and 32B-6-406 that are applicable to a club 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.~~

~~KEY: alcoholic beverages~~

~~Date of Enactment or Last Substantive Amendment: December 24, 2018~~

~~Notice of Continuation: January 8, 2015~~

~~Authorizing, and Implemented or Interpreted Law: 32-1-607; 32B-2-202; 32B-5; 32B-8]~~

NOTICE OF PROPOSED RULE

TYPE OF RULE: Repeal			
Utah Admin. Code Ref (R no.):	R81-4F	Filing	No.
		52426	

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:
Reception Center Licenses
3. Purpose of the new rule or reason for the change:
The provisions of this rule are being moved to Title R82. The new rules will condense and reorganize the administrative code to a format similar to state statute. (EDITOR'S NOTE: The proposed new rules under Title R82 were published in the December 15, 2019, issue of

the Bulletin.)

4. Summary of the new rule or change:

The repealed and 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 filing does not create additional cost or savings.

B) Local governments:

This rule filing does not create additional cost or savings.

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

This rule filing does not create additional cost or savings.

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

This rule filing 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 filing does not create additional cost or savings.

F) Compliance costs for affected persons:

There are no fees associated with this process. The provisions of this rule are being moved to Title R82.

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

Regulatory Impact Table

Fiscal Cost	FY2020	FY2021	FY2022
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0

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

H) Department head approval of regulatory impact analysis:

The executive director of the Department of 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:

The provisions of this rule are being moved to Title R82. The new rules 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-2-202	Section 32B-6-601	Title 32B, Chapter 5
Section 32B-1-607		

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:	Salvador Petilos, Executive Director	Date:	12/05/2019
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[R81- Alcohol Beverage Control, Administration.

R81-4F- Reception Center Licenses.

R81-4F-1- Licensing.

(1) Effective November 1, 2011, before a person may store, sell, offer for sale, or furnish an alcoholic product on its premises as a reception center, the person shall first obtain a reception center license from the commission pursuant to 32B-6-803.

(2) A reception center license is issued to a person as defined in Section 32B-1-102(74). Any contemplated action or transaction that may alter the organizational structure or ownership interest of the person to whom the license is issued must be submitted to the department for approval prior to consummation of any such action to ensure there is no violation of Section 32B-5-310.

R81-4F-2- Application.

(1) No license application will be included on the agenda of a monthly commission meeting for consideration for issuance of a reception center license until:

(a) The applicant has first met all requirements of Sections 32B-1-304 (qualifications to hold the license), and 32B-5-201, 204, and 32B-6-804 (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 of a reception center license, evidence of proximity to certain community locations, a bond, a floor plan, and public liability and liquor liability insurance); and

(b) the department has inspected the reception center premise.

(2)(a) All application requirements of Subsection (1)(a) 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 Subsection (1)(a) must be filed on the next business day after the 10th of the month.

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

(c) A completed application filed after the deadline in Subsection (2)(a) will not be considered by the commission that month, but will be included on the agenda of the commission meeting the following month.

R81-4F-3- Bonds.

No part of any corporate or cash bond required by Section 32B-5-204 and 32B-6-804(4), may be withdrawn during the time the license is in effect. If the licensee fails to maintain a valid corporate or cash bond, the license shall be immediately suspended until a valid bond is obtained. Failure to obtain a bond within 30 days of

notification by the department of the delinquency shall result in the automatic revocation of the license.

R81-4F-4- Insurance.

Public liability and dram shop insurance coverage required in Section 32B-5-201(2)(j) must remain in force during the time the license is in effect. Failure of the licensee to maintain the required insurance coverage may result in a suspension or revocation of the license by the commission.

R81-4F-5- Reception Center Licensee Liquor Order and Return Procedures.

The following procedures shall be followed when a reception center licensee orders liquor from or returns liquor to any state liquor store, package agency, or department satellite warehouse:

(1) The licensee must place the order in advance to allow department personnel sufficient time to assemble the order. 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. 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.

(2) The licensee shall allow at least four hours for department personnel to assemble the order for pick up. When the order is complete, the licensee will be notified by phone and given the total cost of the order. The licensee may pay for the product in cash, company check or cashier's check.

(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.

(b) 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.

R81-4F-6- Reception Center Liquor Licensee Operating Hours.

Allowable hours of liquor sales shall be in accordance with Section 32B-6-805(8). However, the licensee may open the liquor storage area during hours otherwise prohibited for the limited purpose of inventory, restocking, repair, and cleaning.

R81-4F-7- Sale and Purchase of Alcoholic Beverages.

(1) The reception center licensee may not maintain in excess of 30% of its total annual receipts from the sale of an alcoholic product which includes mix for an alcoholic product, or a charge in connection with the furnishing of an alcoholic product pursuant to 32B-6-805(9).

(2) The restaurant shall maintain records separately showing quarterly expenditures and sales for beer, heavy beer, liquor, wine, set

ups, service charges, and all other sales. These records shall be reported to the department on an annual basis as part of the application for renewal of the reception center license. Additionally, these records should be available for inspection and audit by representatives of the department, and maintained for a period of three years.

(3) If any inspection or audit discloses that the sales of alcoholic products exceed 30% of the reception center licensee's total receipts for any quarterly period, the department shall immediately put the licensee on a probationary status and closely monitor the licensee's alcohol sales during the next quarterly period to determine that the licensee is able to prove to the satisfaction of the department that the sales of alcohol do not exceed 30% of the business. Failure of the licensee to provide satisfactory proof of the required alcohol percentage within the probationary period shall result in issuance of an order to show cause by the department to determine why the license should not be revoked by the commission.

(4) Liquor dispensing shall be in accordance with Section 32B-5-304 and Section R81-1-9 (Liquor Dispensing Systems).

R81-4F-8. Liquor Storage.

Liquor bottles kept for sale in use with a dispensing system, liquor flavorings in properly labeled unsealed containers, and unsealed containers of wines poured by the glass may be stored in the same storage area of the reception center as approved by the department.

R81-4F-9. Alcoholic Product Flavoring.

Reception center liquor licensees may use alcoholic products as flavoring subject to the following guidelines:

(1) Alcoholic product flavoring may be utilized in beverages only during the authorized selling hours under the reception center license. Alcoholic product flavoring may be used in the preparation of food items and desserts at any time if plainly and conspicuously labeled "cooking flavoring".

(2) No reception center employee under the age of 21 years may handle alcoholic product flavorings.

R81-4F-10. Table Service.

(1) Alcoholic products may not be sold, offered for sale, or furnished to a patron, and a patron may not consume an alcoholic product at a bar structure. Alcoholic products may be dispensed from a mobile serving area that is moved only by staff of the reception center licensee, is capable of being moved by only one individual, and is no larger than 6 feet long and 30 inches wide. Otherwise, alcoholic products must be dispensed from an area that is separated from an area for the consumption of food by a patron by a solid, translucent or opaque, permanent structural barrier in accordance with 32B-6-805(15).

(2) A wine service may be performed by the server at the patron's table. The wine may be opened and poured by the server.

(3) Beer and heavy beer, if in sealed containers, may be opened and poured by the server at the patron's table.

(4) A patron's table may be located in waiting, patio, garden and dining areas previously approved by the department.

R81-4F-11. Identification Badge.

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.

R81-4F-12. Reporting Requirement.

(1) Authority. This rule is pursuant to the commission's powers and duties under 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 32B-6-805(3).

(2) Purpose. This rule implements the requirement of 32B-6-805(3) that 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 32B-6-801 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) 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 or submitted by mail or electronically.

(c) Each report shall include the name and specific location of each scheduled 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 Section (2).

(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 submitting the information, and the licensee 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 63G-2-305 and -309;

(ii) any report filed shall be classified by the department as protected pursuant to 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 a reception center licensee to timely file the quarterly reports may result in disciplinary action pursuant to 32B-3-201 to -207, and R81-1-6 and -7.

R81-4F-13. Agreement For Alcoholic Beverage Service.

(1) "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 32B-6-805(19)(a), 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 32B-6-805(19)(a), 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 32B-6-805(19)(a), 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.~~

~~**KEY: alcoholic beverages, reception center licenses**
Date of Enactment or Last Substantive Amendment: April 30, 2013
Notice of Continuation: September 28, 2016
Authorizing, and Implemented or Interpreted Law: 32-1-607; 32B-2-202; 32B-5; 32B-6-801 through 805]~~

NOTICE OF PROPOSED RULE			
TYPE OF RULE: Repeal			
Utah Admin. Code Ref (R no.):	R81-5	Filing No.	52427

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:
Bar Establishment Licenses
3. Purpose of the new rule or reason for the change:
The provisions of this rule are being moved to Title R82. The new rules will condense and reorganize the administrative code to a format similar to state statute. (EDITOR'S NOTE: The proposed new rules under Title

R82 were published in the December 15, 2019, issue of the Bulletin.)

4. Summary of the new rule or change:

The repealed and 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 filing does not create additional cost or savings.
B) Local governments:
This rule filing does not create additional cost or savings.
C) Small businesses ("small business" means a business employing 1-49 persons):
This rule filing does not create additional cost or savings.
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):
This rule filing 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 filing does not create additional cost or savings.
F) Compliance costs for affected persons:
There are no fees associated with this process. The provisions of this rule are being moved to Title R82.

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

Regulatory Impact Table			
Fiscal Cost	FY2020	FY2021	FY2022
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			

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

H) Department head approval of regulatory impact analysis:

The executive director of the Department of 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:

The provisions of this rule are being moved to Title R82. The new rules 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-2-202		
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Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until: 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:	Salvador Petilos, Executive Director	Date:	12/05/2019
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[R81. Alcoholic Beverage Control, Administration.

R81-5. Bar Establishment Licenses.

R81-5-1. Licensing.

~~(1) Bar establishment licenses are issued to persons as defined in Section 32B-1-102(74). Any contemplated action or transaction that may alter the organizational structure or ownership interest of the person to whom the license is issued must be submitted to the department for approval prior to consummation of any such action to ensure there is no violation of Sections 32B-5-310.~~

~~(2) (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, bar based on criteria in 32B-6-404.~~

~~(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 32B-6-404.~~

~~(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.~~

~~(3)(a) A converted full service restaurant licensee must operate as described in 32B-6-404.1, and must maintain at least the tiered percentages outlined in 32B-6-404.1(4) of its total business from the sale of food, not including mix for alcoholic beverages, and service charges.~~

~~(b) A converted full service restaurant licensee shall maintain records separately showing quarterly expenditures and sales for beer, heavy beer, liquor, wine, set ups and food. These shall be available for inspection and audit by representatives of the department, and maintained for a period of three years.~~

~~(c) If any inspection or audit discloses that the sales of food are less than the required percentage for any quarterly period, the department shall immediately put the licensee on a probationary status and closely monitor the licensee's food sales during the next quarterly period to determine that the licensee is able to prove to the satisfaction of the department that the sales of food meet or exceed the required percentage. Failure of the licensee to provide satisfactory proof of the required food percentage within the probationary period shall result in issuance of an order to show cause by the department to determine why the license should not be revoked by the commission.~~

~~(1) bar establishment licensees with a Fraternal classification as of July 1, 2013 may allow guests that are over 21 without a host as long as long as the practice is allowed in the bylaws of the Fraternal and the Fraternal maintains at least 60% of its total business from the sale of food pursuant to Section 32B-6-407(10)(c)(i-iii).~~

~~(a) The Fraternal shall notify the department of the intent to allow guests without a host by providing a copy of the bylaws.~~

~~(b) The Fraternal shall maintain records separately showing quarterly expenditures and sales for beer, heavy beer, liquor, wine, set-ups, and food. These shall be available for inspection and audit by representatives of the department, and maintained for a period of three years.~~

~~(c) If any inspection or audit discloses that the sales of food are less than 60% for any quarterly period, the department shall immediately put the licensee on a probationary status and closely monitor the licensee's food sales during the next quarterly period to determine that the licensee is able to prove to the satisfaction of the department that the sales of food meet or exceed 60%. Failure of the licensee to provide satisfactory proof of the required food percentage within the probationary period shall result in issuance of an order to show cause by the department to determine if the Fraternal may continue to allow guests without a host.~~

R81-5-2. Application.

~~(1) No license application will be included on the agenda of a monthly commission meeting for consideration for issuance of a bar establishment license until:~~

~~(a) The applicant has first met all requirements of Sections 32B-1-304 (qualifications to hold the license), and 32B-5-201, 204, and 32B-6-405 (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 the type of bar establishment license requested on the application, evidence of proximity to certain community locations, evidence that the applicant meets the requirements for the type of bar establishment license for which the person is applying, evidence that a variety of food is prepared and served in connection with dining accommodations, a bond, a floor plan, public liability and liquor liability insurance, and if an equity or fraternal a copy bylaws or house rules and any amendment to those records); and~~

~~(b) the department has inspected the bar establishment premises.~~

~~(2)(a) All application requirements of Subsection (1)(a) 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 Subsection (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 Subsection (2)(a) will not be considered by the commission that month, but will be included on the agenda of the commission meeting the following month.~~

R81-5-3. Bonds.

~~No part of any corporate or cash bond required by Section 32B-5-204 and 32B-6-405(5) may be withdrawn during the time the license is in effect. If the licensee fails to maintain a valid corporate or cash bond, the license shall be immediately suspended until a valid~~

~~bond is obtained. Failure to obtain a bond within 30 days of notification by the department of the delinquency shall result in the automatic revocation of the license.~~

R81-5-4. Insurance.

~~Public liability and dram shop insurance coverage required in Subsections 32B-5-201(2)(j) must remain in force during the time the license is in effect. Failure of the licensee to maintain the required insurance coverage may result in a suspension or revocation of the license by the commission.~~

R81-5-6. Bar Establishment Licensee Liquor Order and Return Procedures.

~~The following procedures shall be followed when a bar establishment licensee orders liquor from or returns liquor to any state liquor store, package agency, or department satellite warehouse:~~

~~(1) The licensee must place the order in advance to allow department personnel sufficient time to assemble the order. 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. 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.~~

~~(2) The licensee shall allow at least four hours for department personnel to assemble the order for pick up. When the order is complete, the licensee will be notified by phone and given the total cost of the order. The licensee may pay for the product in cash, company check or cashier's check.~~

~~(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.~~

~~(b) 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.~~

R81-5-7. Bar Establishment Licensee Operating Hours.

~~Allowable hours of liquor sales shall be in accordance with Section 32B-6-406(4). However, the licensee may open the liquor storage area during hours otherwise prohibited for the limited purpose of inventory, restocking, repair, and cleaning.~~

R81-5-8. Sale and Purchase of Alcoholic Beverages.

~~(1) A patron may pay for an alcoholic beverage at the time of purchase, or, at the discretion of both the licensee and the patron, the price charged may be added to the patron's tab.~~

~~(2) Liquor dispensing shall be in accordance with Section 32B-5-304; and Sections R81-1-9 (Liquor Dispensing Systems) and~~

~~R81-1-11 (Multiple Licensed Facility Storage and Service) of these rules.~~

R81-5-9. Liquor Storage.

~~Liquor bottles kept for sale in use with a dispensing system, liquor flavorings in properly labeled unsealed containers, and unsealed containers of wines poured by the glass may be stored in the same storage area of the club as approved by the department.~~

R81-5-10. Alcoholic Product Flavoring.

~~(1) Alcoholic product flavoring may be utilized in beverages only during the authorized selling hours under the bar establishment license. Alcoholic product flavoring may be used in the preparation of food items and desserts at any time if plainly and conspicuously labeled "cooking flavoring".~~

~~(2) No bar establishment employee under the age of 21 years may handle alcoholic product flavorings.~~

R81-5-11. Price Lists.

~~(1) Each licensee shall have available for its patrons a printed price list containing current prices of all mixed drinks, wine, beer, and heavy beer. This list shall include any amounts charged by the licensee for the service of packaged liquor, wine or heavy beer. A copy shall be kept on the bar establishment premises and available at all times for examination by patrons of the bar establishment.~~

~~(2) Any printed menu, master beverage price list or other printed list is sufficient as long as the prices are current and the list is readily available to the patron.~~

~~(3) Customers shall be notified of the price charged for any packaged liquor, wine or heavy beer and any service charges for the supply of glasses, chilling, or wine service.~~

~~(4) A licensee or his employee may not misrepresent the price of any alcoholic beverage that is sold or offered for sale on the licensed premises.~~

R81-5-12. Identification Badge.

~~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.~~

R81-5-13. Brownbagging.

~~When private events, as defined in 32B-1-102(77), are held on the premises of a licensed bar establishment, the proprietor may, in his or her discretion, allow members of the private group to bring onto the club premises, their own alcoholic beverages under the following circumstances:~~

~~(1) When the entire bar establishment is closed to regular patrons for the private event, or~~

~~(2) When an entire room or area within the bar establishment such as a private banquet room is closed to regular patrons for the private event, and members of the private group are restricted to that area, and are not allowed to co-mingle with regular patrons of the bar establishment.~~

R81-5-14. Membership Fees and Monthly Dues.

~~(1) Authority. This rule is pursuant to the commission's powers and duties under 32B-2-202(1)(C)(i) general licensing procedures and 32B-6-405(2) for issuing an equity or fraternal bar establishment licenses.~~

~~(2) Purpose. This rule furthers the intent of 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.~~

R81-5-15. Minors in Lounge or Bar Areas.

~~(1) Pursuant to 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 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 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.~~

~~(3) A minor who is otherwise permitted to be on the premises of an equity, or fraternal may momentarily pass through the lounge or bar area en route to those areas where the minor is permitted to be. However, no minor shall remain or be seated in the bar or lounge area.~~

KEY: alcoholic beverages

Date of Enactment or Last Substantive Amendment: December 24, 2018

Notice of Continuation: May 2, 2016

Authorizing, and Implemented or Interpreted Law: 32B-1-607; 32B-2-202; 32B-5; 32B-6-401 through 409]

NOTICE OF PROPOSED RULE			
TYPE OF RULE: Repeal			
Utah Admin. Code Ref (R no.):	R81-6	Filing No.	52428

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:
The provisions of this rule are being moved to Title R82. The new rules will condense and reorganize the administrative code to a format similar to state statute. (EDITOR'S NOTE: The proposed new rules under Title R82 were published in the December 15, 2019, issue of the Bulletin.)
4. Summary of the new rule or change:
The repealed and 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 filing does not create additional cost or savings.
B) Local governments:
This rule filing does not create additional cost or savings.
C) Small businesses ("small business" means a business employing 1-49 persons):
This rule filing does not create additional cost or savings.
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):
This rule filing 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 filing does not create additional cost or savings.

F) Compliance costs for affected persons:

There are no fees associated with this process. The provisions of this rule are being moved to Title R82.

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

Regulatory Impact Table			
Fiscal Cost	FY2020	FY2021	FY2022
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head approval of regulatory impact analysis:

The executive director of the Department of 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:

The provisions of this rule are being moved to Title R82. The new rules 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-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:	01/31/2020
--	------------

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:	Salvador Petilos, Executive Director	Date:	12/05/2019
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~~[R81. Alcoholic Beverage Control, Administration.~~

~~**R81-6. Special Use Permits.**~~

~~**R81-6-1. Application.**~~

~~(1) No application will be included on the agenda of a monthly commission meeting for consideration for issuance of a special use permit until:~~

~~(a) The applicant has first met all requirements of Sections 32B-1-304 (qualifications to hold the permit), and 32B-10-202 and 205 (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 restaurant premise.~~

~~(2)(a) All application requirements of Subsection (1)(a) 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 Subsection (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 Subsection (2)(a) will not be considered by the commission that month, but will be included on the agenda of the commission meeting the following month.~~

~~**R81-6-2. Warning Sign.**~~

~~All public service permittees which utilize a hospitality room shall display in a prominent place therein a "warning sign" as defined in R81-1-2.~~

~~**R81-6-3. Direct Delivery.**~~

~~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.~~

~~**R81-6-4. Public Service Permittee Operating Guidelines.**~~

~~(1) A public service permittee that operates on an interstate basis may purchase liquor outside of the state and bring it into the state and/or 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.~~

~~(2) 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.~~

~~(3) 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.~~

~~(4) 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.~~

~~**R81-6-5. 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, 503. 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 the 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 prior to 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 R81-1-17 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 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.~~

R81-6-6. Religious Wine Permits.

~~(1) 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.~~

~~(2) Application of Rule.~~

~~(a) The permit holder may purchase any generally listed wine directly off of 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/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 the 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) 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. Special orders may be placed only with the special order clerk at the department's administrative office. No special orders may be placed with a state store or package agency. The special order clerk shall verify that the purchasing religious organization is on file in the department's licensee/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. The state store or package agency shall notify the permit holder when the product is available for pick-up. All procedures for processing the purchase that are outlined in (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: May 22, 2012~~

~~Notice of Continuation: May 2, 2016~~

~~Authorizing, and Implemented or Interpreted Law: 32A-1-107]~~

NOTICE OF PROPOSED RULE			
TYPE OF RULE: Repeal			
Utah Admin. Code Ref (R no.):	R81-7	Filing No. 52429	

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:
Event Permits

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

The provisions of this rule are being moved to Title R82. The new rules will condense and reorganize the administrative code to a format similar to state statute. (EDITOR'S NOTE: The proposed new rules under Title R82 were published in the December 15, 2019, issue of the Bulletin.)

4. Summary of the new rule or change:

The repealed and 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 filing does not create additional cost or savings.

B) Local governments:

This rule filing does not create additional cost or savings.

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

This rule filing does not create additional cost or savings.

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

This rule filing 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 filing does not create additional cost or savings.

F) Compliance costs for affected persons:

There are no fees associated with this process. The provisions of this rule are being moved to Title R82.

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

Regulatory Impact Table

Fiscal Cost	FY2020	FY2021	FY2022
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small	\$0	\$0	\$0

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

H) Department head approval of regulatory impact analysis:

The executive director of the Department of 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:

The provisions of this rule are being moved to Title R82. The new rules 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-2-202		
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Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until: 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:	Salvador Petilos, Executive Director	Date:	12/05/2019
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[R81. Alcoholic Beverage Control, Administration.

R81-7. Event Permits.

R81-7-1. Authority and Purpose.

~~_____ (1) Pursuant to 32B-2-202(1)(c)(i) and (1)(n), this rule establishes procedures and criteria for issuing and denying event permits in accordance with 32B-9.~~

R81-7-2. Definitions.

~~_____ (1) "Conducting" means the conduct, management, control or direction of an event. An applicant may be deemed to be conducting the event if there is a contract in which the applicant has been designated as the agent for the event's beverage service.~~

R81-7-3. Application Guidelines.

~~_____ (1) An event permit application will not be submitted to the Director for consideration until the requirements of Section 32B-1-304, 32B-9-201-203, 304 (for single event permits) and 405 (for temporary beer event permits) have been met, including:~~

~~_____ (a) A complete application including all documents and supplemental materials listed on the department's application checklist has been submitted to the department one month prior to the event; and~~

~~_____ (b) The department has conducted an investigation in compliance with 32B-9-202(1)(a).~~

~~_____ (2) Late applications will be accepted up to 7 business days prior to the event. Late applications will be reviewed as time allows and are not subject to the provisions in R81-7-4(1)(ii) and (iii) below.~~

R81-7-4. Guidelines for Issuing Permits.

~~_____ (1) Once submitted to the director, the application will be considered in compliance with 32B-9-202 and 303 (for single event permits) and 403 (for temporary beer event permits), including consideration of R81-7-5 below.~~

~~_____ (i) After consideration of the totality of the circumstances, the director will either issue a preliminary decision to issue or deny the event permit or refer the application to the commission in accordance with 32B-9-202(3).~~

~~_____ (ii) If the director issues a preliminary decision to deny issuance of an event permit, the decision shall be provided in writing detailing the basis for the denial.~~

~~_____ (iii) An applicant may submit a request for review by the commission within the time limits of 32B-9-202(3)(b) and (c) related to the three business day review period and regularly scheduled~~

~~commission meetings. If at least three commissioners request review of the denial in compliance with 32B-9-202(3)(b) and (c), the commission shall review the request at their next regularly schedule commission meeting.~~

~~_____ (2) In accordance with 32B-9-202(2)(d), the director may authorize multiple sales outlets on different properties under one single event permit, provided that each site conforms to location requirements of Section 32B-9-201(4).~~

~~_____ (3) All approvals, notifications, requests for meetings or requirements to inform under section 32B-9-202 shall be done electronically.~~

~~_____ (4) For purposes of 32B-9-202(4), the department may provide notice to law enforcement of the preliminary approval within three business days of the event, so long as law enforcement is notified if that approval does not become final.~~

R81-7-5. Additional Consideration for Event Permits.

~~_____ (1) Additional Consideration for Single Event Permits: In accordance with 32B-9-303(2), a single event permit is issued to entities in existence for a year or more conducting a convention, civic or community enterprise.~~

~~_____ (a) As part of local consent required by 32B-9-201(1)(e), the locality may provide a recommendation as to whether the entity is conducting a civic or community enterprise.~~

~~_____ (b) The director may consider the recommendation of the local authority in determining whether the entity is conducting a civic or community enterprise.~~

~~_____ (c) Notwithstanding subsection (1), an event permit will not be issued if, based on the totality of the circumstances, it is determined that the permit is being used to circumvent other applicable requirements of 32B-9 Event Permit Act.~~

~~_____ (2) Violation History: In accordance with 32B-9-202(2)(d), in considering the nature of the event, if there is a violation of the applicant, the event, or the venue within the last 36 months, the director will consider violation history in making a determination regarding whether to issue the permit or in determining additional controls as outlined in section (3) below.~~

~~_____ (3) Control Measures: In accordance with 32B-9-202(2)(d), in considering the nature of the event, the director must determine that adequate and appropriate control measures will be in place to minimize the possibility of minors being sold or furnished alcohol or adults being over served alcohol at the event.~~

~~_____ (a) Before an event permit may be issued by the director, the following control measures must be present at the event unless relaxed by the director in accordance with section (c) below.~~

~~_____ (i) There must be at least one location at the event where those wanting to purchase alcoholic beverages must show proof of age;~~

~~_____ (ii) Any person assigned to check proof of age shall have completed the alcohol server training seminar outlined in 62A-15-401 in the last three years;~~

~~_____ (iii) At least one person who has completed the alcohol server training seminar outlined in 62A-15-401 shall be at each location where alcoholic beverages are sold and dispensed to supervise the sale and dispensing of alcoholic beverages;~~

~~_____ (iv) The event shall be properly secured and completely delineated by some type of physical structure(s), such as fencing, walls, gates and secured entry and exits; and~~

~~_____ (v) A minimum of one (1) security person for every fifty (50) people estimated to be in the consumption area at one time; security may include police officers, hired security, organization staff members and security volunteers.~~

~~(b) In accordance with 32B-9-202(2)(c), the following additional control measures must be present for an outdoor public event or a large scale public event where minors are present, unless relaxed by the director in accordance with section (c) below.~~

~~(i) Alcoholic beverages shall be served in readily identifiable cups or containers distinct from those used for non-alcoholic beverages;~~

~~(ii) All dispensing and consumption of alcoholic beverages shall be in a designated, confined, and restricted area where minors are not allowed without being accompanied by a parent or guardian, and where alcohol consumption may be closely monitored;~~

~~(iii) The proof of age location(s) shall be separate from the alcoholic beverage sales and dispensing location(s); and~~

~~(iv) The proof of age location(s) will either issue a hand stamp and/or non-transferable wristband.~~

~~(e) The director, after reviewing the facts and circumstances of a particular event, has the discretion to relax any of the control measures outlined in Subsection (a) and (b) above or to require additional control measures as a condition of issuing an event permit provided that the director has first reasonably determined that such modification will not increase the likelihood of minors being sold or furnished alcohol or adults being over-served alcohol at the event.~~

KEY: alcoholic beverages, event permits

Date of Enactment or Last Substantive Amendment: November 2, 2015

Notice of Continuation: May 2, 2016

Authorizing, and Implemented or Interpreted Law: 32B-2-202(1); 32B-9-101; 32B-9-102; 32B-9-201; 32B-9-202; 32B-9-203; 32B-9-204; 32B-9-301; 32B-9-302; 32B-9-303; 32B-9-304; 32B-9-305; 32B-9-401; 32B-9-402; 32B-9-403; 32B-9-404; 32B-9-405; 32B-9-406]

NOTICE OF PROPOSED RULE

TYPE OF RULE: Repeal

Utah Admin. Code Ref (R no.):	R81-8	Filing No.	52430
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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 and Related Licenses

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

The provisions of this rule are being moved to Title R82. The new rules will condense and reorganize the administrative code to a format similar to state statute. (EDITOR'S NOTE: The proposed new rules under Title R82 were published in the December 15, 2019, issue of the Bulletin.)

4. Summary of the new rule or change:

The repealed and 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 filing does not create additional cost or savings.

B) Local governments:

This rule filing does not create additional cost or savings.

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

This rule filing does not create additional cost or savings.

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

This rule filing 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 filing does not create additional cost or savings.

F) Compliance costs for affected persons:

There are no fees associated with this process. The provisions of this rule are being moved to Title R82.

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

Regulatory Impact Table			
Fiscal Cost	FY2020	FY2021	FY2022
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head approval of regulatory impact analysis:

The executive director of the Department of 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:

The provisions of this rule are being moved to Title R82. The new rules 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-2-202		
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Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:	01/31/2020
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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:	Salvador Petilos, Executive Director	Date:	12/05/2019
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~~**[R81. Alcoholic Beverage Control, Administration.**~~

~~**R81-8. Manufacturing and Related Licenses.**~~

~~**R81-8-1. Purpose.**~~

~~Reserved.~~

~~**R81-8-2. Authority.**~~

~~(1) This rule is enacted pursuant to Subsections 32B-2-202, 32B-11-208(9), and 32B-11-210(7) and (12).~~

~~**R81-8-3. Definitions.**~~

~~(1) "Substantial Food." RESERVED.~~

~~(2) "Educational Information" means a presentation of information whose primary purpose is imparting knowledge related to the history, culture, significance, agriculture, manufacture, flavor profiles and/or the effects of alcohol.~~

~~**R81-8-4. Application Guidelines.**~~

~~(1) 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 32B-11-206.~~

~~(2)(a) All application requirements of Subsection (1)(a) 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 Subsection (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 Subsection (2)(a) will not be considered by the commission that month, but will be included on the agenda of the commission meeting the following month.~~

R81-8-5. Out of State Business.

~~(1) Purpose. Pursuant to 32B-11-201(4), 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 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.~~

~~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.~~

~~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 32B-11-201(4) 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) 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. However, the certificate holder 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 certificate holder.~~

~~(c) 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 32B-11-201(4), and may be issued a certificate of approval. However, the distillery or winery 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: January 3, 2017~~

~~Notice of Continuation: May 2, 2016~~

~~Authorizing, and Implemented or Interpreted Law: 32B-2-202; 32B-11-208(9); 32B-11-210(7) and (12)]~~

NOTICE OF PROPOSED RULE

TYPE OF RULE: Repeal

Utah Admin. Code Ref (R no.):	R81-9	Filing No.	52431
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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:

Liquor Warehousing Licenses

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

The provisions of this rule are being moved to Title R82. The new rules will condense and reorganize the administrative code to a format similar to state statute. (EDITOR'S NOTE: The proposed new rules under Title R82 were published in the December 15, 2019, issue of the Bulletin.)

4. Summary of the new rule or change:

The repealed and 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 filing does not create additional cost or savings.

B) Local governments:

This rule filing does not create additional cost or savings.

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

This rule filing does not create additional cost or savings.

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

This rule filing 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 filing does not create additional cost or savings.

F) Compliance costs for affected persons:

There are no fees associated with this process. The provisions of this rule are being moved to Title R82.

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

Regulatory Impact Table			
Fiscal Cost	FY2020	FY2021	FY2022
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0

Net Fiscal Benefits	\$0	\$0	\$0
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H) Department head approval of regulatory impact analysis:

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:

The provisions of this rule are being moved to Title R82. The new rules 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-2-202		
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Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:	01/31/2020
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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	Salvador Petilos,	Date:	12/05/2019
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designee, and title:	Executive Director		
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~~[R81- Alcoholic Beverage Control, Administration.
R81-9- Liquor Warehousing Licenses.~~

~~**R81-9-1. Application.**~~

~~_____ (1) No license application will be included on the agenda of a monthly commission meeting for consideration for issuance of a liquor warehouse license until:~~

~~_____ (a) The applicant has first met all requirements of Sections 32B-1-304 (qualifications to hold the license), and 32B-12-202, 204, and 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 of a liquor warehousing license, a bond, a floor plan, and public liability and liquor liability insurance); and~~

~~_____ (b) the department has inspected the warehouse premise.~~

~~_____ (2)(a) All application requirements of Subsection (1)(a) 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 Subsection (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 Subsection (2)(a) will not be considered by the commission that month, but will be included on the agenda of the commission meeting the following month.~~

~~**R81-9-2. Transportation.**~~

~~_____ Dual licensees, those who have both a liquor warehousing license and a beer wholesaling license, pursuant to Chapters 12 and 13 of the Act, may transport liquor, wine, and heavy beer to the department and to federal military installations within Utah.~~

~~**R81-9-3. Records.**~~

~~_____ Each licensee shall keep available and open for audit at all times during regular business hours, complete and accurate records of shipments to or from their warehouse facility. Records shall be kept for a minimum of three years.~~

~~**R81-9-4. Audits.**~~

~~_____ The liquor warehouse licensee shall allow the department, through its authorized representatives, to audit all records of their liquor warehouse license at times the department considers advisable.~~

~~**R81-9-5. Inspection.**~~

~~_____ A liquor warehouse licensee shall permit any authorized representative of the commission, department, or any law enforcement officer unrestricted right to enter the liquor warehouse facility to inspect the premises.~~

~~**KEY:** alcoholic beverages~~

~~**Date of Enactment or Last Substantive Amendment:** April 30, 2013~~

~~**Notice of Continuation:** May 2, 2016~~

~~**Authorizing, and Implemented or Interpreted Law:** 32A-1-607; 32B-2-202; 32B-9]~~

NOTICE OF PROPOSED RULE			
TYPE OF RULE: Repeal			
Utah Admin. Code Ref (R no.):	R81-10	Filing No.	52432

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 Beer Retailers
3. Purpose of the new rule or reason for the change:
The provisions of this rule are being moved to Title R82. The new rules will condense and reorganize the administrative code to a format similar to state statute. (EDITOR'S NOTE: The proposed new rules under Title R82 were published in the December 15, 2019, issue of the Bulletin.)
4. Summary of the new rule or change:
The repealed and 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 filing does not create additional cost or savings.
B) Local governments:
This rule filing does not create additional cost or savings.

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

This rule filing does not create additional cost or savings.

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

This rule filing 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 filing does not create additional cost or savings.

F) Compliance costs for affected persons:

There are no fees associated with this process. The provisions of this rule are being moved to Title R82.

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

Regulatory Impact Table

Fiscal Cost	FY2020	FY2021	FY2022
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head approval of regulatory impact analysis:

The executive director of the Department of 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:

The provisions of this rule are being moved to Title R82. The new rules 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-2-202		
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Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until: 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:	Salvador Petilos, Executive Director	Date:	12/05/2019
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[R81. Alcoholic Beverage Control, Administration.

R81-10. Off-Premise Beer Retailers.

R81-10-1. Separation of Alcoholic Beverages from Non-Alcoholic Beverages and Required Signage.

(1) Authority and General Purpose. This rule is pursuant to 32B-7-202(6)(a)(ii) 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 32B-7-202(6)(a)(ii) must be:
 - (A) prominently posted in all areas where beer is sold;
 - (B) easily readable by the consumer;
 - (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.

R81-10-2. Off-Premise Beer Retailer State License and Master Off-Premise Beer Retailer State License.

- (1) Authority and General Purpose. This rule is pursuant to 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 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 32B-7-404(2):
 - (a) The applicant has submitted a complete application to the department in accordance with 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 Subsection (2)(a) 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 Subsection (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 Subsection (3)(a) will not be considered by the commission that month, but will be included on the agenda of the commission meeting the following month.
- (4) Subsection (2)(a) does not preclude the commission from considering an application for a conditional license under the terms and conditions of 32B-7-406.

KEY: alcoholic beverages
Date of Enactment or Last Substantive Amendment: September 25, 2019
Notice of Continuation: May 23, 2018
Authorizing, and Implemented or Interpreted Law: 32B-1-102; 32B-7-202; 32B-7-401]

NOTICE OF PROPOSED RULE			
TYPE OF RULE: Repeal			
Utah Admin. Code Ref (R no.):	R81-10A	Filing No. 52433	

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:
Recreational Amenity On-Premise Beer Retailer Licenses
3. Purpose of the new rule or reason for the change:
The provisions of this rule are being moved to Title R82. The new rules will condense and reorganize the administrative code to a format similar to state statute. (EDITOR'S NOTE: The proposed new rules under Title R82 were published in the December 15, 2019, issue of the Bulletin.)
4. Summary of the new rule or change:
The repealed and 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 filing does not create additional cost or savings.
B) Local governments:
This rule filing does not create additional cost or savings.

C) Small businesses ("small business" means a business employing 1-49 persons):			
This rule filing does not create additional cost or savings.			
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):			
This rule filing 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 filing does not create additional cost or savings.			
F) Compliance costs for affected persons:			
There are no fees associated with this process. The provisions of this rule are being moved to Title R82.			
G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)			
Regulatory Impact Table			
Fiscal Cost	FY2020	FY2021	FY2022
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0
H) Department head approval of regulatory impact analysis:			
The executive director of the Department of 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:
The provisions of this rule are being moved to Title R82. The new rules 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-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:	01/31/2020

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:	Salvador Petilos, Executive Director	Date:	12/05/2019
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~~[R81. Alcoholic Beverage Control, Administration.
R81-10A. Recreational Amenity On-Premise Beer Retailer Licenses.
R81-10A-1. Definitions.
(1) "Recreational Amenity" is one or more of the following or an activity substantially similar to one of the following:~~

- ~~_____ (a) a billiard parlor;~~
- ~~_____ (b) a pool parlor;~~
- ~~_____ (c) a bowling facility;~~
- ~~_____ (d) a golf course;~~
- ~~_____ (e) miniature golf;~~
- ~~_____ (f) a golf driving range;~~
- ~~_____ (g) a tennis club;~~
- ~~_____ (h) a sports facility that hosts professional sporting events and has a seating capacity equal to or greater than 6,500;~~
- ~~_____ (i) a concert venue that has a seating capacity equal to or greater than 6,500;~~
- ~~_____ (j) one of the following if owned by a government agency:~~
 - ~~_____ (i) a convention center;~~
 - ~~_____ (ii) a fair facility;~~
 - ~~_____ (iii) an equestrian park;~~
 - ~~_____ (iv) a theater; or~~
 - ~~_____ (v) a concert venue;~~
 - ~~_____ (k) an amusement park:~~
 - ~~_____ (i) with one or more permanent amusement rides; and~~
 - ~~_____ (ii) located on at least 50 acres;~~
 - ~~_____ (l) a ski resort;~~
 - ~~_____ (m) a venue for live entertainment if the venue:~~
 - ~~_____ (i) is not regularly open for more than five hours on any day;~~
 - ~~_____ (ii) is operated so that food is available whenever beer is sold, offered for sale, or furnished at the venue; and~~
 - ~~_____ (iii) is operated so that no more than 15% of its total annual receipts are from the sale of beer; or~~
 - ~~_____ (n) concessions operated within the boundary of a park administered by the:~~
 - ~~_____ (i) Division of Parks and Recreation; or~~
 - ~~_____ (ii) National Parks Service.~~

R81-10A-2. Licensing.

~~_____ (1) Recreational amenity on premise beer retailer licenses are issued to persons as defined in Section 32B-1-102(74). The department must be immediately notified of any action or transaction that may alter the organizational structure or ownership interest of the person to whom the license is issued to ensure there is no violation of Sections 32B-5-310.~~

R81-10A-3. Application.

~~_____ (1) No license application will be included on the agenda of a monthly commission meeting for consideration for issuance of a recreational amenity on premise beer retailer license until:~~

~~_____ (a) The applicant has first met all requirements of Sections 32B-1-304 (qualifications to hold the license), and 32B-5-201, -204, and 32B-6-705 (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 recreational amenity on premise beer retailer license, evidence of proximity to certain community locations, a bond, a floor plan, and public liability insurance and liquor liability insurance if the retailer sells more than \$5000 of beer annually); and~~

~~_____ (b) the department has inspected the recreational amenity on premise beer retailer premise.~~

~~_____ (2)(a) All application requirements of Subsection (1)(a) 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 Subsection (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 Subsection (2)(a) will not be considered by the commission that month, but will be included on the agenda of the commission meeting the following month.~~

R81-10A-4. Bonds.

~~_____ No part of any corporate or cash bond required by Section 32B-5-204 and 32B-6-705(4) may be withdrawn during the time the license is in effect. If the recreational amenity on premise beer licensee fails to maintain a valid corporate or cash bond, the license shall be immediately suspended until a valid bond is obtained. Failure to obtain a bond within 30 days of notification by the department of the delinquency shall result in the automatic revocation of the license.~~

R81-10A-5. Insurance.

~~_____ Public liability and dram shop insurance coverage required in Section 32B-5-201(2)(j) must remain in force during the time the license is in effect. Failure of the licensee to maintain the required insurance coverage may result in a suspension or revocation of the license by the commission.~~

R81-10A-6. Identification Badge.

~~_____ 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.~~

KEY: alcoholic beverages

~~**Date of Enactment or Last Substantive Amendment: December 24, 2018**~~

~~**Notice of Continuation: October 2, 2015**~~

~~**Authorizing, and Implemented or Interpreted Law: 32-1-607; 32B-2-202; 32B-5; 32B-6-701 through 708]**~~

NOTICE OF PROPOSED RULE			
TYPE OF RULE: Repeal			
Utah Admin. Code Ref (R no.):	R81-10C	Filing No. 52434	

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:
Beer-Only Restaurant Licenses
3. Purpose of the new rule or reason for the change:
The provisions of this rule are being moved to Title R82. The new rules will condense and reorganize the administrative code to a format similar to state statute. (EDITOR'S NOTE: The proposed new rules under Title R82 were published in the December 15, 2019, issue of the Bulletin.)
4. Summary of the new rule or change:
The repealed and 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 filing does not create additional cost or savings.
B) Local governments:
This rule filing does not create additional cost or savings.
C) Small businesses ("small business" means a business employing 1-49 persons):
This rule filing does not create additional cost or savings.
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):
This rule filing 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 filing does not create additional cost or savings.

F) Compliance costs for affected persons:			
There are no fees associated with this process. The provisions of this rule are being moved to Title R82.			
G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)			
Regulatory Impact Table			
Fiscal Cost	FY2020	FY2021	FY2022
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0
H) Department head approval of regulatory impact analysis:			
The executive director of the Department of 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:			
The provisions of this rule are being moved to Title R82. The new rules 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):
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Section	32B-2-202		
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Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:	01/31/2020
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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:	Salvador Petilos, Executive Director	Date:	12/05/2019
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~~[R81- Alcohol Beverage Control, Administration.~~

~~**R81-10C. Beer Only Restaurant Licenses.**~~

~~**R81-10C-1. Licensing.**~~

~~(1) Beer only restaurant licenses are issued to persons as defined in Section 32B-1-102(74). The department must be immediately notified of any action or transaction that may alter the organizational structure or ownership interest of the person to whom the license is issued to ensure there is no violation of Sections 32B-5-310.~~

~~**R81-10C-2. Application.**~~

~~(1) No license application will be included on the agenda of a monthly commission meeting for consideration for issuance of a beer only restaurant license until:~~

~~(a) The applicant has first met all requirements of Sections 32B-1-304 (qualifications to hold the license), and 32B-5-201, 204, and 32B-6-904 (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 of a beer only restaurant license, evidence of proximity to certain community locations, a bond, a floor plan, and public liability and liquor liability insurance); and~~

~~(b) the department has inspected the beer only restaurant premise.~~

~~(2)(a) All application requirements of Subsection (1)(a) 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 Subsection (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 Subsection (2)(a) will not be considered by the commission that month, but will be included on the agenda of the commission meeting the following month.~~

~~**R81-10C-3. Bonds.**~~

~~No part of any corporate or cash bond required by Section 32B-5-204 and 32B-6-904(4) may be withdrawn during the time the license is in effect. If the beer only restaurant licensee fails to maintain a valid corporate or cash bond, the license shall be immediately suspended until a valid bond is obtained. Failure to obtain a bond within 30 days of notification by the department of the delinquency shall result in the automatic revocation of the license.~~

~~**R81-10C-4. Insurance.**~~

~~Public liability and dram shop insurance coverage required in Section 32B-5-201(2)(j) must remain in force during the time the license is in effect. Failure of the licensee to maintain the required insurance coverage may result in a suspension or revocation of the license by the commission.~~

~~**R81-10C-5. Identification Badge.**~~

~~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.~~

~~**R81-10C-6. Sale and Purchase of Beer.**~~

~~(1) The restaurant shall maintain at least 70% of its total business from the sale of food pursuant to Section 32B-6-905(7).~~

~~(a) The restaurant shall maintain records separately showing quarterly expenditures and sales for beer and food. These 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 70% for any quarterly period, the department shall immediately put the licensee on a probationary status and closely monitor the licensee's food sales during the next quarterly period to determine that the licensee is able to prove to the satisfaction of the department that the sales of food meet or exceed 70%. Failure of the licensee to provide satisfactory proof of the required food percentage within the probationary period shall result in issuance of an order to show cause by the department to determine why the license should not be revoked by the commission.~~

~~(3) Beer dispensing shall be in accordance with Section 32B-5-304(5) and Section R81-1-11 (Multiple Licensed Facility Storage and Service) of these rules.~~

R81-10C-7. Alcoholic Product Flavoring.

Beer Only Restaurant licensees may use alcoholic products as flavoring subject to the following guidelines:

(1) Alcoholic product flavoring may be used in the preparation of food items and desserts at any time if plainly and conspicuously labeled "cooking flavoring".

(2) No restaurant employee under the age of 21 years may handle alcoholic product flavorings.

R81-10C-8. Table, Counter, and "Grandfathered Bar Structure" Service.

(1) Beer, if in sealed containers, may be opened and poured by the server at the patron's table, counter, or "grandfathered bar structure".

R81-10C-10. Grandfathered Bar Structures.

(1) Authority 32B-1-102; 32B-6-902; and 32B-6-905.2.

(2) The purpose of this rule is to define terms for full service restaurant licenses as required by 32B-6 Part 9.

(3) Definitions.

(a) "remodels the grandfathered bar structure" for purposes of 32B-6-902(1)(b) 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.

(b) "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.

(c) Pursuant to 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".

(d) "remodels the grandfathered bar structure or dining area" for purposes of 32B-6-905.2 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.

(e) "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.

(f) Pursuant to 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".

KEY: alcoholic beverages

Date of Enactment or Last Substantive Amendment: December 24, 2018

Notice of Continuation: September 28, 2016

Authorizing, and Implemented or Interpreted Law: 32B-2-202; 32B-5; 32B-6-901 through 905]

NOTICE OF PROPOSED RULE			
TYPE OF RULE: Repeal			
Utah Admin. Code Ref (R no.):	R81-10D	Filing No. 52435	

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:
Tavern Beer Licenses
3. Purpose of the new rule or reason for the change:
The provisions of this rule are being moved to Title R82. The new rules will condense and reorganize the

administrative code to a format similar to state statute. (EDITOR'S NOTE: The proposed new rules under Title R82 were published in the December 15, 2019, issue of the Bulletin.)

4. Summary of the new rule or change:

The repealed and 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 filing does not create additional cost or savings.

B) Local governments:

This rule filing does not create additional cost or savings.

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

This rule filing does not create additional cost or savings.

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

This rule filing 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 filing does not create additional cost or savings.

F) Compliance costs for affected persons:

There are no fees associated with this process. The provisions of this rule are being moved to Title R82.

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

Regulatory Impact Table

Fiscal Cost	FY2020	FY2021	FY2022
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0

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

H) Department head approval of regulatory impact analysis:

The executive director of the Department of 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:

The provisions of this rule are being moved to Title R82. The new rules 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-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:	01/31/2020
--	------------

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:	Salvador Petilos, Executive Director	Date:	12/05/2019
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~~[R81. Alcoholic Beverage Control, Administration.~~

~~**R81-10D. Tavern Beer Licenses.**~~

~~**R81-10D-1. Licensing.**~~

~~(1) Tavern beer licenses are issued to persons as defined in Section 32B-1-102(74). The department must be immediately notified of any action or transaction that may alter the organizational structure or ownership interest of the person to whom the license is issued to ensure there is no violation of Sections 32B-5-310.~~

~~**R81-10D-2. Application.**~~

~~(1) No license application will be included on the agenda of a monthly commission meeting for consideration for issuance of a tavern license until:~~

~~(a) The applicant has first met all requirements of Sections 32B-1-304 (qualifications to hold the license), and 32B-5-201, 204, and 32B-6-703 and 705 (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 tavern beer license, evidence of proximity to certain community locations, a bond, a floor plan, and public liability insurance and liquor liability insurance if the tavern sells more than \$5000 of beer annually); and~~

~~(b) the department has inspected the tavern premise.~~

~~(2)(a) All application requirements of Subsection (1)(a) 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 Subsection (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 Subsection (2)(a) will not be considered by the commission that month, but will be included on the agenda of the commission meeting the following month.~~

~~**R81-10D-3. Bonds.**~~

~~No part of any corporate or cash bond required by Section 32B-5-204 and 32B-6-705(4) may be withdrawn during the time the license is in effect. If the tavern beer licensee fails to maintain a valid corporate or cash bond, the license shall be immediately suspended until a valid bond is obtained. Failure to obtain a bond within 30 days of notification by the department of the delinquency shall result in the automatic revocation of the license.~~

~~**R81-10D-4. Insurance.**~~

~~Public liability and dram shop insurance coverage required in Section 32B-5-201(2)(j) must remain in force during the time the license is in effect. Failure of the licensee to maintain the required insurance coverage may result in a suspension or revocation of the license by the commission.~~

~~**R81-10D-5. Identification Badge.**~~

~~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.~~

~~**KEY: alcoholic beverages**~~

~~**Date of Enactment or Last Substantive Amendment: December 24, 2018**~~

~~**Notice of Continuation: September 28, 2016**~~

~~**Authorizing, and Implemented or Interpreted Law: 32-1-607; 32B-2-202; 32B-5; 32B-6-701 through 708]**~~

NOTICE OF PROPOSED RULE			
TYPE OF RULE: Repeal			
Utah Admin. Code Ref (R no.):	R81-11	Filing No.	52436

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:
Beer Wholesaler Licenses
3. Purpose of the new rule or reason for the change:
The provisions of this rule are being moved to Title R82. The new rules will condense and reorganize the administrative code to a format similar to state statute. (EDITOR'S NOTE: The proposed new rules under Title R82 were published in the December 15, 2019, issue of the Bulletin.)
4. Summary of the new rule or change:
The repealed and 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 filing does not create additional cost or savings.
B) Local governments:
This rule filing does not create additional cost or savings.
C) Small businesses ("small business" means a business employing 1-49 persons):
This rule filing does not create additional cost or savings.
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):
This rule filing 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 filing does not create additional cost or savings.

F) Compliance costs for affected persons:

There are no fees associated with this process. The provisions of this rule are being moved to Title R82.

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

Regulatory Impact Table			
Fiscal Cost	FY2020	FY2021	FY2022
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head approval of regulatory impact analysis:

The executive director of the Department of 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:

The provisions of this rule are being moved to Title R82. The new rules 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-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: 01/31/2020

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:	Salvador Petilos, Executive Director	Date:	12/05/2019
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~~[R81. Alcoholic Beverage Control, Administration.~~

~~R81-11. Beer Wholesaler Licenses.~~

~~R81-11-1. Application.~~

~~(1) 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, 204 and 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.~~

~~(2)(a) All application requirements of Subsection (1)(a) 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 Subsection (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 Subsection (2)(a) will not be considered by the commission that month, but will be included on the agenda of the commission meeting the following month.~~

~~R81-11-2. Transfer of License.~~

~~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. However, no assignment and transfer may result in both a change of license and change of location.~~

~~R81-11-3. Conditions of Transfer.~~

~~(1) The holder of the wholesaler license shall first execute a proposed assignment and transfer of the license. The assignee/transferee shall apply to the commission for approval of the assignment and transfer, and shall furnish any information the commission may require.~~

~~(2) The assignment and transfer shall not be of any force and effect until the commission has approved it.~~

~~(3) The assignee/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.~~

~~(4) No assignment and transfer shall be made within thirty days after the holder of a wholesaler license has been granted a change of location.~~

~~(5) No change of location shall be granted within ninety days after assignment and transfer of a wholesaler license.~~

~~(6) 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 employees with the business of the assignee or transferee.~~

~~(a) Prior to the imposition of any special conditions, the commission shall hold a hearing to allow the former licensee or any of his employees to attend and provide information to the commission.~~

~~(b) The commission shall provide written notice to all parties involved at least ten days prior to the hearing.~~

~~(7) 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 and 204.~~

~~R81-11-4. Change of Trade Name.~~

~~A change of trade name may coincide with the transfer of the wholesaler license, with the commission's approval. 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.~~

~~R81-11-5. Change in Partners.~~

~~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 R81-11-3. 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: April 30, 2013~~

Notice of Continuation: May 2, 2016

Authorizing, and Implemented or Interpreted Law: 32A-1-607; 32B-2-202; 32B-13]

NOTICE OF PROPOSED RULE			
TYPE OF RULE: Repeal			
Utah Admin. Code Ref (R no.):	R81-12	Filing No. 52437	

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:
Local Industry Representative Licenses (Distillery, Winery, Brewery)
3. Purpose of the new rule or reason for the change:
The provisions of this rule are being moved to Title R82. The new rules will condense and reorganize the administrative code to a format similar to state statute. (EDITOR'S NOTE: The proposed new rules under Title R82 were published in the December 15, 2019, issue of the Bulletin.)
4. Summary of the new rule or change:
The repealed and 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:																																																								
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Net Fiscal Benefits	\$0	\$0	\$0
H) Department head approval of regulatory impact analysis:			
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:			
The provisions of this rule are being moved to Title R82. The new rules 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-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:	01/31/2020

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	Salvador Petilos,	Date:	12/05/2019
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designee, and title:	Executive Director		
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~~**[R81- Alcoholic Beverage Control, Administration. R81-12. Local Industry Representative Licenses (Distillery, Winery, Brewery).**~~

~~**R81-12-1. Application.**~~

~~(1) 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 (qualifications to hold the license), and 32B-11-604 (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.~~

~~(2)(a) All application requirements of Subsection (1) 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 Subsection (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 Subsection (2)(a) will not be considered by the commission that month, but will be included on the agenda of the commission meeting the following month.~~

~~**R81-12-2. Industry Participation in Educational Seminars Involving Liquor, Wine and Heavy Beer Products.**~~

~~(1) Authority. This rule is pursuant to 32B-4-401 and 701 to 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 the 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) "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. "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) "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. 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(5) and (8).

(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.

KEY: alcoholic beverages

Date of Enactment or Last Substantive Amendment: May 22, 2012

Notice of Continuation: May 2, 2016

Authorizing, and Implemented or Interpreted Law: 32B-4-401; 32B-4-701 to 708]

NOTICE OF PROPOSED RULE			
TYPE OF RULE: Amendment			
Utah Admin. Code Ref (R no.):	R156-73-501	Filing No. 52439	

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:	
Allyson Pettley	801-530-6179	apettley@utah.gov	

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

General Information

2. Rule or section catchline:
Unprofessional Conduct
3. Purpose of the new rule or reason for the change:
The Division of Occupational and Professional Licensing (Division) in collaboration with the Chiropractic Physician Licensing Board recommends these proposed amendments to define certain actions as unprofessional conduct.
4. Summary of the new rule or change:
In Subsection R156-73-501(15), the proposed subsection will establish unprofessional conduct for using another chiropractic physician's patient records to determine medical necessity without physically performing a patient examination, while the patient is under active care.
In Subsection R156-73-501(16), the proposed subsection will establish unprofessional conduct for failing to provide a written refund policy for pre-paid plans.
In Subsection R156-73-501(17), the proposed subsection will establish unprofessional conduct for failing to obtain a written acknowledgement of the patient's acceptance and understanding of a pre-paid plan.
Subsections R156-73-501(18) will establish unprofessional conduct for making a guarantee of outcomes of care.

Subsection R156-73-501(19) will establish unprofessional conduct for soliciting, receiving, or paying compensation to another party for sending or referring a patient in excess of \$50 per patient.

Subsection R156-73-501(20) will establish unprofessional conduct for soliciting, receiving, or paying compensation to another party for commissions, rebates, kickbacks, or bribes.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

The Division estimates that the proposed amendments may result in two additional investigations of violations or complaints annually at a cost of \$300 each for a total of \$600. The amendments are not expected to impact any existing state practices or procedures, and 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 licensees to experience any measurable fiscal impacts. No other impact to the state is expected 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 the proposed amendments will have no measurable impact on local governments. None of these amendments are expected to impact existing 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 licensees to experience any measurable fiscal impacts.

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

The proposed amendments will regulate chiropractic physicians practicing in Utah, which may indirectly affect the estimated 470 small businesses in Utah owned by individuals in the chiropractic profession (NAICS 621310). However, the amendments are not expected to result in any measurable fiscal impact to small businesses. The amendments will only affect licensees who violate the rule, and as described below for other persons, for the typical licensee the amendments will have no fiscal impact. Accordingly, any impact from non-compliance will never be uniformly felt across the industry, and most small businesses will never be impacted. Although a small business owned by a licensee who is sanctioned may face indirect financial costs, it is impossible to estimate what those costs might be because any such violations are unforeseeable, and because any indirect costs that a small business may potentially experience will vary widely depending on the unique characteristics of the entity 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.

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

These proposed rule changes will not impact non-small businesses because there are no non-small businesses in Utah in this 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 are approximately 987 licensed chiropractic physicians who may be affected by these proposed amendments. No measurable fiscal impact to these persons is expected. 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 for noncompliance. Therefore, for the typical licensee the amendments are expected to have no direct or indirect fiscal impact. Further, although a licensee who is found to have violated the rule may experience a fiscal impact, it is impossible to estimate what those 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 Table			
Fiscal Cost	FY2020	FY2021	FY2022
State Government	\$675	\$600	\$600
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$675	\$600	\$600
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0

Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$(675)	\$(600)	\$(600)

H) Department head approval of regulatory impact analysis:

The executive director of the Department of Commerce, Francine Giani, 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 consultation with the Chiropractic Physician Licensing Board, the Division proposes amendments to define certain actions as unprofessional conduct to Subsections R156-73-501(15) through (20). Changes encompass physical examinations before treatment, written refund policies, written acknowledgment for prepaid plans, forbidding guaranteed outcomes of care, restrictions on referrals of patients, and barring compensation for commissions and bribes. These amendments are narrowly tailored so that there will be a limited fiscal impact to licensed chiropractors.

Small Businesses (less than 50 employees):
The proposed amendments will apply to chiropractic physicians practicing in Utah. There is a potential to affect an estimated 470 small businesses in Utah practicing in the chiropractic profession (NAICS 621310). The affect will only be on those licensed chiropractors that engage in unprofessional conduct, and by extension, the impact from non-compliance will not impact small business chiropractors uniformly. It is impossible to estimate what those costs might be because any violations for sanctions are unforeseeable. Any indirect costs that a small business may experience will vary depending on the characteristics of the entity and each licensee. This relevant data is unavailable and the cost of acquiring any such data is prohibitively expensive. Thus, the amendments are not expected to result in any measurable fiscal impact to small businesses.

Regulatory Impact to Non-Small Businesses (50 or more employees):
These proposed rule changes will not impact non-small businesses because there are no non-small businesses in Utah in the chiropractic industry (NAICS 621310). However, in the case that there may be, any measurable fiscal impact for non-small businesses will be similar for the same reasons as described above for small businesses. Any of these potential costs are either inestimable at this time, for the reasons stated, or there is no 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):

Section 58-73-101	Subsection 58-1-106(1)(a)	Subsection 58-1-202(1)(a)
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Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until: 01/31/2020

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

On:	At:	At:
01/28/2020	9:00 AM	Heber Wells Bldg, 160 E 300 S, Conference Room 474 (fourth floor), Salt Lake City, UT

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:	Mark B. Steinagel, Division Director	Date:	12/10/2019
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R156. Commerce, Occupational and Professional Licensing. R156-73. Chiropractic Physician Practice Act Rule. R156-73-501. Unprofessional Conduct.

"Unprofessional conduct" includes:

- (1) keeping the office, instruments, laboratory, equipment, appliances or supplies in an unsafe or unsanitary condition;
- (2) engaging in advertising which is misleading because of omission of necessary material information, which contains false or misleading statements, or which otherwise operates to deceive;
- (3) engaging in or abetting deceptive or fraudulent billing practices;
- (4) engaging in sexual contact with a patient, with or without patient consent, within 12 months of last treatment;
- (5) engaging in sexual activities or contact with a former patient, with or without consent, after 12 months of last treatment if there is a risk of exploitation or potential harm to the former patient;
- (6) engaging in behaviors in a patient/doctor relationship, including verbal, intended to sexually arouse any person or encourage sexual activity;
- (7) failing to keep the division informed of a current address and telephone number;
- (8) advertising acupuncture services or practicing clinical acupuncture techniques beyond the scope of the certification held;
- (9) advertising as an "acupuncturist" either verbally or in print;
- (10) failing to maintain responsibility for care, billing and documentation in a group practice, multidisciplinary practice or third-party ownership practice;
- (11) engaging in any act or practice in a professional capacity which the licensee is not competent to perform through education or training;
- (12) administering injections through the skin, limited to subcutaneous or intramuscular administration, of any substances other than non-prescription drugs as defined in Subsections 58-17b-102(39) or non-controlled substances as defined in Subsection 58-37-2(1)(f)(ii);
- (13) administering injections of non-prescription drugs or non-controlled substances without sufficient competency and training as demonstrated by the following:
 - (a) completion of a recognized course on injectables and their administration, under the sponsorship of or approved by an institution, organization or association meeting the continuing education standards as defined in Section R156-73-303b; and
 - (b) receiving a passing score on a certifying examination;~~and~~
- (14) delegating the administration of injections to a chiropractic assistant~~[-];~~
- (15) while a patient is under active care of another chiropractic physician, determining medical necessity using that chiropractic physician's patient records without physically performing a patient examination, except as ordered or otherwise directed by:
 - (a) a court; or
 - (b) the presiding office in administrative adjudicative proceedings;
- (16) failing to provide a written refund policy for pre-paid plans before the provision of service;
- (17) failing to obtain written acknowledgment of the patient's acceptance and understanding of a prepaid plan before the provision of service;
- (18) making a guarantee of outcomes of care;
- (19) soliciting, receiving or paying compensation to any person or entity for sending or referring a patient in excess of \$50 per patient; and

(20) soliciting, receiving, or paying compensation to any person or entity for a product or service to or from a chiropractic physician or chiropractic facility including commissions, rebates, kickbacks or bribes.

KEY: chiropractors, licensing, chiropractic physician
Date of Enactment or Last Substantive Amendment: ~~[August 24, 2009]~~2020
Notice of Continuation: February 11, 2016
Authorizing, and Implemented or Interpreted Law: 58-73-101; 58-1-106(1)(a); 58-1-202(1)(a)

NOTICE OF PROPOSED RULE			
TYPE OF RULE: Amendment			
Utah Admin. Code Ref (R no.):	R277-210	Filing No. 52445	No.

Agency Information

1. Department:	Education		
Agency:	Administration		
Street address:	250 E 500 S		
City, state:	Salt Lake City, UT		
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:
Utah Professional Practices Advisory Commission (UPPAC), Definitions
3. Purpose of the new rule or reason for the change:
Amendments to Rule R277-210 result from the recent work of the Utah Professional Practices Advisory Commission (UPPAC) taskforce, which reviewed the UPPAC process and made recommendations to increase fairness for educators involved.
4. Summary of the new rule or change:
The amendments include updates to the definitions applicable to all UPPAC rules.

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. The amendments result from the recent work of the UPPAC taskforce and include updates to the definitions applicable to all UPPAC rules. The changes add clarity including deleting some definitions such as probation and stipulated agreement, adding definitions such as consent to discipline and investigative letter, and inserting additional statutory references where appropriate. This additional clarification to the definitions for the UPPAC rules is not expected to have a material fiscal impact.

B) Local governments:

These rule changes are not expected to have any fiscal impact on local governments' revenues or expenditures. The amendments result from the recent work of the UPPAC taskforce and include updates to the definitions applicable to all UPPAC rules. The changes add clarity including deleting some definitions such as probation and stipulated agreement, adding definitions such as consent to discipline and investigative letter, and inserting additional statutory references where appropriate. This additional clarification to the definitions for the UPPAC rules is not expected to have a material 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 definitions for the UPPAC which is made up of licensed educators and two community members to assist and advise the State Board of Education in matters relating to the professional practice of educators and thus does 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', non-small businesses', or local government entities' revenues or expenditures. This rule is about definitions for the Utah Professional Practices Advisory Commission which is made up of licensed educators and two community members to assist and advise the State Board of Education in matters relating to the professional practice of educators.

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 Table			
Fiscal Cost	FY2020	FY2021	FY2022
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head approval of regulatory impact analysis:

Sydnee Dickson, State Superintendent, 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	Section 53E-6-506	Subsection 53E-3-401(4)
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Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until: 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:	Angie Stallings, Deputy Superintendent of Policy	Date:	12/13/2019
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R277. Education, Administration.
R277-210. Utah Professional Practices Advisory Commission (UPPAC), Definitions.

R277-210-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;
 (b) Section 53E-6-506, which directs the Board to adopt rules regarding UPPAC duties and procedures; and

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

(2) The purpose of this rule is to establish definitions for terms in UPPAC activities.

(3) The definitions contained in this rule apply to Rules R277-210 through R277-21[6]7.

(b) Any calculation of time called for by these rules shall be governed by Utah R. Civ. P. 6.

R277-210-2. Definitions.

(1)(a) "Action" means a disciplinary action taken by the Board adversely affecting an educator's license.

(b) "Action" does not include a [~~disciplinary~~]letter of warning or letter of education.

(c) "Action" includes:

(i) a [~~letter of~~]reprimand;[

~~(ii) probation;]~~

(ii)[~~†~~] suspension; and

(iv) revocation.

(2) "Administrative hearing" or "hearing" has the same meaning as that term is defined in Section 53E-6-601.41.

(3) "Alcohol related offense" means a violation of:[

~~(a) driving under the influence;~~

~~(b) alcohol related reckless driving or impaired driving;]~~

(a) Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving, except for offenses not involving alcohol;

~~([e]b) Section 76-9-701, [†]Intoxication;[~~

~~(d) driving with an open container;]~~

~~([e]c) Section 32B-4-403, [‡]Unlawful sale[or supply of alcohol;], offer for sale, or furnishing to minor; and[~~

~~(f) unlawful permitting of consumption of alcohol by minors;~~

~~(g) driving in violation of an alcohol or interlock restriction; and]~~

~~([h]d) any offense under the laws of another state that is substantially equivalent to the offenses described in Subsections(3)(a) through ([g]c).~~

~~(4) "Allegation of misconduct" means a written report alleging that an educator:~~

~~(a) has engaged in unprofessional or criminal conduct;~~

~~(b) is unfit for duty;~~

~~(c) has lost the educator's license in another state due to revocation or suspension, or through voluntary surrender or lapse of a license in the face of a claim of misconduct; or~~

~~(d) has committed some other violation of standards of ethical conduct, performance, or professional competence as provided in Rule R277-515.;~~

~~([5]4) "Answer" means a written response to a complaint filed by the Executive Secretary alleging educator misconduct.~~

~~([6]5) "Applicant" means a person seeking:~~

~~(a) a new license; or[~~

~~(b) reinstatement of an expired, surrendered, suspended, or revoked license; or]~~

~~([e]b) clearance of a criminal background review from Executive Secretary at any stage of the licensing process.~~

~~(7)6(a)~~ "Boundary violation" means ~~[the same as that term is defined in Rule R277-515.]~~ crossing verbal, physical, emotional, and social lines that an educator must maintain in order to ensure structure, security, and predictability in an educational environment.

(b) "Boundary violation" may include the following, depending on the circumstances:

(i) isolated, one-on-one interactions with students out of the line of sight of others;

(ii) meeting individually with students in rooms with covered or blocked windows;

(iii) telling risqué jokes or using profanity in the presence of a student;

(iv) employing favoritism to a student;

(v) inappropriate gift giving to individual students;

(vi) uninvited or inappropriate touching;

(vii) photographing individual students for a non-educational purpose or use;

(ix) engaging in inappropriate or unprofessional contact outside of educational program activities;

(x) exchanging personal email or phone numbers with a student for a non-educational purpose or use;

(xi) interacting privately with a student through social media, computer, or handheld devices;

(xii) discussing with a student inappropriate details about:

(A) an educator's personal life or personal issues; or

(B) a student's personal life or personal issues;

(xiii) discussing issues restricted under Subsection 53E-9-203(1) without authorization.

(c) "Boundary violation" does not include:

(i) offering praise, encouragement, or acknowledgment;

(ii) offering rewards available to all who achieve;

(iii) asking permission to touch for necessary purposes;

(iv) giving pats on the back or a shoulder;

(v) giving side hugs;

(vi) giving handshakes or high fives;

(vii) offering warmth and kindness;

(viii) utilizing public social media alerts to groups of students and parents; or

(ix) contact permitted by an IEP or 504 plan.[

~~(8) "Chair" means the Chair of UPPAC;]~~

~~(9)7~~ "Complaint" means a written allegation or charge against an educator filed by the Executive Secretary against the educator.

~~(10)8~~ "Complainant" means the Executive Secretary.

~~(11)9~~ "Comprehensive Administration of Credentials for Teachers in Utah Schools (CACTUS)" means the electronic file developed by the Superintendent and maintained on all licensed Utah educators.

~~(12)0~~ "Conflict of interest" means ~~[the same as that term is defined in Rule R277-104]~~ a business, family, monetary or relationship concern that may cause a reasonable educator to be unduly influenced or that creates the appearance of undue influence.

~~(13)1~~(a) "Conviction" means the final disposition of a judicial action for a criminal offense, except in cases of a dismissal on the merits.

(b) "Conviction" includes:

(i) a finding of guilty by a judge or jury;

(ii) a guilty or no contest plea;

(iii) a plea in abeyance; and

(iv) for purposes of ~~[this rule]~~ Rule R277-214, a conviction that has been expunged.

~~(12)~~ "Consent to discipline" means an agreement between a respondent and the Board:

(a) under which disciplinary action is taken against the educator in lieu of a hearing;

(b) that may be negotiated between the parties and becomes binding:

(i) when approved by the Board; and

(ii) at any time after an investigative letter has been sent;

(c) is a public document under GRAMA unless it contains specific information that requires redaction or separate classification of the agreement.

~~(14)3~~ "Criminal ~~[B]~~background ~~[R]~~review" means the process by which the Executive Secretary, UPPAC, and the Board review information pertinent to:

(a) a charge revealed by a criminal background check;

(b) a charge revealed by a hit as a result of ongoing monitoring; or

(c) an educator or applicant's self-disclosure.[

~~(15)(a)~~ "Disciplinary letter" means a letter issued to a respondent by the Board as a result of an investigation into an allegation of educator misconduct.

(b) "Disciplinary letter" includes:

(i) a letter of admonishment;

(ii) a letter of warning; and

~~(iii) any other action that the Board takes to discipline an educator for educator misconduct that does not rise to the level of an action as defined in this section.]~~

~~(16)5~~ "Drug" means controlled substance as defined in Section 58-37-2.

~~(17)6~~ "Drug related offense" means any criminal offense under:

(a) Title 58, Chapter 37;

(b) Title 58, Chapter 37a, Utah Drug Paraphernalia Act;

(c) Title 58, Chapter 37b, Imitation Controlled Substances Act;

(d) Title 58, Chapter 37c, Utah Controlled Substance Precursor Act;

(e) Title 58, Chapter 37d, Clandestine Drug Lab Act; and

~~(f) Title 58, Chapter 37e, Drug Dealer's Liability Act.[~~

~~Sections 58-37 through 37e.]~~

~~(17)(a)~~ "Educator" means a person who:

(i) currently holds a Utah educator license; or

(ii) held a license at the time of an alleged offense.

~~(b) "Educator" does not include a paraprofessional, a volunteer, or an unlicensed teacher in a classroom.~~

~~(18)8~~ "Educator ~~[M]~~misconduct" means:

(a) unprofessional~~[or criminal]~~ conduct;

(b) conduct that renders an educator unfit for duty; or

(c) conduct that is a violation of standards of ethical conduct, performance, or professional competence as provided in Rule R277-~~[545]~~217.[

~~(19)~~ "Executive Committee" means a subcommittee of UPPAC consisting of the following members:

~~(a) Executive Secretary;~~

~~(b) Chair;~~

~~(c) Vice Chair; and~~

~~(d) one member of UPPAC at large.]~~

~~(20)19~~ "Executive Secretary" means~~[:~~

(a) an employee of the Board ~~[who:~~

~~(i) is appointed by the Superintendent to serve as the UPPAC Director; and~~

~~(ii) appointed by the Superintendent to serve[s] as a non-voting member of UPPAC, consistent with Section 53E-6-502; or~~
 (b) the Executive Secretary's designee.

~~(2[+0]) "Expedited [H]hearing" means an informal hearing aimed at determining [an Educator's fitness to remain in the classroom held as soon as possible following an arrest, citation, or charge for a criminal offense requiring mandatory self-reporting under Section R277-516-3.] if allegations of educator misconduct can be summarily resolved or if an investigation by UPPAC is warranted.~~

~~(2[2]1) "Expedited [H]hearing [P]panel" means a panel of the following[three members]:~~

~~(a) the Executive Secretary or the Executive Secretary's designee, who acts as a non-voting hearing officer; and~~

~~(b)(i) [a]three voting members of UPPAC;[and~~

~~(e) a UPPAC attorney;] or~~

~~(ii) two voting members of UPPAC and a licensed educator with appropriate skills and training to assist on the panel.~~

~~(2[3]2) "Final action" means an action by the Board that concludes an investigation of an allegation of misconduct against a licensed educator.~~

~~(2[4]3) "GRAMA" [refers to the Government Records Access and Management Act,] means Title 63G, Chapter 2, Government Records Access and Management Act.~~

~~(2[5]4) "Hearing officer" means a licensed attorney who:~~

~~(a) is experienced in matters relating to administrative procedures;~~

~~(b) is appointed by the Executive Secretary to manage the proceedings of a hearing;~~

~~(c) is not an acting member of UPPAC;~~

~~(d) has authority, subject to the limitations of these rules, to regulate the course of the hearing and dispose of procedural requests;~~

~~(e) drafts a hearing report reflecting the findings and recommendations of the hearing panel; and~~

~~([e]f) does not have a vote as to the recommended disposition of a case.~~

~~(2[6]5) "Hearing panel" means a panel of three or more individuals designated to:~~

~~(a) hear evidence presented at a hearing;~~

~~(b) make a recommendation to UPPAC as to disposition consistent with the rebuttable presumptions in Rule R277-215; and~~

~~(c) collaborate with the hearing officer in preparing a hearing report.~~

~~(2[7]6) "Hearing report" means a report that:~~

~~(a) is prepared by the hearing officer consistent with the recommendations of the hearing panel at the conclusion of a hearing; and~~

~~(b) includes:~~

~~(i) a recommended disposition;~~

~~(ii) detailed findings of fact and conclusions of law, based upon the evidence presented in the hearing, relevant precedent; and~~

~~(iii) applicable law and rule.~~

~~(27) "Illegal drug" means a substance included in:~~

~~(a) Schedules I, II, III, IV, or V established in Section 58-37-4;~~

~~(b) Schedules I, II, III, IV, or V of the federal Controlled Substances Act, Title II, Pub. L. No. 91-513; or~~

~~(c) any controlled substance analog.~~

~~(28) "Informant" means a person who submits information to UPPAC concerning the alleged misconduct of an educator.[~~

~~(29) "Investigator" means an employee of the Board, or independent investigator selected by the Board, who:~~

~~(a) is assigned to investigate allegations of educator misconduct under UPPAC supervision;~~

~~(b) offers recommendations of educator discipline to UPPAC and the Board at the conclusion of the investigation;~~

~~(c) provides an independent investigative report for UPPAC and the Board; and~~

~~(d) may also be a UPPAC attorney but does not have to be.]~~

~~(29)(a) "Investigative letter" means a letter sent by the Executive Secretary to an educator notifying the educator:~~

~~(i) that an allegation of misconduct has been received against the educator;~~

~~(ii) that UPPAC or the Board has directed that an investigation of the educator's alleged actions take place; and~~

~~(iii) if applicable, that the Executive Secretary will place a flag on the educator's CACTUS file.~~

~~(b) An "investigative letter" is not evidence of unprofessional conduct.~~

~~(30) "Investigative report" means a written report of an investigation [into]addressing allegations of educator misconduct, prepared by an [F]investigator that:~~

~~(a) includes a brief summary of the allegations, the investigator's narrative, a summary of the evidence, and a recommendation for UPPAC[and the Board];~~

~~(b) may include a rationale for the recommendation, and mitigating and aggravating circumstances;~~

~~(c) is maintained in the UPPAC [C]case [F]file; and~~

~~(d) is classified as protected under Subsection 63G-2-305(34).~~

~~(31) "Investigator" means an employee of the Board, or independent investigator selected in accordance with Subsection 53E-6-506(3), who:~~

~~(a) is assigned to conduct an independent and objective investigation into allegations of educator misconduct under UPPAC supervision;~~

~~(b) offers recommendations of educator discipline to UPPAC, supported by Rule R277-215, and the evidence, at the conclusion of the investigation;~~

~~(c) provides an independent and objective investigative report for UPPAC and the Board; and~~

~~(d) may also be a UPPAC attorney but does not have to be.~~

~~(3[+2]) "LEA" or "local education agency" for purposes of [this rule]Rules R277-210 through R277-217 includes the Utah Schools for the Deaf and the Blind.[~~

~~(32) "Letter of admonishment" is a letter sent by the Board to an educator cautioning the educator to avoid or take specific actions in the future.~~

~~(33) "Letter of reprimand" is a letter sent by the Board to an educator:~~

~~(a) for misconduct that was longer term or more seriously unethical or inappropriate than conduct warranting a letter of warning, but not warranting more serious discipline;~~

~~(b) that provides specific directives to the educator as a condition for removal of the letter;~~

~~(c) appears as a notation on the educator's CACTUS file; and~~

~~(d) that an educator can request to be removed from the educator's CACTUS file after two years, or after such other time period as the Board may prescribe in the letter of reprimand.]~~

(33) "Letter of education" is a letter sent by the Board to an educator to instruct and caution the educator in an area of professional conduct when the evidence does not show a violation of the educator standards in Rule R277-217, but the evidence may show conduct that could lead to a violation of the standards in the future.

(34) "Letter of warning" is a letter sent by the Board to an educator:

(a) for misconduct that was inappropriate or unethical; and

(b) that does not warrant longer term or more serious discipline.

(35) "License" means a teaching or administrative credential, including an endorsement, which is issued by the Board to signify authorization for the person holding the license to provide professional services in Utah's public schools.[]

~~(36) "Licensed educator" means an individual issued a teaching or administrative credential, including an endorsement, issued by the Board to signify authorization for the individual holding the license to provide professional services in Utah's public schools.[]~~

(36) "Misdemeanor offense," for purposes of these rules, does not include:

(a) violations of municipal ordinances; or

(b) Class C Misdemeanors or Infractions in violation of Title 41, Utah Motor Vehicle Code.

(37) "National Association of State Directors of Teacher Education and Certification[~~-(NASDTEC)]~~ Educator Information Clearinghouse" or "NASDTEC Clearinghouse" means a database maintained by NASDTEC for the members of NASDTEC regarding persons who:

(a) had their license suspended or revoked;

(b) have been placed on probation; or

(c) have received a [~~letter of~~] reprimand.

(38) "Notification of [~~A~~]alleged [~~E~~]educator [~~M~~]misconduct" means the official UPPAC form that may be accessed on UPPAC's internet website, and may be submitted by any person, school, or LEA that alleges educator misconduct.

(39) "Party" means [~~a~~]the complainant or a respondent.

(40) "Petitioner" means an individual seeking:

(a) an educator license following a denial of a license; or
(b) reinstatement following a license suspension[~~; or in the event of compelling circumstances, reinstatement following a license revocation].[]~~

~~(41) "Probation" is an action directed by the Board that:~~

~~(a) involves monitoring or supervision for a designated time period, usually accompanied by a disciplinary letter;~~

~~(b) may require the educator to be subject to additional monitoring by an identified person or entity;~~

~~(c) may require the educator to be asked to satisfy certain conditions in order to have the probation lifted;~~

~~(d) may be accompanied by a letter of reprimand, which shall appear as a notation on the educator's CACTUS file; and~~

~~(e) unless otherwise specified, lasts at least two years and may be terminated through a formal petition to the Board by the respondent.~~

~~(42) "Revocation" means a permanent invalidation of a Utah educator license consistent with Rule R277-517.]~~

(41) "Plea in abeyance" means the same as described in Subsection 77-2a-1(1).

(42) "Pornographic or indecent material" means the same as the term is defined in Subsection 76-10-1235(1)(a).

(43) "Reprimand" is an action by the Board, which:

(a) is imposed for misconduct that was longer term or more seriously unethical or inappropriate than conduct warranting a letter of warning, but not warranting invalidation of the educator's license;

(b) is accompanied by a flag on the educator's CACTUS file, which the educator may request the Board remove from the educator's CACTUS file two years from the date the educator's CACTUS file was flagged for investigation, or after such other time period as prescribed by the Board; and

(c) may include specific directives that the educator must complete prior to requesting the flag be removed from the educator's CACTUS file under Subsection (43)(b).

(4[3]4) "Respondent" means an educator against whom:

(a) a complaint is filed; or

(b) an investigation is undertaken.

(45) "Revocation" means a permanent invalidation of a Utah educator license.

(46) "School-related activity" means a class, event, activity, or program:

(a) occurring at the school before, during, or after school hours; or

(b) that a student attends at a remote location as a representative of the school or with the school's authorization.

(4[4]7) "Serve" or "service," as used to refer to the provision of notice to a person, means:

(a) delivery of a written document[~~or its contents~~] to [~~the person or persons in question~~]a respondent; and

(b) delivery that may be made in person, by mail, by electronic correspondence, or by any other means reasonably calculated, under all of the circumstances, to notify a[~~n interested person or persons~~] respondent to the extent reasonably practical or practicable of the information contained in the document.

(4[5]8) "Sexually explicit conduct" means the same as that term is defined in Section 76-5b-103.[]

~~(46) "Stipulated agreement" means an agreement between a respondent and the Board:~~

~~(a) under which disciplinary action is taken against the educator in lieu of a hearing;~~

~~(b) that may be negotiated between the parties and becomes binding;~~

~~(i) when approved by the Board; and~~

~~(ii) at any time after an investigative letter has been sent;~~

~~(c) is a public document under GRAMA unless it contains specific information that requires redaction or separate classification of the agreement.]~~

(47[49])(a) "Suspension" means an invalidation of a Utah educator license[~~], which may be reinstated after:~~

~~(b) "Suspension" may:~~

~~(i) include specific conditions that an educator must satisfy; and~~

~~(ii) may identify a minimum time period that must elapse before the educator may request a reinstatement hearing before UPPAC.]~~

(a) the educator completes specific conditions identified in the consent to discipline or hearing report;

(b) the passage of the time specified in the consent to discipline or hearing report; and

(c) Board action to reinstate the license following a reinstatement hearing as described in Rule R277-213.

(50)(a) "Under the influence of alcohol or an illegal drug" means that a person:

(i) is under the influence of alcohol, an illegal drug, or the combined influence of alcohol and drugs to a degree that renders the person incapable of effectively working in a public school;

(ii) has sufficient alcohol in the person's body that a subsequent chemical test shows that the person has a blood or breath alcohol concentration of .05 grams or greater at the time of the test; or

(iii) has a blood or breath alcohol concentration of .05 grams or greater during work hours at a public school.

(b) An educator is presumed to be "under the influence of alcohol or an illegal drug" if the educator refuses a lawful request, made with reasonable suspicion by the educator's LEA, to submit to a drug or alcohol test.

~~(48)51~~ "Utah Professional Practices Advisory Commission" or "UPPAC" means an advisory commission established to assist and advise the Board in matters relating to the professional practices of educators, established in Section 53E-6-501.

~~(49)52~~ "UPPAC ~~[A]~~attorney ~~[F]~~file" means a file:

(a) that is kept by the attorney assigned by UPPAC to investigate ~~and~~ or prosecute a case that contains:

(i) the attorney's notes ~~prepared in the course of investigation~~; and

(ii) other documents prepared by the attorney in anticipation of an eventual hearing; and

(b) that is classified as protected pursuant to Subsection 63G-2-305(18).

~~(5)03~~ "UPPAC ~~[B]~~background ~~[C]~~check ~~[F]~~file" means a file maintained securely by UPPAC on a criminal background review that:

(a) contains information obtained from:

(i) BCI; and

(ii) letters, police reports, court documents, and other materials ~~as~~ provided by an ~~educator~~ applicant; and

(b) is classified as private under Subsection 63G-2-302(2).

~~(5)14~~ "UPPAC ~~[C]~~case ~~[F]~~file" means a file:

(a) maintained securely by UPPAC on an investigation into educator misconduct;

(b) opened following UPPAC's direction to investigate alleged misconduct;

(c) that contains the original notification of alleged misconduct with supporting documentation, correspondence with the Executive Secretary, the investigative report, the stipulated agreement, the hearing report, and the final disposition of the case;

(d) that is classified as protected under Subsection 63G-2-305(10) until the investigation and any subsequent proceedings before UPPAC and the Board are completed; and

(e) that after a case proceeding is closed, is considered public under GRAMA, unless specific documents contained therein contain non-public information or have been otherwise classified as non-public under GRAMA, in which case the file may be redacted or partially or fully restricted.

~~(5)25~~ "UPPAC ~~[E]~~evidence ~~[F]~~file" means a file:

(a) maintained by ~~the attorney assigned by UPPAC to investigate a case~~ UPPAC investigator containing materials, written or otherwise, obtained by the UPPAC investigator during the course of the ~~attorney's~~ investigation;

(b) that contains correspondence between the ~~[F]~~investigator and the educator or the educator's counsel;

(c) that is classified as protected under Subsection 63G-2-305(10) until the investigation and any subsequent proceedings before UPPAC and the Board are completed; and

(d) that is considered public under GRAMA after case proceedings are closed, unless specific documents contained therein contain non-public information or have been otherwise classified as non-public under GRAMA.[]

~~(53) "UPPAC investigative letter" means a letter sent by UPPAC to an educator notifying the educator that an allegation of misconduct has been received against him and that UPPAC or the Board has directed that an investigation of the educator's alleged actions take place.~~

~~(56) "Weapon" means an item that in the manner of the item's use or intended use is capable of causing death or serious bodily injury.~~

KEY: professional practices, definitions, educators

Date of Enactment or Last Substantive Amendment: ~~February 7, 2017~~ **2020**

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; ~~53A-6-306~~ **53E-6-506**; ~~53A-1-401~~ **53E-3-401**

NOTICE OF PROPOSED RULE			
TYPE OF RULE: Amendment			
Utah Admin. Code Ref (R no.):	R277- 211	Filing No.	52446

Agency Information

1. Department:	Education		
Agency:	Administration		
Street address:	250 E 500 S		
City, state:	Salt Lake City, UT		
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:
Utah Professional Practices Advisory Commission (UPPAC), Rules of Procedure: Notification to Educators, Complaints and Final Disciplinary Actions
3. Purpose of the new rule or reason for the change:
The amendments to Rule R277-211 result from the recent work of the Utah Professional Practices Advisory Commission (UPPAC) taskforce, which was assembled to recommend improvements to the educator discipline process.

4. Summary of the new rule or change:

The amendments include updates to the considerations for opening UPPAC cases and expansion of the expedited hearing process to reduce case times.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

These rule changes may have a fiscal impact on state government expenditures. The amendments result from the recent work of the UPPAC taskforce and include updates to the considerations for opening UPPAC cases and expansion of the expedited hearing process in an attempt to reduce case times. The expansion of the expedited hearing process may mean additional hearings which may mean additional UPPAC costs e.g. an increase in the funding to cover substitute teachers for the UPPAC members who are licensed educators. The number of additional hearings cannot be estimated so it is uncertain how much the additional expenditures may be. However, Education estimates that this potential increase can be handled within the existing UPPAC budget.

B) Local governments:

These rule changes are not expected to have any fiscal impact on local governments' revenues or expenditures. The amendments result from the recent work of the UPPAC taskforce and include updates to the considerations for opening UPPAC cases and expansion of the expedited hearing process in an attempt to reduce case times.

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 rules of procedure including notification to educators and complaints and final disciplinary actions for the UPPAC which is made up of licensed educators and two community members to assist and advise the Utah State Board of Education (Board) in matters relating to the professional practice of educators and thus does 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', non-small businesses', or local government entities' revenues or expenditures. This rule is about rules of procedure including notification to educators and complaints and final disciplinary actions for the UPPAC which is made up of licensed educators and two community members to assist and advise the Board in matters relating to the professional practice of educators.

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 Table			
Fiscal Cost	FY2020	FY2021	FY2022
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head approval of regulatory impact analysis:

Sydnee Dickson, State Superintendent, has reviewed and approved this fiscal analysis.

<p>6. A) Comments by the department head on the fiscal impact this rule may have on businesses:</p> <p>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.</p>
<p>B) Name and title of department head commenting on the fiscal impacts:</p> <p>Sydnee Dickson, State Superintendent</p>

Citation Information

<p>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):</p>			
Utah Constitution Article X, Section 3	Section 506	53E-6-3-401(4)	53E-3-401(4)

Public Notice Information

<p>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.)</p>	
<p>A) Comments will be accepted until:</p>	01/31/2020

<p>10. This rule change MAY become effective on:</p>	02/07/2020
<p>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.</p>	

Agency Authorization Information

<p>Agency head or designee, and title:</p>	Angie Stallings, Deputy Superintendent of Policy	<p>Date:</p>	12/13/2019
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**R277. Education, Administration.
R277-211. Utah Professional Practices Advisory Commission (UPPAC), Rules of Procedure: Notification to Educators, Complaints and Final Disciplinary Actions.**

R277-211-1. Authority and Purpose.

- (1) This rule is authorized by:
 - (a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;
 - (b) Section 53E-6-506, which directs the Board to adopt rules regarding UPPAC duties and procedures; and
 - (c) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

(2) The purpose of this rule is to provide procedures regarding:

- (a) notifications of alleged educator misconduct;
- (b) review of notifications by UPPAC; and
- (c) complaints, ~~[proposed stipulated agreements, approved stipulated agreements]~~ consents to discipline, and defaults.

~~(3) Except as provided in Subsection (4),~~ Title 63G, Chapter 4, Administrative Procedures Act does not apply to this rule under the exemption of Subsection 63G-4-102(2)(d).

~~(4) UPPAC may invoke and use sections or provisions of Title 63G, Chapter 4, Administrative Procedures Act as necessary to adjudicate an issue.~~

R277-211-2. Initiating Proceedings Against Educators.

(1) The Executive Secretary may refer a case to UPPAC to make a determination if an investigation should be opened regarding an educator:

- (a) upon receiving a notification of alleged educator misconduct; or
- (b) upon the Executive Secretary's own initiative.

(2) ~~[An]~~ If an informant seeks to report information to UPPAC concerning alleged educator misconduct, the informant shall submit an allegation of misconduct to the Executive Secretary in writing, including the following:

- (a) the informant's:
 - (i) name;
 - (ii) position, such as administrator, teacher, parent, or student;

- (iii) telephone number;
- (iv) address; and
- (v) contact information;

(b) information ~~[of]~~ about the educator against whom the allegation is made:

- (i) name;
- (ii) position, such as administrator, teacher, candidate;

and

- (iii) if known, the address and telephone number; and

(c) the facts on which the allegation is based and supporting information ~~[; and~~

~~(d) signature of the informant and date].~~

(3) If an informant submits a written allegation of misconduct as provided in this rule, the informant may be notified of a final action taken by the Board regarding the allegation.

(4)(a) Proceedings initiated upon the Executive Secretary's own initiative may be based on information received through a telephone call, letter, newspaper article, media information, notice from another state, or by other means.

(b) The Executive Secretary may also recommend an investigation based on an anonymous allegation, notwithstanding the provisions of this rule, if the allegation bears sufficient indicia of reliability.

(5) The Executive Secretary shall permanently maintain all written allegations, subsequent dismissals, actions, or disciplinary letters related to a case against an educator [~~shall be maintained permanently~~] in the UPPAC case file.

R277-211-3. Review of Notification of Alleged Educator Misconduct.

(1)(a) Upon receipt of a notification of alleged educator misconduct, the Executive Secretary shall review the notification with UPPAC and recommend one of the following actions to UPPAC:

(i) dismiss the matter if [~~UPPAC determines that~~]the alleged misconduct does not involve an issue that UPPAC should address; or

(ii) [~~initiate an investigation if UPPAC determines that~~]open a case if the alleged misconduct involves an issue that may be appropriately addressed by UPPAC and the Board.

(b) In considering whether to open a case regarding an allegation of educator misconduct, UPPAC shall consider the known facts and circumstances surrounding the allegation to determine whether opening a case is warranted.

(c) UPPAC shall open a case most readily when the evidence shows that:

(i) the alleged misconduct involves the physical or emotional safety and well-being of a student;

(ii) the alleged misconduct had a highly visible impact on the educator's school community;

(iii) the alleged misconduct has the potential to damage the integrity of the education profession;

(iv) the educator's LEA recommends the Board investigate the matter; or

(v) the educator has received prior UPPAC discipline.

([b]c) If [~~the Executive Secretary recommends~~] UPPAC [~~initiate an investigation;~~

(i) UPPAC shall initiate an investigation; and votes to open a case, UPPAC shall also determine whether to:

(i) initiate an investigation; or

(ii) invite the educator to participate in an expedited hearing as described in Section R277-211-5.]

(ii) the Executive Secretary shall direct a UPPAC investigator to gather evidence relating to the allegations.]

(2)(a) Prior to a UPPAC investigator's initiation of an investigation, the Executive Secretary shall send an investigative letter to the following [~~with information that UPPAC has initiated an investigation~~]:

(i) the educator to be investigated;

(ii) the LEA that employs the educator; and

(iii) the LEA where the alleged activity occurred.]

(b) A letter described in Subsection(2)(a) shall inform the educator and the LEA that an investigation shall take place and is not evidence of unprofessional conduct.]

([e]b) [~~UPPAC~~]The Executive Secretary shall place a flag on the educator's CACTUS file after:

(i) sending the [~~notices as provided in this rule.~~]educator an investigative letter; and

(ii) directing UPPAC staff to begin gathering evidence relating to the allegations.

(c) The Executive Secretary may not place a flag on an educator's CACTUS file if the educator agrees to an expedited hearing under Section R277-215-5 unless the expedited hearing panel recommends a full investigation.

(3)(a) The investigator shall review relevant documentation and interview individuals who may have knowledge of the allegations.

(b) The investigator shall prepare an objective and independent investigative report of the findings of the investigation and a recommendation supported by the evidence and Rule R277-215. [~~for appropriate action or disciplinary letter.~~]

(c) If the investigator discovers additional evidence of unprofessional conduct [~~that could have been included in the original notification of alleged educator misconduct~~]beyond the original allegations, the investigator may include the additional evidence of misconduct in the investigative report provided that the educator has had the opportunity to respond to the additional evidence.

(d) The investigator shall submit the investigative report to the Executive Secretary.

(e) The Executive Secretary shall [~~review~~]add the investigative report described in Subsection (3)(d) [~~with~~]to a UPPAC meeting agenda.

(f) The investigative report described in Subsection(3)(d) shall become part of the UPPAC case file.

(4) UPPAC shall review the investigative report and take one of the following actions:

(a) Recommend that the Board clear the CACTUS flag and take no action[~~UPPAC determines no further action should be taken, UPPAC may recommend that the Board dismiss the case~~]; or

(b) [~~UPPAC may~~]make an initial recommendation [~~of appropriate action or disciplinary letter~~]consistent with the evidence and Rule R277-215.

(5) After receiving an initial recommendation from UPPAC for action, the Executive Secretary shall [~~direct a UPPAC attorney to~~]:

(a) prepare and serve a complaint; or

(b) negotiate and prepare a proposed [~~stipulated agreement~~]consent to discipline.

(6)(a) Upon request of an educator, UPPAC will provide an electronic or paper copy of the UPPAC case file and evidence file to the educator.

(b) UPPAC may charge fees in accordance with Section R277-103-5 if the educator requests a paper copy.]

(7)(a) A proposed stipulated agreement shall conform to the requirements set forth in Section R277-211-6.

(b) An educator may stipulate to any recommended disposition for an action.

(8) The Executive Secretary shall forward any proposed stipulated agreement to the Board for approval.]

R277-211-4. Expedited Hearings on Criminal Charges in lieu of Initial UPPAC Review.

(1) In a case involving the first report of an arrest, citation, or charge of an [~~licensed~~] educator, which requires self-reporting by the educator under Section R277-217-4[~~R277-516-3~~],

the Executive Secretary, with the consent of the educator, may schedule the matter for an expedited hearing in lieu of initially referring the matter to UPPAC.

(2)(a) The Executive Secretary shall hold an expedited hearing within ~~[30]~~60 days of a report of an arrest, citation, or charge, unless otherwise agreed upon by both parties.

(b) ~~[The Executive Secretary or the Executive Secretary's designee]~~An expedited hearing panel shall conduct an expedited hearing on a criminal charge~~[with]~~ and include the following additional invited participants:

- (i) the educator;
- (ii) the educator's attorney or representative;
- (iii) a UPPAC attorney; ~~and~~[
- ~~(iv) a voting member of UPPAC; and]~~
- (iv) a representative of the educator's LEA.

(3) The panel may consider the following matters at an expedited hearing on a criminal charge:

- (a) an educator's oral or written explanation of the events;
- (b) a police report;
- (c) a court docket or transcript;
- (d) an LEA's investigative report or employment file; and
- (e) additional information offered by ~~the educator]~~a participant in the expedited hearing if the [panel]Executive Secretary deems it probative of the issues at the expedited hearing.

(4) After reviewing the evidence described in Subsection (3), the expedited hearing panel shall make written findings and a recommendation to UPPAC consistent with the evidence and Rule R277-215 to do one of the following:

- (a) close the case;
- (b) close the case upon completion of court requirements;
- (c) recommend that the Board issue a~~[issuance of a disciplinary]~~ letter of education or letter of warning to the Board;
- (d) open a full investigation; or
- (e) recommend action by the Board, subject to an educator's due process rights under these rules.

(5) An expedited hearing on a criminal charge may be recorded, but the testimony from the expedited hearing is inadmissible during a future UPPAC action related to the allegation unless the educator stipulates to admitting the recording.

(6) If the Board fails to adopt ~~[the]~~UPPAC's recommendation~~[of an expedited hearing panel]~~, UPPAC ~~[shall]~~may open a full investigation or issue a complaint.

(7) An expedited hearing panel may proceed under this section with only two voting panel members with the stipulation of the educator.

R277-211-5. Expedited Hearings on Minor Violations of the Educator Standards.

(1) Upon review of an allegation of educator misconduct, UPPAC may recommend conducting an expedited hearing if:

- (a) the material evidence provided by the informant does not appear to be disputed;
- (b) the allegations, if true, implicate the presumption for a letter of education or letter of warning under Subsection R277-215-2(9); and
- (c) the educator consents to participate.

(2) If an educator elects not to participate in an expedited hearing after UPPAC opens a case, the Executive Secretary shall initiate an investigation into the allegations of misconduct with no prejudice to the educator for not participating in the expedited hearing.

(3) At an expedited hearing under this section, an expedited hearing panel shall conduct the hearing and include the following invited individuals:

- (a) the educator;
- (b) the educator's attorney or representative;
- (c) a UPPAC attorney; and
- (d) an administrator from the educator's school or LEA.

(4) At an expedited hearing under this section, the panel may consider:

- (a) an educator's oral or written explanation of the events;
- (b) an LEA's investigative report or employment file, including witness statements; and
- (c) additional information proffered by a participant in the expedited hearing if the Executive Secretary deems it probative of the issues at the expedited hearing.

(5) After reviewing the evidence described in Subsection (4), the expedited hearing panel shall make written findings and a recommendation consistent with the evidence and Rule R277-215 to do one of the following:

- (a) close the case;
- (b) close the case upon completion of recommended training or other educator requirements;
- (c) issue a letter of education or letter of warning; or
- (d) open a full investigation.

(6) If an expedited hearing panel recommends a full investigation be opened, the Executive Secretary shall follow the requirements set forth in Subsection R277-211-3(2).

(7) An expedited hearing under this section may be recorded.

(8) Testimony offered at an expedited hearing may be considered in a subsequent report to UPPAC or hearing if a full investigation is opened.

(9) An expedited hearing panel may proceed under this section with only two voting panel members with the stipulation of the educator.

R277-211-~~[5]~~6. Complaints.

(1) If UPPAC determines that an allegation is sufficiently supported by evidence discovered in the investigation, the Executive Secretary ~~[shall]~~may direct the UPPAC attorney to serve a complaint upon the educator being investigated.

(2) At a minimum, a complaint shall include:

- (a) a statement of legal authority and jurisdiction under which the action is being taken;
- (b) a statement of the facts and allegations upon which the complaint is based;
- (c) other information~~[that the investigator believes is]~~ necessary to enable the respondent to understand and address the allegations;
- (d) a statement of the potential consequences if an allegation is found to be true or substantially true;
- (e) a statement that the respondent shall answer the complaint and request a hearing, if desired, within 30 days of the date the complaint is mailed to the respondent;
- (f) a statement that the respondent is required to file a written answer described in Subsection(2)(e) with the Executive Secretary;
- (g) a statement advising the respondent that if the respondent fails to respond within 30 days, the Executive Secretary may issue a default [judgment for revocation or a suspension of the educator's license may occur for a term of five years or more]order in accordance with Section R277-211-8;

(h) a statement that, if a hearing is requested, the hearing will be scheduled no less than 45 days, nor more than 180 days, after receipt of the respondent's answer, unless a different date is agreed to by both parties in writing;~~and~~

(i) a copy of the applicable hearing rules as required by S[ub]section 53E-6-607~~[-]; and~~

~~(j) if the respondent is not represented by counsel, a written guide to help the respondent understand the UPPAC investigation and hearing process.~~

(3) On the Executive Secretary's own motion, the Executive Secretary, or the Executive Secretary's designee, with notice to the parties, may reschedule a hearing date.

(4)(a) A respondent may file an answer to a complaint by filing a written response signed by the respondent or the respondent's ~~representative~~attorney with the Executive Secretary within 30 days after the complaint is mailed.

(b) The answer ~~may~~shall include;

~~(i) a request for a hearing, and shall include;~~

~~(ii) the file number of the complaint;~~

~~(iii) the names of the parties; and~~

~~(iv) [a statement of]the relief that the respondent seeks at a hearing.[-and~~

~~(v) if not requesting a hearing, a statement of the reasons that the relief requested should be granted.]~~

(c) As an alternative to filing an answer, the respondent may file a voluntary surrender pursuant to Rule R277-216.

(5)(a) ~~[As soon as reasonably practicable after receiving an answer, or no more than 30 days after receipt of an answer, t]The Executive Secretary shall schedule a hearing, if requested by the respondent, [as provided in Rule R277-212]in accordance with Subsection (2)(h).~~

(b) If the parties can reach an agreement prior to the hearing consistent with the terms of UPPAC's initial recommendation, the UPPAC attorney may negotiate a proposed ~~[stipulated agreement]consent to discipline~~ with the respondent.

(c) A proposed ~~[stipulated agreement]consent to discipline~~ described in Subsection(5)(b) shall be submitted to the Board for the Board's ~~[final approval]consideration in accordance with Section R277-211-7.~~

(6)(a) If a respondent does not respond to the complaint within 30 days, the Executive Secretary may initiate default proceedings in accordance with the procedures set forth in Section R277-211-~~7~~8.

(b) ~~[Except as provided in Subsection R277-211-7(3), i]If the Executive Secretary enters an order of default, the Executive Secretary shall make a recommendation to the Board for [a revocation or a suspension of the educator's license for five years before the educator may request a reinstatement hearing]discipline consistent with the evidence and Rule R277-215.~~

(c) If a default results in a suspension, a default may include conditions that an educator shall satisfy before the educator may qualify for a reinstatement hearing.[-

~~(d) An order of default shall result in a recommendation to the Board for a revocation if the alleged misconduct is conduct identified in Subsection 53E-6-604(5)(b)].~~

R277-211-~~6~~7. Proposed Consent to Discipline.

(1) At any time after UPPAC has made an initial recommendation, a respondent may accept UPPAC's initial recommendation, rather than request a hearing, by entering into a proposed consent to discipline.

(2) By entering into a proposed consent to discipline, a respondent waives the respondent's right to a hearing to contest the recommended disposition, contingent on final approval by the Board.

(3) At a minimum, ~~[the Executive Secretary shall include the following in-]a proposed consent to discipline shall include:~~

(a) a summary of the facts, the allegations, the presumption described in Rule R277-215, mitigating or aggravating factors described in Rule R277-215, and the evidence relied upon by UPPAC in its recommendation;

(b) a statement that the respondent admits the facts recited in the proposed consent to discipline as true for purposes of the Board administrative action;

(c) a statement that the respondent:

(i) waives the respondent's right to a hearing to contest the allegations that gave rise to the investigation; and

(ii) agrees to limitations on the respondent's license or surrenders the respondent's license rather than contest the allegations;

(d) a statement that the respondent agrees to the terms of the proposed consent to discipline and other provisions applicable to the case, such as remediation, assessment and recommended counseling, restitution, rehabilitation, and other conditions, if any, under which the respondent may request a reinstatement hearing or a removal of the~~[-letter of] reprimand[-or termination of probation];~~

~~(e) if for suspension or revocation of a license, a statement that the respondent:~~

~~(i) may not seek or provide professional services in a public school in the state;~~

~~(ii) may not seek to obtain or use an educator license in the state; or~~

~~(iii) may not work or volunteer in a public K-12 setting in any capacity without express authorization from the UPPAC Executive Secretary, unless or until the respondent:~~

~~(A) first obtains a valid educator license or authorization from the Board to obtain such a license; or~~

~~(B) satisfies other provisions provided in the proposed consent to discipline;~~

~~(f) a statement that the action and the proposed consent to discipline shall be reported to other states through the NASDTEC Educator Information Clearinghouse and any attempt to present to any other state a valid Utah license shall result in further licensing action in Utah;~~

~~(g) a statement that respondent waives the respondent's right to contest the facts stated in the proposed consent to discipline at a subsequent reinstatement hearing, if any;~~

~~(h) a statement that all records related to the proposed consent to discipline shall remain permanently in the UPPAC case file;~~

~~(i) a statement reflecting the proposed consent to discipline classification under Title 63G, Chapter 2, Government Records Access and Management Act;~~

~~(j) a statement that information regarding the proposed [letter of]reprimand, suspension, or revocation may be included in an online licensing database that is available for public access in accordance with R277-512.~~

~~(k) a statement that a violation of the terms of an approved consent to discipline may result in additional disciplinary action and may affect the reinstatement process; and~~

~~(l) a statement that the educator understands that the Board is not bound by UPPAC's recommendation or the negotiated~~

proposed ~~[stipulated agreement]~~ consent to discipline unless the Board approves the proposed consent to discipline[-];

(l) if for a suspension of the educator's license;

~~(i) specific conditions that an educator must satisfy prior to requesting a reinstatement hearing; and~~

~~(ii) a minimum time period that must elapse before the educator may request a reinstatement hearing; and~~

~~(m) if for suspension or revocation of a license, a statement that the respondent:~~

~~(i) may not seek or provide professional services in a public school in the state;~~

~~(ii) may not seek to obtain or use an educator license in the state; or~~

~~(iii) may not work or volunteer in a public K-12 setting in any capacity without express authorization from the UPPAC Executive Secretary, unless or until the respondent:~~

~~(A) first obtains a valid educator license or authorization from the Board to obtain such a license; or~~

~~(B) satisfies other provisions provided in the proposed consent to discipline.~~

(4)(a) The Executive Secretary shall forward a proposed consent to discipline to the Board for approval.

(b) If the Board does not approve a proposed consent to discipline, the Board may:

(i)(A) remand the case to UPPAC and ~~[may]~~shall include issues or questions that need to be addressed;

(B) offer respondent the opportunity for a hearing; or

(C) provide alternative terms and disposition to the Executive Secretary, consistent with the available evidence and presumptions described in R277-215, that would be satisfactory to the Board to be submitted to the educator for consideration;

(ii) direct the Executive Secretary to issue a ~~[disciplinary]~~ letter of education or letter of warning or dismiss the matter; or

(iii) take other appropriate action consistent with due process and R277-215.

(5) If the respondent accepts a consent to discipline with alternative terms and disposition proposed by the Board, the consent to discipline, as modified, is a final Board administrative action without further Board consideration.

(6) If the terms approved by the Board are rejected by the respondent, the proceedings shall continue from the point under these procedures at which the agreement was negotiated, as if the ~~[stipulated agreement]~~ consent to discipline had not been submitted.

(7) If the Board remands to UPPAC to provide respondent the opportunity for a hearing under Subsection (4)(b)(i)(B), the Executive Secretary shall:

(a) notify the parties of the decision;

(b) direct a UPPAC attorney to issue a complaint; and

(c) direct the proceedings as if the proposed consent to discipline had not been submitted.

(8) If the Board approves a proposed consent to discipline, the approval is a final Board administrative action and the Executive Secretary shall:

(a) notify the parties of the decision;

(b) update CACTUS to reflect the action;

(c) report the action to the NASDTEC Educator Information Clearinghouse if the agreement results in:

(i) a revocation;

(ii) a suspension; or

~~(iii) probation; or~~

~~(i) or (ii) a [letter of] reprimand;~~

(d) direct the appropriate penalties to begin; and

(e) notify the LEAs throughout the state.

R277-211-[7]8. Default Procedures.

(1) If a respondent does not respond to a complaint within 30 days from the date the complaint is served, the Executive Secretary may issue an order of default against the respondent consistent with the following:

(a) the Executive Secretary shall prepare and serve on the respondent an order of default including:

(i) a statement of the grounds for default; and

(ii) a recommended disposition if the respondent fails to file a response to a complaint;

(b) ten days following service of the order of default, a UPPAC attorney shall attempt to contact respondent or respondent's attorney by telephone or electronically unless the respondent is incarcerated and unrepresented;

(c) UPPAC shall maintain documentation of attempts toward written, telephonic, or electronic contact;

(d) the respondent has 20 days following service of the order of default to respond to UPPAC; and

(e) if UPPAC receives a response from respondent to a default order before the end of the 20 day default period, UPPAC shall allow respondent a final ten day period to respond to a complaint.

~~(2) [Except as provided in Subsection (3), if an order of default is issued, t]The Executive Secretary shall make a recommendation to the Board for discipline [in accordance] consistent with the evidence and Rule R277-215.~~

~~(3) If an order of default is issued, the Executive Secretary shall make a recommendation to the Board for a revocation of the educator's license if the alleged misconduct is conduct identified in Subsection 53E-6-604(5)(b).~~

R277-211-[8]9. Disciplinary Letters and Dismissal.

(1) If UPPAC recommends issuance of a ~~[disciplinary]~~ letter of warning, letter of education, or dismissal, the Executive Secretary shall forward the case to the Board for review on a consent calendar.

(2) If the Board does not approve a recommendation for a ~~[disciplinary]~~ letter of warning, letter of education, or dismissal described in Subsection (1), the Board may:

(a) remand the case to the Executive Secretary~~[UPPAC]~~ with:

(i) direction as to the issues UPPAC should address;

(ii) alternative terms and disposition that ~~[should]~~would be satisfactory to the Board to be submitted to the educator for consideration; and

(iii) the opportunity for the educator to participate in a hearing; ~~[~~

~~(b) direct the Executive Secretary to issue a different level of disciplinary letter;]~~

~~([e]b) dismiss the matter; or~~

~~([d]c) take other appropriate action consistent with due process and Rule R277-215.~~

(3) If the Board approves a ~~[disciplinary]~~ letter of warning or letter of education, the Executive Secretary shall:

(a) prepare the ~~[disciplinary]~~ letter of warning or letter of education and mail it to the educator;

(b) place a copy of the ~~[disciplinary]~~ letter of warning or letter of education in the UPPAC case file; and

(c) update CACTUS to reflect that the ~~[investigation]~~ case is closed.

KEY: teacher licensing, conduct, hearings
Date of Enactment or Last Substantive Amendment: ~~May 10, 2017~~ 2020
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-6-506; 53E-3-401(4)

NOTICE OF PROPOSED RULE			
TYPE OF RULE: Amendment			
Utah Admin. Code Ref (R no.):	R277-212	Filing No.	52447

Agency Information

1. Department:	Education		
Agency:	Administration		
Street address:	250 E 500 S		
City, state:	Salt Lake City, UT		
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:
UPPAC Hearing Procedures and Reports
3. Purpose of the new rule or reason for the change:
The reason for these changes to Rule R277-212 results from the recent work of the Utah Professional Practices Advisory Council (UPPAC) taskforce, which was assembled to recommend improvements to the educator discipline process.
4. Summary of the new rule or change:
These amendments include updates to the rule for conduct in UPPAC hearings and to eliminate certain appeals to the Superintendent from UPPAC recommendations.

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. The amendments result from the recent work of the UPPAC taskforce and include updates to this rule for conducting UPPAC hearings. The taskforce also

included amendments to eliminate certain appeals to the Superintendent from UPPAC recommendations. The changes update this rule for conducting hearings and thus are not expected to have a material fiscal impact.

B) Local governments:

These rule changes are not expected to have any fiscal impact on local governments' revenues or expenditures. The amendments result from the recent work of the UPPAC taskforce and include updates to this rule for conducting UPPAC hearings. The taskforce also included amendments to eliminate certain appeals to the Superintendent from UPPAC recommendations. The changes update this rule for conducting hearings and thus are not expected to have a material 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. The amendments update this rule for conducting UPPAC hearings. UPPAC is made up of licensed educators and two community members to assist and advise the Utah State Board of Education (Board) in matters relating to the professional practice of educators and thus does 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', non-small businesses', or local government entities' revenues or expenditures. The amendments update this rule for conducting UPPAC hearings. UPPAC is made up of licensed educators and two community members to assist and advise the Board in matters relating to the professional practice of educators.

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 Table			
Fiscal Cost	FY2020	FY2021	FY2022
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head approval of regulatory impact analysis:

Sydnee Dickson, State Superintendent, has reviewed and approved this fiscal analysis.

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

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

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

Sydnee Dickson, State Superintendent

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Utah Constitution Article X, Section 3	Section 506	53E-6-	Subsection 3-401(4)	53E-
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Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:	01/31/2020
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10. This rule change MAY become effective on:	02/07/2020
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NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	Angie Stallings, Deputy Superintendent of Policy	Date:	12/13/2019
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R277. Education, Administration.
R277-212. UPPAC Hearing Procedures and Reports.
R277-212-1. Authority and Purpose.

- (1) This rule is authorized by:
 - (a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;
 - (b) Section 53E-6-506, which directs the Board to adopt rules regarding UPPAC duties and procedures; and
 - (c) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.
- (2) The purpose of this rule is to establish procedures regarding UPPAC hearings and hearing reports.
- (3) The standards and procedures of Title 63G, Chapter 4, Administrative Procedures Act do not apply to this rule under the exemption of Subsection 63G-4-102(2)(d).

(4) Hearings conducted in accordance with this rule are formal adjudicatory proceedings.

R277-212-2. Scheduling a Hearing.

(1)(a) Following receipt of an answer by respondent requesting a hearing, or at the direction of the Board to give the respondent an opportunity to have a hearing:

(i) UPPAC shall select panel members;

(ii) the Executive Secretary shall appoint a hearing officer from among a list of hearing officers identified by the state procurement process and approved by UPPAC; and

(iii) UPPAC shall schedule the date, time, and place for the hearing.

(b) The Executive Secretary shall schedule a hearing for a date that is not less than 45 days nor more than 180 days from the date the Executive Secretary receives the answer unless otherwise stipulated by the parties.

(c) The required scheduling periods may be waived by mutual written consent of the parties or by the hearing officer for good cause shown.

(2)(a) Any party may request a change of hearing date by submitting a request in writing that shall:

(i) include a statement of the reasons for the request; and

(ii) be submitted to the hearing officer at least five days prior to the scheduled date of the hearing.

(b) The hearing officer shall determine whether the reason stated in the request is sufficient to warrant a change.

(c) If the hearing officer finds that the reason for the request for a change of hearing date is sufficient, the hearing officer shall promptly ~~notify all parties of the new time, date, and place for the hearing~~ direct the Executive Secretary to reschedule the hearing and send notice to the parties.

(d) If the hearing officer does not find the reason for the request for a change of hearing date to be sufficient, the hearing officer shall immediately notify the parties that the request has been denied.

(e) The hearing officer ~~and the parties~~ may, upon stipulation of the parties or upon motion, waive the time period required for requesting a change of hearing date for good cause shown.

(3) An educator is entitled to a hearing on any matter in which an action is recommended.

(4) An educator is not entitled to a hearing on a matter in which a ~~disciplinary~~ letter of education or letter of warning is recommended.

R277-212-3. Appointment and Duties of the Hearing Officer and Hearing Panel.

(1)(a) The Executive Secretary shall appoint a hearing officer to chair the hearing panel and conduct the hearing.

(b) The Executive Secretary shall select a hearing officer on a random basis from a list of available contracted hearing officers, subject to availability and conflict of interest.

(c) The Executive Secretary shall provide such information about the case as necessary to determine whether the hearing officer has a conflict of interest and shall disqualify any hearing officer that cannot serve under the Utah Rules of Professional Conduct.

(d) A hearing officer:

(i) may require the parties to submit a brief and a list of witnesses prior to the hearing;

(ii) presides at the hearing and regulates the course of the proceeding;

(iii) administers an oath to a witness as follows: "Do you swear or affirm that the testimony you will give is the truth?";

(iv) may take testimony, rule on a question of evidence, and ask a question of a witness to clarify a specific issue; and

(v) prepares and submits a hearing report to the Executive Secretary at the conclusion of the proceedings in consultation with panel members and the timelines of this rule.

(2)(a) UPPAC shall select three or more individuals to serve as members of the hearing panel.

(b) The majority of panel members shall be current UPPAC members.

(c) As directed by UPPAC, a licensed educator or member of the community may serve as a panel member, if needed.

(d) UPPAC shall select panel members on a rotating basis to the extent practicable.

(e) UPPAC shall accommodate each prospective panel member based on the availability of the panel member.

(f) If the respondent is a teacher, at least one panel member shall be a current classroom teacher.

(g) If the respondent is a non-teacher licensed educator, at least one panel member shall be a non-teacher licensed educator.

(3) The requirements of Subsection (2) may be waived only upon the stipulation of both the UPPAC attorney and the respondent.

(4)(a) A UPPAC panel member shall:

(i) assist a hearing officer by providing information concerning professional standards and practices of educators in the respondent's particular field of practice and in the situations alleged;

(ii) ask a question of a witness to clarify a specific issue;

(iii) review all evidence and briefs, if any, presented at the hearing;

(iv) make a recommendation to UPPAC as to the suggested disposition of a complaint; and

(v) assist the hearing officer in preparing the hearing report.

(b) A panel member may only consider the evidence approved for admission by the hearing officer.

(c) The Executive Secretary may make an emergency substitution of a panel member for good cause shown or with the consent of the parties.

(d) ~~The~~ An agreement to substitute a panel member shall be in writing.

(e) Parties may agree to a two-member UPPAC panel in an emergency situation. [

~~(f) If the parties do not agree to a substitution or to having a two member panel, the Executive Secretary shall reschedule the hearing.]~~

(5)(a) A party may request that the Executive Secretary disqualify a hearing officer by submitting a written request for disqualification to the Executive Secretary.

(b) A party shall submit a request to disqualify a hearing officer to the Executive Secretary at least 15 days before a scheduled hearing.

(6)(a) The Executive Secretary shall review a request described in Subsection (5) and supporting evidence to determine whether the reasons for the request are substantial and compelling.

(b) If the Executive Secretary determines that the hearing officer should be disqualified, the Executive Secretary shall appoint a new hearing officer and, if necessary, reschedule the hearing.

(7) A hearing officer may recuse himself or herself from a hearing if, in the hearing officer's opinion, the hearing officer's participation would violate any of the Utah Rules of Professional Conduct consistent with the Supreme Court Rules of Professional Practice.

(8)(a) If the Executive Secretary denies a request to disqualify a hearing officer described in Subsection (5), the Executive Secretary shall notify the party within ten days prior to the date of the hearing.

(b) The requesting party may submit a written appeal of the Executive Secretary's denial to the Superintendent no later than five days prior to the hearing date.

(c) If the Superintendent finds that the appeal is justified, the Superintendent shall direct the Executive Secretary to appoint a new hearing officer and, if necessary, reschedule the hearing.

(d) The decision of the Superintendent described in Subsection (8)(c) is final.

(e) If a party fails to file an appeal within the time requirements of Subsection (8)(b), the appeal shall be deemed denied.

(f) If the Executive Secretary fails to meet the time requirements described in Subsection (6) or (8), the request or appeal is approved.

(9)(a) A UPPAC member shall recuse himself or herself as a panel member due to any known financial or personal interest, prior relationship, personal and independent knowledge of the persons or issues in the case, or other association that the panel member believes would compromise the panel member's ability to make an impartial decision.

(b) A party may request that a UPPAC panel member be disqualified by submitting a written request to the ~~following:~~

- ~~(i) the hearing officer; or~~
- ~~(ii) to the Executive Secretary if there is no] hearing officer.~~

(c) A party shall submit a request described in Subsection (9)(b) no less than 15 days before a scheduled hearing.

(d) The hearing officer ~~or the Executive Secretary, if there is no hearing officer,~~ shall:

- (i) review a request described in Subsection (9)(b) and supporting evidence to determine whether the reasons for the request are substantial and compelling enough to disqualify the panel member; and
- (ii) if the reasons for the request described in Subsection (9)(b) are substantial and compelling, disqualify the panel member.

(e) If ~~the panel member's disqualification leaves the hearing panel with fewer than three UPPAC panel members]~~ a panel member is disqualified:

- (i) UPPAC shall appoint a replacement; and
- (ii) the Executive Secretary shall, if necessary, reschedule the hearing.

(f) If a request described in Subsection (9)(b) is denied, the hearing officer ~~or the Executive Secretary if there is no hearing officer,~~ shall notify the party requesting the panel member's disqualification no less than ten days prior to the date of the hearing. ~~]~~

~~(g) The requesting party may file a written appeal of a denial described in Subsection (9)(f) with the Superintendent no later than five days prior to the hearing date.~~

~~(h) If the Superintendent finds that an appeal described in Subsection (9)(g) is justified, the Superintendent shall direct the hearing officer or the Executive Secretary if there is no hearing officer, to replace the panel member.~~

~~(i) If a panel member's disqualification leaves the hearing panel with fewer than three UPPAC panel members, UPPAC shall agree upon a replacement and the Executive Secretary shall, if necessary, reschedule the hearing.~~

~~(j) The decision of the Superintendent described in Subsection (9)(h) is final.~~

~~(k) If a party fails to file an appeal within the time requirements of Subsection (9)(g), the appeal shall be deemed denied.~~

~~(l) If the hearing officer, or the Executive Secretary if there is no hearing officer, fails to meet the time requirements described in this Subsection (9), the request or appeal is approved.]~~

(10) The Executive Secretary may, at the time the Executive Secretary selects a hearing officer or panel member, select an alternative hearing officer or panel member following the process for selecting those individuals.

(11) The Executive Secretary may substitute a panel member with an alternative panel member if the Executive Secretary notifies the parties of the substitution.

R277-212-4. Preliminary Instructions to Parties to a Hearing.

(1) A hearing shall be scheduled no less than 45 days after receipt of an answer, unless otherwise stipulated by the parties.

(2) No later than 25 days before the date of a hearing, the Executive Secretary shall provide the parties with the following information:

- (a) date, time, and location of the hearing;
- (b) names and LEA affiliations of each panel member, and the name of the hearing officer; and
- (c) instructions for accessing these rules.

(3) No later than 20 days before the date of the hearing, the respondent and the complainant shall provide the following to the other party and to the hearing officer:

- (a) a brief, if requested by the hearing officer containing:
 - (i) any procedural and evidentiary motions along with the party's position regarding the allegations; and
 - (ii) relevant laws, rules, and precedent;
- (b) the name of the person who will represent the party at the hearing;
- (c) a list of witnesses expected to be called, including a summary of the testimony that each witness is expected to present;
- (d) a summary of documentary evidence that the party intends to submit; and
- (e) following receipt of the other party's witness list, a list of anticipated rebuttal witnesses and evidence no later than ten days prior to the hearing.

(4)(a) Except as provided in Subsection (4)(b), a party may not present a witness or evidence at the hearing if the witness or evidence has not been disclosed to the other party as required in Subsection (3).

(b) A party may present a witness or evidence at the hearing even if the witness or hearing has not been disclosed to the other party if:

- (i) the parties stipulate to the presentation of the witness or evidence at the hearing; or
- (ii) the hearing officer makes a determination of good cause to allow the witness or evidence.

(5) If a party fails to comply in good faith with a directive of the hearing officer, including time requirements, the hearing officer may prohibit introduction of the testimony or evidence or take other steps reasonably appropriate under the circumstances.

(6) A party shall provide materials to the hearing officer, panel members, and UPPAC as directed by the hearing officer.

R277-212-5. Hearing Parties' Representation.

- (1) A UPPAC attorney shall represent the complainant.
- (2) A respondent may represent himself or herself or be represented, at the respondent's own cost, by ~~[another person]~~legal counsel.
- (3) ~~The~~An informant has no right to:
 - (a) individual representation at the hearing; or
 - (b) to be present or heard at the hearing unless called as a witness.
- (4) A respondent shall notify the Executive Secretary in a timely manner and in writing if the respondent chooses to be represented by ~~[anyone other than the respondent]~~legal counsel.

R277-212-6. Discovery Prior to a Hearing.

- (1) Discovery is permitted to the extent necessary to obtain relevant information necessary to support claims or defenses, as determined by the hearing officer.
- (2) Unduly burdensome legalistic discovery may not be used to delay a hearing.
- (3) A hearing officer may limit discovery:
 - (a) at the discretion of the hearing officer; or
 - (b) upon a motion by either party.
- (4) A hearing officer rules on all discovery requests and motions.
- (5) The Executive Secretary shall issue a subpoena or other order to secure the attendance of a witness pursuant to Subsection 53E-6-606(1) if:
 - (a) requested by either party; and
 - (b) notice of intent to call the witness has been timely provided as required by Section R277-212-4.
- (6) The Executive Secretary shall issue a subpoena to produce evidence if timely requested by either party.
- (7)(a) A party may not present an expert witness report or expert witness testimony at a hearing unless the requirements of Section R277-212-10 have been met.
- (b) A respondent may not subpoena the UPPAC attorney or investigator as an expert witness.

R277-212-7. Burden and Standard of Proof for UPPAC Proceedings.

- (1) In matters other than those involving applicants for licensing, and excepting the presumptions under Subsection R277-212-11~~(4)~~, the Board shall have the burden of proving that an action against the license is appropriate.
- (2) An applicant for licensing has the burden of proving that licensing is appropriate.
- (3) The standard of proof in all UPPAC hearings is a preponderance of the evidence.
- (4) The Utah Rules of Evidence are not applicable to UPPAC proceedings.
- (5) The criteria to decide an evidentiary question are:
 - (a) reasonable reliability of the offered evidence;
 - (b) fairness to both parties; and
 - (c) usefulness to UPPAC in reaching a decision.
- (6) The hearing officer has the sole responsibility to determine the application of the hearing rules and the admissibility of evidence.

R277-212-8. Department.

- (1) Parties, their representatives, witnesses, and other persons present during a hearing shall conduct themselves in an appropriate manner during a hearing, giving due respect to members of the hearing panel and complying with the instructions of the hearing officer.
- (2) A hearing officer may exclude a person from the hearing room who fails to conduct himself or herself in an appropriate manner and may, in response to extreme instances of noncompliance, disallow the person's testimony.
- (3) Parties, attorneys for parties, or other participants in the professional practices investigation and hearing process may not harass, intimidate, or pressure witnesses or other hearing participants, nor may they direct others to harass, intimidate, or pressure witnesses or participants.

R277-212-9. Hearing Record.

- (1) A hearing shall be recorded at UPPAC's expense, and the recording shall become part of the UPPAC case file, unless otherwise agreed upon by all parties.
- (2) An individual party may, at the party's own expense, make a recording or transcript of the proceedings if the party provides notice to the Executive Secretary.
- (3) If an exhibit is admitted as evidence, the record shall reflect the contents of the exhibit.
- (4) All evidence and statements presented at a hearing shall become part of the UPPAC case file and may not be removed except by direction of the Executive Secretary or by order of the Board.
- (5)(a) Upon request of an educator, UPPAC will provide an electronic or paper copy of the UPPAC case file to the educator.
- (b) UPPAC may charge fees in accordance with Rule R277-103-5 if the educator requests a paper copy.

R277-212-10. Expert Witnesses in UPPAC Proceedings.

- (1) A hearing officer may allow testimony by an expert witness.
- (2) A party may call an expert witness at the party's own expense.
- (3) A party shall provide a hearing officer and the opposing party with the following information at least 15 days prior to the hearing date:
 - (a) notice of intent of a party to call an expert witness;
 - (b) the identity and qualifications of an expert witness;
 - (c) the purpose for which the expert witness is to be called; and
 - (d) any prepared expert witness report.
- (4) Defects in the qualifications of an expert witness, once a minimum threshold of expertise is established, go to the weight to be given the testimony and not to its admissibility.
- (5) An expert witness who is a member of the complainant's staff or staff of an LEA may testify and have the testimony considered as part of the record in the same manner as the testimony of any other expert.

R277-212-11. Evidence and Participation in UPPAC Proceedings.

- (1) A hearing officer may not exclude evidence solely because the evidence is hearsay.
- (2) Each party has a right to call witnesses, present evidence, argue, respond, cross-examine witnesses who testify in person at the hearing, and submit rebuttal evidence.

(3) Testimony presented at the hearing shall be given under oath if the testimony is offered as evidence to be considered in reaching a decision on the merits.

(4) On the hearing officer's own motion or upon objection by a party, the hearing officer:

(a) may exclude evidence that the hearing officer determines to be irrelevant, immaterial, or unduly repetitious;

(b) shall exclude evidence that is privileged under law applicable to administrative proceedings in the state unless waived;

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

(d) may take official notice of any facts that could be judicially noticed under judicial or administrative laws of the state, or from the record of other proceedings before the agency.

(5)(a) In addition to a rebuttable presumption described in Subsection 53E-6-506(3)(e), a rebuttable evidentiary presumption exists that a person has committed a sexual offense against a minor if the person has:

(i) been found, pursuant to a criminal, civil, or administrative action to have committed a sexual offense against a minor; or

(ii) failed to defend himself or herself against the charge when given a reasonable opportunity to do so.

(b) A rebuttable evidentiary presumption exists that a person is unfit to serve as an educator if the person has been found pursuant to a criminal, civil, or administrative action to have exhibited behavior evidencing unfitness for duty, including immoral, unprofessional, or incompetent conduct, or other violation of standards of ethical conduct, performance, or professional competence.

(c) Evidence of behavior described in Subsection (11)(b) may include:

(i) conviction of a felony;

(ii) a felony charge and subsequent conviction for a lesser related charge pursuant to a plea bargain or plea in abeyance;

(iii) an investigation of an educator's license, certificate, or authorization in another state; or

(iv) the expiration, surrender, suspension, revocation, or invalidation of an educator's license for any reason.

R277-212-12. Testimony of a Minor Victim or Witness.

(1) For purposes of this section, a "minor victim or witness" is an individual who is less than 18 years old at the time of hearing.

(2) If a case involves allegations of child abuse or of a sexual offense against a minor under applicable federal or state law, either party~~, a member of the hearing panel~~, or the hearing officer, may request that a minor victim or witness be allowed to testify outside of the respondent's presence.

(3) If the hearing officer determines that a minor victim or witness would suffer undue emotional or mental harm, or that the minor victim or witness's testimony in the presence of the respondent would be unreliable, the minor victim or witness's testimony may be admitted as described in this section.

(4) An oral statement of a minor victim or witness that is recorded prior to the filing of a complaint is admissible as evidence in a hearing regarding the offense if:

(a) no attorney for either party is in the minor victim or witness's presence when the statement is recorded;

(b) the recording is visual and aural and is recorded;

(c) the recording equipment is capable of making an accurate recording;

(d) the operator of the equipment is competent;

(e) the recording is accurate and has not been altered; and

(f) each voice in the recording is identified.

(5) The testimony of a minor victim or witness may be taken in a room other than the hearing room, and may be transmitted by closed circuit equipment to another room where it can be viewed by the respondent if:

(a) only the hearing officer, hearing panel members, attorneys for each party, persons necessary to operate equipment, and a person approved by the hearing officer whose presence contributes to the welfare and emotional well-being of the minor victim or witness may be with the minor victim or witness during the testimony;

(b) the respondent is not present during the minor victim or witness's testimony;

(c) the hearing officer ensures that the minor victim or witness cannot hear or see the respondent;

(d) the respondent is permitted to observe and hear, but not communicate with the minor victim or witness; and

(e) only hearing panel members, the hearing officer, and the attorneys question the minor victim or witness.

(6)(a) If a witness testifies under circumstances described in Subsection (5), a pro se educator, may submit written questions to the hearing officer to ask on the educator's behalf.

(b) A hearing officer shall take appropriate recesses to ensure a pro se educator is allowed to ask all needed follow up questions.

(7) If the hearing officer determines that the testimony of a minor victim or witness may be taken consistent with Subsections (2) through (5), the minor victim or witness may not be required to testify in any proceeding where the recorded testimony is used.

R277-212-13. Hearing Report.

(1) Within 20 days after the hearing, or within 20 days after the deadline imposed for the filing of any post-hearing materials as permitted by the hearing officer, the hearing officer shall sign and issue a hearing report consistent with the recommendations of the panel that includes:

(a) detailed findings of fact and conclusions of law based upon the evidence of record or on facts officially noted;

(b) a statement of relevant precedent, if available;

(c) a statement of applicable law and rule;

(d) presumptions applied by UPPAC;

(e) mitigating and aggravating circumstances considered by UPPAC;

(f) a recommended disposition of UPPAC panel members that shall be one ~~or an appropriate combination~~ of the following:

(i) dismissal of the complaint;

(ii) letter of ~~admonishment~~ education;

(iii) letter of warning;

(iv) ~~letter of~~ reprimand;

~~(v) probation, to include the following terms and conditions:~~

~~(A) it is the respondent's responsibility to petition UPPAC for removal of probation and letter of reprimand from the respondent's CACTUS file;~~

~~(B) a recommended minimum probationary time;~~

~~(C) conditions that can be monitored;~~

~~(D) if recommended by the panel, a person or entity to monitor a respondent's probation;~~

~~(E) a statement providing for costs of probation, if appropriate; and~~

~~(F) whether or not the respondent may work in any capacity in public education during the probationary period;~~

~~(vi) disciplinary action held in abeyance;]~~

(vii) suspension, to include the following terms and conditions:

(A) a recommended minimum time period consistent with R277-215 after which an educator may request a reinstatement hearing under Rule R277-213; and

(B) any recommended conditions precedent to requesting a reinstatement hearing under Section R277-213-2; or

(viii) revocation; and

(g) notice that UPPAC's recommendation is subject to approval by the Board and judicial review as may be allowed by law.

(2) Findings of fact may not be based solely upon hearsay, and conclusions shall be based upon competent evidence.[

~~(3) Any of the consequences described in Subsection (1)(d) may be imposed in the form of a disciplinary action held in abeyance.~~

~~(4)(a) If the respondent's penalty is held in abeyance, the respondent's penalty is stayed subject to the satisfactory completion of probationary conditions.~~

~~(b) The decision to impose a consequence in the form of a disciplinary action held in abeyance shall provide for appropriate or presumed discipline if the respondent does not fully satisfy the probationary conditions.]~~

([5]3)(a) A hearing officer shall circulate a draft report to hearing panel members prior to the 20 day completion deadline of the hearing report.

(b) Hearing panel members shall notify the hearing officer of any changes to the report:

(i) as soon as possible after receiving the report; and

(ii) prior to the 20 day completion deadline of the hearing report.

(c) The hearing officer shall file the completed hearing report with the Executive Secretary, who shall review the report with UPPAC.

(d) The Executive Secretary may participate in UPPAC's deliberation as a resource to UPPAC in explaining the hearing report and answering any procedural questions raised by UPPAC members.

(e) The hearing officer may confer with the Executive Secretary or the panel members or both while preparing the hearing report.

(f) The hearing officer may request the Executive Secretary to confer with the hearing officer and panel following the hearing.

(g) The Executive Secretary may return a hearing report to a hearing officer if the report is incomplete, unclear, or unreadable, or missing essential components or information.

(h) UPPAC shall vote to uphold the hearing officer's and panel's report if UPPAC finds that:

(i) there are no significant procedural errors;

(ii) the hearing officer's recommendations are based upon a preponderance of the evidence presented at the hearing; and

(iii) that all issues explained in the hearing report are adequately addressed in the conclusions of the report.

(i) After the UPPAC review, the Executive Secretary shall send a copy of the hearing report to:

(i) the Board for further action;

(ii) the respondent; and

(iii) the UPPAC case file.]

~~(6)(a) If UPPAC adopts a hearing report that recommends an action, as defined in Subsection R277-210-2(1), either party may request review by the Superintendent within 15 days from the date the Executive Secretary sends a copy of the hearing report to the respondent.~~

~~(b) The request for review shall consist of:~~

~~(i) the name, position, and address of the appellant;~~

~~(ii) the issue being appealed; and~~

~~(iii) the signature of the appellant or the appellant's representative.~~

~~(c) An appeal to the Superintendent is limited to a question of fairness or a violation of due process.~~

~~(d) If the Superintendent finds that a procedural error has occurred that violates fairness or due process, the Superintendent shall:~~

~~(i) refer the report back to UPPAC for reconsideration as to whether the findings, conclusions, or decisions are supported by a preponderance of the evidence; or~~

~~(ii) direct the UPPAC Executive Secretary to take specific administrative action.~~

~~(e) After UPPAC completes reconsideration, the Superintendent shall:~~

~~(i) notify all parties; and~~

~~(ii) refer the report to the Board, if necessary, for final disposition consistent with this rule.]~~

([7]4) If the Board does not approve a UPPAC hearing report, the Board may:

(a) remand the case to UPPAC with direction to cure due process issues; or

(b) direct the Executive Secretary to make other evidence available pursuant to Section R277-212-14 before issuing a final decision with official findings; or

(c) issue findings based on the UPPAC hearing record and report:

(i) specifying the reasons, including the evidence, presumptions, and the mitigating and aggravating circumstances the Board considered, for the Board's failure to accept~~why the Board disapproves of~~ the hearing report;

(ii) adopting the Board's decision on the matter; and

(iii) directing the Executive Secretary to include the findings as an addendum to the hearing report, which findings constitute final Board action; or

(d) take other appropriate action consistent with due process and R277-215.

([8]5) Following Board adoption of a hearing report or the Board's decision under Subsection ([7]4)([b]c), the Executive Secretary shall:

(a) notify the educator;

(b) notify the educator's employer;

(c) update CACTUS to reflect the Board's action; and

(d) report the action to the NASDTEC Educator Information Clearing house if the action results in:

(i) a revocation;

(ii) a suspension;[

~~(iii) probation;] or~~

(i[v]ii) [a letter of]reprimand.

([9]6) The hearing report is a public document under Title 63G, Chapter 2, Government Records Access and Management Act after final action is taken in the case, but may be redacted if it is

determined that the hearing report contains particular information, the dissemination of which is otherwise restricted under the law.

(14) A respondent's failure to comply with the terms of a final disposition may result in additional discipline against the educator license.

(15) If a hearing officer fails to satisfy the hearing officer's responsibilities under this rule, the Executive Secretary may:

- (a) notify the Utah State Bar of the failure;
- (b) reduce the hearing officer's compensation consistent with the failure;
- (c) take timely action to avoid disadvantaging either party; or
- (d) preclude the hearing officer from further employment by the Board for UPPAC purposes.

(16) The Executive Secretary may waive the deadlines within this section if the Executive Secretary finds good cause.

(17) All criteria of letters of warning and reprimand, probation, suspension, and revocation apply to the comparable sections of the final hearing report.

R277-212-14. Additional Relevant Evidence.

(1) If the Board directs the Executive Secretary to make additional relevant evidence available to the Board for review, before the Board issues a final decision with official findings, the Executive Secretary shall give the educator a notice that includes:

- (a) what additional relevant evidence the Board directed UPPAC to make available to review;
- (b) the opportunity to file a response described in Subsection (2); and
- (c) a statement that the educator's failure to file either a timely written response or request for hearing would be a waiver of the right to either respond, or request a hearing.

(2) An educator who receives a notice described in Subsection (1) may submit one of the following within 30 days of the notice described in Subsection (1) was sent:

- (a) a written response to the additional relevant evidence that the Board directed the Executive Secretary to make available for review; or
- (b) a written request for a hearing before the Board to respond to the additional relevant evidence.
- (3) If the educator fails to timely respond as provided in Subsection (2):

(a) the Executive Secretary shall notify the respondent that the respondent waived the right to respond or request a hearing; and

(b) the Board may proceed to view the additional relevant evidence.

(4) If the educator files a timely written response, the Executive Secretary shall submit the written response to the Board for consideration before the Board issues a final decision.

(5) If the educator files a timely hearing request, before the Board issues a final decision, the Executive Secretary shall:

- (a) request a hearing before the Board, as described in Subsection (7);
- (b) provide the respondent notice of the hearing meeting the requirements of Section 53E-6-607;
- (c) include a copy of the Board rules that apply; and
- (d) notify the respondent that if the respondent fails to attend or participate in the hearing:
 - (i) that the respondent has waived the right to appear and respond to the additional relevant evidence; and

(ii) that the Board may proceed to review the additional relevant evidence.

(6) The Board shall schedule a hearing described in ~~Subsection~~ Subsection (5)(b) within no less than 45 days and no more than 90 days from the date the Executive Secretary receives the respondent's written request for a hearing.

(7) If the Board conducts a hearing described in Subsection (6), Sections R277-212-4, R277-212-5, and R277-212-7 through R277-212-12 apply.

(8) The Executive Secretary shall issue a subpoena or other order to secure the attendance of a witness pursuant to Subsection 53E-6-506(3)(c)(i) if:

- (a) requested by either party; and
- (b) notice of intent to call the witness has been timely provided as required by Section R277-212-4.

(9) Subsection R277-212-3(1) governs the appointment of a hearing officer to conduct a hearing under this section, but no hearing report is required.

(10) After the hearing or viewing the additional relevant evidence, the Board will prepare findings that support the reasons for the Board's decision, including the presumptions and mitigating and aggravating circumstances described in Rule R277-215 that the Board applied.

(11) Findings issued by the Board as described in Subsection (11) may not be based solely upon hearsay.

R277-212-15. Default.

(1)(a) The Executive Secretary shall prepare an order of default if:

- (i) the respondent fails to file an answer as described in Subsection R277-211-5(4);
- (ii) the respondent fails to attend or participate in a properly scheduled hearing after receiving proper notice; or
- (iii) the hearing officer recommends default as a sanction as a result of misconduct by the respondent or the respondent's representative during the course of the hearing process.

(b) The hearing officer may determine that the respondent has failed to attend a properly scheduled hearing if the respondent has not appeared within 30 minutes of the appointed time for the hearing to begin, unless the respondent shows good cause for failing to appear in a timely manner.

(2) The recommendation of default may be executed by the Executive Secretary following all applicable time periods, without further action by UPPAC.

(3) ~~[Except as provided in Subsection (4), t]~~ The Executive Secretary shall make a recommendation to the Board for discipline in accordance with Rule R277-215.

~~(4) An order of default shall result in an Executive Secretary recommendation to the Board for a revocation if the alleged misconduct is conduct identified in Subsection 53E-6-604(5)(b).]~~

R277-212-16. Rights of Victims at Hearings.

(1) If the allegations that gave rise to the underlying allegations involve abuse of a sexual or physical nature, UPPAC shall make reasonable efforts to:

- (a) advise the alleged victim that a hearing has been scheduled;
- (b) notify the alleged victim of the date, time, and location of the hearing; and
- (c) notify the alleged victim of the right to attend the hearing alone or with a victim advocate present.

(2) An alleged victim or guardian entitled to notification of a hearing is permitted, but is not required, to attend the hearing.

(3) An alleged victim or witness may have a criminal justice victim advocate or support person attend the hearing with them.

KEY: hearings, reports, educators

Date of Enactment or Last Substantive Amendment: ~~February 7, 2017~~ **2020**

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-6-506; 53E-3-401(4)

NOTICE OF PROPOSED RULE			
TYPE OF RULE: Amendment			
Utah Admin. Code Ref (R no.):	R277-213	Filing No.	52448

Agency Information

1. Department:	Education		
Agency:	Administration		
Street address:	250 E 500 S		
City, state:	Salt Lake City, UT		
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:
Request for Licensure Reinstatement and Reinstatement Procedures
3. Purpose of the new rule or reason for the change:
The amendments to Rule R277-213 result from the recent work of the Utah Professional Practices Advisory Commission (UPPAC) taskforce.
4. Summary of the new rule or change:
The amendments include updates to the procedures for conduct reinstatement hearings.

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.

The amendments result from the recent work of the UPPAC taskforce and include updates to the procedures for conducting reinstatement hearings. The changes add clarity including stating an educator may file a request for reinstatement at any time one year prior to the expiration of the suspension period if the educator has completed the requirements identified in the educator's consent to discipline or hearing report. This additional clarification to the procedure is not expected to have a material fiscal impact.

B) Local governments:

These rule changes are not expected to have any fiscal impact on local governments' revenues or expenditures. The amendments result from the recent work of the UPPAC taskforce and include updates to the procedures for conducting reinstatement hearings. The changes add clarity including stating an educator may file a request for reinstatement at any time one year prior to the expiration of the suspension period if the educator has completed the requirements identified in the educator's consent to discipline or hearing report.

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. This rule is about procedure for the UPPAC which is made up of licensed educators and two community members to assist and advise the Utah State Board of Education (Board) in matters relating to the professional practice of educators and thus does 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', non-small businesses', or local government entities' revenues or expenditures. This rule is about

procedure for the UPPAC which is made up of licensed educators and two community members to assist and advise the Board in matters relating to the professional practice of educators.

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 Table

Fiscal Cost	FY2020	FY2021	FY2022
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head approval of regulatory impact analysis:

Sydnee Dickson, State Superintendent, 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	Section 53E-6-506	Subsection 53E-3-401(4)
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Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until: 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:	Angie Stallings, Deputy Superintendent of Policy	Date:	12/13/2019
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R277. Education, Administration.

R277-213. Request for Licensure Reinstatement and Reinstatement Procedures.

R277-213-1. Authority and Purpose.

- (1) This rule is authorized by:
 - (a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;
 - (b) Section 53E-6-506, which directs the Board to adopt rules regarding UPPAC duties and procedures; and

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

(2) The purpose of this rule is to establish procedures regarding educator reinstatement.

(3) The standards and procedures of the Utah Administrative Procedures Act do not apply to this rule under the exemption of Subsection 63G-4-102(2)(d).

R277-213-2. Application for ~~[Licensing Following Denial or Loss of License]~~Reinstatement.

(1)(a) An individual ~~[who has been denied a license or lost the individual's license through suspension, or allowed a license to lapse in the face of an allegation of misconduct]~~with a suspended license, may request a review to consider reinstatement of ~~[a]the~~ license.

(b) A request for review described in Subsection (1)(a) shall:

- (i) be in writing;
- (ii) be ~~[transmitted]~~submitted to the UPPAC Executive Secretary; and
- (iii) have the following information:

(A) name and address of the individual requesting review;

(B) the action being requested;

(C) specific evidence and documentation of compliance with terms and conditions of any remedial or disciplinary requirements or recommendations from UPPAC or the Board;

(D) reason~~[s]~~ that the individual seeks reinstatement; and

(E) signature of the individual requesting review.

(2)(a) The Executive Secretary shall review the request with UPPAC.

(b) If UPPAC determines that the request is incomplete or invalid:

(i) the Executive Secretary shall deny the request; and

(ii) notify the individual requesting reinstatement of the denial.

(c) If UPPAC determines that the request of an individual described in Subsection (1) is complete, timely, and appropriate, ~~[UPPAC]~~the Executive Secretary shall schedule and hold a hearing as ~~[provided under]~~soon as practicable in accordance with the provisions of Section R277-213-3.

(3) An educator may file a request for reinstatement at any time one year prior to the expiration of the suspension period if the educator has completed the requirements identified in the educator's consent to discipline or hearing report.

~~[(3)4]~~(a) Burden of Persuasion: The burden of persuasion at a reinstatement hearing shall fall on the individual seeking ~~[the]~~reinstatement.

(b) An individual requesting reinstatement of a suspended license shall:

(i) show sufficient evidence of compliance with any conditions imposed in the past disciplinary action;

(ii) provide sufficient evidence to the reinstatement hearing panel that the educator will not engage in recurrences of the actions that gave rise to the suspension and that reinstatement is appropriate;

(iii) undergo a criminal background check not more than six months prior to the requested hearing; and

(iv) provide materials for review by the hearing panel that demonstrate the individual's compliance with directives from

UPPAC or the Board found in petitioner's original ~~[stipulated agreement]~~consent to discipline or hearing report.

(c) An individual requesting ~~[licensing following a denial]~~reinstatement shall show sufficient evidence of completion of a rehabilitation or remediation program, if applicable, when requesting reinstatement.

~~[(4)5]~~ An individual whose license has been suspended or revoked in another state shall seek reinstatement of the individual's license in the other state before a request for a reinstatement hearing may be approved.

R277-213-3. Reinstatement Hearing Procedures.

(1) A hearing officer shall:

(a) preside over a reinstatement hearing; and

(b) rule on all procedural issues during the reinstatement hearing as they arise.

(2) A hearing panel, comprising individuals as set forth in Subsection ~~R277-212-3~~(2), shall:

(a) hear the evidence; and

(b) along with the UPPAC attorney and hearing officer, question the individual seeking reinstatement regarding the appropriateness of reinstatement.

(3) An individual seeking reinstatement may:

(a) be represented by counsel; and

(b) may present evidence and witnesses.

(4) A party may present evidence and witnesses consistent with Rule R277-212.

(5) A hearing officer of a reinstatement hearing shall direct one or both parties to explain the background of a case to panel members at the beginning of the hearing to provide necessary information about the initial misconduct and subsequent UPPAC and Board action.

(6) An individual seeking reinstatement shall present documentation or evidence that supports reinstatement.

(7) The Executive Secretary, represented by a UPPAC attorney, shall present any evidence or documentation that explains and supports UPPAC's recommendation in the matter.

(8) Other evidence or witnesses may be presented by either party and shall be presented consistent with Rule R277-212.

(9) The individual seeking reinstatement shall:

(a) focus on the individual's actions, rehabilitative efforts, and performance following ~~[license denial or]~~suspension;

(b) explain item by item how each condition of the hearing report or ~~[stipulated agreement]~~consent to discipline was satisfied;

(c) provide documentation in the form of evaluations, reports, or plans, as directed by the hearing report or ~~[stipulated agreement]~~consent to discipline, of satisfaction of all required and outlined conditions;

(d) be prepared to completely and candidly respond to the questions of the UPPAC attorney and hearing panel regarding:

(i) the misconduct that caused the license suspension;

(ii) subsequent rehabilitation activities;

(iii) counseling or therapy received by the individual related to the original misconduct; and

(iv) work, professional actions, and behavior between the suspension and reinstatement request;

(e) present witnesses and be prepared to question witnesses (including counselors, current employers, support group members) at the hearing who can provide substantive corroboration of rehabilitation or current professional fitness to be an educator;

(f) provide copies of all reports and documents to the UPPAC attorney and hearing officer at least five days before a reinstatement hearing; and

(g) bring eight copies of all documents or materials that an individual seeking reinstatement plans to introduce at the hearing.

(10) The UPPAC attorney, the hearing panel, and hearing officer shall thoroughly question the individual seeking reinstatement as to the individual's:

(a) underlying misconduct which is the basis of the sanction on the educator's license;

(b) specific and exact compliance with reinstatement requirements;

(c) counseling, if required for reinstatement;

(d) specific plans for avoiding previous misconduct; and

(e) demeanor and changed understanding of petitioner's professional integrity and actions consistent with Rule R277-~~515~~217.

(11) If the individual seeking reinstatement sought counseling as described in Subsection(10)(c), the individual shall state, under oath, that he provided all relevant information and background to his counselor or therapist.

(12) A hearing officer shall rule on procedural issues in a reinstatement hearing in a timely manner as they arise.

(13) No more than 20 days following a reinstatement hearing, a hearing officer, with the assistance of the hearing panel, shall:

(a) prepare a hearing report in accordance with the requirements set forth in Section R277-213-5; and

(b) provide the hearing report to the UPPAC Executive Secretary.

(14) The Executive Secretary shall submit the hearing report to UPPAC at the next meeting following receipt of the hearing report by the Executive Secretary.

(15) UPPAC may do the following upon receipt of the hearing report:

(a) accept the hearing panel's recommendation as prepared in the hearing report;

(b) amend the hearing panel's recommendation with conditions or modifications to the hearing panel's recommendation which shall be:

(i) directed by UPPAC;

(ii) prepared by the UPPAC Executive Secretary; and

(iii) attached to the hearing report; or

(c) reject the hearing panel's recommendation.

(16) After UPPAC makes a recommendation on the hearing panel report, the UPPAC recommendation will be forwarded to the Board for final action on the individual's reinstatement request.[]

~~(17) If the Board denies an individual's request for reinstatement, the individual shall wait at least twenty four (24) months prior to filing a request for reinstatement again, unless a different time is specified by UPPAC or the Board.~~

(1[8]7) If the Board reinstates an educator's license, the Executive Secretary shall:

(a) update CACTUS to reflect the Board's action; and

(b) report the Board's action to the NASDTEC Educator Information Clearing house.

(1[9]8) The Executive Secretary shall send notice of the Board's decision no more than 30 days following Board action to:

(a) the educator;

(b) the educator's LEA.

R277-213-4. Rights of a Victim at a Reinstatement Hearing.

(1) If the allegations that gave rise to the underlying suspension involve abuse of a sexual or physical nature, UPPAC shall make reasonable efforts to notify the victim or the victim's family of the reinstatement request.

(2) A UPPAC's notification described in Subsection (1) shall:

(a) advise the victim or the victim's family that a reinstatement hearing has been scheduled;

(b) notify the victim or the victim's family of the date, time, and location of the hearing;

(c) advise the victim or the victim's family of the victim's right to be heard at the reinstatement hearing; and

(d) provide the victim or the victim's family with a form upon which the victim can submit a statement for consideration by the hearing panel.

(3) A victim entitled to notification of the reinstatement proceedings shall be permitted:

(a) to attend the hearing; and

(b) to offer the victim's position on the educator's reinstatement request, either by testifying in person or by submitting a written statement.

(4) A victim choosing to testify at a reinstatement hearing shall be subject to reasonable cross examination in the hearing officer's discretion.

(5) A victim choosing not to respond in writing or appear at the reinstatement hearing waives the victim's right to participate in the reinstatement process.

R277-213-5. Reinstatement Hearing Report.

(1) A hearing officer shall provide the following in a reinstatement hearing report:

(a) a summary of the background of the original disciplinary action;

(b) adequate information, including summary statements of evidence presented, documents provided, and petitioner's testimony and demeanor for both UPPAC and the Board to evaluate petitioner's progress and rehabilitation since petitioner's original disciplinary action;

(c) the hearing panel's conclusions regarding petitioner's appropriateness and fitness to be a public school educator again;

(d) the hearing panel's recommendation; ~~and~~

(e) a statement indicating whether the hearing panel's recommendation to UPPAC was unanimous or identifying how the panel member[s] voted concerning reinstatement[-]; and

(f) if the recommendation is to deny the reinstatement request, a recommended time period the educator must wait and requirements the educator must complete, if any, before requesting another reinstatement hearing.

(2)(a) The hearing panel report is a public document under GRAMA following the conclusion of the reinstatement process unless specific information or evidence contained therein is protected by a specific provision of GRAMA, or another provision of state or federal law.

(b) The Executive Secretary shall add the hearing panel report to the UPPAC case file.

(3) If a license is reinstated, an educator's CACTUS file shall be updated to:

(a) remove the flag;

(b) show that the educator's license was reinstated; and

(c) show the date of formal Board action reinstating the license.

R277-213-6. Reinstatement from Revocation of License.

(1) The Executive Secretary shall deny any request for a reinstatement hearing for a revoked license unless the educator's stipulated agreement or revocation order from the Board allows the educator to request a reinstatement hearing consistent with the law at the time of the revocation.

(2) An educator may request that the Superintendent order a reconsideration of the prior Board licensing action if:

(a) an educator provides:

(i) evidence of mistake or false information that was critical to the revocation action; or

(ii) newly discovered evidence:

(A) that undermines the revocation determination; and

(B) that the educator could not have reasonably obtained during the original disciplinary proceedings; or

(b) an educator identifies material procedural Board error in the revocation process.

(3) A request for reconsideration by the Superintendent must be filed within 30 days of Board action for circumstances identified in Subsection (2)(a)(i) or (b).

(4) A request for reconsideration by the Superintendent must be filed within 90 days of discovery of the new evidence for circumstances identified in Subsection(2)(a)(ii).

(5) The Superintendent:

(a) shall make a determination on a request made under Subsection(2) within 60 days; and

(b) may request briefing from ~~an~~the educator and the ~~Executive Secretary~~UPPAC attorney in making a determination.

(6) If the Superintendent finds that the criteria in Subsection (2)(a) have been established, the Superintendent shall make a recommendation to ~~the Board~~direct UPPAC to conduct a new hearing consistent with Rule R277-212.

(7) If the Superintendent finds that the criteria in Subsection (2)(b) have been established, the Superintendent shall recommend to the Board that they reconsider their previous action.

KEY: licensure, reinstatement, hearings

Date of Enactment or Last Substantive Amendment: ~~August 12, 2016~~2020

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-6-506; 53E-3-401(4)

NOTICE OF PROPOSED RULE			
TYPE OF RULE: Amendment			
Utah Admin. Code Ref (R no.):	R277-215	Filing No.	52449

Agency Information

1. Department:	Education
Agency:	Administration
Street address:	250 E 500 S
City, state:	Salt Lake City, UT
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
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Please address questions regarding information on this notice to the agency.

General Information

2. Rule or section catchline:

Utah Professional Practices Advisory Commission (UPPAC), Disciplinary Rebuttable Presumptions

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

The amendments to Rule R277-215 result from the recent work of the Utah Professional Practices Advisory Commission (UPPAC) taskforce, which was established to recommend improvements to the educator discipline process.

4. Summary of the new rule or change:

These amendments include updates to the UPPAC rebuttable presumptions and aggravating and mitigating circumstances. These amendments also provide guidance for giving credit for missed classroom time and weighing the effect of an educator's plea in abeyance.

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 amendments result from the recent work of the UPPAC taskforce and include updates to the UPPAC rebuttable presumptions and aggravating and mitigating circumstances. These amendments also provide guidance for giving credit for missed classroom time and weighing the effect of an educator's plea in abeyance. These changes update this rule, provide additional clarification, and thus are not expected to have a material fiscal impact.

B) Local governments:

These rule changes are not expected to have any fiscal impact on local governments' revenues or expenditures. These amendments result from the recent work of the UPPAC taskforce and include updates to the UPPAC rebuttable presumptions and aggravating and mitigating circumstances. These amendments also provide guidance for giving credit for missed classroom time and weighing the effect of an educator's plea in abeyance. These changes update this rule, provide additional clarification, and thus are not expected to have a material 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. These amendments include updates to the UPPAC rebuttable presumptions and aggravating and mitigating circumstances. The UPPAC is made up of licensed educators and two community members to assist and advise the State Board of Education (Board) in matters relating to the professional practice of educators and thus does 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', non-small businesses', or local government entities' revenues or expenditures. These amendments include updates to the UPPAC rebuttable presumptions and aggravating and mitigating circumstances. The UPPAC is made up of licensed educators and two community members to assist and advise the Board in matters relating to the professional practice of educators.

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 Table			
Fiscal Cost	FY2020	FY2021	FY2022
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0

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

H) Department head approval of regulatory impact analysis:

Sydnee Dickson, State Superintendent, 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. This rule change has no fiscal impact on local education agencies and will not have a fiscal impact on small businesses either.

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

Sydnee Dickson, State Superintendent

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Utah Constitution Article X, Section 3	Section 506	53E-6-	Subsection 3-401(4)	53E-
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Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:	01/31/2020
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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:	Angie Stallings, Deputy Superintendent of Policy	Date:	12/13/2019
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R277. Education, Administration.

R277-215. Utah Professional Practices Advisory Commission (UPPAC), Disciplinary Rebuttable Presumptions.

R277-215-1. Authority and Purpose.

- (1) This rule is authorized by:
 - (a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;
 - (b) Section 53E-6-506, which directs the Board to adopt rules regarding UPPAC duties and procedures; and
 - (c) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

(2) The purpose of this rule is to establish rebuttable presumptions for UPPAC and Board review of UPPAC cases.

R277-215-2. Rebuttable Presumptions.

- (1) UPPAC and the Board shall consider the rebuttable presumptions in this section when evaluating a case of educator misconduct.
 - (2) Revocation is presumed appropriate if an educator:
 - (a) is subject to mandatory revocation under Subsection 53E-6-604(5)(b);
 - (b) is convicted of, admits to, or is found pursuant to an evidentiary hearing to have engaged in viewing or distributing child pornography, whether real or simulated, on or off school property;
 - (c) is convicted of an offense that requires the educator to register as a sex offender under Subsection 77-41-105(3);

- (d) intentionally provides alcohol or illegal drugs to a minor.
- (3)(a) Suspension of ten years or more is presumed appropriate if an educator is convicted of any felony not specified in Subsection (2).
- (b) An educator who is suspended based on a felony conviction under Subsection (3)(a) may apply for a reinstatement hearing early if the educator's felony:
 - (i) is expunged; or
 - (ii) is reduced pursuant to Section 76-3-402.
- (4) Suspension of three years or more is presumed appropriate if an educator:
 - (a) engages in a boundary violation ~~of a~~ that is sexual[ly suggestive] in nature that is not sexually explicit conduct;
 - (b) is convicted of ~~child abuse~~ using physical force with a minor if the conduct results in a conviction of a class A misdemeanor;
 - (c) is convicted of an offense that results in the educator being placed on court supervision for three or more years; ~~or~~
 - (d) is convicted of ~~intentional~~ theft or intentional misappropriation of public funds ~~[-]; or~~
 - (e) intentionally misappropriates public funds or property in an amount of \$500 or more.
- (5) Suspension of one to three years is presumed appropriate, if an educator:
 - (a) willfully or knowingly creates, views, or gains access to sexually inappropriate material on school property or using school equipment;
 - (b) is convicted of one or more class A misdemeanor violence offenses [in the last 3 years] under Title 76, Chapter 5, Offenses Against the Person, or a comparable statute from a jurisdiction outside of Utah;
 - (c) is convicted of two or more misdemeanor violence offenses under Title 76, Chapter 5, Offenses Against the Person, or a comparable statute from a jurisdiction outside of Utah, in the last three years;
- ~~(d)~~ (d) is convicted of using physical force with a minor if:
 - (i) the conviction is a class B misdemeanor or lower; and
 - (ii) the minor is a student in the educator's school;
- ~~(e)~~ (e) engages in repeated incidents of or a single egregious incident of excessive physical force or discipline to a ~~child or~~ student that:
 - (i) ~~does not result in a criminal conviction; and~~
 - (ii) ~~does not meet the circumstances described in Subsection 53G-8-302(2);~~
- ~~(f)~~ (f) bullies or threatens a student physically, verbally, or electronically;
- ~~(g)~~ (g) engages in a pattern of boundary violations with a student under a circumstance not described in Subsection (4)(a);
- ~~(h)~~ (h) engages in multiple incidents or a pattern of theft or misappropriation of public funds that does not result in a criminal conviction;
- ~~(i)~~ (i) attends a school or school-related activity in an assigned employment-related capacity while possessing, using, or under the influence of alcohol or illegal drugs;
- ~~(j)~~ (j) is convicted of two drug-related offenses or alcohol-related offenses in the three years previous to the most recent conviction;
- ~~(k)~~ (k) engages in a pattern of or a single egregious incident of:
 - (i) harassing;

- (ii) bullying; or
- (iii) threatening a co-worker or community member; or
- ~~(4e)~~(l) knowingly and deliberately falsifies or misrepresents information on an education-related document.

(6) A suspension of up to one year is presumed appropriate if an educator:

(a)(i) ~~[has three or more]~~engages in inappropriate conduct that warrants lesser discipline; and

(ii) has previously received two or more disciplinary letters or actions from UPPAC, including a letter of admonishment, education or warning, related to similar incidents of inappropriate conduct; [that would otherwise warrant lesser discipline so long as the educator had notice that such conduct was inappropriate from:

- ~~_____ (i) Board rule or LEA policy; or~~
- ~~_____ (ii) verbal or written notice from an LEA or UPPAC;]~~

(b) fails to report to appropriate authorities suspected child or sexual abuse; or

(c) knowingly teaches, counsels, or assists a minor student in a manner that disregards a legal, written directive, such as a court order or an approved college and career ready plan.

(7) A reprimand is presumed appropriate if an educator:

(a) engages in conduct described in Subsection (8) that is more egregious or repetitive than the conduct described in Subsection (8); or

(b)(i) engages in reportable inappropriate conduct that warrants lesser discipline; and

(ii) within the previous ten years, has received two or more written disciplinary actions from the same LEA for similar inappropriate conduct related to a violation of Board rule or LEA policy.

~~[(7)](8) A [letter of admonition,] letter of warning[, or letter of reprimand, with or without probation,] is presumed appropriate if an educator:~~

(a) engages in a miscellaneous minimal boundary violation with a student or minor, whether physical, electronic, or verbal;

(b) engages in minimal inappropriate physical contact with a student;

(c) engages in unprofessional communications or conduct with a student, co-worker, community member, or parent;

(d) engages in an inappropriate discussion with a student that violates state or federal law;

(e) knowingly violates a requirement or procedure for special education needs;

(f) knowingly violates a standardized testing protocol;

(g) is convicted of one of the following with or without court probation:

(i) a single driving under the influence of alcohol or drugs offense under Section 41-6a-502;

(ii) impaired driving under Section 41-6a-502.5; or

(iii) a charge that contains identical or substantially similar elements to the state's driving under the influence of alcohol or drugs[-] law or under the law of another state or territory;

(h) carelessly mismanages public funds or fails to accurately account for receipt and expenditure of public funds entrusted to the educator's care;

(i) fails to make a report required by Rule R277-516;

(j) except for a class C misdemeanor under Title 41, Motor Vehicles, is convicted of one or two misdemeanor offenses not otherwise listed;

(k) engages in an activity that constitutes a conflict of interest;[-~~or~~]

(l)(i) is convicted of using physical force with a minor if the conduct results in a conviction of a class B misdemeanor or lower; and

(ii) the inappropriate conduct does not involve a student at the educator's school; or

([4]m) engages in other minor violations of the Utah Educator Standards in Rule R277-[545]217.

(9) A letter of education is presumed appropriate if the evidence does not show a violation of the educator standards in Rule R277-217, but the evidence may show conduct that could lead to a violation of the standards in the future.

277-215-3. Aggravating and Mitigating Circumstances.

~~[(8)](1) In [considering]the course of evaluating a presumption described in this [section]rule, UPPAC or the Board [shall]may consider deviating from the presumptions if:~~

(a) the presumption does not involve a revocation mandated by statute; and

~~(b) relevant aggravating or mitigating factors exist[that warrant deviation from the presumption].~~

~~[(9)](2) An aggravating factor may include evidence of the following:~~

(a) the educator has engaged in prior misconduct;

(b) the educator presents a serious threat to a student;

(c) the educator's misconduct directly involved a student;

(d) the educator's misconduct involved a particularly vulnerable student;

(e) the educator's misconduct resulted in physical or psychological harm to a student;

(f) the educator violated multiple standards of professional conduct;

~~(g) the educator's attitude [does not reflect responsibility for the misconduct or the consequences of the misconduct]exhibits indifference, flippancy, disregard, or defiance towards the allegations or the consequences;~~

(h) the educator's misconduct continued after investigation by the LEA or UPPAC;

(i) the educator holds a position of heightened authority as an administrator;

(j) the educator's misconduct had a significant impact on the LEA or the community;

(k) the educator's misconduct was witnessed by a student;

(l) the educator was not honest or cooperative in the course of UPPAC's investigation;

(m) the educator was convicted of crime as a result of the misconduct;

(n) any other factor that, in the view of UPPAC or the Board, warrants a more serious consequence for the educator's misconduct; and

(o) the educator is on criminal probation or parole; or

(p) the Executive Secretary has issued an order of default on the educator's case as described in Rules R277-211 or R277-212.

~~[(10)](3) A mitigating factor may include evidence of the following:~~

(a) the educator's misconduct was the result of strong provocation;

(b) the educator was young and new to the profession;

(c) the educator's attitude reflects recognition of the nature and consequences of the misconduct and demonstrates a reasonable expectation that the educator will not repeat the misconduct;

(d) the educator's attitude suggests amenability to supervision and training;

(e) the educator has little or no prior disciplinary history;

(f) since the misconduct, the educator has an extended period of misconduct-free classroom time;

(g) the educator was a less active participant in a larger offense;

(h) the educator's misconduct was directed or approved, whether implicitly or explicitly, by a supervisor or person in authority over the educator;

(i) the educator has voluntarily sought treatment, counseling or training specific to the misconduct; ~~[-or made restitution for the misconduct;]~~

(j) the educator has made a timely, good faith effort to make restitution or rectify the consequences of the educator's misconduct;

~~([j]k)~~ there was insufficient training or other policies that might have prevented the misconduct;

~~([k]l)~~ there are substantial grounds to partially excuse or justify the educator's behavior though failing to fully excuse the violation;

~~([l]m)~~ the educator self-reported the misconduct; ~~[-or]~~

(n) the educator received a plea in abeyance from the court for criminal charges stemming from the alleged misconduct;

~~([m]o)~~ any other factor that, in the view of UPPAC or the Board, warrants a less serious consequence for the educator's misconduct.

~~([4])~~(4)(a) UPPAC and the Board have sole discretion to determine the weight they give to an aggravating or mitigating factor.

(b) The weight UPPAC or the Board give an aggravating or mitigating factor may vary in each case and any one aggravating or mitigating factor may outweigh some or all other aggravating or mitigating factors.

R277-215-4. Circumstances Warranting Consideration of Deviation from Presumptions.

(1) UPPAC and the Board shall consider reducing a presumed suspension under this Rule R277-215 if the evidence shows that:

(a) the educator's misconduct resulted in a disproportionate period of missed classroom time; or

(b) UPPAC's investigation into a matter with no pending criminal charges took more than six months to present to UPPAC under Subsection R277-211-3(3)(e) due to circumstances beyond the educator's control.

(2) UPPAC and the Board may consider reducing a presumed suspension period to correspond to a probationary period in an educator's court plea in abeyance agreement if the plea results from charges stemming from the educator's alleged misconduct.

KEY: educators, disciplinary presumptions

Date of Enactment or Last Substantive Amendment: ~~[August 12, 2016]~~2020

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-6-506; 53E-3-401(4)

NOTICE OF PROPOSED RULE

TYPE OF RULE: New

Utah Admin. Code Ref (R no.):	R277-217	Filing No.	52450
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Agency Information

1. Department:	Education		
Agency:	Administration		
Street address:	250 E 500 S		
City, state:	Salt Lake City, UT		
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:
Educator Standards and LEA Reporting
3. Purpose of the new rule or reason for the change:
As a result of the work of the recent Utah Professional Practices Advisory Commission (UPPAC) taskforce, the Utah State Board of Education (Board) adopted this new educator standards rule to clarify local education agency (LEA) reporting obligations and misconduct that was a licensing issue for the Board.
4. Summary of the new rule or change:
This rule recategorizes conduct for educators in Utah under the headings of prohibited conduct and mandatory conduct. It also clarifies reporting requirements for educators with criminal charges and LEAs with educators who have violated the educator standards.

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
This proposed rule is not expected to have any fiscal impact on state government revenues or expenditures. This rule results from the recent work of the UPPAC taskforce. It is proposed that the Board adopt a new educator standards rule and repeal the existing one, Rule R277-515. This rule does away with discretionary misconduct reporting and clarifies when LEAs are required to report alleged misconduct to UPPAC. It also provides additional clarification and thus is not expected to have a material fiscal impact. (EDITOR'S NOTE: This rule contains the content from the repeal of Rule R277-515 under Filing No. 52453 in this issue, January 1, 2020, of the Bulletin.)

B) Local governments:
This proposed rule is not expected to have any fiscal impact on local governments' revenues or expenditures. This rule results from the recent work of the UPPAC taskforce. It is proposed that the Board adopt a new educator standards rule and repeal the existing one, Rule R277-515. This rule does away with discretionary misconduct reporting and clarifies when LEAs are required to report alleged misconduct to UPPAC. The proposed rule also provides additional clarification and thus is not expected to have a material fiscal impact.
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. This rule does away with discretionary misconduct reporting and clarifies when LEAs are required to report alleged misconduct to the UPPAC. The UPPAC is made up of licensed educators and two community members to assist and advise the Board in matters relating to the professional practice of educators and thus does 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. 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 persons other than small businesses', non-small businesses', or local government entities' revenues or expenditures. This rule does away with discretionary misconduct reporting and clarifies when LEAs are required to report alleged misconduct to UPPAC. The UPPAC is made up of licensed educators and two community members to assist and advise the Board in matters relating to the professional practice of educators and thus does not apply to persons other than small businesses, non-small 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 Table			
Fiscal Cost	FY2020	FY2021	FY2022
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0
H) Department head approval of regulatory impact analysis:			
Sydnee Dickson, State Superintendent, 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 LEAs and will not have a fiscal impact on small businesses either.			
B) Name and title of department head commenting on the fiscal impacts:			
Sydnee Dickson, State Superintendent			

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Utah Constitution Article X, Section 3	Title 53E, Chapter 6	Subsection 53E-3-401(4)
Subsection 53E-3-501(1)(a)		

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:	01/31/2020
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10. This rule change MAY become effective on:	02/07/2020
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NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	Angie Stallings, Deputy Superintendent of Policy	Date:	12/13/2019
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**R277. Education, Administration.
R277-217. Educator Standards and LEA Reporting.
R277-217-1. 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)(a), which directs the Board to make rules regarding the certification of educators; and
 - (d) Title 53E, Chapter 6, Educator Licensing and Professional Practices Act, which provides all laws related to educator licensing and professional practices.

- (2) The purpose of this rule is to:
 - (a) establish statewide ethical standards for educators;
 - (b) establish reporting requirements for educators and LEAs; and
 - (c) recognize that educators are professionals and share common professional standards, expectations, and role model responsibilities.

R277-217-2. Prohibited Conduct by an Educator.

- An educator may not:
- (1) be convicted of a felony;
 - (2) be convicted of a misdemeanor offense that:
 - (a) adversely affects the educator's ability to perform an assigned duty and carry out the educator's responsibilities; or
 - (b) adversely affects the well being of students;
 - (3) be convicted of, or engage in conduct of a sexual nature described in Subsection 53E-6-603(2);
 - (4) participate in sexual, physical, or emotional harassment towards any colleague or public school-age student;
 - (5) engage in:
 - (a) a single egregious instance or pattern of inappropriate contact in any communication, including written, verbal, or electronic, with a minor, student, colleague, or member of the community; or
 - (b) a single egregious instance or pattern of boundary violations with a student;
 - (6) solicit, encourage, or consummate an inappropriate relationship, whether written, verbal, or physical, with a student or minor;
 - (7) accept an inappropriate gift from, or give an inappropriate gift to, a student;
 - (8) be convicted of or commit a criminal offense involving a child, including physical abuse, cruelty, or exploitation of child;
 - (9) use corporal punishment, excessive physical force, or inappropriate physical restraint, except as provided in Section 53G-8-302;
 - (10) provide alcohol or unauthorized drugs to a student or allow a student under the educator's supervision or control to consume or obtain alcohol or unauthorized drugs;
 - (11) attend school or a school-related activity in an assigned employment-related capacity while possessing, using, or under the influence of alcohol or an illegal drug;
 - (12) attend school or a school-related activity in an assigned employment-related capacity after intentionally exceeding the prescribed dosage of a prescription medication that may impair the educator;
 - (13) possess or distribute an illegal drug or be convicted of any crime related to an illegal drug, including a prescription drug not specifically prescribed to the educator;
 - (14) be convicted of an alcohol-related offense;
 - (15) use or attempt to use an LEA computer or information system to access information that may be detrimental to young people or inconsistent with the educator's role model responsibility;
 - (16) knowingly possess, while at school or any school-related activity, any pornographic or indecent material in any form;
 - (17) use school equipment to intentionally view, create, distribute, or store pornographic or indecent material in any form;
 - (18) knowingly use, view, create, distribute, or store pornographic or indecent material involving children;

(19) expose students to material the educator knows or should have known to be inappropriate given the age and maturity of the students;

(20) violate state laws regarding the possession of a firearm while on school property or at a school-sponsored activity;

(21) knowingly allow a student to violate an LEA policy or law concerning possession or access to a weapon;

(22) interfere with or discourage a student's or colleague's legitimate exercise of constitutional, legal, or civil rights, acting consistent with the law and an LEA's policy;

(23) exclude a student from participating in any program, deny or grant any benefit to a student, or encourage a student to develop a prejudice on the basis of:

(a) race;

(b) color;

(c) creed;

(d) sex;

(e) national origin;

(f) marital status;

(g) political or religious belief;

(h) physical or mental condition;

(i) family, social, or cultural background;

(j) sexual orientation; or

(k) gender identification;

(24) knowingly or intentionally permit unauthorized collection, sharing, or use of student data;

(25) knowingly violate student confidentiality unless revealing confidential information to an authorized person serves the best interest of the student and serves a lawful purpose;

(26) violate:

(i) Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act;

(ii) Title 53E, Chapter 9, Student Privacy and Data Protection;

(iii) Rule R277-107, Educational Services Outside of an Educator's Regular Employment; or

(iv) Section R277-120-5, Classroom Materials Developed by Utah Educators.

R277-217-3. Required Conduct for an Educator.

An educator shall:

(1) comply with all federal, state, and local laws;

(2) maintain a professional educator/student relationship, including by:

(a) treating a student with dignity and respect by promoting the health, safety and well being of students; and

(b) maintaining appropriate verbal, emotional and social boundaries;

(3) take prompt and appropriate action to prevent harassment or discriminatory conduct toward a student or school employee that the educator knew or should have known may result in a hostile, intimidating, abusive, offensive, or oppressive environment;

(4) take prompt and appropriate action to protect a student from any known condition detrimental to the student's physical health, mental health, safety, or learning;

(5) report suspected child abuse or neglect to law enforcement or the Division of Child and Family Services in accordance with Sections 53E-6-701 and 62A-4a-409;

(6) cooperate in providing all relevant information and evidence to the proper authority in the course of an investigation by a law enforcement agency or by the Division of Child and Family

Services regarding potential criminal activity, except that an educator may decline to give evidence against himself or herself in an investigation if the evidence may tend to incriminate the educator as that term is defined by the Fifth Amendment of the U.S. Constitution;

(7) take appropriate steps to notify a student's parents and refer a student to appropriate prevention services if a student threatens suicide or self harm as required by Subsections 53E-9-203(7) and 53G-9-604(2);

(8) provide truthful, accurate, and complete information in:

(a) licensing, transfer, and employment applications or other documentation;

(b) evaluations of the educator, other educators, or students;

(c) proceedings related to educator licensure, employment, or related benefits;

(d) student IEP plans and related special education documentation;

(9) be forthcoming with truthful, accurate, and complete information to an appropriate authority regarding known educator misconduct that could adversely impact performance of a professional responsibility, by another educator;

(10) notify the Superintendent at the time of application for licensure of:

(a) current investigations involving professional misconduct in another jurisdiction;

(b) prior licensing disciplinary action in another jurisdiction; and

(c) past criminal convictions;

(11) report an arrest, citation, charge or conviction to the educator's LEA in accordance with Section R277-217-4;

(12) conduct financial business with integrity by honestly accounting for all funds committed to the educator's charge, as school responsibilities require, consistent with LEA policy;

(13) follow an LEA's fiscal policy for collecting money in connection with a school activity, accounting for all money collected, and not commingling LEA or school funds with personal funds as described in R277-113; and

(14) demonstrate honesty and integrity by strictly adhering to all state and LEA instructions and protocols in managing and administering a standardized test to a student consistent with Section 53E-4-312 and Rule R277-404.

R277-217-4. Educator Reporting of Arrests, Citations, Charges, and Convictions.

(1) An educator who is arrested, cited or charged with the following alleged offenses shall report the arrest, citation, or charge within 48 hours or as soon as possible to the licensed educator's district superintendent, charter school director, or the LEA's designee, or to the Executive Secretary if not employed:

(a) any matters involving an alleged sex offense;

(b) any matters involving an alleged drug-related offense;

(c) any matters involving an alleged alcohol-related offense;

(d) any matters involving an alleged offense against the person under Title 76, Chapter 5, Offenses Against the Person;

(e) any matters involving an alleged felony offense under Title 76, Chapter 6, Offenses Against Property;

(f) any matters involving an alleged crime of domestic violence under Title 77, Chapter 36, Cohabitant Abuse Procedures Act; and

(g) any matters involving an alleged crime under federal law or the laws of another state comparable to the violations listed in Subsections (1)(a) through (f).

(2) An educator shall report any conviction or plea in abeyance for a felony or misdemeanor offense to the educator's LEA, or the Executive Secretary if not employed, within 48 hours, or as soon as possible thereafter.

(3) An LEA superintendent, director, or designee shall report conviction, arrest, or offense information received from an educator to the Superintendent within 48 hours of receipt of information from an educator.

(4) The Superintendent shall provide a form on the Board's website for reports required under this section.

(5) An educator shall report for work following an arrest and provide notice to the licensed educator's employer unless directed not to report for work by the employer, consistent with LEA policy.

R277-217-5. LEA Reporting of Misconduct to UPPAC.

(1) An LEA shall notify UPPAC if an educator is determined pursuant to a judicial or administrative proceeding, or internal LEA investigation, to have violated the educator standards described in Sections R277-217-2 or R277-217-3.

(2) The Executive Secretary shall provide a form for an LEA to make a notification required under Subsection (1).

(3) Upon submitting a notification under Subsection (1), an LEA may make a recommendation to the Executive Secretary concerning whether an investigation by UPPAC would be appropriate under the circumstances, taking into account any employment action taken by the LEA.

(4) If no related criminal charge is filed, an LEA is not responsible to notify UPPAC of an allegation if the LEA's internal investigation establishes that the allegation is unsupported.

KEY: educator standards, professional practices, reporting Date of Enactment or Last Substantive Amendment: 2020 Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-401; 53E-3-501; 53E-6

NOTICE OF PROPOSED RULE			
TYPE OF RULE: New			
Utah Admin. Code Ref (R no.):	R277-316	Filing No.	52451

Agency Information

1. Department:	Education	
Agency:	Administration	
Street address:	250 E 500 S	
City, state:	Salt Lake City, UT	
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:
Professional Standards and Training for Non-licensed Employees and Volunteers

3. Purpose of the new rule or reason for the change:
This rule contains no substantive change to existing requirements but is being enacted as part of the State Board of Education's (Board) ongoing revisions to the licensing system. The content was moved from Rule R277-516. However, some reporting requirements were moved into the newly approved Rule R277-217. (EDITOR'S NOTE: The proposed repeal of Rule R277-516 is under Filing No. 52454 and the proposed new Rule R277-217 is under Filing No. 52450 in this issue, January 1, 2020, of the Bulletin.)

4. Summary of the new rule or change:
This rule is being enacted with existing requirements except reporting requirements for licensed educators which have been moved from this rule's content and included in newly approved Rule R277-217.

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
This rule is not expected to have fiscal impact on state government revenues or expenditures. The rule contains no substantive change to existing requirements.

B) Local governments:
This rule is not expected to have fiscal impact on local governments' revenues or expenditures. The rule contains no substantive change to existing requirements.

C) Small businesses ("small business" means a business employing 1-49 persons):
This rule is not expected to have fiscal impact on small businesses' revenues or expenditures. The change contains no substantive change to existing requirements.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons):
This rule is not expected to have fiscal impact on non-small businesses' revenues or expenditures. The change contains no substantive change to existing 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**):

This rule is not expected to have fiscal impact on revenues or expenditures for persons other than small businesses, non-small businesses, or local government entities. The change contains no substantive change to existing requirements.

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 Table

Fiscal Cost	FY2020	FY2021	FY2022
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head approval of regulatory impact analysis:

Sydnee Dickson, State Superintendent, has reviewed and approved this fiscal analysis.

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

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

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	Subsections 53E-3-501(1)(a)(iii)	Subsections 53E-3-501(1)(a)(i)
Subsection 53E-3-301(3)	Title 53E, Chapter 11, Part 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: 01/31/2020

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:	Angie Stallings, Deputy Superintendent of Policy	Date:	12/13/2019
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R277. Education, Administration.
R277-316. Professional Standards and Training for Non-licensed Employees and Volunteers.

R277-316-1. 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)(i) Subsection 53E-3-301(3), which instruct the Superintendent to perform duties assigned by the Board that include:

(ii) presenting to the Governor and the Legislature each December a report of the public school system for the preceding year that includes:

(A) investigation of all matters pertaining to the public schools; and

(B) statistical and financial information about the school system which the Superintendent considers pertinent;

(c) Subsections 53E-3-501(1)(a)(i) and (iii), which direct the Board to:

(i) 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

(ii) the evaluation of instructional personnel; and

(d) Title 53E, Chapter 6, Part 4, Background and Employment Checks, which directs the Board to require educator license applicants to submit to background checks and provide ongoing monitoring of licensed educators.

(2) The purpose of this rule is to ensure that all students who are compelled by law to attend public schools, subject to release from school attendance consistent with Section 53G-6-204, are instructed and served by public school teachers and employees who have not violated laws that would endanger students in any way.

R277-316-2. Definitions.

(1) "Association" means the same as that term is defined in Subsection 53G-7-1101(3).

(2) "Charter school governing board" means a board designated by a charter school to make decisions for the operation of the charter school.

(3) "Charter school board member" means a current member of a charter school governing board.

(4) "Comprehensive Administration of Credentials for Teachers in Utah Schools (CACTUS)" means the database maintained on all licensed Utah educators, which includes information such as:

(a) personal directory information;

(b) educational background;

(c) endorsements;

(d) employment history;

(e) professional development information;

(f) completion of employee background checks; and

(g) a record of disciplinary action taken against the educator.

(5) "Contract employee" means an employee of a staffing service who works at a public school under a contract between the staffing service and the public school.

(6) "DPS" means the Department of Public Safety.

(7) "LEA" or "local education agency" for purposes of this rule includes the Utah Schools for the Deaf and the Blind.

(8)(a) "Licensed educator" means an individual who holds a valid Utah educator license and has satisfied all requirements to be a licensed educator in the Utah public school system (examples are traditional public school teachers, charter school teachers, school administrators, Board employees, and school district specialists).

(b) A licensed educator may or may not be employed in a position that requires an educator license.

(c) A licensed educator includes an individual who:

(i) is student teaching;

(ii) is in an alternative route to licensing program or position; or

(iii) holds an LEA-specific competency-based license.

(9) "Non-licensed public education employee" means an employee of an LEA who:

(a) does not hold a current Utah educator license issued by the Board under Title 53E, Chapter 6, Educator Licensing and Professional Practices Act; or

(b) is a contract employee.

(10) "Public education employer" means the education entity that hires and employs an individual, including public school districts, the Utah State Office of Education, Regional Service Centers, and charter schools.

(11) "Volunteer" means a volunteer who may be given significant unsupervised access to children in connection with the volunteer's assignment.

R277-316-3. Non-Licensed Public Education Employee, Volunteer, and Charter School Board Member Background Check Policies.

(1) An LEA shall adopt a policy for non-licensed public education employee, volunteer, and charter school board member background checks that includes at least the following components:

(a) a requirement that the individual submit to a background check and ongoing monitoring through registration with the systems described in Section 53G-11-404 as a condition of employment or appointment; and

(b) identification of the appropriate privacy risk mitigation strategy that will be used to ensure that the LEA only receives notifications for individuals with whom the LEA maintains an authorizing relationship.

(2) An LEA policy shall describe the background check process necessary based on the individual's duties.

R277-316-4. Non-Licensed Public Education Employee, Volunteer, or Charter School Board Member Arrest Reporting Policy Required from LEAs.

(1) An LEA shall have a policy requiring a non-licensed public employee, a volunteer, a charter school board member, or any other employee who drives a motor vehicle as an employment responsibility, to report offenses specified in Subsection (3).

(2) An LEA shall post the policy described in Subsection (1) on the LEA's website.

(3) An LEA's policy described in Subsection (1) shall include the following minimum components:

(a) reporting of the following:

(i) convictions, including pleas in abeyance and diversion agreements;

(ii) any matters involving arrests for alleged sex offenses;

(iii) any matters involving arrests for alleged drug-related offenses;

(iv) any matters involving arrests for alleged alcohol-related offenses; and

(v) any matters involving arrests for alleged offenses against the person under Title 76, Chapter 5, Offenses Against the Person.

(b) a timeline for receiving reports from non-licensed public education employees;

(c) immediate suspension from student supervision responsibilities for alleged sex offenses and other alleged offenses which may endanger students during the period of investigation;

(d) immediate suspension from transporting students or public education vehicle operation or maintenance for alleged offenses involving alcohol or drugs during the period of investigation;

(e) adequate due process for the accused employee consistent with Section 53G-11-405;

(f) a process to review arrest information and make employment or appointment decisions that protect both the safety of students and the confidentiality and due process rights of employees and charter school board members; and

(g) timelines and procedures for maintaining records of arrests and convictions of non-licensed public education employees and charter school board members.

(4) An LEA shall ensure that the records described in R277-516-5(3)(g):

(a) include final administrative determinations and actions following investigation; and

(b) are maintained;

(i) only as necessary to protect the safety of students; and

(ii) with strict requirements for the protection of confidential employment information.

R277-316-5. Association Professional Standard Setting, Training, and Monitoring.

(1) Beginning with the 2017-2018 school year, a public school may not be a member of, or pay dues to an association that adopts rules or policies that are inconsistent with this R277-516-6.

(2) An association shall establish policies or rules that require:

(a) coaches and individuals who oversee interscholastic activities or work with students as part of an interscholastic activity to meet a set of professional standards that are consistent with the Utah Educator Professional Standards described in Rule R277-217; and

(b) the association or public school to annually train each coach or other individual who oversees or works with students as part of an interscholastic activity of a public school on the following:

(i) child sexual abuse prevention as described in Section 53G-9-207;

(ii) the prevention of bullying, cyber-bullying, hazing, harassment, and retaliation as described in:

(A) Title 53G, Chapter 9, Part 6, Bullying and Hazing; and

(B) R277-613; and

(iii) the professional standards described in Subsection (2)(a).

(3) An association shall establish procedures and mechanisms to:

(a) monitor LEA compliance with the association's training requirements described in Subsection (2); and

(b) track the employment history of individuals who receive a certification from the association.

R277-316-6. Public Education Employer Responsibilities Upon Receipt of Arrest Information.

(1) A public education employer that receives arrest information about a licensed public education employee shall review the arrest information and assess the employment status consistent with Section 53E-6-604, Rule R277-217, and the LEA's policy.

(2) A public education employer that receives arrest information about a non-licensed public education employee, volunteer, or charter school board member shall review the arrest information and assess the individual's employment or appointment status:

(a) considering the individual's assignment and duties; and

(b) consistent with a local board-approved policy for ethical behavior of non-licensed employees, volunteers, and charter school board members.

(3) A local board shall provide appropriate training to non-licensed public education employees, volunteers, and charter school board members about the provisions of the local board's policy for self-reporting and ethical behavior of non-licensed public education employees, volunteers, and charter school board members.

(4) A public education employer shall cooperate with the Superintendent in investigations of licensed educators.

KEY: school employees, self reporting, background check
Date of Enactment or Last Substantive Amendments: 2020
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-301(3)(a); 53E-3-301(3)(d)(x); 53E-3-501(1)(a)(i); 53E-3-501(1)(a)(iii)

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment			
Utah Admin. Code Ref (R no.):	R277-502-5	Filing No.	52452

Agency Information

1. Department:	Education		
Agency:	Administration		
Street address:	250 E 500 S		
City, state:	Salt Lake City, UT		
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:
Professional Educator License Areas of Concentration, and Endorsements and Under-Qualified Employees
3. Purpose of the new rule or reason for the change:
Recent legislation requires the State Board of Education (Board) rulemaking to update provisions regarding awarding a science, technology, engineering, and

mathematics (STEM) endorsement to an educator and procedures for providing incentives to educators to earn the STEM endorsement.

4. Summary of the new rule or change:

These rule amendments update requirements for awarding STEM endorsements and enact provisions required by legislation to provide incentives to educators to obtain a STEM endorsement. These rule amendments also clarify that a local education agency (LEA) may count a STEM endorsement towards salary schedules in accordance with statutory language.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

These rule changes are not expected to have an independent fiscal impact on state government revenues or expenditures. S.B. 172, passed in the 2019 General Session, moved the state's STEM education endorsements program from the Governor's Office of Economic Development to the State Board of Education. These rule amendments update requirements for awarding STEM endorsements and enact provisions required by the legislation to provide incentives to educators to obtain a STEM endorsement. Therefore, these rule changes do not have an impact independent of S.B. 172.

B) Local governments:

These rule changes are not expected to have an independent fiscal impact on local governments' revenues or expenditures. S.B. 172 (2019), moved the state's STEM education endorsements program from the Governor's Office of Economic Development to the State Board of Education. These rule amendments update requirements for awarding STEM endorsements and enact provisions required by the legislation to provide incentives to educators to obtain a STEM endorsement. Therefore, these rule changes do not have an impact independent of S.B. 172.

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

These rule changes are not expected to have an independent fiscal impact on small businesses' revenues or expenditures. S.B. 172 (2019), moved the state's STEM education endorsements program from the Governor's Office of Economic Development to the State Board of Education. These rule amendments update requirements for awarding STEM endorsements and enact provisions required by the legislation to provide incentives to educators to obtain a STEM endorsement. Therefore, these rule changes do not have an impact independent of S.B. 172.

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

These rule changes are not expected to have an independent fiscal impact on non-small businesses' revenues or expenditures. S.B. 172 (2019) moved the state's STEM education endorsements program from the Governor's Office of Economic Development to the State Board of Education. These rule amendments update requirements for awarding STEM endorsements and enact provisions required by the legislation to provide incentives to educators to obtain a STEM endorsement. Therefore, these rule changes do not have an impact independent of S.B. 172.

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 an independent fiscal impact for persons other than small businesses, non-small businesses, or local government entities. S.B. 172 (2019) moved the state's STEM education endorsements program from the Governor's Office of Economic Development to the State Board of Education. These rule amendments update requirements for awarding STEM endorsements and enact provisions required by the legislation to provide incentives to educators to obtain a STEM endorsement. Therefore, these rule changes do not have an impact independent of S.B. 172.

F) Compliance costs for affected persons:

There are no independent compliance costs for affected persons. S.B. 172 (2019) moved the state's STEM education endorsements program from the Governor's Office of Economic Development to the State Board of Education. The rule amendments update requirements for awarding STEM endorsements and enact provisions required by the legislation to provide incentives to educators to obtain a STEM endorsement. Therefore, this rule change does not have an impact independent of S.B. 172.

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

Regulatory Impact Table			
Fiscal Cost	FY2020	FY2021	FY2022
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0

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

H) Department head approval of regulatory impact analysis:

Sydnee Dickson, State Superintendent, 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.

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)	Section 53E-6-201
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Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:	01/31/2020
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10. This rule change MAY become effective on:	02/07/2020
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NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	Angie Stallings, Deputy Superintendent of Policy	Date:	12/13/2019
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R277. Education, Administration.

R277-502. Educator Licensing and Data Retention.

R277-502-5. Professional Educator License Areas of Concentration, and Endorsements and Under-Qualified Employees.

(1) Unless excepted under rules of the Board, to be employed in a public school in a capacity covered by a license area of concentration set forth in Subsection R277-502-2(6)(a), a person shall hold a valid license issued by the Board in the respective license area of concentration.

(2) An educator who is licensed and holds the appropriate license area of concentration but who is working out of the educator's endorsement area, shall:

(a) submit an SAEP to complete the requirements of an endorsement to the Superintendent; or

(b) request, along with the educator's employing LEA, a letter of authorization from the Board if the educator has not completed requirements for an area of concentration or endorsement.

(3)(a) A letter of authorization issued under Subsection (2)(b) is valid for one year.

(b) An educator may receive no more than three Letters of Authorization throughout the educator's employment in Utah schools.

(c) The Superintendent may recommend an exception to the limitation in Subsection (3)(b) on a case by case basis following specific approval of the request by the educator's employing LEA governing board.

(d) A letters of authorization approved prior to the 2000-2001 school year shall not be counted towards the limit in Subsection (3)(b).

(e) If an educator's letter of authorization expires before the individual is approved for licensing, the educator falls into under-qualified status.

(4)(a) A licensed educator may receive an endorsement to indicate qualification in a subject or content area.

(b) An endorsement described in Subsection (4)(a) is not valid for employment purposes without a current license and license area of concentration.

(5)(a) The Superintendent shall designate a list of content area endorsements, which qualify as a STEM education endorsement, in accordance with Subsection 53E-6-903(2)(a).

(a) ~~An LEA shall recognize a STEM endorsement as a minimum of 16 semester hours of university credit toward lane change on the LEA's salary schedule.~~ An LEA may consider a STEM endorsement as part of the LEA's salary schedule in accordance with Subsection 53E-6-903(3)(b).

(b) The Superintendent shall determine the courses and experiences necessary for a STEM endorsement.

(d) The Superintendent shall determine which content area endorsements qualify as STEM endorsements.

~~(5) An endorsement is not valid for employment purposes without a current license and license area of concentration.~~

(6) The Superintendent shall develop a process to provide incentives for an educator to take courses leading to a STEM education endorsement in accordance with Subsection 53E-6-903(2)(b), which shall include:

(a) an application; and

(b) an appeals process for an educator whose application is denied.

(7) The Superintendent may not award an incentive to an educator for a course that does not carry higher education credit.

KEY: professional competency, educator licensing

Date of Enactment or Last Substantive Amendment: ~~May 8, 2018~~ 2020

Notice of Continuation: July 19, 2017

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-6-201; 53E-3-401

NOTICE OF PROPOSED RULE

TYPE OF RULE: Repeal

Utah Admin. Code Ref (R no.):	R277-515	Filing No.	52453
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Agency Information

1. Department:	Education
Agency:	Administration

Street address:	250 E 500 S	
City, state:	Salt Lake City, UT	
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:

Utah Educator Professional Standards

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

The rule is being repealed and the contents being moved to proposed Rule R277-217. (EDITOR'S NOTE: The proposed new Rule R277-217 is under Filing No. 52450 in this issue, January 1, 2020, of the Bulletin.)

4. Summary of the new rule or change:

The rule is being repealed in its entirety.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

This repeal is not expected to have any fiscal impact on state government revenues or expenditures. The repeal results from the recent work of the Utah Professional Practices Advisory Commission (UPPAC) taskforce. It is proposed that the Utah State Board of Education (Board) adopt a new educator standards rule and repeal the existing one, Rule R277-515. This repeal will not have a fiscal impact.

B) Local governments:

This repeal is not expected to have any fiscal impact on local governments' revenues or expenditures. The repeal results from the recent work of the UPPAC taskforce. It is proposed that the Board adopt a new educator standards rule and repeal the existing one, Rule R277-515. This repeal will not have a fiscal impact.

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

This repeal is not expected to have any fiscal impact on small businesses' revenues or expenditures. The repeal results from the recent work of the UPPAC taskforce. It is proposed that the Board adopt a new educator standards rule and repeal the existing one, Rule R277-515. This repeal will not have a fiscal impact.

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 <i>agency</i>):			
This repeal is not expected to have any fiscal impact on persons other than small businesses', non-small businesses', or local government entities' revenues or expenditures. The repeal results from the recent work of the UPPAC taskforce. It is proposed that the Board adopt a new educator standards rule and repeal the existing one, Rule R277-515. This repeal will not 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 Table			
Fiscal Cost	FY2020	FY2021	FY2022
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0

Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0
H) Department head approval of regulatory impact analysis:			
Sydnee Dickson, State Superintendent, 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 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)	Title 53E, Chapter 6
Subsection 53E-3-501(1)(a)		

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	01/31/2020

10. This rule change MAY become effective on:	02/07/2020
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NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	Angie Stallings, Deputy Superintendent of Policy	Date:	12/13/2019
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R277. Education, Administration.

~~**R277-515. Utah Educator Professional Standards.**~~

~~**R277-515-1. Authority and Purpose.**~~

- ~~(1) This rule is authorized by:~~
 - ~~(a) Utah Constitution Article X, Section 3, which vests the general control and supervision of the public schools in the Board;~~
 - ~~(b) Subsection 53E-3-501(1)(a), which directs the Board to make rules regarding the certification of educators;~~
 - ~~(c) Title 53E, Chapter 6, Educator Licensing and Professional Practices Act, which provides all laws related to educator licensing and professional practices; and~~
 - ~~(d) 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 statewide standards for public school educators that provide notice to educators and prospective educators and notice and protection to public school students and parents;~~
 - ~~(b) recognize that licensed public school educators are professionals and, as such, should share common professional standards, expectations, and role model responsibilities; and~~
 - ~~(c) distinguish behavior for which educators shall receive license discipline from behavior that all Utah educators should aspire to and for which license discipline shall be initiated only in egregious circumstances or following a pattern of offenses.~~

~~**R277-515-2. Definitions.**~~

- ~~(1)(a) "Boundary violation" means crossing verbal, physical, emotional, and social lines that an educator must maintain in order to ensure structure, security, and predictability in an educational environment.~~
- ~~(b) A "boundary violation" may include the following, depending on the circumstances:~~
 - ~~(i) isolated, one on one interactions with students out of the line of sight of others;~~
 - ~~(ii) meeting with students in rooms with covered or blocked windows;~~
 - ~~(iii) telling risqué jokes to, or in the presence of a student;~~
 - ~~(iv) employing favoritism to a student;~~
 - ~~(v) giving gifts to individual students;~~
 - ~~(vi) educator initiated frontal hugging or other uninvited touching;~~
 - ~~(vii) photographing individual students for a non-educational purpose or use;~~

- ~~(viii) engaging in inappropriate or unprofessional contact outside of educational program activities;~~
- ~~(ix) exchanging personal email or phone numbers with a student for a non-educational purpose or use;~~
- ~~(x) interacting privately with a student through social media, computer, or handheld devices; and~~
- ~~(xi) discussing an educator's personal life or personal issues with a student.~~
- ~~(c) "Boundary violations" does not include:~~
 - ~~(i) offering praise, encouragement, or acknowledgment;~~
 - ~~(ii) offering rewards available to all who achieve;~~
 - ~~(iii) asking permission to touch for necessary purposes;~~
 - ~~(iv) giving pats on the back or a shoulder;~~
 - ~~(v) giving side hugs;~~
 - ~~(vi) giving handshakes or high fives;~~
 - ~~(vii) offering warmth and kindness;~~
 - ~~(viii) utilizing public social media alerts to groups of students and parents; or~~
 - ~~(ix) contact permitted by an IEP or 504 plan.~~
- ~~(2)(a) "Conviction" means the final disposition of a judicial action for a criminal offense, except in cases of a dismissal on the merits.~~
 - ~~(b) "Conviction" includes:~~
 - ~~(i) a finding of guilty by a judge or jury;~~
 - ~~(ii) a guilty or no contest plea; and~~
 - ~~(iii) a plea in abeyance.~~
- ~~(3) "Core Standard" means a statement:~~
 - ~~(a) of what a student enrolled in a public school is expected to know and be able to do at a specific grade level or following completion of an identified course; and~~
 - ~~(b) established by the Board in Rule R277-700 as required by Section 53E-3-501.~~
- ~~(4) "Diversion agreement" means an agreement between a prosecutor and defendant entered into prior to a conviction delaying prosecution of a criminal charge for a specified period of time and contingent upon the defendant satisfying certain conditions.~~
- ~~(5)(a) "Educator" or "professional educator" means a person who currently holds a Utah educator license, held a license at the time of an alleged offense, is an applicant for a license, or is a person in training to obtain a license.~~
 - ~~(b) "Professional educator" does not include a paraprofessional, a volunteer, or an unlicensed teacher in a classroom.~~
- ~~(6) "Illegal drug" means a substance included in:~~
 - ~~(a) Schedules I, II, III, IV, or V established in Section 58-37-4;~~
 - ~~(b) Schedules I, II, III, IV, or V of the federal Controlled Substances Act, Title II, Pub. L. No. 91-513; or~~
 - ~~(c) any controlled substance analog.~~
- ~~(7) "Grooming" means befriending and establishing an emotional connection with a child or a child's family to lower the child's inhibitions for emotional, physical, or sexual abuse.~~
- ~~(8) "LEA" or "local education agency" for purposes of this rule includes the Utah Schools for the Deaf and the Blind.~~
- ~~(9) "License applicant" means a person who is applying for:~~
 - ~~(a) an initial license; or~~
 - ~~(b) renewal of a license.~~
- ~~(10) "Licensing discipline" means a sanction, including an admonition, a letter of warning, a written reprimand, suspension of license, and revocation of license, or other appropriate disciplinary measure, for violation of a professional educator standard.~~

~~(11) "Misdemeanor offense," for purposes of this rule, does not include Class C or lower violations of Title 41, Utah Motor Vehicle Code~~

~~(12) "Plea in abeyance" means a plea of guilty or no contest that is not entered as a judgment or conviction but is held by a court in abeyance for a specified period of time.~~

~~(13) "Pornographic or indecent material" shall have the same meaning as defined in Subsection 76-10-1235(1)(a).~~

~~(14) "School-related activity" means any event, activity, or program:~~

~~(a) occurring at the school before, during, or after school hours; or~~

~~(b) that a student attends at a remote location as a representative of the school or with the school's authorization, or both.~~

~~(15) "Stalking" means the act of intentionally or knowingly engaging in a course of conduct directed at a specific person as defined in Section 76-5-106.5.~~

~~(16)(a) "Under the influence of alcohol or an illegal drug" means that a person:~~

~~(i) is under the influence of alcohol, an illegal drug, or the combined influence of alcohol and drugs to a degree that renders the person incapable of effectively working in a public school;~~

~~(ii) has sufficient alcohol in the person's body that a subsequent chemical test shows that the person has a blood or breath alcohol concentration of .08 grams or greater at the time of the test; or~~

~~(iii) has a blood or breath alcohol concentration of .08 grams or greater during work hours at a public school.~~

~~(b) An educator is presumed to be "under the influence of alcohol or an illegal drug" if the educator refuses a lawful request, made with reasonable suspicion by the educator's LEA, to submit to a drug or alcohol test.~~

~~(17) "Utah Professional Practices Advisory Commission" or "UPPAC" means an advisory commission established to assist and advise the Board in matters relating to the professional practices of educators, as established by Section 53E-6-501.~~

~~(18) "Weapon" means any item that in the manner of its use or intended use is capable of causing death or serious bodily injury.~~

~~R277-515-3. Educator as a Role Model of Civic and Societal Responsibility.~~

~~(1) The professional educator is responsible for compliance with federal, state, and local laws.~~

~~(2) The professional educator shall familiarize himself or herself with professional ethics and is responsible for compliance with applicable professional standards.~~

~~(3) Failing to strictly adhere to Subsection (4) shall result in licensing discipline in accordance with Rule R277-215.~~

~~(4) The professional educator, upon receiving a Utah educator license:~~

~~(a) may not be convicted of any felony or misdemeanor offense that adversely affects the individual's ability to perform an assigned duty and carry out the responsibilities of the profession, including role model responsibility;~~

~~(b) may not be convicted of or commit any act of violence or abuse, including physical, sexual, or emotional abuse of any person;~~

~~(c) may not commit any act of cruelty to a child or any criminal offense involving a child;~~

~~(d) may not be convicted of a stalking crime;~~

~~(e) may not possess or distribute an illegal drug or be convicted of any crime related to an illegal drug, including a prescription drug not specifically prescribed for the individual;~~

~~(f) may not engage in conduct of a sexual nature described in Section 53E-6-603;~~

~~(g) may not be convicted of or subject to a diversion agreement for a sex-related or drug-related offense;~~

~~(h) may not provide to a student or allow a student under the educator's supervision or control to consume an alcoholic beverage or unauthorized drug;~~

~~(i) may not attend school or a school-related activity in an assigned employment-related capacity while possessing, using, or under the influence of alcohol or an illegal drug;~~

~~(j) may not intentionally exceed the prescribed dosage of a prescription medication while at school or a school-related activity;~~

~~(k) shall cooperate in providing all relevant information and evidence to the proper authority in the course of an investigation by a law enforcement agency or by the Division of Child and Family Services regarding potential criminal activity, except that an educator may decline to give evidence against himself or herself in an investigation if the evidence may tend to incriminate the educator as that term is defined by the Fifth Amendment of the U.S. Constitution;~~

~~(l) shall report suspected child abuse or neglect to law enforcement or the Division of Child and Family Services pursuant to Sections 53E-6-701 and 62A-4a-409 and comply with rules and LEA policy regarding the reporting of suspected child abuse;~~

~~(m) shall strictly adhere to state laws regarding the possession of a firearm while on school property or at a school-sponsored activity and enforce an LEA policy related to student access to or possession of a weapon;~~

~~(n) may not solicit, encourage, or consummate an inappropriate relationship, whether written, verbal, or physical, with a student or minor;~~

~~(o) may not engage in grooming of a student or minor;~~

~~(p) may not:~~

~~(i) participate in sexual, physical, or emotional harassment towards any public school age student or colleague; or~~

~~(ii) knowingly allow harassment toward a student or colleague;~~

~~(q) may not make inappropriate contact in any communication, including written, verbal, or electronic, with a minor, student, or colleague, regardless of age or location;~~

~~(r) may not interfere or discourage a student's or colleague's legitimate exercise of political and civil rights, acting consistent with law and LEA policy;~~

~~(s) shall provide accurate and complete information in a required evaluation of himself or herself, another educator, or student, as directed, consistent with the law;~~

~~(t) shall be forthcoming with accurate and complete information to an appropriate authority regarding known educator misconduct that could adversely impact performance of a professional responsibility, including a role model responsibility, by himself or herself, or another;~~

~~(u) shall provide accurate and complete information required for licensure, transfer, or employment purposes;~~

~~(v) shall provide accurate and complete information regarding qualifications, degrees, academic or professional awards or honors, and related employment history when applying for employment or licensure;~~

~~(w) shall notify the Superintendent at the time of application for licensure of past license disciplinary action or license discipline from another jurisdiction;~~

~~(x) shall notify the Superintendent honestly and completely of past criminal convictions at the time of the license application and renewal of licenses;~~

~~(y) shall provide complete and accurate information during an official inquiry or investigation by LEA, state, or law enforcement personnel; and~~

~~(z) shall report an arrest, citation, charge, or conviction to the educator's LEA in accordance with Section R277-516-3.~~

~~(5) An LEA shall report violations described in Subsection (4) to UPPAC.~~

~~(6)(a) Failure to adhere to this Subsection (6) may result in licensing discipline in accordance with Rule R277-215.~~

~~(b) A penalty shall be imposed, most readily, if an educator has received a previous documented warning from the educator's employer.~~

~~(c) An educator may not:~~

~~(i) exclude a student from participating in any program or deny or grant any benefit to any student on the basis of race, color, creed, sex, national origin, marital status, political or religious belief, physical or mental condition, family, social, or cultural background, or sexual orientation; and~~

~~(ii) may not engage in conduct that would encourage a student to develop a prejudice on the grounds described in Subsection (6)(c)(i) or any other, consistent with the law.~~

~~(d) An educator shall maintain confidentiality concerning a student unless revealing confidential information to an authorized person serves the best interest of the student and serves a lawful purpose, consistent with:~~

~~(i) 53E-9-202, Utah Family Educational Rights and Privacy Act; and~~

~~(ii) the Federal Family Educational Rights and Privacy Acts, 20 U.S.C. Sec. 1232g and 34 CFR Part 99.~~

~~(e) Consistent with Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act, Section 53E-3-512, and rule, a professional educator:~~

~~(i) may not accept a bonus or incentive from a vendor or potential vendor or a gift from a parent of a student, or a student where there may be the appearance of a conflict of interest or impropriety;~~

~~(ii) may not accept or give a gift to a student that would suggest or further an inappropriate relationship;~~

~~(iii) may not accept or give a gift to a colleague that is inappropriate or furthers the appearance of impropriety;~~

~~(iv) may accept a donation from a student, parent, or business donating specifically and strictly to benefit a student;~~

~~(v) may accept, but not solicit, a nominal appropriate personal gift for a birthday, holiday, or teacher appreciation occasion, consistent with LEA policy and Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act;~~

~~(vi) may not use the educator's position or influence to:~~

~~(A) solicit a colleague, student, or parent of a student to purchase equipment, supplies, or services from the educator or participate in an activity that financially benefits the educator unless approved in writing by the LEA; or~~

~~(B) promote an athletic camp, summer league, travel opportunity, or other outside instructional opportunity from which the educator receives personal remuneration and that involve students in the educator's school system, unless approved in writing consistent with LEA policy and rule; and~~

~~(vii) may not use school property, a facility, or equipment for personal enrichment, commercial gain, or for personal uses without express supervisor permission.~~

~~R277-515-4. Educator Responsibility for Maintaining a Safe Learning Environment and Educational Standards.~~

~~(1) A professional educator maintains a positive and safe learning environment for a student and works toward meeting an educational standard required by law.~~

~~(2)(a) Failure to strictly adhere to this Subsection (2) shall result in licensing discipline in accordance with Rule R277-215.~~

~~(b) The professional educator, upon receiving a Utah educator license:~~

~~(i) shall take prompt and appropriate action to prevent harassment or discriminatory conduct toward a student or school employee that may result in a hostile, intimidating, abusive, offensive, or oppressive learning environment;~~

~~(ii) shall resolve a disciplinary problem according to law, LEA policy, and local building procedures and strictly protect student confidentiality and understand laws relating to student information and records;~~

~~(iii) shall supervise a student appropriately at school and a school-related activity, home or away, consistent with LEA policy and building procedures and the age of the students;~~

~~(iv) shall take action to protect a student from any known condition detrimental to that student's physical health, mental health, safety, or learning;~~

~~(v)(A) shall demonstrate honesty and integrity by strictly adhering to all state and LEA instructions and protocols in managing and administering a standardized test to a student consistent with Section 53E-4-312 and Rule R277-404;~~

~~(B) shall cooperate in good faith with a required student assessment;~~

~~(C) shall submit and include all required student information and assessments, as required by statute and rule; and~~

~~(D) shall attend training and cooperate with assessment training and assessment directives at all levels;~~

~~(vi) may not use or attempt to use an LEA computer or information system in violation of the LEA's acceptable use policy for an employee or access information that may be detrimental to young people or inconsistent with the educator's role model responsibility;~~

~~(vii) may not knowingly possess, while at school or any school-related activity, any pornographic or indecent material in any form;~~

~~(viii) may not knowingly use school equipment to view, create, distribute, or store pornographic or indecent material in any form; and~~

~~(ix) may not knowingly use, view, create, distribute, or store pornographic or indecent material involving children.~~

~~(3) An LEA shall report violations of Subsection (2) to UPPAC.~~

~~(4)(a) Failure to adhere to this Subsection (4) may result in licensing discipline in accordance with Rule R277-215.~~

~~(b) A penalty shall be imposed, most readily, if an educator has received a previous documented warning from the educator's employer.~~

~~(c) A professional educator:~~

~~(i) shall demonstrate respect for a diverse perspective, idea, and opinion and encourage contributions from a broad spectrum of school and community sources, including a community whose heritage language is not English;~~

~~(ii) shall use appropriate language, eschewing profane, foul, offensive, or derogatory comments or language;~~

- ~~_____ (iii) shall maintain a positive and safe learning environment for a student;~~
- ~~_____ (iv) shall make appropriate use of technology by:~~
 - ~~_____ (A) involving students in social media responsibly, transparently, and primarily for purposes of teaching and learning per school and district policy;~~
 - ~~_____ (B) maintaining separate professional and personal virtual profiles;~~
 - ~~_____ (C) respecting student privacy on social media; and~~
 - ~~_____ (D) taking appropriate and reasonable measures to maintain confidentiality of student information and education records stored or transmitted through the use of electronic or computer technology;~~
 - ~~_____ (v) shall work toward meeting an educational standard required by law;~~
 - ~~_____ (vi) shall teach the objectives contained in a Core Standard;~~
 - ~~_____ (vii) may not distort or alter subject matter from a Core Standard in a manner inconsistent with the law;~~
 - ~~_____ (viii) shall use instructional time effectively consistent with LEA policy; and~~
 - ~~_____ (ix) shall encourage a student's best effort in an assessment.~~

R277-515-5. Professional Educator Responsibility for Compliance with LEA Policy.

- ~~_____ (1)(a) Failure to strictly adhere to this Subsection (1) shall result in licensing discipline in accordance with Rule R277-215.~~
- ~~_____ (b) A professional educator:~~
 - ~~_____ (i) understands, respects, and does not violate appropriate boundaries:~~
 - ~~_____ (A) established by ethical rules and school policy and directive in teaching, supervising, and interacting with a student or colleague; and~~
 - ~~_____ (B) described in Subsection R277-515-2(1); and~~
 - ~~_____ (ii) shall conduct financial business with integrity by honestly accounting for all funds committed to the educator's charge, as school responsibilities require, consistent with LEA policy.~~
 - ~~_____ (2) An LEA shall report violations of Subsection (1) to UPPAC.~~
 - ~~_____ (3)(a) Failure to adhere to this Subsection (3) may result in licensing discipline in accordance with Rule R277-215.~~
 - ~~_____ (b) A penalty shall be imposed most readily, if an educator has received a previous documented warning from the educator's employer.~~
 - ~~_____ (c) The professional educator:~~
 - ~~_____ (i) understands and follows a rule and LEA policy;~~
 - ~~_____ (ii) understands and follows a school or administrative policy, procedure, or documented directive specific to a rule or policy;~~
 - ~~_____ (iii) resolves a grievance with a student, colleague, school community member, and parent professionally, with civility, and in accordance with LEA policy; and~~
 - ~~_____ (iv) follows LEA policy for collecting money from a student, accounting for all money collected, and not commingling any school funds with personal funds.~~

R277-515-6. Professional Educator Conduct.

- ~~_____ (1) A professional educator exhibits integrity and honesty in relationships with an LEA administrator or personnel.~~
- ~~_____ (2)(a) Failure to adhere to this Subsection (2) may result in licensing discipline in accordance with Rule R277-215.~~
- ~~_____ (b) A penalty shall be imposed most readily, if an educator has received a previous documented warning from the educator's employer.~~

- ~~_____ (c) The professional educator:~~
 - ~~_____ (i) shall communicate professionally and with civility with a colleague, school and community specialist, administrator, and other personnel;~~
 - ~~_____ (ii) shall maintain a professional and appropriate relationship and demeanor with a student, colleague, school community member, and parent;~~
 - ~~_____ (iii) may not promote a personal opinion, personal issue, or political position as part of the instructional process in a manner inconsistent with law;~~
 - ~~_____ (iv) shall express a personal opinion professionally and responsibly in the community served by the school;~~
 - ~~_____ (v) shall comply with an LEA policy, supervisory directive, and generally-accepted professional standard regarding appropriate dress and grooming at school and at a school-related event;~~
 - ~~_____ (vi) shall work diligently to improve the educator's own professional understanding, judgment, and expertise;~~
 - ~~_____ (vii) shall honor all contracts for a professional service;~~
 - ~~_____ (viii) shall perform all services required or directed by the educator's contract with the LEA with professionalism consistent with LEA policy and rule; and~~
 - ~~_____ (ix) shall recruit another educator for employment in another position only within a LEA timeline and guideline.~~

R277-515-7. Violations of Professional Ethics.

- ~~_____ (1) This rule establishes standards of ethical decorum and behavior for licensed educators in the state.~~
- ~~_____ (2) Beginning in the 2018-19 school year, to obtain a license or renew a license issued by the Board, a license applicant shall review this rule and execute a form as part of the licensure or renewal process verifying that the educator:~~
 - ~~_____ (a) has read R277-515 and R277-516; and~~
 - ~~_____ (b) understands that the educator's conduct is governed by R277-515 and R277-516.~~
- ~~_____ (3) An LEA shall:~~
 - ~~_____ (a) annually train educators employed by the LEA on the Utah Educator Professional Standards described in Rules R277-515 and R277-516; and~~
 - ~~_____ (b) provide written assurance of the training described in Subsection (3)(a) in accordance with R277-108.~~
- ~~_____ (4) Provisions of this rule do not prevent, circumvent, replace, nor mirror criminal or potential charges that may be issued against a professional educator.~~
- ~~_____ (5) The Board and Superintendent shall adhere to the provisions of this rule in licensing and disciplining a licensed Utah educator.~~
- ~~_____ (6) Reporting and employment provisions related to professional ethics are provided in:~~
 - ~~_____ (a) Section 53G-11-406;~~
 - ~~_____ (b) Section 53E-6-604;~~
 - ~~_____ (c) Section 53G-8-503; and~~
 - ~~_____ (d) Section R277-516-7.~~

KEY: educators, professional, standards

Date of Enactment or Last Substantive Amendment: December 1, 2017

Notice of Continuation: November 6, 2017

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-501(1)(a); 53E-6; 53E-3-401(4)

NOTICE OF PROPOSED RULE			
TYPE OF RULE: Repeal			
Utah Admin. Code Ref (R no.):	R277-516	Filing No. 52454	No.

Agency Information

1. Department:	Education		
Agency:	Administration		
Street address:	250 E 500 S		
City, state:	Salt Lake City, UT		
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:
Professional Standards and Training for Non-licensed Employees and Volunteers
3. Purpose of the new rule or reason for the change:
This rule's content is being moved to proposed Rule R277-316. (EDITOR'S NOTE: The proposed Rule R277-316 is under Filing No. 52451 in this issue, January 1, 2020, of the Bulletin.)
4. Summary of the new rule or change:
The rule is being repealed in its entirety and the content moved to Rule R277-316 as part of the State Board of Education's (Board) new licensing rule structure.

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 rule is being repealed in its entirety and the content moved to Rule R277-316 as part of the Board's ongoing revisions to rules governing licensing systems for educators and non-educators.
B) Local governments:
This rule repeal is not expected to have any fiscal impact on local governments' revenues or expenditures. The rule is being repealed in its entirety and the content moved to Rule R277-316 as part of the Board's ongoing

revisions to rules governing licensing systems for educators and non-educators.

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

This rule repeal is not expected to have any fiscal impact on small businesses' revenues or expenditures. The rule is being repealed in its entirety and the content moved to Rule R277-316 as part of the Board's ongoing revisions to rules governing licensing systems for educators and non-educators.

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

This rule repeal is not expected to have any fiscal impact on non-small businesses' revenues or expenditures. The rule is being repealed in its entirety and the content moved to Rule R277-316 as part of the Board's ongoing revisions to rules governing licensing systems for educators and non-educators.

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 fiscal impact on revenues or expenditures for persons other than small businesses, non-small businesses, or local government entities. The rule is being repealed in its entirety and the content moved to Rule R277-316 as part of the Board's ongoing revisions to rules governing licensing systems for educators and non-educators.

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 Table			
Fiscal Cost	FY2020	FY2021	FY2022
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0

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

H) Department head approval of regulatory impact analysis:

Sydnee Dickson, State Superintendent, 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.

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	Subsections 53E-3-501(1)(a)(iii)	Subsections 53E-3-501(1)(a)(i)
Subsection 53E-3-301(3)	Title 53E, Chapter 11, Part 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: 01/31/2020

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:	Angie Stallings, Deputy Superintendent of Policy	Date:	12/13/2019
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R277. Education, Administration.

~~**[R277-516. Professional Standards and Training for Non-licensed Employees and Volunteers.**~~

~~**R277-516-1. 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)(i) Subsection 53E-3-301(3), which instructs the Superintendent to perform duties assigned by the Board that include:~~
 - ~~(ii) presenting to the Governor and the Legislature each December a report of the public school system for the preceding year that includes:~~
 - ~~(A) investigation of all matters pertaining to the public schools; and~~
 - ~~(B) statistical and financial information about the school system which the Superintendent considers pertinent;~~
 - ~~(c) Subsections 53E-3-501(1)(a)(i) and (iii), which direct the Board to:~~
 - ~~(i) 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~~
 - ~~(ii) the evaluation of instructional personnel; and~~
 - ~~(d) Title 53G, Chapter 11, Part 4, Background Checks, which directs the Board to require educator license applicants to submit to background checks and provide ongoing monitoring of licensed educators.~~
 - ~~(2) The purpose of this rule is to ensure that all students who are compelled by law to attend public schools, subject to release from school attendance consistent with Section 53G-6-204, are instructed and served by public school teachers and employees who have not violated laws that would endanger students in any way.~~

~~**R277-516-2. Definitions.**~~

- ~~(1) "Association" means the same as that term is defined in Subsection 53G-7-1101(3).~~
- ~~(2) "Charter school governing board" means a board designated by a charter school to make decisions for the operation of the charter school.~~
- ~~(3) "Charter school board member" means a current member of a charter school governing board.~~

~~(4) "Comprehensive Administration of Credentials for Teachers in Utah Schools (CACTUS)" means the database maintained on all licensed Utah educators, which includes information such as:~~

- ~~(a) personal directory information;~~
- ~~(b) educational background;~~
- ~~(c) endorsements;~~
- ~~(d) employment history;~~
- ~~(e) professional development information;~~
- ~~(f) completion of employee background checks; and~~
- ~~(g) a record of disciplinary action taken against the educator.~~

~~(5) "Contract employee" means an employee of a staffing service who works at a public school under a contract between the staffing service and the public school.~~

~~(6) "DPS" means the Department of Public Safety.~~

~~(7) "LEA" or "local education agency" for purposes of this rule includes the Utah Schools for the Deaf and the Blind.~~

~~(8)(a) "Licensed educator" means an individual who holds a valid Utah educator license and has satisfied all requirements to be a licensed educator in the Utah public school system (examples are traditional public school teachers, charter school teachers, school administrators, Board employees, and school district specialists).~~

~~(b) A licensed educator may or may not be employed in a position that requires an educator license.~~

~~(c) A licensed educator includes an individual who:~~

- ~~(i) is student teaching;~~
- ~~(ii) is in an alternative route to licensing program or position; or~~
- ~~(iii) holds an LEA specific competency based license.~~

~~(9) "Non licensed public education employee" means an employee of a an LEA who:~~

~~(a) does not hold a current Utah educator license issued by the Board under Title 53E, Chapter 6, Educator Licensing and Professional Practices Act; or~~

~~(b) is a contract employee.~~

~~(10) "Public education employer" means the education entity that hires and employs an individual, including public school districts, the Utah State Office of Education, Regional Service Centers, and charter schools.~~

~~(11) "Utah Professional Practices Advisory Commission" or "UPPAC" means an advisory commission established to assist and advise the Board in matters relating to the professional practices of educators, established in Section 53E-6-501.~~

~~(12) "Volunteer" means a volunteer who may be given significant unsupervised access to children in connection with the volunteer's assignment.~~

~~R277 516 3. Licensed Public Education Employee Personal Reporting of Arrests.~~

~~(1) A licensed educator who is arrested, cited or charged with the following alleged offenses shall report the arrest, citation, or charge within 48 hours or as soon as possible to the licensed educator's district superintendent, charter school director or designee:~~

- ~~(a) any matters involving an alleged sex offense;~~
- ~~(b) any matters involving an alleged drug-related offense;~~
- ~~(c) any matters involving an alleged alcohol related offense;~~
- ~~(d) any matters involving an alleged offense against the person under Title 76, Chapter 5, Offenses Against the Person;~~
- ~~(e) any matters involving an alleged felony offense under Title 76, Chapter 6, Offenses Against Property;~~
- ~~(f) any matters involving an alleged crime of domestic violence under Title 77, Chapter 36, Cohabitant Abuse Procedures Act; and~~

~~(g) any matters involving an alleged crime under federal law or the laws of another state comparable to the violations listed in Subsections (a) through (f).~~

~~(2) A licensed educator shall report convictions, including pleas in abeyance and diversion agreements within 48 hours or as soon as possible upon receipt of notice of the conviction, plea in abeyance or diversion agreement.~~

~~(3) An LEA superintendent, director, or designee shall report conviction, arrest or offense information received from a licensed educator to the Superintendent within 48 hours of receipt of information from a licensed educator.~~

~~(4) The Superintendent shall develop an electronic reporting process on the Board's website.~~

~~(5) A licensed educator shall report for work following an arrest and provide notice to the licensed educator's employer unless directed not to report for work by the employer, consistent with school district or charter school policy.~~

~~R277 516 4. Non licensed Public Education Employee, Volunteer, and Charter School Board Member Background Check Policies.~~

~~(1) An LEA shall adopt a policy for non licensed public education employee, volunteer, and charter school board member background checks that includes at least the following components:~~

~~(a) a requirement that the individual submit to a background check and ongoing monitoring through registration with the systems described in Section 53G-11-404 as a condition of employment or appointment; and~~

~~(b) identification of the appropriate privacy risk mitigation strategy that will be used to ensure that the LEA only receives notifications for individuals with whom the LEA maintains an authorizing relationship.~~

~~(2) An LEA policy shall describe the background check process necessary based on the individual's duties.~~

~~R277 516 5. Non licensed Public Education Employee, Volunteer, or Charter School Board Member Arrest Reporting Policy Required from LEAs.~~

~~(1) An LEA shall have a policy requiring a non licensed public employee, a volunteer, a charter school board member, or any other employee who drives a motor vehicle as an employment responsibility, to report offenses specified in Subsection (3).~~

~~(2) An LEA shall post the policy described in Subsection (1) on the LEA's website.~~

~~(3) An LEA's policy described in Subsection (1) shall include the following minimum components:~~

- ~~(a) reporting of the following:~~
 - ~~(i) convictions, including pleas in abeyance and diversion agreements;~~
 - ~~(ii) any matters involving arrests for alleged sex offenses;~~
 - ~~(iii) any matters involving arrests for alleged drug related offenses;~~
 - ~~(iv) any matters involving arrests for alleged alcohol related offenses; and~~

~~(v) any matters involving arrests for alleged offenses against the person under Title 76, Chapter 5, Offenses Against the Person.~~

~~(b) a timeline for receiving reports from non licensed public education employees;~~

~~(c) immediate suspension from student supervision responsibilities for alleged sex offenses and other alleged offenses which may endanger students during the period of investigation;~~

~~(d) immediate suspension from transporting students or public education vehicle operation or maintenance for alleged offenses involving alcohol or drugs during the period of investigation;~~

~~(e) adequate due process for the accused employee consistent with Section 53G-11-405;~~

~~(f) a process to review arrest information and make employment or appointment decisions that protect both the safety of students and the confidentiality and due process rights of employees and charter school board members; and~~

~~(g) timelines and procedures for maintaining records of arrests and convictions of non-licensed public education employees and charter school board members.~~

~~(4) An LEA shall ensure that the records described in R277-516-5(3)(g):~~

~~(a) include final administrative determinations and actions following investigation; and~~

~~(b) are maintained;~~

~~(i) only as necessary to protect the safety of students; and~~

~~(ii) with strict requirements for the protection of confidential employment information.~~

R277-516-6. Association Professional Standard Setting, Training, and Monitoring.

~~(1) Beginning with the 2017-2018 school year, a public school may not be a member of, or pay dues to an association that adopts rules or policies that are inconsistent with this R277-516-6.~~

~~(2) An association shall establish policies or rules that require:~~

~~(a) coaches and individuals who oversee interscholastic activities or work with students as part of an interscholastic activity to meet a set of professional standards that are consistent with the Utah Educator Professional Standards described in Rule R277-515; and~~

~~(b) the association or public school to annually train each coach or other individual who oversees or works with students as part of an interscholastic activity of a public school on the following:~~

~~(i) child sexual abuse prevention as described in Section 53G-9-207;~~

~~(ii) the prevention of bullying, cyber bullying, hazing, harassment, and retaliation as described in:~~

~~(A) Title 53G, Chapter 9, Part 6, Bullying and Hazing; and~~

~~(B) R277-613; and~~

~~(iii) the professional standards described in Subsection (2)(a).~~

~~(3) An association shall establish procedures and mechanisms to:~~

~~(a) monitor LEA compliance with the association's training requirements described in Subsection (2); and~~

~~(b) track the employment history of individuals who receive a certification from the association.~~

R277-516-7. Public Education Employer Responsibilities Upon Receipt of Arrest Information.

~~(1) A public education employer that receives arrest information about a licensed public education employee shall review the arrest information and assess the employment status consistent with Section 53E-6-604, Rule R277-515, and the LEA's policy.~~

~~(2) A public education employer that receives arrest information about a non-licensed public education employee, volunteer, or charter school board member shall review the arrest information and assess the individual's employment or appointment status:~~

~~(a) considering the individual's assignment and duties; and~~

~~(b) consistent with a local board approved policy for ethical behavior of non-licensed employees, volunteers, and charter school board members.~~

~~(3) A local board shall provide appropriate training to non-licensed public education employees, volunteers, and charter school board members about the provisions of the local board's policy for self-reporting and ethical behavior of non-licensed public education employees, volunteers, and charter school board members.~~

~~(4) A public education employer shall cooperate with the Superintendent in investigations of licensed educators.~~

R277-516-8. Misconduct Notification Requirements and Procedures.

~~(1)(a) An educator who has reasonable cause to believe that a student may have been physically or sexually abused by a school's employee shall immediately report that belief to:~~

~~(i) law enforcement;~~

~~(ii) the school principal; and~~

~~(iii) to any other entity to which a report is required by law.~~

~~(b) A school administrator who receives a report described in Subsection (1)(a) shall immediately submit the information to UPPAC if the employee is licensed as an educator.~~

~~(2) A local superintendent or charter school director shall notify UPPAC if an educator is determined, pursuant to an administrative or judicial action, or internal LEA investigation, to have had disciplinary action taken for, or, to have engaged in:~~

~~(a) unprofessional conduct or professional incompetence that:~~

~~(i) results in suspension for more than one week or termination;~~

~~(ii) requires mandatory licensing discipline under R277-515; or~~

~~(iii) otherwise warrants UPPAC review; or~~

~~(b) immoral behavior.~~

~~(3) An educator who fails to comply with Subsection (1) may:~~

~~(a) be found guilty of unprofessional conduct; and~~

~~(b) have disciplinary action taken against the educator.~~

~~(4) The Superintendent may withhold, reduce, or terminate funding to an LEA for failure to make a required report under this R277-516 through the process described in Rule R277-114.~~

KEY: background checks, school employees, self reporting

Date of Enactment or Last Substantive Amendment: September 21, 2017

Notice of Continuation: July 19, 2017

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-301(3)(a); 53E-3-301(3); 53E-3-501(1)(a)(i); 53E-3-501(1)(a)(iii)]

NOTICE OF PROPOSED RULE			
TYPE OF RULE: Amendment			
Utah Admin. Code Ref (R no.):	R277-553	Filing 52455	No.

Agency Information

1. Department:	Education
Agency:	Administration
Street address:	250 E 500 S

City, state:	Salt Lake City, UT	
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:
Charter School Oversight, Monitoring and Appeals
3. Purpose of the new rule or reason for the change:
Rule R277-553 is amended to clarify options for the State Board of Education (Board) in the event that an authorizer places a charter school on probation or initiates the closure process.
4. Summary of the new rule or change:
The new language adds actions the Superintendent may pursue in the event that an authorizer places a charter school on probation or recommends closure of a charter school.

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
These rule changes are not expected to have an independent fiscal impact on state government revenues or expenditures. They provide greater clarity on existing board authority regarding the handling and/or monitoring of a charter school's funds, if an authorizer places the charter school on probation or initiates the closure process.
B) Local governments:
These rule changes are not expected to have an independent fiscal impact on local governments' revenues or expenditures. They provide greater clarity on existing board authority regarding the handling and/or monitoring of a charter school's funds, if an authorizer places the charter school on probation or initiates the closure process.
C) Small businesses ("small business" means a business employing 1-49 persons):
These rule changes are not expected to have an independent fiscal impact on small businesses' revenues or expenditures. They provide greater clarity on existing board authority regarding the handling and/or monitoring

of a charter school's funds, if an authorizer places the charter school on probation or initiates the closure process.

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

These rule changes are not expected to have an independent fiscal impact on non-small businesses' revenues or expenditures. They provide greater clarity on existing board authority regarding the handling and/or monitoring of a charter school's funds, if an authorizer places the charter school on probation or initiates the closure process.

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

These rule changes are not expected to have an independent fiscal impact for persons other than small businesses, non-small businesses, or local government entities. They provide greater clarity on existing board authority regarding the handling and/or monitoring of a charter school's funds, if an authorizer places the charter school on probation or initiates the closure process.

F) Compliance costs for affected persons:

There are no independent compliance costs for affected persons. They provide greater clarity on existing board authority regarding the handling and/or monitoring of a charter school's funds, if an authorizer places the charter school on probation or initiates the closure process.

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

Regulatory Impact Table			
Fiscal Cost	FY2020	FY2021	FY2022
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0

Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head approval of regulatory impact analysis:

Sydnee Dickson, State Superintendent, 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.

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 53G-5-501(5)	Subsection 53G-5-205(5)
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: 01/31/2020

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:	Angie Stallings, Deputy Superintendent of Policy	Date:	12/13/2019
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R277. Education, Administration.

R277-553. Charter School Oversight, Monitoring and Appeals.

R277-553-1. Authority and Purpose.

- (1) This rule is authorized under:
 - (a) Utah Constitution Article X, Section 3 which vests general control and supervision over public education in the Board;
 - (b) Subsection 53E-3-401(4), which allows the Board to adopt rules in accordance with its responsibilities;
 - (c) Subsection 53G-5-205(5), which requires the Board to establish minimum standards that a charter school authorizer is required to apply when evaluating a charter school application and monitoring charter school compliance; and
 - (d) Subsection 53G--5-501(5), which directs the Board to adopt rules specifying the timeline for remedying deficiencies and ensuring the compliance of a charter school with its charter.
- (2) The purpose of this rule is to establish minimum standards that an authorizer is required to apply when monitoring charter school compliance.

R277-553-2. Authorizer Review of Charter Schools.

- (1) An authorizer shall review and evaluate annually the performance of charter schools for which it is the authorizer, including requiring all charter schools to:
 - (a) comply with their charter agreements; and
 - (b) comply with statute and board rule.
- (2) An authorizer shall:
 - (a) visit a charter school at least once during its first year of operation in order to ensure adherence to an implementation of the approved charter and to finalize a review process;
 - (b) visit a charter school as determined in the review process;
 - (c) provide written reports to a charter school after the visits that set forth:
 - (i) strengths;
 - (ii) deficiencies; and
 - (iii) proposed corrective actions;
 - (d) notify the Superintendent of a claim of fraud or misuse of public assets or funds by a charter school; and
 - (e) coordinate the investigation of claims identified in Subsection (d) with the Superintendent.
- (3) An authorizer shall annually review, and document matters specific to effective charter school operations, including:
 - (a) financial performance;
 - (b) academic performance;
 - (c) enrollment; and

(d) governing board performance.

(4) An authorizer shall conduct and document a comprehensive review of governing board performance and review the charter agreement at least once every five years.

(5) An authorizer shall coordinate with the Superintendent to regularly review its charter schools as described in Subsection 53G-5-205(2).

R277-553-3. Remediation and Probation.

(1)(a) An authorizer shall develop a written policy documenting the process and for remediation of any deficiencies identified through the processes outlined in Section R277-553-2.

(b) An authorizer shall submit a copy of their remediation policy to the Board for approval along with their policy for approving new charters under Section R277-552-3.

(c) Notwithstanding Subsection (b), each authorizer shall submit a remediation policy to the Board for approval by January 1, 2020.

(2) If a school fails to remedy deficiencies through the remediation process, an authorizer may place the school on probation for no longer than one calendar year.

(3) Upon placing a school on probation, an authorizer shall set forth a written plan outlining those provisions in the charter agreement, applicable laws, rules, and regulations with which the school is not in compliance.

(4) The written plan required by Subsection (3) shall:

(a) set forth the terms, conditions, and timeline that the school shall follow in order to be removed from probation; and

(b) a plan for further remedial action if the school fails to comply with probationary terms.

(5) If a school complies with the terms of the written plan within the timeline prescribed, the authorizer shall remove the school from probation.

(6) A school may request a single extension of no more than six months from an authorizer to comply with the terms of the written plan.

(7) If a school fails to satisfy the terms of the written plan within the established timeline, the authorizer shall propose to terminate the school's charter.

(8) While a school is on probation, the school may seek technical assistance from the authorizer to remedy any deficiencies.

(9) An authorizer may, for good cause, or if the health, safety, or welfare of the students at the school is threatened at any time during the probationary period, terminate the charter immediately.

(10) An authorizer shall notify the Superintendent in writing within 30 days of any probationary terms imposed under this Section R277-553-3.

(11) An authorizer shall comply with the notification requirements in Section 53G-5-504 if the authorizer approves a motion to terminate a charter.

R277-553-4. Charter School Governing Board Compliance with Law.

(1) A charter school governing board may amend the charter school's charter agreement by receiving approval from its authorizer consistent with Section 53G-5-303.

(2) A charter school governing board shall comply with the charter school's authorizer's processes and timelines for all reviews, amendments, expansion requests, and satellite applications.

(3) A charter school shall notify the Superintendent and charter school's authorizer of lawsuits filed against the charter

school within 30 days of the school being served with the complaint.

R277-553-5. Charter School Financial Practices and Training.

(1)(a) A charter school shall hire or contract with a business administrator to perform the duties described in Section 53G-4-303.

(b) A charter school business administrator shall attend business meetings required by the Superintendent or the school's authorizer.

(2) A charter school board shall:

(a) regularly monitor the charter school's business administrator described under Subsection (1); and

(b) ensure the business administrator fulfills the duties outlined in Section 53G-4-303.

(3) The Board may impose corrective action against a charter school for failure to provide financial and statistical information required by law or Board rules in accordance with Rule R277-114.

(3) A charter school shall comply with the Utah State Procurement Code, Title 63G, Chapter 6a.

(4) A charter school may not receive necessarily existent small schools funding under Subsection 53F-2-304(2) and Rule R277-445.

R277-553-6. Remedying Charter School Deficiencies.

(1) Upon receiving credible information of charter school financial mismanagement or fraud, or a threat to the health, safety, or welfare of students, in coordination with the Superintendent an authorizer shall direct an independent review or monitoring, as appropriate.

(2) An authorizer may direct a charter school governing board or the charter school administration to take reasonable action to protect students or state or federal funds consistent with Section 53G-5-503.

(3) Upon receipt of findings documenting a threat to the health, welfare, or safety of a school under Subsection (1), an authorizer may:

(a) recommend that the Superintendent impose corrective action against the school in accordance with Rule R277-114;

(b) take immediate or subsequent corrective action with charter school governing board members or employees who are responsible for deficiencies consistent with Section 53G-5-501;

(c) identify a remediation team to work with the school;

or
(d) immediately terminate the school's charter in accordance with Subsection 53G-5-503(5).

(4) Upon notification of an authorizer placing a charter school on probation or notification of an authorizer recommending closure of a charter school pending an appeal, the Superintendent may do one or any combination of the following:

(a) place state appropriations in a reimbursable status pending the outcome of the appeal;

(b) suspend state appropriations pending the outcome of the appeal;

(c) direct fiscal monitoring visits for both state and federal programs ahead of other scheduled visits to the charter school; or

(d) take other action at the direction of the Board consistent with state and federal law.

([4]5) Upon receipt of findings documenting financial mismanagement or fraud by a charter school, an authorizer shall coordinate appropriate corrective action with the Superintendent.

([5]6) An authorizer may exercise flexibility for good cause in making a recommendation regarding an identified deficiency.

R277-553-7. Appeals to the Board.

(1) An operating charter school may appeal an authorizer's decision to terminate the school's charter to the Board.

(2) Upon terminating a charter, an authorizer shall:

- (a) provide written notice to the charter school;
- (b) provide written notice of appeal rights and timelines to the charter school governing board chair or authorized agent; and
- (c) post information about the appeals process on its website and provide training to charter school governing board members and authorized agents regarding the appeals procedure.

(3) If a charter school appeals an authorizer's decision to terminate a charter, the charter school governing board chair shall submit a written appeal to the Superintendent within 14 calendar days of the authorizer's action.

(4)(a) Upon receipt of an appeal under this section, Board leadership may:

(i) set a hearing before a standing committee to make a recommendation to the Board for consideration at its next regularly scheduled meeting;

(ii) designate three to five Board members and a hearing officer, who is not a Board member, to act as an objective hearing panel to conduct a hearing and provide a recommendation to the Board for consideration at its next regularly scheduled meeting; or

(iii) set a hearing before the full Board.

(b) A hearing under Subsection (4)(a) shall be held no more than 45 days following receipt of the written appeal.

(5) The Board shall:

- (a) uphold the authorizer's decision; or
- (b) remand the matter to the authorizer with identified deficiencies in the authorizer's decision and suggested remedies.

(6) The recommendation of the chartering entity shall be in place pending the conclusion of the appeals process, unless the Superintendent in the Superintendent's sole discretion, determines that the authorizer's decision or failure to act presents a serious threat to students or an imminent threat to public property or resources.

(7) The Board's acceptance or rejection of the hearing report is the final administrative action on the issue.

KEY: charter schools, oversight, monitoring, appeals

Date of Enactment or Last Substantive Amendment: ~~January 9, 2019~~ 2020

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-401(4); 53G-5-205(5); 53G-5-501(5)

NOTICE OF PROPOSED RULE			
TYPE OF RULE: New			
Utah Admin. Code Ref (R no.):	R277-623	Filing No.	52456

Agency Information

1. Department:	Education
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Agency:	Administration	
Street address:	250 E 500 S	
City, state:	Salt Lake City, UT	
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 Climate Survey
3. Purpose of the new rule or reason for the change:
H.B. 120, Student and School Safety Assessment, passed in the 2019 General Session, requires that the Utah State Board of Education (Board) create a rule regarding the content and format of a school climate survey.
4. Summary of the new rule or change:
Rule R277-623 addresses the legislative requirements and incorporates by reference the baseline model survey that will be required of all local education agencies (LEA).

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
This rule is not expected to have an independent fiscal impact on state government revenues or expenditures. H.B. 120 (2019) requires the Board to create a model school climate survey and adopt rules governing how LEAs must create or adopt and disseminate a school climate survey. This rule addresses the legislative requirements and incorporates by reference the baseline model survey that will be required of all LEAs.
B) Local governments:
This rule is not expected to have an independent fiscal impact on local governments' revenues or expenditures. H.B. 120 (2019) requires the Board to create a model school climate survey and adopt rules governing how LEAs must create or adopt and disseminate a school climate survey. This rule addresses the legislative requirements and incorporates by reference the baseline model survey that will be required of all LEAs.
C) Small businesses ("small business" means a business employing 1-49 persons):

This rule is not expected to have an independent fiscal impact on small businesses' revenues or expenditures. H.B. 120 (2019) requires the Board to create a model school climate survey and adopt rules governing how LEAs must create or adopt and disseminate a school climate survey. This rule addresses the legislative requirements and incorporates by reference the baseline model survey that will be required of all LEAs.

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

This rule is not expected to have an independent fiscal impact on non-small businesses' revenues or expenditures. H.B. 120 (2019) requires the Board to create a model school climate survey and adopt rules governing how LEAs must create or adopt and disseminate a school climate survey. This rule addresses the legislative requirements and incorporates by reference the baseline model survey that will be required of all LEAs.

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 an independent fiscal impact for persons other than small businesses, non-small businesses, or local government entities. H.B. 120 (2019) requires the Board to create a model school climate survey and adopt rules governing how LEAs must create or adopt and disseminate a school climate survey. This rule addresses the legislative requirements and incorporates by reference the baseline model survey that will be required of all LEAs.

F) Compliance costs for affected persons:

There are no independent compliance costs for affected persons. H.B. 120 (2019) requires the Board to create a model school climate survey and adopt rules governing how LEAs must create or adopt and disseminate a school climate survey. This rule addresses the legislative requirements and incorporates by reference the baseline model survey that will be required of all LEAs.

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

Regulatory Impact Table			
Fiscal Cost	FY2020	FY2021	FY2022
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0

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

H) Department head approval of regulatory impact analysis:

Sydnee Dickson, State Superintendent, has reviewed and approved this fiscal analysis.

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

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

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

Sydnee Dickson, State Superintendent

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Utah Constitution Article X, Section 3	Section 401(4)	53E-3-	Section 53G-8-802(2)(i)
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Incorporations by Reference Information

(If this rule incorporates more than two items by reference, please include additional tables.)

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

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	First Incorporation
Official Title of Materials Incorporated (from title page)	Model School Climate Survey
Publisher	Utah State Board of Education
Date Issued	December 5, 2019
Issue, or version	Version 1

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	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:	Angie Stallings, Deputy Superintendent of Policy	Date:	12/12/2019
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R277. Education, Administration.

R277-623. School Climate Survey.

R277-623-1. Authority and Purpose.

- (1) This rule is authorized by:
 - (a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;
 - (b) Section 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and
 - (c) Section 53G-8-802(2)(i), which requires the Board to make rules requiring an LEA to:
 - (i) create or adopt and disseminate a school climate survey; and
 - (ii) disseminate the school climate survey.
- (2) The purpose of this rule is to provide an LEA with:

- (a) the recommended distribution method;
- (b) climate survey frequency; and
- (c) minimum sample size required to conduct a climate survey.

R277-623-2. Definitions.

- (1) "School Climate Survey" or "climate survey" means a survey that evaluates a range of aspects of the educational environment to assess perceptions and identify specific strengths and weaknesses within a school.
- (2) "School Community" means relevant stakeholders including:
 - (a) parents;
 - (b) students;
 - (c) administration;
 - (d) school building staff including teachers; and
 - (e) school resource officers as defined in Subsection 53G-8-701(2).

R277-623-3. Incorporation of Required School Climate Survey Questions by Reference.

- (1) This rule incorporates by reference the Model School Climate Survey.
- (2) A copy of the model survey is located at:
 - (a) <https://schools.utah.gov/administrativerules/documentsincorporated;>
 - and
 - (b) the Utah State Board of Education.

R277-623-4. Climate Survey Administration.

- (1) An LEA shall administer a school climate survey containing the questions identified in the Model School Climate Survey described in Section R277-623-3.
- (2) An LEA may include additional questions in the LEA's climate survey consistent with student data privacy requirements as described in Section 53E-9-203.
- (3) An LEA shall administer the climate survey:
 - (a) at least once every other year and in the opposite year from administration of the public education exit and engagement survey described in R277-325;
 - (b) in an anonymous and randomized way;
 - (c) to the LEA's school community;
 - (d) in other languages relevant to the school community where possible;
 - (e) to students across all academic achievement levels; and
 - (f) in a form compliant with the Americans with Disabilities Act.
- (4) An LEA may administer the survey orally to a student if:
 - (a) the LEA provides methods to protect the confidentiality of the student's responses;
 - (b) the student can request for a different survey administrator; and
 - (c) the LEA provides methods to protect the confidentiality and identity of the survey administrator from the general public.
- (5) An LEA shall administer the climate survey through a Board approved online provider.
- (6) An LEA shall provide the survey to:
 - (a) the lesser of 35% of the student population or 400 students;

(b) each school in the LEA; and
 (c) staff at a school level.
 (7) An LEA shall restrict access to survey responses in accordance with the LEA's written policies, Board rule, or state and federal laws.

KEY: school climate survey, school safety
Date of Enactment or Last Substantive Amendment: 2020
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-401(4); 53G-8-802(2)(i)

NOTICE OF PROPOSED RULE			
TYPE OF RULE: Amendment			
Utah Admin. Code Ref (R no.):	R277-800	Filing No.	52458

Agency Information

1. Department:	Education		
Agency:	Administration		
Street address:	250 E 500 S		
City, state:	Salt Lake City, UT		
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:
Utah Schools for the Deaf and the Blind
3. Purpose of the new rule or reason for the change:
Revisions to Rule R277-800 are required as a result of recent changes made in H.B. 409, Changes to the Utah Schools for the Deaf and Blind, passed in the 2019 General Session.
4. Summary of the new rule or change:
These rule amendments update definitions and update Utah School for the Deaf and Blind (USDB) reporting requirements to USBE as required by H.B. 409 (2019).

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
These rule changes are not expected to have an independent fiscal impact on state government revenues

or expenditures. H.B. 409 (2019) amended various provisions related to the USDB. These rule changes address changes in H.B. 409 (2019), as well as aligns definitions and provisions with existing rule, state statute, or federal law related to special education. Therefore, these rule changes do not have an independent fiscal impact, outside of these factors.

B) Local governments:

These rule changes are not expected to have an independent fiscal impact on local governments' revenues or expenditures. These rule changes address changes in H.B. 409 (2019), as well as aligns definitions and provisions with existing rule, state statute, or federal law related to special education. Therefore, these rule changes do not have an independent fiscal impact, outside of these factors.

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

These rule changes are not expected to have an independent fiscal impact on small businesses' revenues or expenditures. These rule changes address changes in H.B. 409 (2019), as well as aligns definitions and provisions with existing rule, state statute, or federal law related to special education. Therefore, these rule changes do not have an independent fiscal impact, outside of these factors.

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

These rule changes are expected to have an independent fiscal impact on non-small businesses' revenues or expenditures. These rule changes address changes in H.B. 409 (2019), as well as aligns definitions and provisions with existing rule, state statute, or federal law related to special education. Therefore, these rule changes do not have an independent fiscal impact, outside of these factors.

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 an independent fiscal impact for persons other than small businesses, businesses, or local government entities. These rule changes address changes in H.B. 409 (2019), as well as aligns definitions and provisions with existing rule, state statute, or federal law related to special education. Therefore, these rule changes do not have an independent fiscal impact, outside of these factors.

F) Compliance costs for affected persons:

There are no independent compliance costs for affected persons. These rule changes address changes in H.B.

409 (2019), as well as aligns definitions and provisions with existing rule, state statute, or federal law related to special education. Therefore, these rule changes do not create independent compliance costs for affected persons.

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

Regulatory Impact Table			
Fiscal Cost	FY2020	FY2021	FY2022
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head approval of regulatory impact analysis:

Sydnee Dickson, State Superintendent, 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 it does 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	Section 402	53E-8-	Subsection 3-401(4)
Section 204	53E-8-	Section 409	53E-8-204(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: 01/31/2020

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:	Angie Stallings, Deputy Superintendent of Policy	Date:	12/13/2019
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R277. Education, Administration.
R277-800. Utah Schools for the Deaf and the Blind.
R277-800-1. Authority and Purpose.

- (1) This rule is authorized by:
 - (a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;
 - (b) Section 53E-8-204 which authorizes the Board to make rules regarding the administration of the Utah Schools for the Deaf and the Blind;

(c) Subsection 53E-8-204(3), which directs the Board to appoint Advisory Council members;

(d) Section 53E-8-402, which directs the Board to establish entrance policies and procedures to be considered, consistent with the IDEA, for student placement recommendations at the USDB;

(e) Section 53E-8-409, which directs the Board to establish the USIMAC and outline collaboration and operating procedures for USIMAC and USDB resources; and

(f) 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 standards and procedures for the operation of the USDB and the USDB outreach programs and services.

R277-800-2. Definitions.

(1) "Accessible media producer" means a company or agency that creates fully-accessible, specialized, student-ready formats for curriculum materials, such as:

- (a) Braille;
- (b) large print;
- (c) audio books; or
- (d) digital books.

(2) "Advisory Council" means the Advisory Council for the Utah Schools for the Deaf and the Blind appointed by the Board in accordance with Subsection 53E-8-204(3) and Section R277-800-4.

(3)(a) "Assessment" means the process of documenting, usually in measurable terms, knowledge, skills, attitudes and abilities pertaining to the fields of vision and hearing.

(b) An assessment may include the following areas of focus:

(i) a valid, reliable and appropriate assessment given to determine eligibility for placement and services by a team of qualified professionals and a student's parent or guardian;

(ii) a functional assessment accomplished by observation and measurement of daily living skills and functional use of vision or hearing, or both; and

(iii) academic evaluations as part of the ~~Utah Performance Assessment System for Students (U-PASS)~~ Statewide School Accountability System, including an alternate assessment with appropriate accommodations as indicated on a student's IEP.

(4)(a) "Campus-based program" means a program provided by USDB that offers an alternative to an outreach program for students, ages three to 22, who are blind or visually impaired, deaf or hard of hearing, or deafblind.

(b) Under a campus-based program, services are provided by qualified USDB staff at a USDB site.

(5)(a) "The Chafee Amendment to the Copyright Act" or the "Chafee Amendment" is a federal law, 17 U.S.C. 121, that allows an authorized entity to reproduce or distribute copyrighted materials in specialized formats for students who are blind or have other print disabilities without the need to obtain permission of the copyright owner.

(b) Authorized entities under the Chafee Amendment include governmental or nonprofit organizations that have a primary mission to provide copyrighted works in specialized formats for students who are blind or have other print disabilities.

(6) "Child Find" means activities and strategies designed to locate, evaluate, and identify individuals eligible for services under the IDEA.

(7) "Consultation" means a meeting for discussion or seeking advice.

(8) "Designated LEA" means the local education agency assigned by a student's IEP or Section 504 team to have primary responsibility for ensuring that all rights and requirements regarding individual student assessment, eligibility services and procedural safeguards are satisfied consistent with the IDEA.

(9) "Deafblindness" or "deafblind" means written verification provided by a medical professional stating that an individual has concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for students with deafness or students with blindness.

(10) "Deafness" is a hearing impairment that is so severe that the student is impaired in processing linguistic information through hearing, with or without amplification, and that adversely affects a student's educational performance.

(11) "Educational Resource Center" or "ERC" is a center under the direction of the USDB that:

(a) provides information, technology, and instructional materials to assist children who are deaf, hard of hearing, blind, visually impaired, and deafblind in progressing in the curriculum; and

(b) facilitates access to materials, information, and training for teachers and parents of children who are deaf, hard of hearing, blind, visually impaired, and deafblind.

(12) "Extension classroom" means a classroom provided by an LEA where USDB provides a full-time classroom teacher and related services to students who remain enrolled in the LEA's general education programs.

(13) "Hearing loss" is an impairment in hearing, whether permanent or fluctuating, that adversely affects a student's educational performance, but that is not included under the definition of deafness.

(14) "National Instructional Materials Access Center" or "NIMAC" is a central national repository that receives file sets in the NIMAS from publishers to maintain, catalogue, and house for future reference file sets for states to use with students who have print disabilities and require accessible alternate formats.

(15) "National Instructional Materials Accessibility Standard" or "NIMAS" means the electronic standard that enables all producers of alternate formats for students with print disabilities to work from one standard format available from publishers for this purpose.

(16)(a) "Outreach program" is a program provided by the USDB that offers an alternative to a campus-based program for students ages three to 22 who are blind or visually impaired, deaf or hard of hearing, or deafblind.

(b) In an outreach program, services are provided at a student's resident school or at a designated school by a qualified teacher of the blind or visually impaired, deaf or hard of hearing, or deafblind.

(17)(a) "Related services" means ~~those supportive services that are necessary for the appropriate implementation of an IEP~~ transportation and such developmental, corrective, and other supportive services as are required to assist a student with disability to benefit from special education.

(b) Related services may include ~~but are not limited to~~:

- (i) speech-language pathology services;
- (ii) audiology services;
- (iii) interpreting services;

- ~~(iv) psychological services;~~
- ~~(v) physical and occupational therapy;~~
- ~~(vi) recreation, including therapeutic recreation;~~
- ~~(vii) early identification and assessment of disabilities in students;~~
- ~~(iii) low vision services;~~
- ~~(iv) orientation and mobility;~~
- ~~(viii) [school] counseling services, including rehabilitation counseling;~~
- ~~(ix) orientation and mobility services;~~
- ~~(vi) transportation;~~
- ~~(vii) health services and school nursing services;~~
- ~~(xi) social work services in schools;~~
- ~~(xii) parent counseling and training; or~~
- ~~(viii) occupational therapy; or~~
- ~~(ix) physical therapy]~~
- ~~(xi) low vision services.~~

(18) "Section 504 accommodation plan" means a plan required by Section 504 of the Rehabilitation Act of 1973, which is 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) "Technical assistance" means assistance to public education employees, licensed educators, parents, and families in significant areas of need by someone who has the expertise necessary to give council and training in designated areas.

(20) "USDB" means the Utah Schools for the Deaf and the Blind.

(21) "Utah State Instructional Materials Access Center" or "USIMAC" means a center that receives NIMAS electronic file sets and produces them in the accessible alternate format required by students with print disabilities.

(22)(a) "Visual impairment," is an impairment in vision that, even with correction, adversely affects a student's educational performance.

(b) "Visual impairment" includes both partial sight and blindness that adversely affect a student's educational performance.

(23) "Weighted pupil unit" or "WPU" means the basic unit used to calculate the amount of state funds for which a school district or charter school is eligible.

R277-800-3. Operation of USDB.

(1) Consistent with Section 53E-8-204, the Board is the governing board of the USDB.

(2) The USDB superintendent, appointed consistent with Subsection 53E-8-204(2), is subject to the direction of the Board and the Superintendent.

(3) The USDB superintendent shall serve subject to the following:

(a) the USDB superintendent's term of office is for two years and until a successor is appointed;

(b) the Board shall set the USDB superintendent's compensation for services;

(c) the USDB superintendent shall have, at a minimum, an annual evaluation, as directed by the Board;

(d) the USDB superintendent qualifications shall be established by the Board; and

(e) the duties of the USDB superintendent shall be established by the Board.

(4) The Superintendent shall support, provide assistance, and work cooperatively with the USDB in providing services to designated Utah students.

(5) The Superintendent shall assign a liaison to provide appropriate supervision to the USDB to ensure compliance with the law.

(6) The Superintendent shall assist the USDB, its superintendent, and associate superintendents in adopting policies and preparing an annual budget that are consistent with the law.

(7) The Board shall approve the annual budget and expenditures of USDB.

(8)(a) The USDB superintendent shall, subject to the approval of the Board, appoint an associate superintendent to administer the Utah School for the Deaf and an associate superintendent to administer the Utah School for the Blind.

(b) Qualifications of a USDB associate superintendent shall be aligned with the requirements of Section 53E-8-204.

(9)(a) The USDB superintendent and associate superintendents may hire staff and teachers as needed for the USDB.

(b) Educators and related service providers shall be appropriately licensed and credentialed for their specific assignments.

(10) In employment practices and decisions, the ~~USDB and the~~ USDB superintendent shall maintain the accreditation of the USDB school and programs.

(11) The USDB superintendent and associate superintendents shall communicate regularly and effectively with the Board and provide a written report to the Board at least annually in adequate time prior to the November legislative interim meeting, or at such other time as requested by the Board.

(12) The USDB report shall ~~contain:~~

~~(a) a financial report;~~

~~(b) a report on the activities of the superintendent and associate superintendents;~~

~~(c) a report on activities to involve parents and constituency, including LEA personnel and advocacy groups, in the governance of the school and implementation of service delivery plans for students who are deaf, hard of hearing, blind, visually impaired, and deafblind; and~~

~~(d) a report on student achievement, including student achievement data, that provides:~~

~~(i) longitudinal data for both current and previous students served by USDB;~~

~~(ii) graduation rates; and~~

~~(iii) students exiting USDB and their educational placements after exiting]~~include the data required by Subsection 53E-8-204(6).

(13) USDB shall ensure that each child or student served by USDB is assigned a unique student identifier (SSID) to allow for annual data collection and reporting of achievement of current and past students.

(14) USDB shall provide the Superintendent with a listing of past and current children or students, including the assigned unique student identifier, served by USDB by September 1 of each year to facilitate the required data collection.

R277-800-4. USDB Advisory Council and Community Council.

(1) The Board shall establish the Advisory Council for USDB and appoint Advisory Council members as directed in Section 53E-8-204.

(2) The Advisory Council shall have not more than 11 Board-appointed voting members and shall include members as qualified under Section 53E-8-204.

(3)(a) Advisory Council members shall serve two year terms and members may serve no more than three consecutive terms.

(b) Notwithstanding, Subsection (3)(a), advisory Council members serve at the pleasure of the Board.

(4) If an Advisory Council member resigns or is asked to resign, the Board shall appoint another member in a timely manner after seeking nominations.

(5) The Board shall assist the Advisory Council in developing and passing by-laws establishing procedures for:

(a) nominating Advisory Council members;

(b) recommending dismissal of Advisory Council members;

(c) ethical standards for Advisory Council members; and

(d) operation of the Advisory Council.

(6) Advisory Council bylaws may allow for representation on the Advisory Council of constituencies within the USDB community.

(7) The USDB shall establish a community council to operate in a comparable manner to a school community council under Section 53G-7-1202 through 53G-7-1203 [-]and Rule R277-491.

(8) Members of the Advisory Council may serve as school community council members.

(9) The USDB school community council and election process shall be the same as for a district school in Section 53G-7-1202 and Rule R277-491.

(10) The USDB may implement electronic voting and consider encouraging school community council participation through electronic meetings and technology that facilitate participation of parents of USDB students.

R277-800-5. USDB or Student's District of Residence/Charter School as Designated LEA.

(1) To be eligible to receive free services from the USDB, a student must meet the requirements of Section 53E-8-401.

(2)(a) A student's IEP or Section 504 accommodation plan shall determine a student's placement at the USDB, in a district school or charter school.

(b) USDB shall limit its services for students who are school-age to those on an IEP or Section 504 accommodation plan.

(3) Consistent with Subsection 53E-8-401(3), an IEP team or Section 504 team shall determine the appropriate placement for each blind, deaf or deafblind student consistent with Board Special Education Rules incorporated by reference in Section R277-750-2.

(4)(a) It is the responsibility of the student's district of residence or charter school to conduct Child Find, and to convene the initial IEP or Section 504 team meeting in order to determine a student's placement.

(~~a~~)b) A student's initial IEP or Section 504 accommodation plan meeting shall include a representative from the student's district of residence or charter school and a representative from the USDB. [

~~(b) An LEA shall defer, where appropriate, to the parental preference in the IEP or Section 504 accommodation plan process consistent with Subsection 53E-8-401(3)(c).~~

~~(c) Notwithstanding, Subsection (4)(b), in compliance with the IDEA, the final placement decision, as documented on the IEP or Section 504 accommodation plan, shall document a free appropriate public education for the student and shall not be determined solely by parental preference.]~~

(5)(a) If USDB is the designated LEA for a student, USDB has full responsibility for all services defined in the student's IEP or Section 504 accommodation plan.

(b) Notwithstanding USDB's designation as LEA for a student, a representative from the district of residence or charter school remains a required member of the IEP or Section 504 accommodation plan team.

(6) If a district of residence or charter school is the LEA designated to provide services to a student with an IEP or Section 504 accommodation plan, the district of residence or charter school has the responsibility for providing instruction and services for the student except that the USDB:

(a) may be designated by the team as a related service provider; and

(b) remains a required member of the student's IEP or 504 accommodation plan team.

(7) A student's IEP or Section 504 accommodation plan shall clearly define what services are to be provided by a related service provider.

(8) The IEP or Section 504 accommodation plan team shall determine the designated LEA for student placement.

(9) If a parent is dissatisfied with a student's placement at USDB, the student's district of residence, or charter school, the parent may access dispute resolution procedures, consistent with Utah State Board of Education Special Education Rules, adopted by the Board in Section R277-750-2

(10) If a student's IEP or Section 504 accommodation plan provides for services to be provided by both the USDB and the student's district of residence, or for the USDB and district of residence to share responsibility for serving a student, a parent may access dispute resolution procedures consistent with Utah State Board of Education Special Education Rules, adopted by the Board in Section R277-750-2.

R277-800-6. Assessment of USDB Students Served in LEAs of Residence.

(1) An appropriate specialist shall assess a student who may be deaf, hard of hearing, blind, visually impaired, or deafblind using statewide assessment results and in compliance with Board rule and state and federal law.

(2) The USDB shall establish an assessment policy and guidelines to implement required assessments, which address:

(a) appropriate, complete, and timely evaluations of students;

(b) procedures for administration of assessments in addition to those required by the law, as determined by IEPs, Section 504 accommodation plans, and individual teachers;

(c) complete and accurate required assessments available to eligible students consistent with state and LEA assessment timelines and availability of materials for non-disabled students;

(d) staff professional development and preparation on appropriate administration of assessments and reporting of assessment results; and

(e) procedures to ensure appropriate interpretation and use of assessments and results for parents and USDB personnel.

R277-800-7. Extension Classrooms.

(1) The USDB and an LEA may negotiate to share the costs for providing more efficient, cost-effective, and convenient services to students who are deaf, blind, or deafblind in extension classrooms in locations other than the USDB campus.

(2) If the USDB and an LEA enter into an agreement in accordance with Subsection (1), the LEA shall provide:

- (a) classrooms;
- (b) basic instructional materials;
- (c) physical education, music, media, school lunch, and other programs and services, consistent with those programs and services provided to other students within the LEA;
- (d) administrative support;
- (e) basic secretarial services;
- (f) special education and related services; and
- (g) IT support.

(3) If the USDB and an LEA enter into an agreement in accordance with Subsection (1), the USDB shall provide:

- (a) classroom instructors, including aides; and
- (b) instructional materials specific to the disability of the students.

(4) An agreement pursuant to Subsection (1) may reassign the responsibilities of the USDB and a school district or charter school as negotiated between the LEA and the USDB.

(5) An LEA shall claim the state WPU if the LEA provides all items or services identified in Subsection (2).

R277-800-8. USDB Fiscal Procedures.

(1) The USDB shall keep fiscal, program, and accounting records as required by the Board and shall submit reports required by the Board.

(2) The USDB shall follow state standards for fiscal procedures, auditing, and accounting, consistent with Subsection 53E-8-203(3).

(3) The USDB is a public state entity under the direction of the Board and as such is subject to state laws and exemptions consistent with Section 53E-8-203.

(4)(a) The USDB shall prepare and present an annual budget to the Board that includes no more than a five percent carryover of any one fund, including reimbursement funds from federal programs.

(b) The five percent carryover prohibition does not apply to funds received under Section 53F-2-404 and Section 12 of the Utah Enabling Act.

(5)(a) The Superintendent shall recover federal reimbursement funds (IDEA and Medicaid) quarterly during the year.

(b) The Superintendent shall identify reimbursement amounts in the current year's budget, but in no event later than the subsequent year's budget.

(6)(a) The USDB shall use the revenue from the federal trust land grant designated for the benefit of the blind and the deaf, solely for the benefit of deaf, blind, and deafblind students.

(b) The recommended or designated use of federal trust land funds is subject to review by the Board.

R277-800-9. Utah State Instructional Materials Access Center.

(1) The USIMAC shall produce core instructional materials in alternative formats to ensure that all students with print disabilities qualified under the Chafee Amendment receive their materials in a timely manner.

(2) The USIMAC shall provide materials for all students[] with print disabilities who are qualified under the Chafee Amendment or otherwise eligible through an IEP or Section 504 accommodation plan.

(3) The Superintendent shall oversee the operations of the USIMAC.

(4) The USDB is the fiscal agent and operates the USIMAC to the extent of funds received annually from the Utah Legislature and the Board.

(5) An LEA may purchase accessible instructional materials using the LEA's own funding or request the production of accessible instructional materials in alternate formats from the USIMAC in accordance with established opt in procedures to ensure timely access for students with print disabilities.

(6) USIMAC shall provide a textbook in an alternate format by the beginning of the school year if requested no later than April 1 of the preceding school year by an LEA.

(7) The USDB ERC shall serve as the repository and distribution center for the USIMAC.

(8) A student qualifies for accessible instructional materials from the USIMAC, including Braille, audio, large print, or digital formats following an LEA determination that the student has a print disability in accordance with:

- (a) the Chafee Amendment;
- (b) IDEA; or
- (c) Section 504 of the Rehabilitation Act.

(2)(a) An LEA may request textbooks for blind, vision impaired or deafblind students served by the USDB or the LEA consistent with a student's IEP or Section 504 accommodation plan.

(b)(i) When an LEA requests a core instructional textbook the USIMAC shall conduct a search for the textbook within existing resources, and if the textbook is available, the USIMAC shall send the textbook to the ERC for distribution to the LEA.

(ii) If a textbook is not available within existing resources, the USIMAC will conduct a search to determine if the textbook is available for purchase through another source.

(iii) If a textbook is available through the American Printing House for the Blind (APH), the USDB shall order the textbook using state acquired federal funds designated specifically for USIMAC materials and send the textbook to the ERC for distribution to the LEA.

(iv) If a textbook is not available from APH, but is available from another accessible media producer, the textbook shall be purchased and sent to the ERC for distribution to the LEA.

(v) If a textbook is not available for purchase, the LEA shall provide a regular print hard copy of the textbook to the USIMAC, which shall then produce the textbook and send it to the ERC for distribution.[

~~(vi) The USIMAC shall produce a textbook in an LEA requested alternate format in accordance with the cost sharing outlined in a technical manual prepared by the Superintendent.~~

~~(e) The sharing of costs for purchases described in this R277 800 9 shall be outlined in a technical manual prepared by the Superintendent.]~~

(3)(a) All approved textbook contracts for the state of Utah for instructional materials published after August 2006 shall include a provision for making NIMAS file sets available through the NIMAC in accordance with the IDEA and Board Instructional Materials Contract timelines.

(b) If the USIMAC is unable to obtain the NIMAS file set from the NIMAC because the publisher fails to timely provide the NIMAS file set to the NIMAC in accordance with the IDEA and Board Instructional Materials Contract timelines, the USIMAC may:

(i) bill the textbook publisher the difference in the cost of producing the alternate format textbook without benefit of the NIMAS file set; or

(ii) request authorization from the Board to seek damages from the publisher for failure to meet contract provisions.

(c) The Superintendent shall advise publishers of the provisions of this Subsection (3).

(d) The Utah Instructional Materials Commission created under Rule R277-469 may not approve textbooks and materials from publishers that have a pattern of not providing materials and textbooks for students with disabilities in a timely manner, consistent with the law and Board rules.

(4)(a) An LEA may request and access audio books through the USIMAC, as appropriate, or through other sources.

(b) Membership required for other sources is the responsibility of the LEA designated as the responsible entity for serving the student in the IEP or Section 504 accommodation plan.

KEY: educational administration

Date of Enactment or Last Substantive Amendment: [September 21, 2017]2020

Notice of Continuation: July 19, 2017

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-401(4); 53E-8-204; 53E-8-402; 53E-8-409

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code Ref (R no.):	R307-110-32	Filing No.	52414
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Agency Information

1. Department:	Environmental Quality	
Agency:	Air Quality	
Room no.:	Fourth Floor	
Street address:	195 N 1950 W	
City, state:	Salt Lake City, UT	
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:
Section X, Vehicle Inspection and Maintenance Program, Part B, Davis County

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

The Utah Air Quality Board (Board) has proposed for public comment amended Utah State Implementation Plan, Section X, Part B. As a result, Section R307-110-32, which incorporates Section X, Part B, into this rule, must be amended to change the Board adoption date to

the anticipated adoption date of the amended plan.
4. Summary of the new rule or change:
Section R307-110-32 is amended by changing the date of the last adoption by the Air Quality Board to 03/04/2020.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

This rule change is not expected to have any fiscal impact on the state budget.

B) Local governments:

This rule change is not expected to have any fiscal impact on local governments.

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.

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 or expenditures because each county implements their own Inspection and Maintenance program. This rule only incorporates those existing plans into the State Implementation Plan.

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

This rule change is not expected to have any fiscal impact on persons other than small businesses, non-small businesses, state, or local government entities.

F) Compliance costs for affected persons:

This rule change will not have a compliance cost for affected persons.

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

Regulatory Impact Table			
Fiscal Cost	FY2020	FY2021	FY2022
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0

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

H) Department head approval of regulatory impact analysis:

The interim executive director of the Department of 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:

After conducting a thorough analysis, it was determined that this proposed rule amendment will not result in a fiscal impact to businesses.

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

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):

Subsection 19-2-104(1)(a)

Incorporations by Reference Information

(If this rule incorporates more than two items by reference, please include additional tables.)

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

	First Incorporation
Official Title of Materials Incorporated (from title page)	Utah State Implementation Plan Section X, Vehicle Inspection and Maintenance Program, Part B, Davis County
Publisher	Utah Division of Air Quality

Issue, or version	03/04/2020
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Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until: 02/03/2020

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

On:	At:	At:
02/03/2020	10:00 AM	Multi Agency State Office Building, Division of Air Quality, 195 N 1950 W, Fourth Floor, Salt Lake City, UT

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:	11/20/2019
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R307. Environmental Quality, Air Quality.

R307-110. General Requirements: State Implementation Plan.

R307-110-32. Section X, Vehicle Inspection and Maintenance Program, Part B, Davis County.

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part B, Davis County, as most recently amended by the Utah Air Quality Board on March 4, 2020, [~~December 5, 2012~~], pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

KEY: air pollution, PM10, PM2.5, ozone

Date of Enactment or Last Substantive Amendment: [~~September 5, 2019~~]**2020**

Notice of Continuation: January 27, 2017

Authorizing, and Implemented or Interpreted Law: 19-2-104

NOTICE OF PROPOSED RULE			
TYPE OF RULE: Amendment			
Utah Admin. Code Ref (R no.):	R307-110-35	Filing No. 52415	

Agency Information

1. Department:	Environmental Quality		
Agency:	Air Quality		
Room no.:	Fourth Floor		
Street address:	195 N 1950 W		
City, state:	Salt Lake City, UT		
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:
Section X, Vehicle Inspection and Maintenance Program, Part E, Weber County
3. Purpose of the new rule or reason for the change:
The Utah Air Quality Board (Board) has proposed for public comment amended Utah State Implementation Plan, Section X, Part E. As a result, Section R307-110-35, which incorporates Section X, Part E, into this rule, must be amended to change the Board adoption date to the anticipated adoption date of the amended plan.
4. Summary of the new rule or change:
Section R307-110-35 is amended by changing the date of the last adoption by the Air Quality Board to 03/04/2020.

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
This rule change is not expected to have any fiscal impact on the state budget.
B) Local governments:
This rule change is not expected to have any fiscal impact on local governments.
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.

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 or expenditures because each county implements their own Inspection and Maintenance program. This rule only incorporates those existing plans into the State Implementation Plan.

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

This rule change is not expected to have any fiscal impact on persons other than small businesses, non-small businesses, state, or local government entities.

F) Compliance costs for affected persons:

This rule change will not have a compliance cost for affected persons.

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

Regulatory Impact Table			
Fiscal Cost	FY2020	FY2021	FY2022
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head approval of regulatory impact analysis:

The interim executive director of the Department of 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:

After conducting a thorough analysis, it was determined that this proposed rule will not result in a fiscal impact to businesses.

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):

Subsection 19-2-104(1)(a)		
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Incorporations by Reference Information

(If this rule incorporates more than two items by reference, please include additional tables.)

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

	First Incorporation
Official Title of Materials Incorporated (from title page)	Utah State Implementation Plan Section X, Vehicle Inspection and Maintenance Program, Part E, Weber County
Publisher	Utah Division of Air Quality
Issue, or version	03/04/2020

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until: 02/03/2020

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

On:	At:	At:
02/03/2020	10:00 AM	Multi Agency State Office Building, Division of Air

		Quality, 195 N 1950 W, Fourth Floor, Salt Lake City, UT
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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:	11/20/2019
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R307. Environmental Quality, Air Quality.

R307-110. General Requirements: State Implementation Plan. R307-110-35. Section X, Vehicle Inspection and Maintenance Program, Part E, Weber County.

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part E, Weber County, as most recently amended by the Utah Air Quality Board on March 4, 2020, [~~December 5, 2012,~~] pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

KEY: air pollution, PM10, PM2.5, ozone

Date of Enactment or Last Substantive Amendment: [~~September 5, 2019~~]2020

Notice of Continuation: January 27, 2017

Authorizing, and Implemented or Interpreted Law: 19-2-104

NOTICE OF PROPOSED RULE

TYPE OF RULE: New			
Utah Admin. Code Ref (R no.):	R384-418	Filing No.	52465

Agency Information

1. Department:	Health
Agency:	Disease Control and Prevention, Health Promotion
Building:	Cannon Health Building
Street address:	288 N 1460 W
City, state:	Salt Lake City, UT 84116
Mailing address:	PO Box 142102
City, state, zip:	Salt Lake City, UT 84114
Contact person(s):	
Name:	Phone: Email:

Braden Ainsworth	801-538-6187	tobaccorulescomments@utah.gov
Christy Cushing	801-538-6260	tobaccorulescomments@utah.gov

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

General Information

2. Rule or section catchline:

Electronic-Cigarette Mandatory Nicotine Warning Signage and Sale Restrictions

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

The purpose of proposed new Rule R384-418 is to create a new distinct rule to inform youth, parents, and the general public that vaping nicotine can cause addiction and harm the developing brain, as stated by the US Surgeon General. In addition, the proposed new administrative rule restricts youth access to flavored electronic-cigarette products and flavored electronic-cigarette substances by only allowing them to be displayed and sold in age-restricted retail tobacco specialty businesses. Utah adult electronic-cigarette consumers will be able to continue to purchase flavored electronic-cigarette products and flavored electronic-cigarette substances at age-restricted retail tobacco specialty businesses. General tobacco retailers will still be allowed to continue to sell non-flavored electronic-cigarette products and non-flavored electronic-cigarette substances if the required mandatory nicotine warning signs are displayed.

Youth and young adults use flavored tobacco products more than other age groups. Additionally, flavored products are often the first tobacco product youth and young adults use. Bright colors and enticing flavors make these products appear less harmful and more appealing, especially to those who have not previously used tobacco products. The use of electronic-cigarette products among youth continues to increase, which is a cause for concern for two reasons; first, the high levels of nicotine contained in many electronic-cigarettes can damage the developing adolescent brain; and second, research has shown that electronic-cigarette use in youth can lead to traditional tobacco and other substance use later in life.

According to the US Surgeon General, "E-cigarette use poses a significant – and avoidable – health risk to young people in the United States. Besides increasing the possibility of addiction and long-term harm to brain development and respiratory health, e-cigarette use is associated with the use of other tobacco products that can do even more damage to the body. Even breathing e-cigarette aerosol that someone else has exhaled poses potential health risks."

Despite having the lowest youth smoking rate in the United States, use of electronic-cigarette products among Utah's youth continues to increase. Since 2011, Utah's youth electronic-cigarette product use rate has grown from 1.9% to 12.4% in 2019, which is a 553% relative increase over the past 8 years. 2019 SHARP data show that approximately 24% of Utah teens, ages 13-18, (or more than 70,000 teens) have tried electronic-cigarettes or vape products. Utah youth are more than twice as likely to vape as Utah adults. Utah adult electronic-cigarette product use rose from 2% in 2011 to 5.6% in 2018, which is a 180% relative increase.

In a 2018 Utah Department of Health (UDOH) survey about tobacco policies nearly 70% of Utah adults supported a policy that would restrict the sale of flavored vape products.

Restricting the sale of flavored electronic-cigarette products and flavored electronic-cigarette substances to age-restricted retail tobacco specialty businesses, limits access to these products to 10% of Utah's tobacco retail businesses or approximately 170 of Utah's nearly 1,700 total tobacco retailers.

4. Summary of the new rule or change:

The proposed new administrative Rule R384-418 requires all tobacco retailers to display mandatory nicotine warning signs. In addition, the proposed new administrative Rule R384-418 restricts the sale of flavored electronic-cigarette products and flavored electronic-cigarette substances to age-restricted retail tobacco specialty businesses which account for 10% or approximately 170 of Utah's nearly 1,700 total tobacco retailers.

Effective Tuesday March 31, 2020 only tobacco retailers displaying the mandatory nicotine warning signs will be allowed to sell electronic-cigarette products and electronic-cigarette substances in Utah. In addition, general tobacco retailers will no longer be allowed to sell flavored electronic-cigarette products and flavored electronic-cigarette substances.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

The proposed new administrative Rule R384-418 is not anticipated to impact the state budget. Using existing allocated resources, UDOH plans to create, print, and distribute the required mandatory nicotine warning signs that inform youth, parents, and the general public that nicotine exposure can cause addiction and harm the developing brain, electronically through a digital download, by mail, or through local health departments.

B) Local governments:

The proposed new administrative Rule R384-418 is not

anticipated to impact the local governments' budgets, as local health departments will continue to conduct retail observations and investigations in accordance with respective state tobacco control laws, state administrative rules, and local health department regulations.

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

The proposed new administrative Rule R384-418 may result in a direct cost to small businesses that employ fewer than 49 employees and choose to sell electronic-cigarette products or electronic-cigarette substances.

As of June 30, 2019, according to UDOH combined local health department tobacco retail compliance check logs cross-referenced with Utah Department of Workforce Services (DWS) Firm Find Data, there are approximately 1,300 small businesses that sell tobacco products in Utah or approximately 79% of Utah tobacco retailers. Some of these businesses currently do not sell electronic-cigarette products or electronic-cigarette substances or have indicated that they will discontinue the sale of electronic-cigarette products or electronic-cigarette substances. In October 2019, Walgreens and Dollar General publicly announced they are no longer going to sell electronic-cigarette products, including electronic-cigarette substances. According to DWS Firm Find Data, individual Walgreens stores and Dollar General stores both employ fewer than 49 employees. These stores account for approximately 60 individual small businesses operating in Utah with tobacco licensing and tobacco permits.

The proposed new administrative Rule R384-418 may result in a direct fiscal benefit to small businesses that primarily rely on the sale of tobacco products (retail tobacco specialty businesses) and operate under the NAICS codes of 453991, 424940 and 453998.

Other small businesses that may sell tobacco products among other products they choose to sell include civic and social organizations, convenience stores, gas stations with convenience stores, other gasoline stations, general merchandise and discount stores, pharmacies, gift, novelty and souvenir stores, and hotels or businesses that operate under NAICS codes 813410, 445120, 447110, 447190, 452319, 446110, 453220, 721110.

The enactment of Utah Code Title 26, Chapter 62, effective July 1, 2018, required all retailers that advertise, offer for sale, display, and sell tobacco products to apply and certify to be permitted as either a general tobacco retailer or a retail tobacco specialty business by January 1, 2019. Local health departments issued said permits depending on whether individual tobacco retailers paid associated fees and met the regulatory requirements for their retail business operations and/or their geographic location with respective state tobacco control laws, state administrative rules, and local health department

regulations. All of Utah's permitted retail tobacco specialty businesses are considered small businesses.

A review of the UDOH combined local health department tobacco retail compliance check logs cross-referenced with DWS Firm Find Data indicates that seventy-six percent (76%) of tobacco retailers, excluding retail tobacco specialty businesses, are considered small businesses. Effective March 31, 2020, general tobacco retailers will no longer be able to sell flavored electronic-cigarette products and flavored electronic-cigarette substances, and thus these businesses will experience a direct fiscal cost.

The effective date of the proposed new rule and flavor restriction is March 31, 2020, which is 90 calendar days from the date of publication of the proposed rule in the Utah State Bulletin. The 90 calendar days' notice of the flavor restriction policy may reduce the direct fiscal cost impact on existing general tobacco retailers. The 90 calendar days allows time for existing small businesses permitted as general tobacco retailers to sell their current inventory of flavored electronic-cigarette product and flavored electronic-cigarette substance and avoid restocking new flavored electronic-cigarette product and electronic-cigarette substances.

In accordance with Utah Code, the small businesses permitted as general tobacco retailers cannot gross more than 34% of their quarterly gross receipts from tobacco products, which includes electronic-cigarette products, electronic-cigarette substances and tobacco paraphernalia, as defined in Utah Code Subsection 26-62-102(9). In addition, in accordance to Utah Code Subsection 10-8-41.6(1)(e) and Utah Code Subsection 17-50-333(1)(e), general tobacco retailers cannot use more than 19% of their public retail floor space and no more than 19% of their total shelf space to offer, display, store tobacco products. The statutory requirements for small businesses permitted as general tobacco retailers prevent them from earning a substantial portion of their revenue from tobacco products, therefore mitigating the negative fiscal effects of the proposed new administrative rule on their current business operations.

Flavored electronic-cigarette products and flavored electronic-cigarette substances may account for one of the many products that a general tobacco retailer can choose to sell.

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

The proposed new administrative Rule R384-418 may result in a direct cost to non-small businesses that employ more than 50 employees and choose to sell electronic-cigarette products or electronic-cigarette substances.

As of June 30, 2019, according to UDOH combined local health department tobacco retail compliance check logs cross-referenced with DWS Firm Find Data, there are

approximately 350 non-small businesses that sell tobacco products in Utah. Some of these businesses currently do not sell electronic-cigarette products or electronic-cigarette substances or have indicated that they will discontinue the sale of electronic-cigarette products or electronic-cigarette substances. In October 2019, Kroger (Smiths), Costco Wholesale, Rite Aid (which owns Thrifty Payless), Sam's Club, and Walmart announced they are no longer going to sell electronic-cigarette products, including electronic-cigarette substances. According to DWS Firm Find Data, individual Kroger (Smiths), Costco Wholesale, Rite Aid (which owns Thrifty Payless), Sam's Club, and Walmart, all employ more than 50 employees. These stores account for approximately 140 individual non-small businesses operating in Utah with tobacco licensing and tobacco permits.

Non-small businesses that may sell tobacco products among other products include convenience stores, gas stations with convenience stores, other gasoline stations, and grocery stores and supermarkets, or businesses that operate under NAICS codes 445120, 447110, 447190, 445110.

The enactment of Utah Code Title 26, Chapter 62, effective July 1, 2018 required all retailers that advertise, offer for sale, display, and sell tobacco products to apply and certify to be permitted as either a general tobacco retailer or a retail tobacco specialty business by January 1, 2019. Local health departments issued said permits depending on whether individual tobacco retailers paid associated fees and met the regulatory requirements for their retail business operations and/or their geographic location with respective state tobacco control laws, state administrative rules, and local health department regulations.

A review of the UDOH combined local health department tobacco retail compliance check logs cross-referenced with DWS Firm Find Data indicates that all non-small businesses that sell tobacco products are general tobacco retailers.

Effective March 31, 2020, general tobacco retailers will no longer be able to sell flavored electronic-cigarette products and flavored electronic-cigarette substances, thus these businesses will experience a direct fiscal cost. If general tobacco retailers display the mandatory nicotine warning signs, these businesses will be allowed to continue to sell non-flavored electronic-cigarette products and non-flavored electronic-cigarette substances.

The effective date of the proposed new rule and flavor restriction is March 31, 2020, which is 90 calendar days from the date of publication of the proposed rule in the Utah State Bulletin. The 90 calendar days' notice of the flavor restriction policy may reduce the direct fiscal cost impact on existing general tobacco retailers. The 90 calendar days allows time for existing non-small businesses permitted as general tobacco retailers to sell their current inventory of flavored electronic-cigarette

product and flavored electronic-cigarette substance and avoid restocking new flavored electronic-cigarette product and electronic-cigarette substances.

In accordance with Utah Code, the non-small businesses permitted as general tobacco retailers cannot gross more than 34% of their quarterly gross receipts from tobacco products, which includes electronic-cigarette products, electronic-cigarette substances, and tobacco paraphernalia, as defined in Utah Code Subsection 26-62-102(9). In addition, in accordance to Utah Code Subsection 10-8-41.6(1)(e) and Utah Code Subsection 17-50-333(1)(e), general tobacco retailers cannot use more than 19% of their public retail floor space and no more than 19% of their total shelf space to offer, display, store tobacco products. The statutory requirements for non-small businesses permitted as general tobacco retailers prevent them from earning a substantial portion of their revenue from tobacco products, therefore mitigating the negative fiscal effects of the proposed rule on their current business operations.

Flavored electronic-cigarette products and flavored electronic-cigarette substances may account for one of the many products that a general tobacco retailer can choose to sell.

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

The proposed new administrative Rule R384-418 may result in an indirect cost or indirect benefit to persons, which can include both electronic-cigarette consumers and individuals who work for small businesses or non-small businesses that sell electronic-cigarettes.

According to Utah's Public Health Indicator Based Information System (IBIS-PH), as of 2018, Utah's adult population over the age of 19 was 2,179,421. Based on UDOH 2018 BFRSS data, the Utah adult smoking rate was 9.2% (approximately 200,000 smokers). Based on UDOH 2018 BFRSS data, the Utah adult vaping rate was 5.4% (approximately 120,000 vapors). Many Utahans who smoke also vape. The numbers listed are not mutually exclusive.

F) Compliance costs for affected persons:

The proposed new administrative Rule R384-418 may result in an indirect cost or indirect benefit to persons, which can include both electronic-cigarette consumers and individuals who work for small businesses or non-small businesses that sell electronic-cigarettes.

According to Utah's Public Health Indicator Based Information System (IBIS-PH), as of 2018, Utah's adult population over the age of 19 was 2,179,421. Based on UDOH 2018 BFRSS data, the Utah adult smoking rate was 9.2% (approximately 200,000 smokers). Based on

UDOH 2018 BFRSS data, the Utah adult vaping rate was 5.4% (approximately 120,000 vapors). Many Utahans who smoke also vape. The numbers listed are not mutually exclusive.

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

Regulatory Impact Table			
Fiscal Cost	FY2020	FY2021	FY2022
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head approval of regulatory impact analysis:

The executive director of the Department of 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:

The signage requirements will have no fiscal impact on businesses. Flavored e-cigarette product sales of most general retail stores represent a very small part of their business revenue. Stores which are not tobacco specialty stores are required to have less than 35% of their total sales revenue from all tobacco products which include non-flavored electronic-cigarette products. Even these most-impacted stores will likely see a decrease in revenue significantly less than the 34% of allowed tobacco product revenues.

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):

Subsection 26-1-30(3)	Subsection 26-1-30(4)
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Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until: 02/28/2020

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

On:	At:	At:
01/22/2020	09:00 AM – 11:00 AM	UDOH Cannon Building, Room 125, 288 N 1460 W, Salt Lake City, UT

10. This rule change MAY become effective on: 03/16/2020

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	Joseph Miner, MD, Executive Director	Date:	12/16/2019
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R384. Disease Control and Prevention, Health Promotion. R384-418. Electronic-Cigarette Mandatory Nicotine Warning Signage and Sale Restrictions.

R384-418-1. Authority and Purpose.

(1) This rule is authorized by Section 26-1-30(3) and Section 26-1-30(4).

(2) The purpose of this rule is to promote and protect the health and wellness of the people within the state, by requiring mandatory nicotine warning signs that inform youth, parents and the general public that vaping nicotine can cause addiction and harm the developing brain and by restricting the display and sale of flavored

electronic-cigarette products and electronic-cigarette substances to age-restricted retail tobacco specialty businesses.

R384-418-2. Definitions.

As used in this rule:

(1) "Business" means any sole proprietorship, partnership, joint venture, corporation, association, or other entity formed for profit or non-profit purposes.

(2) "Department" means the Utah Department of Health.

(3) "Display" means to show, exhibit or make visible in a public manner or view.

(4) "Electronic-cigarette product" means an electronic cigarette or an electronic cigarette substance.

(5) "Electronic-cigarette substance" means any substance, including liquid containing nicotine, used or intended for use in an electronic cigarette.

(6) "General tobacco retailer" means a tobacco retailer that is not a retail tobacco specialty business.

(7) "Flavored electronic-cigarette product" means an electronic-cigarette product labeled on the product packaging indicating a flavor or that has a taste or a smell distinguishable by an ordinary consumer either before or during use or consumption of the electronic-cigarette product, including but not limited to a taste or smell of any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb, spice, menthol or mint.

(8) "Flavored electronic-cigarette substance" means an electronic-cigarette substance labeled on the product packaging indicating a flavor or that has a taste or a smell distinguishable by an ordinary consumer either before or during use or consumption of the electronic-cigarette product, including but not limited to a taste or smell of any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb, spice, menthol or mint.

(9) "Local health department" means

(a) a single county local health department;

(b) a multicounty local health department;

(c) a united local health department; or

(d) a multicounty united local health department.

(10) "Non-flavored electronic-cigarette product" means an electronic-cigarette product labeled on the product packaging indicating tobacco or non-flavored or that has a taste or a smell of tobacco that is distinguishable by an ordinary consumer either before or during use or consumption of the electronic-cigarette product.

(11) "Non-flavored electronic-cigarette substance" means an electronic-cigarette substance labeled on the product packaging indicating tobacco or non-flavored or that has a taste or a smell of tobacco that is distinguishable by an ordinary consumer either before or during use or consumption of the electronic-cigarette product.

(12) "Public retail floor space" means the total floor square feet of the business within the retail space where a customer can see or purchase any item that is offered for sale, including all areas behind the purchase counter, and including appurtenant areas used for storage.

(13) "Retail tobacco specialty business" means a commercial establishment in which:

(a) The sale of tobacco products accounts for more than 35% of the total quarterly gross receipts for the establishment;

(b) 20% or more of the public retail floor space is allocated to the offer, display, or storage of tobacco products;

(c) 20% or more of the total shelf space is allocated to the offer, display, or storage of tobacco products; or

(d) The retail space features a self-service display for tobacco products.

(14) "Self-service display" means a display of a cigarette, tobacco, or an electronic cigarette to which the public has access without the intervention of a retailer or retailer's employee.

(15) "Shelf space" means the total cubic feet (length x depth x height) of shelf space contained within the retail space that is used for the offer, display, or storage of items for sale by the tobacco retailer. The shelf height is measured from the top of the tallest item on the top of the shelf. The shelf length is measured from the end of the longest item at the end of the shelf. Empty shelf space is not included in the total shelf space calculation.

(16) "Tobacco product" means:

(a) a cigar, cigarette, or electronic cigarette as those terms are defined in Section 76-10-101;

(b) a tobacco product as that term is defined in Section 59-14-102, including:

(i) chewing tobacco; or

(ii) any substitute for a tobacco product, including flavoring or additives to tobacco; or

(c) tobacco paraphernalia as that term is defined in Section 76-10-104.1.

(17) "Tobacco retail permit" means the permit issued by the local health department to general tobacco retailers and retail tobacco specialty businesses for the sale, marketing, or distribution of tobacco products.

R384-418-3. Responsibility for Compliance.

(1) Each business that must comply with this rule is independently responsible to assure compliance and each may be held liable for noncompliance.

(2) General tobacco retailers and retail tobacco specialty businesses shall comply with the mandatory nicotine warning signs required by this rule within 15 calendar days after the effective date of this rule or by Tuesday March 31, 2020, whichever is later.

(3) General tobacco retailers shall comply with the prohibited display and sale of flavored electronic-cigarette products requirements of this rule within 15 calendar days after the effective date of this rule or by Tuesday March 31, 2020, whichever is later.

R384-418-4. Mandatory Nicotine Warning Signs.

(1) As a condition to display or sell electronic-cigarette products, general tobacco retailers and retail tobacco specialty businesses shall display a mandatory nicotine warning sign, informing youth, parents and the general public that vaping nicotine can cause addiction and harm the developing brain.

(2) Mandatory nicotine warning signs shall be posted in a position that is clearly visible at each register inside the retailer location where the electronic-cigarette product transaction or sale occurs.

(3) Signs shall be typed in a lettering style, stroke width, spacing, and contrast with the background such that the sign is clearly visible.

(4) Mandatory nicotine warning signs will be created by the Department. Local health departments may distribute the mandatory nicotine warning signs for general tobacco retailers and retail tobacco specialty businesses upon request. Retailers may use the Department issued mandatory warning signs or display a warning sign that complies with the signage requirements in this rule.

(5) Mandatory nicotine warning signs required in this section must be easily readable and must not be obscured in any way. The following minimum size standards are required:

(a) The mandatory nicotine warning sign must be at least 8.25 inches wide and 5.25 inches in height, otherwise half of a sheet of

standard letter sized paper that is 8.5 inches wide by 11 inches in height.

(b) The mandatory nicotine warning sign may be printed in any color ink or black and white ink.

(c) The mandatory nicotine warning sign must state "Vaping nicotine can cause addiction and harm the developing brain."

(d) The words "Vaping nicotine can cause addiction and harm the developing brain" must be no less than 0.75 inches in height.

R384-418-5. Allowed and Restricted Sale of Flavored Electronic-Cigarette Products.

(1) Only age-restricted retail tobacco specialty businesses with a valid retail tobacco specialty permit issued by a local health department may display or sell flavored electronic-cigarette products and flavored electronic-cigarette substances.

(2) General tobacco retailers shall not display or sell flavored electronic-cigarette products or flavored electronic-cigarette substances.

(3) General tobacco retailers may display and sell non-flavored electronic-cigarette products and non-flavored electronic-cigarette substances.

KEY: electronic-cigarette products, electronic-cigarettes substances, general tobacco retailers, retail tobacco specialty businesses

Date of Enactment or Last Substantive Amendment: 2020 Authorizing, and Implemented or Interpreted Law: 26-1-30

NOTICE OF PROPOSED RULE			
TYPE OF RULE: New			
Utah Admin. Code Ref (R no.):	R392-701	Filing No. 52460	

Agency Information

1. Department:	Health		
Agency:	Disease Control and Prevention, Environmental Services		
Building:	Cannon Health Building		
Street address:	288 N 1460 W		
City, state:	Salt Lake City, UT		
Mailing address:	PO Box 142102		
City, state, zip:	Salt Lake City, UT 84114-2102		
Contact person(s):			
Name:	Phone:	Email:	
Chris Nelson	801-538-6739	chrisonelson@utah.gov	

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

General Information

2. Rule or section catchline:
Body Art Sanitation

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

This new rule is intended to set statewide uniform standards for sanitation at body art facilities.

4. Summary of the new rule or change:

This new rule establishes minimum standards for the sanitation, operation, and maintenance of a body art facility, as defined by this rule, and provides for the prevention and control of health hazards associated with body art procedures that are likely to affect public health including risk factors contributing to injury, sickness, death, and disability. Body art procedures include tattooing and piercings.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

Enacting Rule R392-701 will not result in a cost or benefit to the state budget because this proposed rule does not require a change to current state operations or programs.

B) Local governments:

Enacting Rule R392-701 will not result in a cost or benefit to local governments because this proposed rule does not require a change to current operations or programs.

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

Enacting Rule R392-701 will likely result in a total cost of \$256,980 the first year, with an ongoing cost increase of \$53,750 to those facilities currently operating under the NAICS code 812199 for tattoo parlors or ear piercing services. In FY19 there were 591 facilities reported operating in Utah as ear piercers or body artists. A survey sent to 430 facilities indicated the following:

Approximately 2% would see a one-time cost of approximately \$90.00 for a compliant First Aid kit for an estimated total of \$1,080.

Approximately 10% would see a one-time cost of an average of approximately \$2,750 for the installation of a dedicated handwash sink for an estimated total of \$167,750.

Approximately 15% would see an ongoing cost increase of \$625 for monthly testing of sterilization equipment for an ongoing cost total of \$53,750.

Approximately 30% would see a one-time cost of approximately \$200 for training in first aid, bloodborne pathogen training, and Hepatitis B vaccinations for an estimated total of \$34,400.

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

There are no non-small businesses operating as a body art facility.

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

Enacting the proposed Rule R392-701 will not result in a direct cost or benefit to any one specific person, as defined, because no additional construction, equipment, or operational requirements are included in this rule specific to any one person.

F) Compliance costs for affected persons:

Affected persons are as follows:

State: Utah Department of Health. There are no compliance costs for state entities associated with the implementation of this rule.

Local Government: 13 local health departments. There are no compliance costs for local health departments associated with the implementation of this rule.

Small business: Businesses operating under NAICS code 812199 and providing body art services. Compliance costs include those to purchase first aid kits, install handsinks, do testing of sterilization equipment, and provide staff training in first aid, bloodborne pathogen training, and obtain Hepatitis B vaccinations.

Non-Small business: There are no non-small businesses operating as a body art facility.

Persons: No specific person will be affected by this rule. There are no compliance costs associated with this rule for any one specific person.

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

Regulatory Impact Table

Fiscal Cost	FY2020	FY2021	FY2022
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0

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

H) Department head approval of regulatory impact analysis:

The executive director of the Department of 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:

The minimal impact of cost to individual small businesses is necessary in order to protect the health and safety of individuals who use the services provided by body art facilities.

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 26-15-2	Section 26-1-30
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Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until: 1/31/2020

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:	12/15/2019
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R392. Health, Disease Control and Prevention, Environmental Services.

R392-701. Body Art Sanitation.

R392-701-1. Authority and Purpose.

(1) This rule is authorized under Sections 26-1-5, 26-1-30, and 26-15-2.

(2) This rule establishes minimum standards for the sanitation, operation, and maintenance of a body art facility, as defined by this rule, and provides for the prevention and control of health hazards associated with the body art industry that are likely to affect public health including risk factors contributing to injury, sickness, death, disability, and the spread of disease.

R392-701-2. Applicability.

This rule applies to facilities practicing body art and those who own or operate a body art facility or school in Utah, unless specifically exempted. This rule does not apply to physicians, surgeons, nurses, other medical persons, or morticians, if duly licensed to practice their respective professions in the State of Utah, and if engaged in the personal performance of the duties of their respective profession.

R392-701-3. Definitions.

For the purposes of this rule, the following terms, phrases, and words shall have the meanings herein expressed:

(1) "Ablative procedure" has the same meaning as provided in Section 58-67-102(1).

(2) "Aftercare instruction" means verbal and written instructions given to the client, specific to the body art procedure rendered, regarding the proper care of impacted human tissue.

(3) "Antiseptic" means a product that is labeled as useful in preventing diseases caused by microorganisms present on the skin or on mucosal surfaces of humans and is in compliance with sections 201(g)(1)(B) of the Federal Food, Drug and Cosmetic Act(21 U.S.C. 321(g)(1)(B)). This includes products meant to kill germs, or products labeled as "antiseptic," "antimicrobial," "antibacterial," "microbicide," or "germicide," or other similar terms.

(4) "Aseptic technique" means a set of specific practices and procedures performed under controlled conditions with the goal of minimizing contamination by pathogens.

(5) "Autoclave" means a FDA registered self-locking piece of equipment that uses steam or heat at high pressure to sterilize objects or materials used in a body art procedure.

(6) "Automated instrument washer" means a machine that cleans and decontaminates dirty instruments so they can be handled safely, repackaged, and sterilized for a future body art procedure.

(7) "Biocompatible" means the ability of the object to perform its intended function, with the desired degree of incorporation in the host, without eliciting any undesirable local or systemic effects in that host.

(8) "Biopsy punch" means a procedure in which a sharp, hollow, circular blade, known in the industry as a "punch," is rotated down through the epidermis and dermis, and into the subcutaneous fat to excise a round or cylindrical core of tissue for nonmedical purposes.

(9) "Bloodborne pathogen" means pathogenic microorganisms that are present in human blood and can cause disease in humans. These pathogens include hepatitis B virus (HBV) and human immunodeficiency virus (HIV).

(10)(a) "Body art" means body piercing, tattooing, or application of permanent cosmetics.

(b) "Body art" does not include any procedure considered an ablative medical procedure which requires a license to practice medicine as stated in Section 58-67-301, including scarification, branding, use of biopsy punch, suspension piercing, tongue splitting, implantation of objects under the skin.

(c) "Body art" does not include ear piercing, as defined in this rule.

(11) "Body artist" means any person performing body art services.

(12) "Body art facility" means any place or premise, whether public or private, permanent in nature or location, where the practice of body art is performed, regardless of whether or not money is exchanged for services.

(13) "Body piercing", excluding ear piercing, means any method of piercing the skin or mucosa to place jewelry through the skin or mucosa.

(14) "Branding" means the process in which a mark or marks are burned into human skin tissue with the intention of leaving a permanent mark.

(15) "Chemical disinfectant" or "disinfectant" means a solution of EPA-registered bactericidal, fungicidal, and virucidal disinfectant, as indicated on the label, used according to manufacturer's directions to reduce or eliminate the presence of disease-causing microorganisms for use in decontaminating work surfaces but does not necessarily eliminate all microbial forms.

(16) "Clean" means the condition of being visibly free from dirt, soil, stain, or other materials not intended to be a part of the object in question.

(17) "Client" means:

(a) an individual upon whom a body artist performs a body art procedure, or who enters a body art facility with the intent to receive services; or

(b) an individual upon whom an ear piercer performs an ear piercing procedure, or who enters an ear-piercing studio with the intent to receive services.

(18) "Contamination" means the presence or the reasonably anticipated presence of blood or other potentially infectious materials on an item or surface.

(19) "Decontamination" means the use of physical or chemical means to remove, inactivate, or destroy bloodborne pathogens on a surface or item to the point where they are no longer capable of transmitting infectious particles and the surface or item is rendered safe for handling, use, or disposal.

(20) "Disinfection" means the use of chemical disinfectant or physical means, where sterilization techniques are not feasible, to destroy pathogens on implements and other nonliving surfaces or to reduce pathogenic organisms to a level at which it will be difficult to reproduce quickly, which thereby renders an item safe for handling, use, and disposal.

(21) "Dwelling" means a building or structure that is intended or designed to be used, rented, leased, let or hired out for human habitation.

(22) "Ear piercer" means any person performing an ear piercing procedure in an ear piercing studio.

(23) "Ear piercing" means the puncturing of the lobe of the ear with ear-piercing equipment, known in the industry as a "piercing gun," according to the manufacturer's directions to insert stud-and-clasp jewelry.

(24) "Ear-piercing studio" means a business establishment or kiosk in which ear piercing, as defined in this rule, is performed, but body piercing and other body art procedures are not performed.

(25) "Equipment" means all machinery, containers, vessels, tools, devices, implements, storage areas, and sinks which are used in conjunction with the storage or application of body art by a body artist to a client, or used within the sterilization, decontamination, or disinfection processes.

(26) "Furnishings" means all fixtures, furniture, and all other objects within a body art facility that are not integral to the structure of the physical facility and are not utilized in the storage of body art equipment, application of body art, or its sterilization, decontamination, or disinfection processes.

(27) "Gloves" means medical grade or exam grade, disposable, single-use full-hand covering worn for protection against disease transmission.

(28) "Guardian" means a person who has qualified as a guardian of a minor pursuant to testamentary or court appointment and according to Section 75-5-202, or by written instrument as provided in Section 75-5-202.5, but excludes one who is merely a guardian ad litem.

(29) "Hot water" means water heated to a temperature of not less than 110 degrees Fahrenheit at the outlet.

(30) "Imminent Health Hazard" means a significant threat or danger to health that is considered to exist when there is evidence sufficient to show that a product, practice, circumstance, or event creates a situation that can cause infection, disease transmission, pest infestation, or hazardous condition that requires immediate correction or cessation of operation to prevent injury, illness, or death.

(31) "Infectious waste" means the same as provided in Subsection 19-6-102(12) which is a solid waste that contains, or may reasonably be expected to contain, pathogens of sufficient virulence and quantity that exposure to the waste by a susceptible host could result in an infectious disease.

(32) "Jewelry" means any biocompatible object that is worn through a body piercing.

(33) "Local Health Department" has the same meaning as provided in Section 26A-1-102(5).

(34) "Local Health Officer" means the director of a local health department as appointed under Section 26A-1-110, or the local health officer's designated representative.

(35) "Microblading" means a procedure in which semipermanent pigment is scratched into the skin of the eyebrow area in fine, short strokes resembling hair, using a hand tool with a blade formed of tiny needles.

(36) "Minor" has the same meaning as provided in Section 76-10-2201.

(37) "Mucosal surface" means the moisture-secreting membrane lining of all body cavities or passages that communicates with the exterior, including, the nose, mouth, vulva, and urethra.

(38) "Operator" means any person who, whether permitted or not, controls, operates, or manages a body art facility, whether or not

they perform body art procedures, or any individual who has been designated by the operator as the person in charge.

(39)(a) "Permanent cosmetics" means a tattoo, whether permanent, or semi-permanent, by someone other than a licensed physician, to the eyebrows, eyelids, lips and other parts of the body for beauty marks, hair imitation, lash enhancement or areola repigmentation. This includes any procedures referred to as, "permanent makeup," "microdermapigmentation," "micropigment implantation," "microblading," "dermagraphics," or "cosmetic tattooing" and for the purpose of this rule has the same meaning as "tattoo."

(b) "Permanent cosmetics" do not include cosmetic medical procedures as defined in Section 58-67-102(6), or other practices that are or may be considered medical procedures by the Physicians Licensing Board.

(40) "Person" means an individual, any form of business or social organization or any other non-governmental legal entity, including corporations, partnerships, limited-liability companies, associations, trusts or unincorporated organizations.

(41) "Piercing" means puncturing or penetration of the skin or a mucosa of a person and the insertion of jewelry or other adornment in the opening.

(42) "Plumbing Code" means International Plumbing Code as incorporated and amended in Title 15A, State Construction and Fire Codes Act.

(43) "Plumbing fixture" means a receptacle or device that is connected to the water supply system of the premises; or discharges wastewater, liquid-borne waste materials, or sewage to the drainage system of the premises.

(44) "Potentially infectious material" means:

(a) The following human body fluids: semen, vaginal secretions, cerebrospinal fluid, synovial fluid, pleural fluid, pericardial fluid, peritoneal fluid, amniotic fluid, saliva in dental procedures, any body fluid that is visibly contaminated with blood, and all body fluids in situations where it is difficult or impossible to differentiate between body fluids;

(b) Any unfixed tissue or organ, other than intact skin, from a human, whether living or dead; and

(c) HIV-containing cell or tissue cultures, organ cultures, and HIV- or HBV-containing culture medium or other solutions.

(45) "Premises" means any lot, parcel, or plot of land, including any buildings or structure.

(46) "Procedure" means the act of performing body art or ear piercing.

(47) "Procedure area" means a room, or portion of a room, or any surface of an inanimate object that is designated only to be used to perform body art or an ear piercing.

(48) "Procedure site" means the area or location on the human body selected for the placement of body art.

(49) "Sanitary" means the condition of being free from infective, physically hurtful, diseased, poisonous, unwholesome, or otherwise unhealthful substances and being completely free from vermin, vectors, and pests and from the traces of either, and free of harborage for vermin, vectors, or pests.

(50) "Scarification" means the process in which a mark or marks are cut into human skin tissue with the intention of leaving a permanent mark.

(51) "Service Animal" has the same meaning as provided in Section 35.104 of the Americans with Disabilities Act Title II Regulations.

(52) "Sharps" means any objects that may purposely or accidentally cut or penetrate the skin or mucosa, including pre-sterilized, single-use needles; scalpel blades; and razor blades.

(53) "Sharps container" means a closable, puncture-resistant container that is:

(a) leak-proof on the sides and bottom;

(b) manufactured in compliance with NIOSH standards;

(c) closable for handling, storage, transportation, and disposal; and

(d) labeled with the international biohazard symbol.

(54) "Single-use" means products or items that are intended for one-time, one-person use and are disposed of after use on each client, including cotton swabs or balls, tissues or paper products, paper or plastic cups, gauze and sanitary coverings, razors, needles, scalpel blades, microblades, stencils, ink cups, gloves,

(55) "Sterile Water" means water that is purchased sterile, in a single use container.

(56) "Sterilization" means a validated process by the use of physical or chemical agents to render an object or instrument free from living microorganisms.

(57) "Sterilization area" or "Processing area" means a room or area set apart in the facility, away from public access not open to the public, and used only for cleaning, decontamination, sterilization, and related tasks.

(58) "Subdermal implant" means a biocompatible object that is placed entirely underneath the skin, therefore allowing the body to heal over the implant and creating a raised design for aesthetic purpose.

(59) "Surface anchor" or "Single-point piercings" or "Dermal anchors" or "Microdermal" means a type of body piercing procedure performed with jewelry specifically intended for this piercing.

(60) "Suspension piercing" means the act of rigging a human body to hang from implements that have been placed through temporary subcutaneous perforations.

(61) "Tattooing" means any method of placing ink or other pigment into or under the skin or mucosa by the use of needles or any other instruments used to puncture the skin, resulting in permanent or temporary colorization of the skin or mucosa. This includes all forms of permanent cosmetics, as defined.

(62) "Temporary body art facility" means any body art facility operating at a fixed location where a body artist performs body art procedures for no more than 14 consecutive days in conjunction with a single event or celebration.

(63) "Tongue splitting" means the use of a blade, cauterizing laser, scalpel, or other instrument to cut a human tongue or any part of a human tongue into two or more parts.

(64) "Transdermal implant" means the process in which a biocompatible object is placed under and passes through the skin by making an incision and elevating the skin. Interchangeable decorations can then be attached to the exposed portion of the object.

(65) "Ultrasonic cleaner" or "Ultrasonic" means a device that removes debris by a process called cavitation, in which waves of acoustic energy are propagated in aqueous solutions to disrupt the bonds that hold particulate matter to surfaces.

(66) "Vermin" means rats, mice, cockroaches, bedbugs, flies, or any other pest or vector as determined by the local health officer to be harmful to the life, health, or welfare of the public.

(67) "Wastewater" means sewage, industrial waste, or other liquid or waterborne substances causing or capable of causing pollution of waters of the state.

(68) "Workstation" means the area within a procedure area where a body artist or ear piercer performs body art or an ear piercing. The workstation includes the client chair or table, counter, mayo stand, instrument tray, storage drawer, and body artist's chair.

R392-701-4. General Requirements.

(1) Body art procedures shall only be done in a permitted body art facility.

(2) All body artist shall comply with the provisions of this rule.

(3) The operator of a body art facility shall:

(a) comply with the provisions of this rule;

(b) be responsible for the conduct of body artists and other persons working at the facility to ensure compliance with this rule; and

(c) not knowingly do any of the following:

(i) conceal, withhold, or falsify records or evidence;

(ii) interfere with the performance of the duties of the local health officer; or

(iii) make a false statement, representation, certification, record, report, or otherwise falsify information required to be maintained or retained pursuant to this rule.

(4) The operator or designated person in charge shall be present when any body art procedure is being performed at the facility.

(5) A body art facility operator shall select or construct a location for the facility that will provide adequate surface drainage. The operator shall make a reasonable effort to locate the facility away from any existing or potential public health hazard or nuisance.

(6) A body art facility shall have:

(a) a 24-unit American National Standards Institute (ANSI) compliant properly stocked First Aid Kit in a readily accessible location; and

(b) an adequate supply of chemical disinfectant for use as required in Subsection R392-701-8(1)(a).

(7) Only service animals assisting persons with disabilities are permitted in a body art facility. Pets, emotional support animals, comfort animals, and therapy animals are not permitted in the facility. A local health officer may allow fish aquariums in waiting rooms and non-procedural areas.

(8) The operator may refuse service to any person, and nothing in this rule shall be construed to require the operator to perform a body art procedure upon a person.

(9) Ink or dye shall not be reused. Tattoos shall be applied using sterile or single-use equipment. Piercings shall be done using only needles which are sterile, single use, and manufactured for either medical or body piercing purposes.

(10) Severability - If any provision of this rule, or its application to any person or circumstance is declared invalid, the application of such provisions to other persons or circumstances, and the remainder of this rule, shall not be affected thereby.

R392-701-5. Water Supply.

(1) Potable water supply systems for use in a body art facility shall be designed, installed, and operated according to the requirements set forth by:

(a) Plumbing Code;

(b) The Utah Department of Environmental Quality, Division of Drinking Water under Title R309; and

(c) local health department regulations.

(2) The operator shall ensure that the body art facility and each toilet room is provided with potable water.

(3) If a body art facility experiences or will experience a disruption of potable water service for more than 10 minutes, the facility shall not perform any body art procedures for the duration of the service disruption.

R392-701-6. Wastewater Disposal Requirements.

(1) The operator shall ensure that sewer services are made available to the body art facility.

(2) The sewer system shall be designed, installed, and operated according to the requirements set forth by:

(a) Plumbing Code;

(b) The Utah Department of Environmental Quality, Division of Water Quality under Title R317;

(c) local health department and municipal regulations; and

(d) the local sewer district having jurisdiction.

(3) All wastewater shall be discharged to a public sanitary sewer system whenever practicable.

(4)(a) Where connection to a public sanitary sewer is not practicable, wastewater shall be discharged to an approved onsite wastewater disposal system.

(b) The operator shall submit all required plans for the construction or alteration of an onsite wastewater disposal system in accordance with Title R317.

R392-701-7. Construction and Maintenance Requirements for Permanent Facilities.

(1) All interior walls, floors, and procedure surfaces of a body art facility shall be smooth, free of open holes or cracks, washable, and in good repair.

(2) All procedure surfaces, tables, counters, equipment, chairs, and other surfaces in the body art facility shall be constructed of smooth, easily cleanable materials, and shall be maintained cleaned and sanitary, and in good repair.

(3) As approved by the Local Health Officer, a body art facility shall be completely separated from any room used for human habitation, any food facility or room where food is prepared, or any other such location that may cause potential contamination of work surfaces.

(a) Body artists shall only perform body art procedures in a procedure area, as defined in this rule.

(b) Home-based body art procedures performed in a dwelling shall be performed in an area that is physically separated from the rest of the residential dwelling. The operator shall make this area inaccessible to pets and children. Areas used as kitchens and bathrooms are not approved locations for body art service.

(c) A body art facility located in a dwelling shall have at least one dedicated and easily-accessible toilet room, as described in Subsection R392-701-7(7) for the exclusive use of clients and body artists during business hours. A handwashing sink shall be located in, or immediately adjacent to the toilet room.

(4)(a) All plumbing fixtures in the facility shall comply with the provisions of Plumbing Code, including backflow prevention requirements.

(b) Plumbing fixtures shall be free from cracks and similar disrepair which may prevent proper cleaning.

(c) The operator shall maintain plumbing fixtures in a clean and operable condition.

(d) The water heater shall be of sufficient size to accommodate all plumbing fixtures when used simultaneously.

(5) The operator shall take effective measures to keep vermin out of the body art facility and to prevent their breeding or

presence on the premises. All exterior openings, windows, skylights, and outer doors shall be protected against the entrance of flies and other flying insects by self-closing doors, closed windows, 16-mesh or finer screening, controlled air currents, or other effective means.

(6) The facility shall be well ventilated and provided with a light source equivalent to at least 20-foot candles three feet off the floor, except that at least 100-foot candles shall be provided at the level where the body art procedure is being performed, and where instruments and sharps are assembled.

(7) Each body art facility shall have a toilet room that is accessible to body artists and clients, and is equipped with:

(a) a toilet;

(b) a handwashing sink;

(c) soap and toilet tissue in suitable dispensers;

(d) individual disposable towels or other approved hand drying facilities; and

(e) a solid, durable, and easily cleanable waste receptacle with lid.

(8)(a) In addition to the handwashing sink required in subsection R392-701-7(7), a hand sink with hot and cold running water under pressure shall be readily accessible to body artists within the facility, and used solely for hand washing and shall be maintained cleaned and sanitary, and in good repair.

(b) A Local Health Officer may approve a handwashing sink as described in Subsection R392-701-7(7) to meet the requirements of Subsection R392-701-7(8)(a) when the hand sink is located outside of the toilet enclosure.

(9) If all other requirements are met in this rule, no minimum floor space is required for the body art procedure area.

(10) Each facility shall have at least one procedure area that may be screened from public view for clients requesting privacy.

(11) Each body art procedure area shall be separated from waiting clients or observers.

(12) Each body art procedure area shall have an infectious waste container that is:

(a) constructed of heavy-grade plastic or metal;

(b) covered;

(c) foot-pedal or sensor operated; and

(d) lined with a bag that is marked or labeled with the International Biohazard Symbol.

(13)(a) A sink for contaminated instruments shall be located separate from the procedure area in the processing area where only contaminated instruments are kept prior to cleaning and sterilization, except as provided in Subsection R392-701-7(16).

(b) To prevent recontamination of sterilized instruments, the operator shall place a permanent physical barrier between the area with the sink with contaminated instruments and ultrasonic cleaner, and the autoclave.

(14) A body art facility shall be equipped with an ultrasonic cleaner for cleaning reusable instruments, except as provided in Subsection R392-701-7(16).

(a) The ultrasonic cleaner shall have a solid tight-fitting lid, which shall be left on for at least five minutes after any cycle or according to manufacturer's directions.

(15) A body art facility shall be equipped with an autoclave for sterilization of reusable instruments, except as provided in Subsection R392-701-7(16).

(a) The autoclave shall be of sufficient size to sterilize the largest instrument requiring sterilization.

(b) The autoclave shall be located away from any body art procedure area, or any areas frequented by the public.

(16) If a body art facility uses only pre-sterilized disposable instruments, pre-sterilized single-use body art materials, and pre-sterilized single-use supplies, an autoclave, ultrasonic, and processing area shall not be required.

(17) All instruments and supplies shall be stored in clean, dry, and covered containers, and shall not be stored or located in a toilet room or garbage room, or under sewer lines that are not shielded to intercept potential drips.

(18) A sufficient supply of clean equipment, instruments, chemical disinfectant, and other cleaning supplies necessary to maintain a sanitary work environment shall be available to the body artist at all times.

R392-701-8. Disinfection and Sterilization Requirements.

(1) The operator shall keep the floors, walls, ceilings, tables, counters, shelves, furniture, furnishings, and fixtures clean and in good repair.

(a) The operator or body artist shall clean and disinfect tables, counters, chairs, and other work surfaces after each use regardless of whether contamination is visible. Disinfection shall be carried out using a chemical disinfectant in accordance with manufacturer's directions.

(2) A body art facility shall utilize clean and sterile equipment, tools, implements, and supplies in accordance with this rule, and body artists shall employ good personal hygiene habits while providing body art services.

(3) Except as specified in Subsection R392-701-8(9), all reusable instruments shall be cleaned after each use in the processing area. Instruments shall be cleaned according to the following sequential order:

(a) soak in an enzymatic or other appropriate solution;

(b) scrub to remove visible debris;

(c) rinse and inspect;

(d) process through an ultrasonic cycle;

(e) rinse;

(f) air dry; and

(g) inspect.

The procedures described in this paragraph may be accomplished using an automated instrument washer.

(4)(a) Except as specified in Subsection R392-701-8(9), all reusable instruments used for body art shall be packed individually in peel-packs and subsequently sterilized after being cleaned as specified in Subsection R392-701-8(3).

(b) All peel-packs shall contain either a sterilizer indicator or internal temperature indicator.

(c) Peel packs shall be dated with an expiration date not to exceed six months from date of sterilization.

(5)(a) Any equipment used to sterilize body art materials and reusable instruments shall be suitable for its intended use.

(b) The equipment shall be operated, cleaned, and maintained according to manufacturer's instructions. A copy of the manufacturer's recommended procedures for the operation of the equipment shall be available for inspection by the local health officer.

(c) The operator shall conduct monthly spore testing to ensure that the sterilization equipment is capable of attaining sterilization. These tests shall be verified through an independent laboratory and shall be conducted as per the manufacturer's directions.

(6) All instruments used for body art procedures shall remain stored in sterile packages or other containers designed for sterilizing instruments and marked with the sterilization date until just prior to the performance of a body art procedure.

(7) Sterile equipment and body art materials may not be used if the package has been breached or after the expiration date without first repackaging and sterilizing again.

(8) Any item or instrument that may have been exposed to bloodborne pathogen contamination during a body art procedure shall be sterilized prior to use. Any item or instrument used for body art that is contaminated during the procedure shall be immediately replaced with a sterilized instrument or item before the procedure resumes.

(9) At the conclusion of each client service, multi-use implements, such as a tattoo machine, and other tools which cannot be sterilized in an autoclave or immersed in liquid without being damaged shall be cleaned and disinfected in the following sequential manner:

(a) Remove all visible debris;

(b) Disinfect with a chemical disinfectant spray or wipe according to the manufacturer's directions; and

(c) Store covered in a clean, dry location.

R392-701-9. Body Artist Requirements and Professional Standards.

(1) Before performing any body art procedure, a body artist shall have:

(a) proof of current certificate from an approved bloodborne pathogen training program, or equivalent, that includes training on aseptic technique, provided or approved by the local health department;

(b) proof of current certificate from an approved First Aid training program, or equivalent, provided or approved by the local health department; and

(c) Hepatitis B vaccination record; or

(d) a completed vaccination exemption form; and

(e) a written notice signed by a licensed health care provider stating that, due to the physical condition of the body artist, administration of the vaccine would endanger the body artist's life or health.

(2) A body artist shall be a minimum of 18 years of age.

(3) No person shall smoke, vape, eat, or drink within the workstation, procedure area, processing area, sterilization area, or any other location where instruments or supplies may be stored, cleaned, or sterilized. A client may drink water from a closable container when in the procedure area.

(4) A body artist shall maintain hair, skin, and clothes free of visible particulate matter and debris.

(5) Before and after performing a body art procedure, body artists shall wash their hands at a designated hand sink in the following sequential order:

(a) remove all rings, watches, and bracelets from hands and wrists;

(b) turn on warm water, wet hands, and apply soap;

(c) rub hands together for a minimum of 20 seconds, making a soapy lather;

(d) include all fingers, between fingers, thumbs, nails, cuticles, wrists, palms, and the top of hands;

(e) rinse soap from hands;

(f) pat hands dry with a clean disposable towel;

(g) use a new, clean, disposable towel to turn off the handles of the sink; and

(h) if necessary, use a new, clean, disposable towel to open any doors between the hand washing area and the procedure area.

(6) At a minimum, a body artist shall wear single-use gloves:

(a) during set-up and cleaning;

(b) during disinfection and sterilization procedures;
(c) when processing contaminated instruments;
(d) when transporting sterilized instruments from the autoclave to designated storage space;

(e) during post-procedure take down; and
(f) during any contact with a client at the workstation or procedure area.

(7)(a) Before a body art procedure is performed, the body artist shall prepare the immediate skin area and the areas of skin surrounding the procedure site by applying an antiseptic solution in accordance with the manufacturer's directions.

(b) If shaving is necessary, it shall be done before skin preparation, as described in Subsection R392-701-9(7)(a), and a single-use disposable razor shall be used. Razors shall be immediately discarded after each use into the sharps container.

(8)(a) If a local anesthetic ("numbing agent") is used, it shall be applied before skin preparation, as described in Subsection R392-701-9(7)(a); and

(b) shall only be in the form of an over-the-counter local or topical anesthetic or spray, and shall not be administered by injection.

(9) Any skin or mucosa surface to receive a body art procedure shall be free of suspected rash or any suspected visible infection.

(10)(a) The body artist shall be free of any infection or any other visible disease condition that may be transmitted to the client as a result of carrying out the body art procedure. A local health officer may require medical testing or examinations if a contagious or communicable disease is suspected.

(b) A body artist shall not perform a body art procedure if he or she has open wounds, cuts, sores, burns, or other skin abnormalities on the hand, or any portion of the body that under normal procedures may come into contact with a client's skin.

(11)(a) In performing body art procedures, the body artist shall wear gloves and use aseptic technique to ensure that the instruments and gloves are not contaminated.

(b) Gloves shall be discarded and changed, at a minimum:

(i) before initial skin preparation and marking;

(ii) before the body art procedure;

(iii) after the completion of a body art procedure, before post-procedure cleanup; and

(iv) when gloves are torn or punctured, or contaminated by contact with unclean surfaces or objects, or by contact with a third person.

(c) If, while performing a body art procedure, a glove is pierced, torn, or otherwise compromised, the compromised gloves shall be immediately discarded, and the hands shall be washed as directed in Subsection R392-701-9(5).

(d) Under no circumstance shall a single pair of gloves be used on more than one client.

(e) Used gloves shall not be rinsed, washed, disinfected, or autoclaved.

(f) A body artist shall use gloves when handling sterile equipment.

(12)(a) Any item or instrument used for body art that is contaminated during the procedure shall be immediately discarded or replaced before the procedure resumes.

(b) Single-use items shall not be used on more than one client for any reason and shall be discarded in the appropriate waste receptacle immediately after use.

(c) Single-use needles, razors, microblades, and other sharps shall be discarded in a sharps container immediately after use.

(13) In the event of bleeding, all products used to check the flow of blood or to absorb blood shall be single-use and shall be disposed of immediately after use in an approved infectious waste container, as required in Subsection R392-701-7(12).

(14) Upon completion of a body art procedure, the operator or body artist shall provide each client with aftercare instructions, which shall contain the name, address, and phone number of the body art facility and the local health department. These instructions shall advise the client to consult the body artist and a licensed health care professional if the body art procedure site shows signs of infection.

(a) Aftercare instructions shall be approved by the local health officer.

R392-701-10. Specific Health and Sanitation Requirements -- Tattooing and Permanent Cosmetics.

(1) Before performing any body art procedures, body artists shall follow the hand washing procedures as directed in Subsection R392-701-9(5).

(2) The body artist shall clean and disinfect the body art procedure area as specified in Subsection R392-701-8(1)(a) prior to use for each client.

(3) Equipment, multi-use implements, tools, and materials shall be properly cleaned and disinfected after servicing each client in accordance with Section R392-701-8.

(4) All absorbent products used for drying the skin after disinfecting or scrubbing the skin prior to tattooing or during application of dyes or inks shall be sanitary single-use products and discarded immediately after use into a covered waste container.

(5) The chairs, table or bench shall be made of or covered in a non-porous material that can be disinfected.

(6)(a) All inks, dyes, and pigments shall be lead free and specifically manufactured for performing body art procedures and shall be used according to manufacturer's instructions.

(b) Only sterile water or other thinner recommended by the manufacturer, may be used for the mixing or diluting of approved inks, dyes, or pigments. Diluting with potable water is not acceptable. Such dilution shall be single-use for the individual procedure.

(c) Immediately before a tattoo is applied, the quantity of the dye to be used shall be transferred from the dye bottle and placed into single-use plastic cups or caps. Upon completion of the tattoo, these single-use cups or caps and their contents shall be discarded. Ink or dye shall not be reused.

(7) Any product used in the application of stencils shall be dispensed and applied on the skin area to be tattooed in a manner to prevent contamination of the original container and its contents.

(8)(a) All products applied to the skin, including body art stencils, shall be single-use and disposable. Tattoos shall be applied using sterile or single-use equipment.

(b) All microblading implements shall consist of a handle and needle grouping, known in the industry as a "blade," manufactured as one unit that shall be single-use and disposable, and shall be discarded immediately after use as required in Subsection R392-701-9(12)(c). All other materials used during a microblading procedure shall be single use, and shall be disposed immediately after use.

(9) All tattoo procedures shall be worked from a sterilized, non-porous tray set-up or disinfected tray with a single-use disposable tray liner.

(10) The body artist shall remove excess dye or ink from the skin with a sterile, single-use sponge or tissue paper that is used only once per procedure, and then immediately discarded into a covered

waste container. After completing work on any person, the body artist shall wash the tattooed area with soap or witch hazel.

(11) A tattooed area shall be allowed to dry, and petroleum jelly or antibacterial ointment shall be applied with sterile gauze according to manufacturer's directions.

R392-701-11. Specific Health and Sanitation Requirements -- Body Piercing.

(1) Before performing any body piercing procedures, body artists shall follow the hand washing procedures as directed in Subsection R392-701-9(5).

(2) The body artist shall clean and disinfect the body art procedure area as specified in Subsection R392-701-8(1)(a) prior to use for each client.

(3) All body piercing needles shall be sterile, single use, and manufactured for either medical or body piercing purposes. All needles shall be disposed of immediately after use in a sharps container.

(4) Equipment, multi-use implements, and tools and materials shall be properly cleaned and sterilized, or disinfected if sterilization is not feasible, after servicing each client in accordance with Section R392-701-8.

(5) All body piercing procedures shall be worked from a sterilized, non-porous tray set-up or disinfected tray with a single-use, disposable tray liner.

(6) A body artist shall inspect each piercing needle immediately before use to ensure that there are no burrs or irregularities.

(7) Prior to oral piercing, the body artist shall provide the client with a small amount of antimicrobial mouthwash in a disposable cup. The client should be advised to rinse thoroughly for at least 30 seconds.

(8) Only the following products shall be used in a new piercing:

(a) implant certified (ASTM F-136) titanium;

(b) implant certified (ASTM F-138) compliant low carbon stainless steel;

(c) niobium (except matte finish black);

(d) solid 14K or 18K white or yellow gold;

(e) platinum;

(f) PTFE;

(g) or Tygon.

(9) All jewelry shall be sterilized before use in new piercings.

(10)(a) Gold filled, rolled, or plated jewelry, silver, stainless steel of the 302, 306, or 400 series, and aluminum materials shall not be used in body or ear piercings.

(b) The following materials shall not be used in a new body art piercing or ear piercing:

(i) Tempered glass (Pyrex);

(ii) Wood of any type;

(iii) Any type of organic material including stone, horn, bone, coconut wood, bamboo, or ivory; or

(iv) High-density, low-porosity nontoxic plastics such as acrylic.

(11) Piercing needles thinner than 20 gauge or thicker than 6 gauge shall not be used for body or ear piercings.

R392-701-12. Specific Health and Sanitation Requirements -- Ear Piercing.

(1) An ear-piercing studio shall be exempt from the requirements of Rule R392-701 except for any requirements specifically listed in this section.

(2) No ear piercer nor any person in an ear-piercing studio shall pierce anywhere on the body other than the lobe of the ear.

(3) Before performing any ear piercing procedure, an ear piercer shall have:

(a) proof of current certificate from an approved bloodborne pathogen training program, or equivalent, that includes training on aseptic technique, provided or approved by the local health department; and

(c) Hepatitis B vaccination record; or

(d) a completed vaccination exemption form; and

(e) a written notice signed by a licensed health care provider stating that, due to the physical condition of the ear piercer, administration of the vaccine would endanger the ear piercer's life or health.

(4) An ear piercer shall be a minimum of 18 years of age.

(5) No person shall smoke, vape, eat, or drink within the workstation, procedure area, or any other location where instruments or supplies may be stored or disinfected.

(6) The ear piercer shall clean and disinfect the ear piercing procedure area as specified in Subsection R392-701-8(1)(a) prior to use for each client.

(7) All ear piercing procedures shall be worked from a sterilized non-porous tray set-up or disinfected tray with a clean, single-use disposable tray liner.

(8) Before performing any ear piercing procedures, ear piercers shall follow the hand washing procedures as directed in Subsection R392-701-9(5).

(a) Where a convenient hand sink is not available, the local health officer may allow use of hand sanitizer in lieu of handwashing.

(9) At a minimum, an ear piercer shall wear single-use gloves:

(a) during set-up and cleaning;

(b) during disinfection or sterilization procedures;

(c) during post-procedure take down; and

(d) during any contact with a client at the workstation or procedure area.

(10) Before an ear piercing procedure is performed, the ear piercer shall prepare the immediate skin area and the areas of skin surrounding the procedure site, the lobe of the ear, by applying an antiseptic solution in accordance with the manufacturer's directions.

(11) An ear piercer shall inspect each piece of stud-and-clasp jewelry before use to ensure that there are no burrs or irregularities.

(a) Studs or other earrings used to pierce the lobes of the ears using a piercing gun shall not be reused.

(12) At the conclusion of each client service, multi-use implements and tools shall be properly cleaned and sterilized or disinfected in accordance with Subsection R392-701-12(13) if sterilization is not feasible.

(13) At the conclusion of each client service, multi-use implements, such as a piercing gun, and other tools which cannot be sterilized in an autoclave or immersed in liquid without being damaged shall be cleaned and disinfected in the following sequential manner:

- (a) Remove all visible debris;
- (b) Disinfect with a chemical disinfectant spray or wipe according to the manufacturer's directions; and
- (c) Store covered in a clean, dry location.
- (14) Upon completion of an ear piercing procedure, an operator or ear piercer shall provide each client with aftercare instructions, which shall contain the name, address, and phone number of the ear piercing studio and the local health department. These instructions shall advise the client to consult a licensed physician if the ear piercing procedure site becomes infected.
- (15) All interior walls, floors, and surfaces of the procedure area of an ear-piercing studio shall be smooth, free of open holes or cracks, washable, and in good repair.
- (16) All procedure area surfaces, tables, counters, equipment, chairs, and other procedure area surfaces in an ear-piercing studio shall be constructed of smooth, easily cleanable materials, and shall be maintained cleaned and sanitary, and in good repair.
- (17) All instruments and supplies shall be stored in clean, dry, and covered containers.
- (18) A sufficient supply of clean equipment, instruments, chemical disinfectant, and other cleaning supplies necessary to maintain a sanitary work environment shall be available to the ear piercer at all times.

R392-701-13. Specific Health and Sanitation Requirements - Temporary Body Art Facilities.

- (1) A temporary body art facility shall be exempt from the requirements of Section R392-701-7 except for any duplicate requirements specifically listed in this section.
- (2) Except for Subsection R392-701-13(1), temporary body art facilities and body artists working in a temporary body art facility shall comply with the requirements of this rule in addition to the requirements of this section.
- (3) No body art procedures shall be performed outside of an approved structure that is permitted and regulated by the local health department.
- (4) Temporary body art facilities shall be maintained in a clean and sanitary condition at all times. The floors and walls or partitions shall be cleanable or disposable. Grass or dirt floors are not allowed.
- (5) All interior walls, floors, and procedure surfaces of a temporary body art facility shall be smooth, free of open holes or cracks, washable, and in good repair.
- (6) All procedure surfaces, tables, counters, equipment, chairs, and other surfaces in a temporary body art facility shall be constructed of smooth, easily cleanable materials, and shall be maintained cleaned and sanitary, and in good repair.
- (7) All instruments and supplies shall be stored in clean, dry, and covered containers.
- (8) A sufficient supply of clean equipment, instruments, chemical disinfectant, and other cleaning supplies necessary to maintain a sanitary work environment shall be available to the body artists at all times.
- (9) the operator of a temporary body art facilities shall provide an area screened from public view for clients requesting privacy.
- (10) The procedure area shall have a physical barrier, at a minimum of four horizontal feet between the client and general patrons.
- (11) No habitation or food preparation is permitted at a temporary body art facility.

- (12)(a) Toilet room facilities shall be available for the body artist and patrons within 300 feet of the temporary body art facility.
- (b) A hand sink shall be available within or adjacent to the toilet room facilities and equipped with hot and cold running water, liquid soap, disposable paper towels, and a solid, durable, and easily cleanable waste receptacle.
- (13)(a) A temporary handwash station equipped with an enclosed water container with spigot or faucet, wastewater catch basin, liquid hand soap, disposable paper towels, and a solid, durable, and easily cleanable waste receptacle shall be:
 - (i) located within or adjacent to the temporary body art facility;
 - (ii) readily accessible to body artists;
 - (iii) used solely for hand washing; and
 - (iv) maintained clean and sanitary, and in good repair.
- (b) Up to four temporary body art facilities, "booths," may share a conveniently located temporary handwash station, as described in Subsection R392-701-13(13)(a).
- (14) All body art artists, including out of state body art artists, working in a temporary body art facility shall comply with the body artist's requirements in Section R392-701-9.

R392-701-14. Records and Recordkeeping Requirements.

- (1) Before engaging in any body art procedure, the operator shall require a client or potential client to complete a client consent and disclosure form.
 - (a) The consent and disclosure form may be in written or digital format.
 - (2) The client consent and disclosure form shall include the following sections:
 - (a) A risk notification section that provides information detailing the risks and possible consequences of a body art procedure, including the following:
 - (i) A body art procedure can cause:
 - (A) swelling, bruising, discomfort, bleeding, and pain;
 - (B) an allergic reaction; and
 - (C) irreversible modifications to the client's body;
 - (ii) a body art procedure increases the client's risk of infection; and
 - (iii) a potential client with a heart condition may have an increased risk of contracting bacterial endocarditis and should contact his or her physician before receiving any body art procedure.
 - (b) A client evaluation section that asks at a minimum the following questions in order to evaluate the client's condition for receiving body art without violating the client's medical privacy:
 - (i) "Are you eighteen (18) years of age or older?";
 - (ii) "Have you eaten within the past four hours?";
 - (iii) "Are you under the influence of drugs or alcohol?";
 - (iv) "Have you ingested anticoagulants, anti-platelet drugs, or NSAIDs (aspirin, ibuprofen, etc.) in the last 24 hours?";
 - (v) "Have you ingested any medication that may inhibit the ability to heal a skin wound?";
 - (vi) "Do you have any allergies or adverse reactions to dyes, pigments, latex, iodine, or other such products?";
 - (vii) "Do you have hemophilia, epilepsy, a history of seizure, fainting or narcolepsy; or other conditions that may interfere with the body art procedure?";
 - (viii) "Do you have a history of skin diseases, skin lesions, or other skin sensitivities to soaps or disinfectants that might inhibit the healing of the body art procedure?";

(ix) "Do you have any communicable diseases (i.e. Hep A, Hep B, HIV, or any other disease that may be transferred during the procedure)?";

(x) "Do you have diabetes, high blood pressure, heart condition, heart disease, or any other conditions that may interfere with the body art procedure?"; and

(xi) The client evaluation section shall state, "If you have health or medical concerns, please consult a physician before engaging in a body art procedure."

(c) A client information section asking for the following information:

(i) The client's full name and date of birth as verified from a valid government issued photo identification or identification from a parent or legal guardian;

(ii) the client's signature, or signature of a legal guardian if client is a minor;

(iii) client's physical address;

(iv) client phone number;

(d) An informed consent statement that shall confirm at least the following:

(i) The client is voluntarily obtaining services of his or her own free will and volition;

(ii) The client has had the opportunity to read and understand the consent and disclosure form;

(iii) The client has the ability to ask questions about the body art procedure, before, during, and after the procedure; and

(iv). The client has received and understands written and verbal aftercare instructions.

(3) The operator or body artist shall sign the client form.

(4) The operator or body artist shall provide a copy of the completed release form in printed or digital format when requested by the client.

(5) The client consent and disclosure form shall be approved by the local health officer before an operating permit is issued.

(6)(a) A body artist shall make a written record of each administered body art procedure to include:

(i) date and time of procedure;

(ii) a brief description of the procedure performed, including type and location;

(iii) materials used, including inks, instruments, jewelry, needles, and lot numbers; and

(iv) the body artist's name.

(b) The operator shall ensure that identification of the sterilized instruments used during the body art procedure as required in Subsection R392-701-8(6) corresponds with the autoclave load log for those instruments.

(7) Within 48 hours of becoming aware, the operator or body artist shall report all adverse events relating to or suspected of being related to materials used during a body art procedure to the local health department including the name of the body artist, client information, description of adverse events and a complete description of materials involved with lot or batch codes.

(8) Within 48 hours of becoming aware, the operator or body artist shall report to the local health department any injury, complaint of injury, infection that required treatment by a licensed medical practitioner, or any communicable diseases resulting from the body art procedure.

(9) The operator shall:

(a) keep client records confidential;

(b) retain client records for a minimum of three years after the date of procedure; and

(c) make client records available to the local health officer upon request.

(10)(a) The operator shall maintain a description of all pre-sterilized instruments used in body art procedures at the body art facility for three years after the date of procedure, and shall make the records available to the local health officer upon request. Invoices or orders may satisfy this requirement.

(b) The operator shall retain records of spore testing, as required in Subsection R392-701-8(5)(c), for at least three years after the date of receipt. These records shall be:

(i) retained at the body art facility; and

(ii) made available to the local health officer upon request.

(11) The following body artist information shall be kept on file on the premises of a body art facility for inspection by the local health officer:

(a) full names;

(b) job description;

(c) dates of employment;

(d) date of birth;

(e) primary residence address;

(f) phone number;

(g) e-mail address;

(h) a copy of a government issued photo ID;

(i) hepatitis B vaccination or record of declination form;

and

(j) documentation of:

(i) annual training in bloodborne pathogens;

(ii) current training in first aid; and

(iii) other continuing education as required.

R392-701-15. Food and Beverage Service.

When food or beverage service is provided for body art clients, food service, storage, and preparation shall comply with Rule R392-100 and local health department regulations.

R392-701-16. Solid Waste.

(1) Solid waste, including infectious waste, shall be contained, labeled, stored, transported, and disposed in accordance with:

(a) OSHA Bloodborne Pathogens Standard 29 CFR 1910.1030;

(b) Utah Department of Environmental Quality, Division of Waste Management and Radiation Control, under Title R315; and

(c) local health department regulations.

(2) Solid waste generated at a body art facility shall be stored in a leak-proof, non-absorbent container, which shall be kept covered with a tight-fitting lid.

(3) All solid waste shall be disposed with sufficient frequency and in such a manner as to prevent insect breeding or a public health nuisance.

R392-701-17. Prohibited Practices.

(1)(a) A body artist shall not perform body art on any person who is a minor without the written consent and presence of the parent or legal guardian of such minor. This proof of consent is to be given in person prior to performing the body art procedure. Identification of the parent or legal guardian is required.

(b) A body artist shall review and retain a copy of a valid driver's license or other government-issued picture identification of the parent or legal guardian before the body artist performs piercing or tattooing.

(c) A body artist shall not perform body art on the genitals or breasts of a minor, regardless of parental or legal guardian consent.

(2) A body artist shall not perform body art on a person who, in the opinion of the operator, is inebriated or appears to be under the influence of alcohol or drugs.

(3) Styptic pencils, alum blocks, or other solid styptics shall not be used to stop the flow of blood. Liquid or powdered astringents may be used to stop the flow of blood if applied with a clean spatula, single-use gauze, or cotton.

(4) Ear piercing stud and clasp systems, known in the industry as "piercing guns," shall not be used anywhere on the body other than the lobe of the ear.

(5) Any procedure considered an ablative medical procedure which requires a license to practice medicine as stated in Section 58-67-301 and is prohibited. These procedures include scarification, biopsy punch, suspension piercing, tongue splitting, and implantation of objects under the skin in a manner that requires the removal of any human tissue, including:

- (a) a subdermal implant;
- (b) a transdermal implant;
- (c) a surface anchor;
- (d) a single-point piercing;
- (e) a dermal anchor; or
- (f) a microdermal implant.

(6) A body artist shall be aware of the U.S. Food and Drug Administration (FDA) list of recalled tattoo inks or other body art products, and shall not use any recalled product on a client.

R392-701-18. Permit Requirements.

(1) A body art facility shall not operate in Utah unless it has first obtained a permit to operate from the local health department having jurisdiction.

(2) In order to obtain a permit, the operator shall complete an application provided by the local health department and pay the associated fee. A permit, unless revoked, shall be valid for one year.

(3) Before the facility is eligible for a permit, the operator shall demonstrate to the local health officer that the facility can meet the requirements specified in Sections R392-701-4 through R392-701-8 of this rule. The operator shall also demonstrate that the facility has the systems in place to meet the written consent and notification requirements, and to keep records as required in Section R392-701-14.

(4) The operator shall be able to demonstrate to the local health officer initially, and upon subsequent inspections, sufficient knowledge of aseptic technique, as well as safe and sanitary procedural operations as required in Section R392-701-9.

(5) The operator shall be required to submit to the local health officer prior to the start of construction or remodeling properly prepared plans and specifications for review before:

- (a) the construction of a body art facility;
- (b) the conversion of an existing structure for use as a body art facility; or
- (c) the remodeling of a body art facility if the local health officer determines plans and specifications are necessary to ensure compliance with this rule.

(6) A body art facility permit shall not be transferrable from one facility, owner, or operator to another. A change in ownership or change of facility location, requires a new permit.

(7) Temporary body art facilities may be permitted to operate in conjunction with a single event or celebration, which permit shall only be valid for 14 consecutive days or less. No body

art procedure shall be performed in a temporary body art facility before a permit is issued.

(8) Prior to permit issuance, the operator of a temporary body art facility shall demonstrate to the local health officer compliance with the following minimum requirements:

(i) adequate structure at which body art procedures will be performed;

(ii) adequate sterilization equipment and procedures for sterilization, cleaning, and sanitation;

(iii) adequate hand wash facilities; and

(iv) the ability to clean and disinfect the procedure area, and clean and sterilize instruments.

(9) A current body art facility permit shall be posted in a prominent and conspicuous area in the body art facility or temporary body art facility where it may be readily observed by clients and the local health officer.

R392-701-19. Inspections and Investigations.

Upon presenting proper identification, the operator shall permit the local health officer to enter upon the premises of a body art facility or temporary body art facility to perform inspections, investigations, and other actions as necessary to ensure compliance with Rule R392-701.

R392-701-20. Closing or Restricting Use of a Body Art Facility.

(1) A body art facility or temporary body art facility, or a portion thereof, may be closed, or its use restricted, as determined by the local health officer, if conditions found during an inspection are deemed to be an imminent health hazard to the public.

(2) The operator shall restrict public access to the impacted area of any body art facility or temporary body art facility closed or restricted to use by a local health officer within a reasonable time as ordered by the local health officer.

(3) It shall be unlawful for an operator to allow the public to utilize any body art facility or temporary body art facility or portion thereof that has been deemed unfit for use until written approval of the local health officer is given.

KEY: body art, tattoo, piercing, permanent cosmetics

Date of Enactment or Last Substantive Amendment: 2020

Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-1-30(9); 26-1-30(23); 26-7-1; 26-15-2

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code Ref (R no.):	R414-22	Filing No.	52462
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Agency Information

1. Department:	Health
Agency:	Health Care Financing, Coverage and Reimbursement Policy
Building:	Cannon Health Building
Street address:	288 N 1460 W
City and 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:		
Administrative Sanction Procedures and Regulations		
3. Purpose of the new rule or reason for the change:		
The purpose of these changes is to clarify sanction procedures for Medicaid providers and to maintain the integrity of the Medicaid program.		
4. Summary of the new rule or change:		
These changes clarify sanction procedures for Medicaid providers. It further updates names, terms, and makes other technical changes.		
Fiscal Information		
5. Aggregate anticipated cost or savings to:		
A) State budget:		
There is no impact to the state budget because these changes only clarify sanction procedures for Medicaid providers. It does not affect provider payments nor member services.		
B) Local governments:		
There is no impact on local governments because these changes only clarify sanction procedures for Medicaid providers. It does not affect provider payments nor member services.		
C) Small businesses ("small business" means a business employing 1-49 persons):		
There is no impact on small businesses because these changes only clarify sanction procedures for Medicaid providers. It does not affect provider payments nor member services.		
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):		
There is no impact on non-small businesses because these changes only clarify sanction procedures for Medicaid providers. It does not affect provider payments nor member services.		
E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency):		

There is no impact on Medicaid providers and Medicaid members because these changes only clarify sanction procedures for Medicaid providers. It does not affect provider payments nor member services.

F) Compliance costs for affected persons:

There are no compliance costs to a single Medicaid provider or to a Medicaid member because these changes only clarify sanction procedures for Medicaid providers. It does not affect provider payments nor member services.

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

Regulatory Impact Table			
Fiscal Cost	FY2020	FY2021	FY2022
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head approval of regulatory impact analysis:

The executive director of the Department of 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	Subsection 26-18-3(7)
----------------	-----------------------

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:	12/15/2019
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R414. Health, Health Care Financing, Coverage and Reimbursement Policy.

R414-22. Administrative Sanction Procedures and Regulations.

R414-22-1. Introduction and Authority.

(1) In order to ~~[effectively and efficiently operate]~~ maintain the integrity of the Medicaid program, and to assure the safety of Medicaid members, the Department may implement administrative sanctions against providers who abuse or improperly apply the benefit program or otherwise conduct themselves contrary to law.

(2) This rule is authorized by Sections 26-1-5 and Subsection 26-18-3(7).

R414-22-2. Definitions.

The definitions in Rule R414-1 apply to this rule. In addition:

(1) "Abuse" means provider practices that are inconsistent with sound fiscal, business, or medical practices, and result in reimbursement for services that are either not medically necessary or that fail to meet professionally recognized standards for health care.

(2) "Conviction" or "Convicted" means a criminal conviction entered by a federal or state court for fraud involving Medicare or Medicaid regardless of whether an appeal from that judgment is pending.

(3) "Fiscal agent" means an organization that processes and pays provider claims on behalf of the Department.

(4) "Fraud" means intentional deception or misrepresentation made by a person that results in some unauthorized Medicaid benefit to himself or some other person. It includes any act that constitutes fraud under applicable state law.

(5) "Member" means an individual who is determined eligible for Medicaid.

(~~5~~)6 "Offense" means any of the grounds for sanctioning set forth in Section R414-22-4.

(~~6~~)7 "Person" means any natural person, company, firm, association, corporation or other legal entity.

(~~7~~)8 "Practitioner" means a physician or other individual licensed under state law to practice his profession.

(~~8~~)9 "Provider" means an individual or other entity who has been approved by the Department to provide services to Medicaid ~~[clients]~~ members, and who has signed a provider agreement with the Department.

(~~9~~)10 "Provider Sanction Committee" means the committee within the Department of Health that determines whether a Medicaid provider with a conviction or other sanction identified in Subsection R414-22-3 (3), (4), or (5) may enroll or remain in the Medicaid program. This committee consists of a designee of the Executive Director of the Department of Health, a designee of the Office of Inspector General of Medicaid Services, and the bureau director over provider enrollment.

(~~10~~)11 "Suspension" means that Medicaid items or services provided by a provider under suspension shall not be reimbursed by the Department.

(~~11~~)12 "Termination from participation" means termination of the existing provider agreement.

R414-22-3. Grounds for Excluding Providers.

(1) Upon learning of the crime, misdemeanor or misconduct, the Department shall exclude a prospective Medicaid provider who:

(a) has a current ~~[restriction,]~~ suspension ~~[, or probation]~~ from the Division of Professional and Occupational Licensing (DOPL) or another state's equivalent agency for sexual misconduct with a child, minor, or non-consenting adult under Title 76 of the Criminal Code; or

(b) is serving any term, completing any associated probation or parole, or still making complete court imposed restitution for a felony conviction involving:

- (i) a sexual crime;
- (ii) a controlled substance; or
- (iii) health care fraud;

~~(c) has a current restriction on their license from DOPL or another state's equivalent agency to treat only a certain age group or gender or DOPL requires another medical professional to supervise and restrict the provider's activity;]~~ or

(~~d~~)c is serving any term, completing any associated probation or parole, or still making complete court imposed restitution for a misdemeanor conviction that involves a controlled substance.

(2) Upon learning of the crime, misdemeanor or misconduct, the Department shall terminate a current Medicaid provider for any violation stated in Subsection R414-22-3(1).

(3) If a prospective or current Medicaid provider has a current restriction or probation on their license from DOPL or another state's equivalent agency to treat only a certain age group or gender, or DOPL requires another medical professional to supervise and restrict the provider's activity, then the Department will require the provider to submit the same documentation to the Department that the provider is required to submit to DOPL or another state's equivalent agency to demonstrate compliance with the restriction. Failure to submit such documentation to the Department is a basis for suspension or termination of enrollment with Medicaid.

(~~3~~4) Subject to approval of the Provider Sanction Committee, the Department may enroll a provider who has served any term, completed any associated probation or parole, or made complete court-imposed restitution for a prior felony conviction involving:

- (a) a sexual crime;
- (b) a controlled substance; or
- (c) health care fraud.

(~~4~~5) Subject to approval of the Provider Sanction Committee, the Department may enroll a provider or allow a provider to remain in the Medicaid program if the provider has a previous restriction, suspension, or probation from DOPL for sexual misconduct with a child, minor, or non-consenting adult under Title 76 of the Criminal Code.

(~~5~~6) Subject to approval of the Provider Sanction Committee, the Department may allow a provider to remain in the Medicaid program when the Office of Inspector General of Medicaid Services has recommended the program consider termination of the provider.

(~~6~~7) The Provider Sanction Committee may consider the need to maintain ~~client~~member access to services when making a determination related to convictions or sanctions described in Subsection R414-22-3(~~3~~4), (~~4~~5), or (~~5~~6).

(~~7~~8) The Provider Sanction Committee may use any grounds described in Section R414-22-4 to exclude providers from Medicaid.

(~~8~~9) The Department may exclude a prospective Medicaid provider who has a current ~~restriction,~~ suspension~~, or probation~~ from DOPL or another state's equivalent agency.

(~~9~~10) The Provider Sanction Committee may exclude a prospective provider for significant misconduct or substantial evidence of misconduct that creates a substantial risk of harm to the Medicaid program.

(~~10~~11) If after review, the Provider Sanction Committee finds there is prior misconduct outlined in Section R414-22-3 or Section R414-22-4, the committee retains discretionary authority to not renew a provider agreement, to not reinstate a provider agreement, and to not enroll a provider until the provider has completed all requirements deemed necessary by the committee.

R414-22-4. Grounds for Sanctioning Providers.

The Department may impose sanctions against a provider who:

(1) knowingly presents, or cause to be presented, to Medicaid any false or fraudulent claim, other than simple billing errors, for services or merchandise; or

(2) knowingly submits, or cause to be submitted, false information for the purpose of obtaining greater Medicaid reimbursement than the provider is legally entitled to; or

(3) knowingly submits, or cause to be submitted, for Medicaid reimbursement any claims on behalf of a provider who has been terminated or suspended from the Medicaid program, unless the claims for that provider were included for services or supplies provided prior to his suspension or termination from the Medicaid program; or

(4) knowingly submits, or cause to be submitted, false information for the purpose of meeting Medicaid prior authorization requirements; or

(5) fails to keep records that are necessary to substantiate services provided to Medicaid recipients; or

(6) fails to disclose or make available to the Department, its authorized agents, or the State Medicaid Fraud Control Unit, records or services provided to Medicaid ~~recipients~~members or records of payments made for those services; or

(7) fails to provide services to Medicaid ~~recipients~~members in accordance with accepted medical community standards as adjudged by either a body of peers or appropriate state regulatory agencies; or

(8) breaches the terms of the Medicaid provider agreement; or

(9) fails to comply with the terms of the provider certification on the Medicaid claim form; or

(10) overutilizes the Medicaid program by inducing, providing, or otherwise causing a Medicaid ~~recipient~~member to receive services or merchandise that is not medically necessary; or

(11) rebates or accepts a fee or portion of a fee or charge for a Medicaid ~~recipient~~member referral; or

(12) violates the provisions of the Medical Assistance Act under Title 26, Chapter 18, or any other applicable rule or regulation; or

(13) knowingly submits a false or fraudulent application for Medicaid provider status; or

(14) violates any laws or regulations governing the conduct of health care occupations, professions, or regulated industries; or

(15) is convicted of a criminal offense relating to performance as a Medicaid provider; or

(16) conducts a negligent practice resulting in death or injury to a patient as determined in a judicial proceeding; or

(17) fails to comply with standards required by state or federal laws and regulations for continued participation in the Medicaid program; or

(18) conducts a documented practice of charging Medicaid ~~recipients~~members for Medicaid covered services over and above amounts paid by the Department unless there is a written agreement signed by the ~~recipient~~member that such charges will be paid by the ~~recipient~~member; or

(19) refuses to execute a new Medicaid provider agreement when doing so is necessary to ensure compliance with state or federal law or regulations; or

(20) fails to correct any deficiencies listed in a Statement of Deficiencies and Plan of Correction, CMS Form 2567, in provider operations within a specific time frame agreed to by the Department and the provider, or pursuant to a court or formal administrative hearing decision; or

(21) is suspended or terminated from participation in Medicare for failure to comply with the laws and regulation governing that program; or

(22) fails to obtain or maintain all licenses required by state or federal law to legally provide Medicaid services; or

(23) fails to repay or make arrangements for repayment of any identified Medicaid overpayments, or otherwise erroneous payments, as required by the State Plan, court order, or formal administrative hearing decision.

(24) The Department may sanction a Medicaid provider who has a current [~~restriction,~~]suspension[~~, or probation~~] from DOPL or another state's equivalent agency.

(25) The Provider Sanction Committee may sanction a provider for significant misconduct or substantial evidence of misconduct that creates a substantial risk of harm to the Medicaid program.

(26) If after review, the Provider Sanction Committee finds there is prior misconduct outlined in Section R414-22-3 or Section R414-22-4, the committee retains discretionary authority to not renew a provider agreement, to not reinstate a provider agreement, and to not enroll a provider until the provider has completed all requirements deemed necessary by the committee.

R414-22-5. Sanctions.

Sanctions for violating any subsection of Section R414-22-4 are:

- (1) Termination from participation in the Medicaid program;
- or
- (2) Suspension of participation in the Medicaid program.

R414-22-6. Imposition of Sanction.

(1) Before the Department decides to impose a sanction, it shall notify the provider, in writing, of:

(a) the findings of any investigation by the Department, its agents, or the [~~Bureau of Medicaid Fraud~~]Office of Inspector General of Medicaid Services; and

(b) any possible sanctions the Department may impose.

(2) Providers shall have 30 days after the notice date to respond in writing to the findings of any investigation. A written request for additional time of less than 30 days may be granted by the Department for good cause shown.

(3) The Provider Sanction Committee has the discretion to impose sanctions after receiving the provider's input.

(4) The Provider Sanction Committee may consider the following factors when determining which sanction to impose:

- (a) seriousness of offense;
- (b) extent of offense;
- (c) history of prior violations of Medicaid or Medicare law;
- (d) prior imposition of sanctions by the Department;
- (e) extent of prior notice, education, or warning given to the provider by the Department pertaining to the offense for which the provider is being considered for sanction;

(f) adequacy of assurances by the provider that the provider will comply prospectively with Medicaid requirements related to the offense;

(g) whether a lesser sanction will be sufficient to remedy the problem;

(h) sanctions imposed by licensing boards or peer review groups and professional health care associations pertaining to the offense; and

(i) suspension or termination from participation in another governmental medical program for failure to comply with the laws and regulations governing these programs.

(5) When the Department decides to impose a sanction, it shall notify the provider at least ten calendar days before the sanction's effective date.

R414-22-7. Scope of Sanction.

(1) Once a provider is suspended or terminated, the Department shall only pay claims for services provided prior to the suspension or termination.

(2) The Department may suspend or terminate any individual, clinic, group, corporation, or other similar organization, who allows a sanctioned provider to bill Medicaid under the clinic, group, corporation or organization provider number.

R414-22-8. Notice of Sanction.

(1) When a provider [~~has been~~]is sanctioned for a period exceeding 15 days, the Department may notify the applicable professional society, board of registration or licenser, and federal or state agencies.

(2) Notice includes:

- (a) the findings made; and
- (b) the sanctions imposed.

(3) The Department shall timely notify any appropriate Medicaid [~~recipient~~]member of the provider's suspension or termination from the Medicaid program.

R414-22-9. Monitoring.

(1) If the Department is aware that an applicant or provider has had an action against them related to the following issues, the applicant will be subject to additional monitoring. The issues include:

- (a) claims for excessive charges;
- (b) providing unnecessary services;
- (c) failing to disclose required information; or
- (d) a misdemeanor conviction that involves health care fraud.

(2) The Department will refer applicants or providers described in Subsection R414-22-9(1) to the Office of Inspector General of Medicaid Services to be monitored for at least six months.

R414-22-10. Provider Application.

The Department shall review any Medicaid provider agreement application for previous sanctions before approving the provider agreement.

KEY: Medicaid

Date of Enactment or Last Substantive Amendment: [~~November 14, 2012~~]2020

Notice of Continuation: November 9, 2017

Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-3(7)

NOTICE OF PROPOSED RULE			
TYPE OF RULE: Amendment			
Utah Admin. Code Ref (R no.):	R414-312	Filing No.	52461

Agency Information

1. Department:	Health
Agency:	Health Care Financing, Coverage and Reimbursement Policy
Building:	Cannon Health Building
Street address:	288 N 1460 W
City and 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: Adult Expansion Medicaid
3. Purpose of the new rule or reason for the change: The purpose of these changes are to implement Community Engagement (CE) and Employer-Sponsored Insurance (ESI) requirements.
4. Summary of the new rule or change: This amendment implements CE and ESI requirements as approved in Utah's 1115 Demonstration Waiver. It also makes other technical changes.

Fiscal Information
5. Aggregate anticipated cost or savings to:
A) State budget: Approximately \$13,800,000 in total expenditures will shift from Medicaid's Fee for Service (FFS) payments to ESI payments. The net change for ESI is expected to be cost neutral to the state budget in FY 2020. Based on Utah's experience with Supplemental Nutrition Assistance Program (SNAP) work requirements, the Department of Health (Department) estimates approximately 70 percent of Adult Expansion beneficiaries will meet an exemption to CE participation. Among individuals who do not meet an exemption or good cause reason, the Department projects that approximately 75 to 80 percent will comply with the CE requirements. Some individuals will enroll in Medicaid expansion, fail to comply with a CE requirement, and lose their Medicaid coverage.
B) Local governments: There is no impact on local governments because they neither fund nor provide CE or ESI services under the Medicaid program.
C) Small businesses ("small business" means a business employing 1-49 persons): An inestimable number of small businesses will see higher benefit costs as Medicaid expansion members enroll in their ESI. Small businesses that provide medical services to Medicaid members may see a different share of annual ESI expenditures up to \$13,800,000 as expenditures shift from FFS to ESI.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons): An inestimable number of non-small businesses will see higher benefit costs as Medicaid expansion members enroll in their ESI. Non-small businesses that provide medical services to Medicaid members may see a different share of annual ESI expenditures up to \$13,800,000 as expenditures shift from FFS to ESI.																																																												
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H) Department head approval of regulatory impact analysis:

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:

Overall, businesses will see an equal amount of revenue and costs as more members enroll in their ESI and annual expenditures shift from FFS to ESI.

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	Pub L. No. 111-148
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Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until: 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:	12/15/2019
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R414. Health, Health Care Financing, Coverage and Reimbursement Policy.

R414-312. Adult Expansion Medicaid.

R414-312-2. Definitions.

The definitions in Rules R414-1 and R414-301 apply to this rule.

(1) In addition, the following definitions apply:

(a) "Certification Period" means the 12-month time frame in which an individual is eligible for coverage based on an approved application or review.

(b) "Community Engagement" means incentivized participation in community engagement activities to improve Medicaid enrollee health and well-being.

(c) "Employer-sponsored health plan" means a health insurance plan offered by an employer either directly or through the Utah Health Exchange.

(d) "Medically Frail" means an individual as described in 42 CFR 440.315(f).

(e) "Qualified Health Plan" means a health plan that meets all of the following:

(i) The plan covers physician visits, hospital inpatient services, pharmacy, well child exams and child immunizations;

(ii) The network deductible is less than \$4000 per person;

(iii) The plan pays at least 70% of an in network inpatient stay after the deductible;

(iv) The plan does not cover abortion services, or the plan only covers abortion services when the life of the mother would be endangered if the fetus were carried to term, or in the case of incest or rape; and

(v) The employer pays at least 50% of the premium for the primary-insured individual.

R414-312-4. General Eligibility Requirements.

Unless otherwise stated, the provisions in Rule R414-302 and Section R414-306-4 apply to all applicants and enrollees.

(1) The following individuals are not eligible for Adult Expansion Medicaid:

(a) Individuals eligible for any Medicaid program without a spenddown; or

(b) Individuals eligible for or receiving Medicare.

(2) An individual must be at least 19 years old and not yet 65 years old to enroll in Adult Expansion Medicaid.

(a) The month in which an individual turns 19 years old is the first month in which the individual may enroll in Adult Expansion Medicaid.

(b) An individual may only enroll in Adult Expansion Medicaid through the month in which the individual turns 65 years old.

(3) The eligibility agency may only enroll applicants during an open enrollment period. The Department may limit the number it enrolls and may stop enrollment at any time.

(4) The eligibility agency shall waive the open enrollment requirement if the enrollee completes a review within three months of case closure as outlined in Section R414-308-6.

(5) A resource test is not required.

(6) Recipients are required as a condition of eligibility, to participate in community engagement (CE) activities, unless found to meet an exemption or good-cause criteria.

(a) A recipient must complete the following to meet the participation requirement for CE activities:

(i) register for work through the state system;
(ii) complete an assessment of training needs;
(iii) complete the job training modules as determined to be relevant by the training needs assessment; and
(iv) apply for employment with at least 48 employers, either directly or through the State's automated employment application submission process.
(b) A recipient must complete CE activities within three months of the month following the approval or renewal of medical coverage.
(c) A recipient who fails to complete the CE requirements will lose eligibility for the remainder of the certification period unless the recipient qualifies for an exemption or demonstrates good cause. If a recipient does not claim good cause before the start of the sanction, the sanction will remain in effect.
(i) A beneficiary will lose eligibility the first day of the month following proper notice.
(ii) An individual shall not be eligible for coverage until one of the following occurs:
(iii) the individual participates with all CE activities. The eligibility agency requires a new application if the individual is sanctioned more than one calendar month;
(iv) the individual meets an exemption;
(v) the individual qualifies for a different Medicaid program; or
(vi) a new certification period begins.
(d) A recipient who meets one of the following exemptions is not required to participate in CE activities, and will remain exempt throughout the certification period:
(i) is 60 years of age or older;
(ii) is pregnant or within the 60-day post-partum period;
(iii) cannot physically or mentally meet the participation requirements as determined by a medical professional or documented through other data sources;
(iv) is responsible for the care of a dependent child who is under six years of age. Only one parent may claim the exemption per child;
(v) is responsible for the care of a person with a disability as defined by the Americans with Disabilities Act of 1990, 42 U.S.C. 12102, the Rehabilitation Act of 1973, Section 504, or the Patient Protection and Affordable Care Act of 2010, Section 1557. Only one parent may claim this exemption per individual;
(vi) is a member of a federally recognized tribe;
(vii) has applied for and is awaiting an eligibility determination for unemployment insurance benefits, or is receiving unemployment insurance benefits and has registered for work at the Department of Workforce Services;
(viii) participates regularly in a substance use disorder treatment program, which includes intensive outpatient treatment;
(ix) is enrolled at least half-time in any school that includes college, university, and vocational training or apprenticeship programs;
(x) participates in refugee employment services offered by the State, which include vocational training and apprenticeship programs, case management, and employment planning;
(xi) is a recipient of the State's Family Employment Program and is working with an employment counselor;
(xii) is a beneficiary who complies with or is exempt from the Supplemental Nutrition Assistance Program;
(xiii) is a beneficiary who complies with the Temporary Assistance for Needy Families employment requirements; or

(xiv) works at least 30 hours a week, or works and earns the federal minimum wage earned by working 30 hours a week.
(e) The Department shall consider a recipient compliant, who does not meet an exemption, but demonstrates good cause not to participate with CE activities throughout the certification period. The following are circumstances for good cause:
(i) The beneficiary or an immediate family member who lives in the home with the beneficiary experiences a hospitalization or serious illness;
(ii) There are fewer than 48 employers in the beneficiary's geographic area that could potentially offer employment to the beneficiary, or from whom the beneficiary could reasonably expect to accept an offer of employment.
(iii) The beneficiary:
(A) has a disability as defined by the Americans with Disabilities Act of 1990, 42 U.S.C. 12102, the Rehabilitation Act of 1973, Section 504, or the Patient Protection and Affordable Care Act of 2010, Section 1557, and cannot meet the requirements for reasons related to that disability;
(B) has an immediate family member in the home with a disability under federal disability rights laws, and cannot meet the requirements for the reasons related to the disability of the family member;
(C) experiences severe inclement weather, including a natural disaster, and therefore cannot meet the requirements;
(D) experiences the birth or death of a family member who lives with the beneficiary;
(E) has a family emergency or other life-changing event;
(F) has no access to the internet or transportation to a place where the requirements can be completed; or
(G) is the primary caretaker of a child who is six years of age or older, and cannot meet the requirements due to childcare responsibilities.
(iv) The Department shall grant the beneficiary a good-cause exemption upon meeting the requirements.
(f) If the Department grants an exemption, the following provisions apply:
(i) If the beneficiary reports the exemption and verifies it timely, the effective date of coverage is the first day of the month of report;
(ii) If the beneficiary does not timely report or verify the exemption, the effective date of coverage is the first day of the month in which the beneficiary verifies the exemption.
(7) A recipient is required as a condition of eligibility, to enroll or remain enrolled in a qualified health insurance plan offered by an employer. The employer-sponsored insurance (ESI) must meet the qualified health plan requirements as described in Section R414-312-2.
(a) The following individuals are not required to participate in ESI:
(i) a member of a federally recognized tribe;
(ii) an individual who is under 26 years of age and on a parent's health insurance plan; and
(iii) an individual who is already enrolled in a non-qualified health plan.
(b) A recipient must enroll in ESI within 30 days of receiving the approval notice, or be sanctioned from receiving Adult Expansion coverage.
(c) The Department shall sanction an individual who does not participate in ESI from receiving Adult Expansion coverage for a period of 12 consecutive months.

(d) The 12-month sanction period applies even when the individual moves from another eligibility program.

(i) The Department may only lift a sanction if the individual enrolls in ESI coverage, or if one of the following occurs:

(A) The employer no longer offers ESI;

(B) The employer no longer offers a qualified health insurance plan; or

(C) The recipient loses health insurance due to termination or loss of job, and reports the change within 10 business days.

(e) If the Department lifts a sanction, the following apply:

(i) If the beneficiary reports the exemption and verifies it timely, the effective date of coverage is the first day of the month of report;

(ii) If the beneficiary does not timely report or verify the exemption, the effective date of coverage is the first day of the month in which the beneficiary verifies the exemption.

KEY: Medicaid, adult expansion, eligibility

Date of Enactment or Last Substantive Amendment: ~~August 29, 2019~~2020

Authorizing, and Implemented or Interpreted Law: 26-18

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code Ref (R no.):	R527-303-2	Filing No.	52438
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Agency Information

1. Department:	Human Services	
Agency:	Recovery Services	
Street address:	515 East 100 South	
City, state:	Salt Lake City, UT	
Mailing address:	PO Box 45033	
City, state, zip:	Salt Lake City, UT 84102-4211	
Contact person(s):		
Name:	Phone:	Email:
Scott Weight	801-741-7435	sweigh2@utah.gov
Casey Cole	801-741-7523	cacole@utah.gov
Jonah Shaw	801-538-4219	jshaw@utah.gov

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

General Information

2. Rule or section catchline:

Automatic Payment Withdrawal

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

The purpose of this amendment is to add an additional criterion which must be met in order for a non-custodial parent to qualify for automatic payment withdrawal.

4. Summary of the new rule or change:

This amendment adds as a criterion for automatic payment withdrawal that the non-custodial parent may not have an active bankruptcy case.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

The rule amendment is adding a criterion for automatic payment withdrawal. There is no anticipated cost or savings to the state budget due to the amendment to this rule.

B) Local governments:

Administrative rules of the Office of Recovery Services do not apply to local governments. There are no anticipated costs or savings for local governments due to this amendment.

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

This amendment adds a criterion for non-custodial parents to qualify for automatic payment withdrawal. There are no anticipated costs or savings to small businesses due to the amendment to this rule.

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

This amendment adds a criterion for non-custodial parents to qualify for automatic payment withdrawal. There are no anticipated costs or savings to non-small businesses due to the amendment to this rule.

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

There is no anticipated effect to other persons due to the amendment to this rule.

F) Compliance costs for affected persons:

There is no anticipated effect to other persons due to the amendments to this rule.

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

Regulatory Impact Table			
Fiscal Cost	FY2020	FY2021	FY2022
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head approval of regulatory impact analysis:

The executive director of the Department of Human Services, Ann Silverberg 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:

After conducting a thorough analysis, it was determined that this proposed rule amendment will not result in a fiscal impact to businesses.

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

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-1-111	Section 62A-11-107	Section 62A-11-703
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Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:	01/31/2020
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10. This rule change MAY become effective on:	02/07/2020
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NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	Liesa Stockdale, Director	Date:	12/09/2020
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R527. Human Services, Recovery Services.

R527-303. Automatic Payment Withdrawal.

R527-303-1. Authority and Purpose.

1. The Department of Human Services is authorized to create rules necessary for the provision of social services by Section 62A-1-111 and 62A-11-107. Pursuant to Subsection 62A-11-703(6), the Office of Recovery Services/Child Support Services (ORS/CSS) shall make rules specifying eligibility requirements to enter into alternative payment agreements.

2. The purpose of this rule is to specify how ORS/CSS will determine the eligibility of an obligor to make child support payments via automatic payment withdrawal from a bank account in lieu of income withholding.

R527-303-2. Automatic Payment Withhdrawal.

1. Pursuant to Section 62A-11-703, ORS/CSS may enter into an alternative payment agreement with an obligor which provides for payment of child support via electronic funds transfer from the obligor's account at a financial institution in lieu of income withholding.

2. In order to be eligible to enter into an alternative payment agreement with ORS/CSS, an obligor:
- a. must have a verified address in the Office of Recovery Services Information System;
 - b. must not have been disqualified from using the alternative payment agreement in the last 12 months; ~~and;~~
 - c. may not be an obligor on an active outgoing intergovernmental case[-]; and
 - d. may not have an active bankruptcy case.
3. The ORS/CSS Director or designee may exercise [his/her] discretion to terminate any agreement for abuse or cause.

KEY: child support, electronic funds transfer, automatic payment withdrawal
Date of Enactment or Last Substantive Amendment: [~~May 8, 2018~~2020
Authorizing, and Implemented or Interpreted Law: 62A-1-111; 62A-11-107; 62A-11-703

NOTICE OF PROPOSED RULE			
TYPE OF RULE: Amendment			
Utah Admin. Code Ref (R no.):	R652-90	Filing No.	52440

Agency Information

1. Department:	Natural Resources		
Agency:	Forestry, Fire and State Lands		
Room no.:	3520		
Street address:	1594 West North Temple		
City, state:	Salt Lake City Utah 84114		
Contact person(s):			
Name:	Phone:	Email:	
Jamie Barnes	385-222-1536	jamiiebarnes@utah.gov	
Please address questions regarding information on this notice to the agency.			

General Information

2. Rule or section catchline:
Sovereign Land Management Planning
3. Purpose of the new rule or reason for the change:
This rule implements Sections 65A-2-2 and 65A-2-4 which requires that planning procedures be developed for sovereign lands, and for the opportunity for the public to participate in the planning process.
4. Summary of the new rule or change:
The summary of the rule change is to implement changes to the planning section to allow site specific planning for project requests when the project encompasses an area of 20 acres or more.

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Fiscal Information

5. Aggregate anticipated cost or savings to:																												
A) State budget:																												
The impacts to state budget are in estimable, as it is unknown how many applications will be received under this rule and whether or not site planning will be required. However, the Division of Forestry, Fire and State Lands does not anticipate an increased cost.																												
B) Local governments:																												
The impacts to local governments are negligible as this rule does not apply to local governments.																												
C) Small businesses ("small business" means a business employing 1-49 persons):																												
There is no impact, anticipated cost or saving to small businesses under this rule as this rule does not pertain to small businesses.																												
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):																												
There is no impact, anticipated cost or savings to non-small business as this rule does not apply 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 is no impact, anticipated cost or savings to persons as defined in this category as this rule does not specifically apply to persons as defined.																												
F) Compliance costs for affected persons:																												
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G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)																												
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<table border="1"> <thead> <tr> <th>Fiscal Cost</th> <th>FY2020</th> <th>FY2021</th> <th>FY2022</th> </tr> </thead> <tbody> <tr> <td>State Government</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> <tr> <td>Local Governments</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> <tr> <td>Small Businesses</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> <tr> <td>Non-Small Businesses</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> <tr> <td>Other Persons</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> <tr> <td>Total Fiscal Cost</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> </tbody> </table>	Fiscal Cost	FY2020	FY2021	FY2022	State Government	\$0	\$0	\$0	Local Governments	\$0	\$0	\$0	Small Businesses	\$0	\$0	\$0	Non-Small Businesses	\$0	\$0	\$0	Other Persons	\$0	\$0	\$0	Total Fiscal Cost	\$0	\$0	\$0
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State Government	\$0	\$0	\$0
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Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head approval of regulatory impact analysis:

The executive director, Brian Steed, has reviewed this rule and been advised on the regulatory impact analysis.

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

This rule will have no impact on businesses.

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

Brian C. Steed, Executive Director

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Section 65A-2-2	Section 65A-2-4
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Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until: 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:	Brian L. Cottam, Director	Date:	12/11/2019
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R652. Natural Resources; Forestry, Fire and State Lands.

R652-90. Sovereign Land Management Planning.

R652-90-100. Authority.

This rule implements Sections 65A-2-2 and 65A-2-4 which requires that planning procedures be developed for sovereign lands, and for the opportunity for the public to participate in the planning process.

R652-90-200. Scope.

This rule sets forth the planning procedures for natural and cultural resources on sovereign land as required by law. These procedures establish comprehensive land-management policies using multiple-use, sustained-yield principles in order to make the interest of the beneficiary paramount. Management plans shall guide the implementation of stated management objectives, and provide direction for land-use decisions and activities on sovereign lands. One or more of the following plans, as defined in Section R652-1-200, shall be implemented pursuant to Section 65A-2-2:

1. Comprehensive management plans;
2. Resource plans; or
3. Site-specific plans.

R652-90-300. Initiation of Planning Process.

1. A comprehensive planning process is initiated by the designation of a planning unit as planning priorities are established by the division.

2. Resource Management planning is initiated by the division's identification and determination that there is a need for such a plan.

3. In the absence of a comprehensive management plan or a resource management plan [~~exists~~] for sovereign land, site-specific planning shall be initiated either by:

- (a) an application for a sovereign land use, or
- (b) the identification by the division of an opportunity for commercial gain in a specific area.

4. Site-specific planning shall also be initiated when required by a comprehensive management plan or when the Division receives an application for a sovereign land use for 20 acres or more, except that applications for grazing permits, rights of entry, and letters of authorization shall not require site-specific planning.

R652-90-400. Site-Specific Planning.

1. When the division conducts site-specific planning it shall consider:

- (a) a comparative evaluation of the commercial gain potential of the proposed use with competing or existing uses;
- (b) the effect of the proposed use on adjoining sovereign lands;
- (c) an evaluation of the proposed use or action with regard to natural and cultural resources, if appropriate;
- (d) the notification of, and environmental analysis of, the proposed use provided by the public, federal, state, and municipal

agencies through the Resource Development Coordinating Committee (RDCC) process; and

(e) any further notification and evaluations as required by applicable rules.

2. During the site-specific planning process, the director may determine that a comprehensive management plan be prepared. In making such a determination, the director may consider:

(a) the amount of public interest in the natural and cultural resources of the area;

(b) any unique attributes of the land;

(c) the potential for conflicts with other land uses; and

(d) the opportunities for commercial gain of the sovereign land resources by development of a comprehensive or resource management plan, exchange of the land or other options in lieu of those set forth in the application.

3. Site-specific plans for land uses for 20 acres or more of sovereign lands shall be subject to the same public review as comprehensive management plans under Section R652-90-600.

4. Any person aggrieved by a site-specific plan for a land use for more than 20 acres of sovereign land is entitled to appeal the plan pursuant to Rule R652-9, even if that person did not provide public comment pursuant to Section R652-90-500.

R652-90-500. Notification and Public Comment.

1. Once a planning unit is designated ~~[for a comprehensive management plan]~~, notice shall be sent to ~~[the Governor's Office of Planning and Budget for inclusion in]~~ the RDCC through the project management system ~~[agenda packet and, if appropriate, the weekly status report.]~~

2. The division shall conduct at least one public meeting in the vicinity of a planning unit that has been designated for a comprehensive management plan or site-specific plan for 20 acres or more of sovereign land.

(a) The meeting shall provide an opportunity for the public to submit written comment regarding the issues to be addressed in the plan.

(b) The public meeting ~~[(*)]~~ shall be held at least two weeks after public notice ~~[in a local newspaper].~~

(c) Notice of public meeting ~~[(*)]~~ shall be sent directly to lessees of record, local government officials and adjacent landowners ~~[the Office of Planning and Budget for inclusion in the RDCC agenda packet and weekly status report. A mailing list shall be maintained by the division.]~~

(d) Additional public meetings may be held.

3. Notice that a site-specific or resource planning effort is under way shall be given to:

(a) affected parties as required by rule for exchange, or lease;

(b) adjacent landowners, lessees of record, and
~~[(b)](c) [the Governor's Office of Planning and Budget for inclusion in]~~ the RDCC through the Project Management System ~~[for public and agency notification and comment.]~~

R652-90-600. Public Review.

1. Comprehensive management plans and site-specific plans for 20 acres or more of sovereign land shall be published in draft form on the Division's website and sent in electronic format to [persons on the mailing list established under R652-90-400,] the RDCC ~~[Governor's Office of Planning and Budget,]~~ and other persons upon request.

(a) A public comment period of at least 45 days shall commence upon receipt of the draft in the RDCC ~~[Governor's Office of Planning and Budget].~~

(b) All public comment shall be acknowledged pursuant to Subsection 65A-2-4(2).

(c) The division's response to the public comment shall be summarized in the final comprehensive management plan or site-specific plan for 20 acres or more of sovereign land.

(d) Comments received after the public comment period shall be acknowledged but need not be summarized in the final plan.

2. Resource plans shall be published and made available upon request.

(a) Persons wishing to comment on these plans may do so at any time during the planning process.

(b) The division shall acknowledge all written comments.

3. Upon completion of any comprehensive management plan, resource management plan, or site-specific plan for 20 acres or more of sovereign land ~~[planning process]~~, the Record of Decision or other document summarizing final division action and relevant facts shall be published on the Division website and provided to the RDCC ~~[provided to any persons requesting notice from the division.]~~

4. The Division shall provide a copy of the Record of Decision or other document summarizing final Division action in electronic format to any person upon request.

R652-90-700. Interim Management.

1. Once the planning process is initiated, and for the purpose of effective interim management, the division may designate a primary intended land use or withdraw land in the planning unit from any or all surface or subsurface land use for the duration of the planning process or 18 months, whichever is less.

2. At the onset of a management planning process, a primary intended land use may be designated for land that is reasonably expected to be used for a combination of mineral, industrial, recreational, residential and other uses.

(a) During the planning process, surface actions which will adversely affect the primary intended land use shall be subject to a maximum term of five years and the prohibition of surface disturbance which will foreclose future use options.

(b) The primary intended land use may be changed during the planning process in response to new management opportunities.

3. Any application for activities covered by a current withdrawal shall be held in abeyance. At the conclusion of the planning process, the director may deny an application or any part thereof which is inconsistent with the completed plan, or continue to process all other applications which have been held in abeyance.

4. A lease which expires during the planning processes may be extended only for the duration of the withdrawal. Extensions granted under this provision are exempt from the requirement of Section R652-30-1000.

R652-90-800. Multiple-Use Framework.

Comprehensive management plans shall consider the following multiple-use factors to achieve sovereign land-management objectives:

1. The highest and best use ~~[(*)]~~ for the sovereign land resources in the planning unit.

2. Present and future use ~~[(*)]~~ for the sovereign land resources in the planning unit;

3. Suitability of the sovereign lands in the planning unit for the proposed uses;
4. The impact of proposed use[~~(s)~~] on other sovereign land resources in the planning unit;
5. The compatibility of possible use[~~(s)~~] as proposed by general public comments, application from prospective users or division analysis; and
6. The uniqueness, special attributes and availability of resources in the planning unit.

R652-90-900. Joint Planning.

The division may participate in joint planning with other land management agencies.

R652-90-1000. Amendments to Management Plans.

1. The division shall follow the management direction, policies and land use proposals presented in comprehensive management plans. When unforeseen circumstances arise which may require a change in plans, the division shall adhere to the following procedure for amendments to comprehensive management plans:

- (a) notify affected lessees, beneficiaries, local and other affected government entities;
- (b) submit the proposed amendment to the RDCC for review and comment; and
- (c) conduct a public meeting in the affected area to provide an opportunity for comment, after giving two weeks' notice in a local newspaper. The division shall acknowledge all written comments.

2. Resource plans may be amended by the division without public notice.

3. Site-specific plans may be amended by the director at any time following issuance provided that the amendment:

- (a) does not materially affect any person's rights or obligations, and
- (b) is consistent with existing policy or rule.

R652-90-1100. Termination of Planning.

Prior to issuance of a final planning document, a planning process may be suspended or terminated by the division.

R652-90-1200. Environmental Assessments.

1. The RDCC process provides an environmental assessment for purposes of sovereign land management. The public may comment on proposed sovereign land uses through the RDCC and other public notification processes.

2. Any additional environmental impact analysis shall be at the director's discretion based on a written determination that additional evaluation is consistent with division duties.

KEY: management, public meetings, environmental assessment, land use

Date of Enactment or Last Substantive Amendment: ~~February 24, 2019~~2020

Notice of Continuation: March 29, 2017

Authorizing, and Implemented or Interpreted Law: 65A-2-4

NOTICE OF PROPOSED RULE			
TYPE OF RULE: New			
Utah Admin. Code Ref (R no.):	R652-124	Filing No.	52416

Agency Information

1. Department:	Natural Resources	
Agency:	Forestry, Fire and State Lands	
Room no.:	3520	
Street address:	1594 West North Temple	
City, state:	Salt Lake City Utah 84114	
Contact person(s):		
Name:	Phone:	Email:
Jamie Barnes	385-222-1536	jamiebarnes@utah.gov

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

General Information

2. Rule or section catchline:
Wildland Fire Preparedness Grants
3. Purpose of the new rule or reason for the change:
This rule implements Section 65A-8-213, which authorizes the Division of Forestry, Fire, and State Lands (Division) to make rules establishing criteria for receiving grants from the Wildland Fire Preparedness Grants Fund. This rule also pertains to grants to fire departments for wildland fire preparedness and prevention from other funding sources.
4. Summary of the new rule or change:
This rule establishes criteria for receiving grants from the Wildland Fire Preparedness Grants Fund. This rule also pertains to grants to fire departments for wildland fire preparedness and prevention from other funding sources.

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
The impact to the state budget are in estimable, as it is unknown how many applications will be received under this rule, the amount of money available, eligibility, and the number and amount of grants approved. However, the Division does not anticipate an increased cost.
B) Local governments:
The impact to local governments are in estimable as it is unknown at this time which entities will apply for grants under this rule, the amount of money available, eligibility, and the number and amount of grants approved.
C) Small businesses ("small business" means a business employing 1-49 persons):
There is no impact, anticipated cost, or saving to small

businesses under this rule as this rule does not pertain to small businesses.

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

There is no impact, anticipated cost, or savings to non-small business as this rule does not apply 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 is no impact, anticipated cost, or savings to persons as defined in this category as this rule does not specifically apply to persons as defined.

F) Compliance costs for affected persons:

There are no compliance costs.

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

Regulatory Impact Table

Fiscal Cost	FY2020	FY2021	FY2022
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head approval of regulatory impact analysis:

The executive director, Brian Steed, has reviewed this rule and been advised on the regulatory impact analysis.

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

This rule will have a negligible fiscal impact on businesses.

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

Brian Steed, Executive Director

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Section	65A-8-213		
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Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until: 12/31/2019

10. This rule change MAY become effective on: 01/07/2020

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:	Brian L. Cottam, Director	Date:	12/3/2019
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R652. Natural Resources; Forestry, Fire and State Lands.

R652-124. Wildland Fire Preparedness Grants.

R652-124-100. Authority and Purpose.

These rules implement Section 65A-8-213, which authorizes the Division of Forestry, Fire, and State Lands to make rules establishing criteria for receiving grants from the Wildland Fire Preparedness Grants Fund. The rules also pertain to grants to fire

departments for wildland fire preparedness and prevention from other funding sources.

R652-124-200. Definitions.

1. "Fire Department" is defined as a department that is tasked with responding to and suppressing or controlling wildland fire within a particular geographic jurisdiction.

2. "Grant" is defined as a disbursement of funds from the Wildland Fire Preparedness Grants Fund and/or another funding source to a fire department to assist in building capacity for the suppression of wildland fires or for wildland fire prevention and preparedness.

3. "Grant Applicant" is defined as a fire department seeking a Wildland Fire Preparedness Grant.

4. "Grant Application" means an application for a grant.

5. "Grant Approval Considerations" means the considerations the Division may use to determine whether or not to approve or deny a grant application.

6. "Grant Applicant Eligibility Requirements" means the requirements that must be met by a fire department to be considered eligible to receive a grant.

7. "Qualified Purpose" means the purpose specified by the funding source for the grant.

R652-124-300. Grant Administration.

1. Funds from the Wildland Fire Preparedness Grants Fund can only be used to assist fire departments in building capacity for the suppression of wildland fire. Other grant funding sources may have other purposes related to wildland fire preparedness and prevention.

2. The Division may limit the number and amount of grants approved.

3. The Division will provide an application form for grant requests.

4. All grants may only be used for a qualified purpose.

5. Grants must be used in the year they are awarded.

6. Grant recipients must provide documentation of the use of the grant to the Division after the grant is used.

7. The Division will notify grant recipients of the date that documentation of the use of the grant must be provided to the Division.

8. The Division will publish the deadline for grant applications on its website.

9. The Division will notify grant applicants who do not meet grant application Eligibility Requirements.

10. The Division may publish further information and guidance on this grant program and other grant programs on its website.

R652-124-400. Grant Applicant Eligibility Requirements.

1. The Division will establish grant applicant eligibility requirements and provide them to potential grant applicants.

2. The Division will determine grant applicant compliance with grant applicant eligibility requirements before a grant is approved or denied and may advise grant applicants how to correct eligibility deficiencies.

3. If a grant request cannot be approved from the Wildland Fire Preparedness Grants Fund, the Division may approve a grant from another source of funding if available.

R652-124-500. Grant Approval Considerations.

1. The Division shall award grants based on its discretion and will consider the following criteria when awarding grants:

(a) The history of wildland fire within the jurisdiction;

- (b) The proposed benefit to be obtained by the grant;
- (c) The severity of threat to human health and safety posed by wildland fire within the jurisdiction;
- (d) Timeliness of the grant application;
- (e) The balance of the Wildland Fire Preparedness Grants Fund and other funding sources;
- (f) The ability of the entity to provide the required match for the grant;
- (g) The priorities of the Division related to wildland fire prevention, preparedness, control, and suppression; and
- (h) Other criteria determined relevant by the Division.

KEY: grants, wildland fire, preparedness

Date of Enactment or Last Substantive Amendment: 2020

Authorizing, and Implemented or Interpreted Law: 65A-8-213

NOTICE OF PROPOSED RULE			
TYPE OF RULE: Amendment			
Utah Admin. Code Ref (R no.):	R657-5	Filing No.	52441

Agency Information

1. Department:	Natural Resources		
Agency:	Wildlife Resources		
Room no.:	Suite 2110		
Building:	Department. of Natural Resources		
Street address:	1594 Wt North Temple		
City, state:	Salt Lake City, UT		
Mailing address:	PO Box 146301		
City, state, zip:	Salt Lake City, UT 84114-6301		
Contact person(s):			
Name:	Phone:	Email:	
Staci Coons	801-450-3093	stacicoons@utah.gov	

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

General Information

2. Rule or section catchline:
Taking Big Game
3. Purpose of the new rule or reason for the change:
This rule is being amended pursuant to Regional Advisory Council meetings and the Wildlife Board meeting conducted for taking public input and reviewing the big game rule.
4. Summary of the new rule or change:
The proposed amendments to this rule: 1) add clarification for clean skull; 2) allow for the requirement of Chronic Wasting Disease (CWD) testing on certain units and/or specific hunts; 3) allow for restrictions on the

importing of whole carcasses from CWD positive states; 4) address changes in State Parks Rule Section R651-614-4 to make regulations consistent.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

The proposed rule amendments add a clarification for clean skull and accompany criteria for importing harvests from CWD positive states, all of these changes can be initiated within the current workload and resources of the Division of Wildlife Resources (Division), therefore, the Division has determined that these amendments do not create a cost or savings impact to the state budget or the Division's budget since the changes will not increase workload and can be carried out with the existing budget.

B) Local governments:

Since the proposed amendments make adjustments to current regulations and add protocol for establishing CWD testing requirements this filing does not create any direct cost or savings impact to local governments. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.

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

The proposed rule amendments will not directly impact small businesses because a service is not required of them.

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

The proposed rule amendments will not directly impact non-small businesses because a service is not required of them.

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

These amendments do not have the potential to create a cost impact to those individuals wishing to participate in hunting opportunities.

F) Compliance costs for affected persons:

The Division has determined that these amendments will not create additional costs for those participating in big game hunting in Utah.

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

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

Regulatory Impact Table

Fiscal Cost	FY2020	FY2021	FY2022
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head approval of regulatory impact analysis:

The executive director of the Department of Natural Resources, Brian Steed, has reviewed and approved this fiscal analysis.

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

After conducting a thorough analysis, it was determined that these proposed rule amendments will not result in a fiscal impact to businesses.

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

Brian Steed, Executive Director

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Section 23-14-18	Section 23-14-19	
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Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:	01/31/2020
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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:	Mike Fowlks, Director	Date:	12/12/2019
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R657. Natural Resources, Wildlife Resources.

R657-5. Taking Big Game.

R657-5-1. Purpose and Authority.

(1) Under authority of Sections 23-14-18 and 23-14-19, the Wildlife Board has established this rule for taking deer, elk, pronghorn, moose, bison, bighorn sheep, and Rocky Mountain goat.

(2) Specific dates, areas, methods of take, requirements, and other administrative details which may change annually are published in the guidebook of the Wildlife Board for taking big game.

R657-5-12. Areas With Special Restrictions.

(1)(a) Hunting of ~~any~~ wildlife is ~~prohibited~~ allowed within the boundaries of all park areas, except for those designated areas and hunts specifically closed by the Division of Parks and Recreation in ~~Rule~~ Section R651-614-4.

(b) ~~Hunting with rifles and handguns in park areas designated open is prohibited within one mile of all park area facilities, including buildings, camp or picnic sites, overlooks, golf courses, boat ramps, and developed beaches.~~ State laws regarding the possession and discharge of dangerous weapons apply in state park areas open to hunting.

~~(c) Hunting with shotguns or archery equipment is prohibited within one quarter mile of the areas provided in Subsection (b-).~~

(2) Hunting is closed within the boundaries of all national parks unless otherwise provided by the governing agency.

(3) Hunters obtaining a Utah license, permit or tag to take big game are not authorized to hunt on tribal trust lands. Hunters must obtain tribal authorization to hunt on tribal trust lands.

(4) Military installations, including Camp Williams, are closed to hunting and trespassing unless otherwise authorized.

(5) In Salt Lake County, a person may:

(a) only use archery equipment to take buck deer and bull elk south of I-80 and east of I-15;

(b) only use archery equipment to take big game in Emigration Township; and

(c) not hunt big game within one-half mile of Silver Lake in Big Cottonwood Canyon.

(6) Hunting is closed within a designated portion of the town of Alta. Hunters may refer to the town of Alta for boundaries and other information.

(7) Domesticated Elk Facilities and Domesticated Elk Hunting Parks, as defined in Subsection 4-39-102(2) and Rules R58-18 and R58-20, are closed to big game hunting. This restriction does not apply to the lawful harvest of domesticated elk as defined and allowed pursuant to Rule R58-20.

(8) State waterfowl management areas are closed to taking big game, except as otherwise provided in the guidebook of the Wildlife Board for taking big game.

(9) Hunters are restricted to using archery equipment, muzzleloaders or shotguns on the Scott M. Matheson Wetland Preserve.

(10) A person may not discharge a firearm, except a shotgun or muzzleloader, from, upon, or across the Green River located near Jensen, Utah from the Highway 40 bridge upstream to the Dinosaur National Monument boundary.

R657-5-42. Carcass Importation.

(1) It is unlawful to import dead elk, moose, mule deer, or white-tailed deer or their parts from ~~[the areas of] any state[, or province[, game management unit, equivalent wildlife management unit, or county]~~ which has deer or elk diagnosed with Chronic Wasting Disease, except the following portions of the carcass:

(a) meat that is cut and wrapped either commercially or privately;

(b) quarters or other portion of meat with no part of the spinal column or head attached;

(c) meat that is boned out;

(d) hides with no heads attached;

(e) skulls or skull plates with antlers attached ~~[that have been cleaned of all meat and tissue]~~, so long as all brain matter and spinal column material is removed;

(f) antlers with no meat or tissue attached;

(g) upper canine teeth, also known as buglers, whistlers, or ivories; or

(h) finished taxidermy heads.

(2)(a) The affected states, provinces, game management units, equivalent wildlife management units, or counties, which have deer, elk, or moose diagnosed with Chronic Wasting Disease shall be available at division offices and through the division's Internet address.

(b) Importation of harvested elk, moose, mule deer, or white-tailed deer or its parts from the affected areas are hereby restricted pursuant to Subsection (1).

(3) Nonresidents of Utah transporting harvested elk, moose, mule deer, or white-tailed deer from the affected areas are exempt if they:

- (a) do not leave any part of the harvested animal in Utah and do not stay more than 24 hours in the state of Utah;
- (b) do not have their deer, elk, or moose processed in Utah; or
- (c) do not leave any parts of the carcass in Utah.

R657-5-43. Chronic Wasting Disease - Infected Animals.

(1) Any person who under the authority of a permit issued by the division legally takes a deer, elk, or moose that is later confirmed to be infected with Chronic Wasting Disease may:

- (a) retain the entire carcass of the animal;
- (b) retain any parts of the carcass, including antlers, and surrender the remainder to the division for proper disposal; or
- (c) surrender all portions of the carcass in their actual or constructive possession, including antlers, to the division and receive a free new permit the following year for the same hunt.

(2) The new permit issued pursuant to Subsection (1)(c) shall be for the same species, sex, weapon type, unit, region, and otherwise subject to all the restrictions and conditions imposed on the original permit, except season dates for the permit shall follow the guidebook of the Wildlife Board for taking big game published in the year the new permit is valid.

(3) Notwithstanding other rules to the contrary, private landowners and landowner associations may refuse access to private property to persons possessing new permits issued under Subsection (1)(c).

(4)(a) The division may identify big game hunting units where an individual may be randomly selected to submit their harvested animal to the division for Chronic Wasting Disease testing.

(b) Big game hunting units that are eligible for mandatory testing will be identified in the guidebook of the Wildlife Board for taking big game.

(c) Individuals who are randomly selected as participants in the big game Chronic Wasting Disease testing program will be notified in writing prior to the opening day of their hunt with a list of program requirements.

(d) An individual who fails to comply with mandatory testing requirements in this rule may be declared ineligible to apply for or receive any big game licenses, permits, or certificates of registration until they comply with the requirements of this rule and any assessment of fees under R657-42-9.

R657-5-46. Management Buck Deer Hunt.

(1)(a) For the purposes of this section "management buck" means any buck deer with 3 points or less on at least one antler above and including the first fork in the antler. A point means a projection longer than one inch, measured from its base to its tip. The eye guard is not counted as a point.

(b) For purposes of this section "youth" means any person 17 years of age or younger on July 31.

(c) For the purposes of this section "senior" means any person 65 years of age or older on the opening day of the management buck deer archery season published in the guidebook of the Wildlife Board for taking big game.

(2) Management buck deer permits shall be distributed pursuant to rule R657-~~[62 with thirty percent of the permits being allocated to youth, thirty percent to seniors and the remaining forty percent to hunters of all ages.]~~62.

(3) Management buck deer permit holders may take one management buck deer during the season, in the area and with the weapon type specified on the permit. Management buck deer hunting seasons, areas and weapon types are published in the guidebook of the Wildlife Board for taking big game.

(4)(a) A person who has obtained a management buck deer permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a management buck deer.

(b) Management buck deer permit holders must report hunt information by telephone, or through the division's Internet address.

(5)(a) Management buck deer permit holders who successfully harvest a management buck deer, as defined in Subsection (1)(a) must have their animal inspected by the division.

(b) Successful hunters must deliver the head and antlers of the deer they harvest to a division office for inspection within 48 hours after the date of kill.

(6) Management buck deer permit holders may not retain possession of any harvested buck deer that fails to satisfy the definition requirements in Subsection (1)(a).

(7) A person who has obtained a management buck deer permit may not hunt during any other deer hunt or obtain any other deer permit, except as provided in Section R657-5-27.

KEY: wildlife, game laws, big game seasons

Date of Enactment or Last Substantive Amendment: ~~July 22, 2019~~2020

Notice of Continuation: October 5, 2015

Authorizing, and Implemented or Interpreted Law: 23-14-18; 23-14-19; 23-16-5; 23-16-6

NOTICE OF PROPOSED RULE			
TYPE OF RULE: Amendment			
Utah Admin. Code Ref (R no.):	R657-42	Filing No. 52442	

Agency Information

1. Department:	Natural Resources		
Agency:	Wildlife Resources		
Room no.:	Suite 2110		
Building:	Department of Natural Resources		
Street address:	1594 W North Temple		
City, state:	Salt Lake City, UT		
Mailing address:	PO Box 146301		
City, state, zip:	Salt Lake City, UT 84114-6301		
Contact person(s):			
Name:	Phone:	Email:	
Staci Coons	801-450-3093	stacicoons@utah.gov	

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

General Information

2. Rule or section catchline:

Fees, Exchanges, Surrenders, Refunds and Reallocations of Wildlife Documents

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

This rule is being amended pursuant to Regional Advisory Council and Wildlife Board meetings conducted annually for taking public input and reviewing the Division of Wildlife Resources' (Division) rule pursuant to fees, exchanges, surrenders, refunds, and reallocation of permits and other documents.

4. Summary of the new rule or change:

The proposed amendments to this rule: 1) amend the surrender requirements to allow for the loss of accrued bonus points; 2) set time frames for the permit to be surrendered to the Division; 3) amend process for the surrender of permits obtained on a group application; 4) set an expiration deadline for the request of a refund; 5) allow for multiple cards to be used for payment during the draw applications; and 6) set process for accepting a surrender of a voucher after it has been redeemed.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

The proposed rule amendments either clarify current regulations or set protocol for new surrender requirements, all of these changes can be initiated within the current workload and resources of the Division, therefore, the Division has determined that these amendments do not create a cost or savings impact to the state budget or the Division's budget since the changes will not increase workload and can be carried out with existing budget.

B) Local governments:

Since the proposed amendments make adjustments to current regulations and sets protocol for surrendering permits prior to the hunt this filing does not create any direct cost or savings impact to local governments. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.

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

The proposed rule amendments will not directly impact small businesses because a service is not required of them.

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

The proposed rule amendments will not directly impact non-small businesses because a service is not required of them.

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

These amendments do not have the potential to create a cost impact to those individuals wishing to participate in the hunting opportunities.

F) Compliance costs for affected persons:

The Division has determined that these amendments will not create additional costs for those participating in big game hunting in Utah.

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

Regulatory Impact Table

Fiscal Cost	FY2020	FY2021	FY2022
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head approval of regulatory impact analysis:

The executive director of the Department of Natural Resources, Brian Steed, has reviewed and approved this fiscal analysis.

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

After conducting a thorough analysis, it was determined

that these proposed rule amendments will not result in a fiscal impact to businesses.

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

Brian Steed, Executive Director

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Section 23-19-1 Section 23-19-38

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:	Mike Fowlks, Director	Date:	12/12/2019
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R657. Natural Resources, Wildlife Resources. R657-42. Fees, Exchanges, Surrenders, Refunds and Reallocation of Wildlife Documents.

R657-42-1. Purpose and Authority.

(1) Under the authority of Sections 23-19-1 and 23-19-38 the division may issue wildlife documents in accordance with the rules of the Wildlife Board.

(2) This rule provides the standards and procedures for the:

- (a) exchange of permits;

- (b) surrender of wildlife documents;
- (c) refund of wildlife documents;
- (d) reallocation of permits; and
- (e) assessment of late fees.

R657-42-4. Surrenders.

(1) Any person who has obtained a wildlife document and decides not to use it, may surrender the wildlife document to any division office.

(2) Any person who ~~has obtained~~ surrenders a wildlife document ~~[may surrender the wildlife document]~~ prior to the season opening date ~~[of the wildlife document]~~ is eligible for the ~~[purpose of]~~ following:

~~(a) waiving the waiting period normally assessed [and reinstating the number of bonus points, including a bonus point for the current year as if a permit had not been drawn, if applicable];~~

~~(b) if bonus points apply to the permit opportunity being surrendered, reinstating the number of [preference points, including a preference point for the current year as if a permit had not been drawn, if applicable];~~ previously acquired bonus points, provided:

(i) the wildlife document is surrendered more than 30 days before the start of the season for which the permit is valid; or

(ii) if the results of the drawing are not posted until less than 30 days before the start of the season, and the hunter surrenders the permit prior to the opening day of the season for which the permit is valid;

~~(c) if preference points apply to the permit opportunity being surrendered, reinstating the number of previously acquired preference points, provided:~~

(i) the wildlife document is surrendered more than 30 days before the start of the season for which the permit is valid; or

(ii) if the results of the drawing are not posted until less than 30 days before the start of the season, and the hunter surrenders the permit prior to the opening day of the season for which the permit is valid;

~~(d) purchasing a reallocated permit or any other permit available for which the person is eligible, and receiving a preference point in lieu of that surrendered permit, if applicable; or~~

~~[(d)]e) receiving a refund as provided in Section R657-42-5.~~

(3) A CWMU permit must be surrendered prior to the applicable season opening date provided by the CWMU operator, except as provided in Section R657-42-11.

(4) Dedicated hunter participants must surrender their permits prior to the general archery deer season, except as provided in Section R657-38-6.

~~(5) A person [may surrender a limited entry, or once-in-a-lifetime permit] surrendering a wildlife document received through a group application [in the Big Game drawing and have their bonus points for that permit species reinstated, provided] is eligible for the following[;]:~~

~~(a) if all group members surrender their permits [and] more than 30 days before the start of the season for which the permit is valid, all group members may:~~

~~(i) have previously acquired bonus points or preference points reinstated;~~

~~(ii) any waiting period normally assessed may be waived; and~~

~~(iii) applicants may be eligible for a refund consistent with Section R657-42-5;~~

~~(b) [all permits are surrendered to the division] except as identified in Subsection (c), if a group member fails to surrender~~

their permit more than 30 days before the start of the season for which the permit is valid[.], all group members lose bonus points or preference points applicable to that hunt, but applicants who have surrendered may have the normally-assessed waiting period waived; and

(c) if an individual in a group surrenders a general season permit to obtain a reallocated permit, then all group members are eligible to:

~~[(6) A person may surrender a general season permit received through a group application in the Big Game drawing and have their preference points reinstated, provided;](i) have previously acquired preference points reinstated;~~

~~[(a) all members of the group surrender their permits to the division prior to the start of the season for which the permit is valid.]~~

(ii) receive a preference point for that year's application; and

(iii) receive a refund on the general season permit consistent with Section R657-42-5.

~~[(7)(6) Notwithstanding [Subsections (5)(b) and (6)(a)]the limitations in this section, a person who obtains a permit through a group application [in the Big Game drawing-]may surrender that permit after the opening date of the applicable hunting season and have [the]previously acquired bonus points or preference points for the permit species restored, provided the person[;]:~~

~~(a) is a member of United States Armed Forces or public health or public safety organization and is deployed or mobilized in the interest of national defense or national emergency;~~

~~(b) surrenders the permit to the division, with the tag attached and intact, or signs an affidavit verifying the permit is no longer in their possession within one year of the end of hunting season authorized by the permit; and~~

~~(c) satisfies the requirements for receiving a refund in Subsections R657-42-5(3)(c) and (d).~~

~~[(8)(7) The division may not issue a refund, except as provided in Sections 23-19-38, 23-19-38.2, and R657-42-5.~~

(8) For the purposes of this section, each reference to restoring previously acquired bonus points or preference points is limited to those points utilized in acquiring the wildlife document to be surrendered.

R657-42-5. Refunds.

(1) The refund of a license, certificate of registration or permit shall be made in accordance with:

- (a) Section 23-19-38 and Rule R657-50;
- (b) Section 23-19-38.2 and Subsection (3); or
- (c) Section 23-19-38 and this section.

(2)(a) An application for a refund may be obtained from any division office.

(b) All refunds must be processed through the Salt Lake Division office.

(c) Except for an individual applying for a refund under Subsection (3), an individual may apply for a refund up to 90 days after the expiration of the wildlife document.

(d) The division may reject an application for a refund that is incomplete.

(3) A person may receive a refund for a wildlife document if that person was deployed or mobilized on or after September 11, 2001, in the interest of national defense or national emergency and is thereby completely precluded from participating in the hunting or fishing activity authorized by the wildlife document, provided:

(a) the refund request is made to the division within one year of the end of the hunting or fishing season authorized by the wildlife document;

(b) the person surrenders the wildlife document to the division, or signs an affidavit stating the wildlife document is no longer in the person's possession; and

(c) the person verifies that the deployment or mobilization completely precluded them from participating in the activity authorized by the wildlife document; and

(d) the person provides military orders, or a letter from an employment supervisor on official public health or public safety organization letterhead stating:

(i) the branch of the United States Armed Forces, or name of the public health organization or public safety organization from which they were deployed or mobilized; and

(ii) the nature and length of their duty while deployed or mobilized.

(4) The division may issue a refund for a wildlife document if the person to whom it was issued dies prior to participating in the hunting or fishing activity authorized by the wildlife document, provided:

(a) The person legally entitled to administer the decedent's estate provides the division with:

- (i) picture identification;
- (ii) letters testamentary, letters of administration, or such other evidence establishing the person is legally entitled to administer the affairs of the decedent's estate;
- (iii) a photocopy of the decedent's certified death certificate; and
- (iv) the wildlife document for which a refund is requested.

(5)(a)(i) A person may receive a refund for a once-in-a-lifetime or limited-entry permit provided the permit is surrendered to the division no less than 30 days prior to the season opening date identified on the permit.

(ii) A person may receive a refund for a general season permit that must be surrendered in order to accept a reallocated limited entry permit for the same species.

~~(b)(4) The established wildlife document refund fee [shall be deducted from all refunds]will not be assessed on general season permits surrendered under [s]Subsection (5)(a)(ii).~~

~~[(ii) A refund will not be issued where the wildlife document purchase price is equal to or less than the wildlife document refund fee.]~~

(6) The director may determine that a person did not have the opportunity to participate in an activity authorized by the wildlife document.

(7) The division may reinstate a bonus point or preference point, whichever is applicable, and waive waiting periods, if applicable, when issuing a refund in accordance with this [S]section.

R657-42-6. Reallocation of Permits.

(1)(a) The division may reallocate surrendered limited entry and once-in-a-lifetime permits.

(b) The division shall not reallocate general season permits for big game and turkey, but the number of permits surrendered may be added to the appropriate permit quota the following year.

~~(2) [Permits shall be reallocated through the Salt Lake Division office.]~~

~~(3)~~(a) Any limited entry, once-in-a-lifetime or public CWMU permit surrendered to the division ~~[shall be]~~and reallocated through the drawing process shall be awarded by contacting the next person listed on the alternate drawing list or as provided in Subsection (b).

(b) A person who is denied a permit due to an error in issuing permits may be placed on the alternate drawing list to address the error, if applicable, in accordance with the Rule R657-50.

(c) The alternate drawing lists are classified as private and therefore, protected under the Government Records Access Management Act.

(d) The division shall make a reasonable effort to contact the next person on the alternate list ~~[by telephone or mail]~~using contact information provided by the applicant.

(e) If the next person, who would have drawn the limited entry, once-in-a-lifetime or public CWMU permit, does not accept the permit or the division is unable to contact that person after reasonable efforts are made, the reallocation process will continue until the division has reallocated the permit or the season closes for that permit.

~~(4)~~3) If the next person, who would have drawn the limited entry, once-in-a-lifetime or public CWMU permit has obtained a permit, that person may be required to surrender the previously obtained permit in accordance with Subsection R657-42-4(2) and any other applicable rules and guidebooks of the Wildlife Board.

~~(5)~~4) Any private CWMU permit surrendered to the division will be reallocated by the landowner through a voucher, issued to the landowner by the division in accordance with Rule R657-37.

R657-42-7. Reallocated Permit Cost.

(1) Any person who accepts the offered reallocated permit must pay the applicable permit fee.

(2) The division may not issue a refund, except as provided in Section R657-42-5.

R657-42-8. Accepted Payment of Fees.

(1) Personal checks, business checks, money orders, cashier's checks, and credit or debit cards are accepted for payment of wildlife documents.

(2) Personal or business checks drawn on an out-of-state account are not accepted.

(3) Third-party checks are not accepted.

(4) All payments must be made payable to the Utah Division of Wildlife Resources.

(5)(a) Credit or debit cards must be valid at least 30 days after any drawing results are posted.

(b) Checks, and credit or debit cards will not be accepted as combined payment on single or group applications.

(c) If applicants are applying as a group, all fees for all applicants in that group charged to a credit or debit card ~~[must]~~may be charged to ~~[a single card]~~multiple cards.

(d) Handling fees and donations are charged to the credit or debit card when the application is processed.

(e) Application amendment fees must be paid by credit or debit card.

(f) Permit fees may be charged to the credit or debit card prior to the posting date of the drawings, if successful.

(g) The division shall not be held responsible for bank charges incurred for the use of credit or debit cards.

(6)(a) An application is voidable if the check is returned unpaid from the bank or the credit or debit card is invalid or refused.

(b) The division charges a returned check collection fee for any check returned unpaid.

(7)(a) A license or permit is voidable if the check is returned unpaid from the bank or the credit or debit card is invalid or refused.

(b) The Division may make attempt to contact the successful applicant ~~[by phone or mail]~~to collect payment prior to voiding the license or permit.

(8)(a) A license or permit received by a person shall be deemed invalid if payment for that license or permit is not received, or a check is returned unpaid from the bank, or the credit or debit card is invalid or refused.

(b) A person must notify the division of any change of credit or debit card numbers if the credit or debit card is invalid or refused.

(9) Hunting with a permit where payment has not been received for that permit constitutes a violation of hunting without a valid permit.

(10) The division may require a money order or cashier's check to correct payment for a license, permit, or certificate of registration.

(11) Any person who fails to pay the required fee for any wildlife document, shall be ineligible to obtain any other wildlife document until the delinquent fees and associated collection costs are paid.

(12) The Division may take any of the following actions when a wildlife document is voided for nonpayment or remains unissued and unpaid~~;~~:

(a) reissue the wildlife document using the alternate drawing list for that document;

(b) reissue the wildlife document over-the-counter; or

(c) elect to withhold the wildlife document from reissuance.

(13) The Division may reinstate the applicant's bonus points or preference points and waive waiting periods, where applicable, when:

(a) voiding a permit in accordance with this section and the permit is reallocated;

(b) withholding a wildlife document from a successful applicant for nonpayment and the permit is reallocated; or

(c) full payment is received by the successful applicant on a voided or withheld wildlife document that is not reallocated.

R657-42-9. Assessment of Late Fees.

(1) Any wildlife application submitted under the Utah Administrative Code Rules provided in Subsection (a) through (e), within 30 days of the applicable application deadline established in such rules, in the guidebooks of the Wildlife Board, or by the division may be processed only upon payment of a late fee as provided by the approved fee schedule.

(a) Rule R657-52, Commercial Harvesting of Brine Shrimp and Brine Shrimp Eggs;

(b) Rule R657-21, Cooperative Wildlife Management Units for Small Game;

(c) Rule R657-22, Commercial Hunting Areas;

(d) Rule R657-37, Cooperative Wildlife Management Units for Big Game; or

(e) Rule R657-43, Landowner Permits.

(2) Any person who fails to report their Big Game hunt information pursuant to Rule R657-5 Taking Big Game, within 30 calendar days of the ending season date for their once-in-a-lifetime, premium limited entry, limited entry, or cooperative wildlife management unit hunt may apply for a Big Game permit or bonus point in the following year provided:

(a) the survey is completed and submitted to the division [~~at least 5 days~~] prior to the close of the Big Game application period established in the guidebook of the Wildlife Board for taking big game.

(b) the late fee established in the approved fee schedule is paid to the Division [~~through the 1-800 number listed in the guidebooks of the Wildlife Board for taking big game~~].

(c) The accepted method of payment of fee is only a credit or debit card.

(3) Any person who fails to report their Swan hunt information pursuant to Section R657-9-7, within 30 calendar days of the ending season date for their Swan hunt may apply for a Swan permit in the following year provided:

(a) the survey is completed and submitted to the division [~~at least 5 days~~] prior to the close of the Swan application period established in the guidebook of the Wildlife Board for taking waterfowl.

(b) the late fee established in the approved fee schedule is paid to the Division [~~through the 1-800 number listed in the guidebook of the Wildlife Board for taking waterfowl or through the division website~~].

(c) The accepted method of payment of fee is only a credit or debit card.

R657-42-11. Surrender of Cooperative Wildlife Management Unit [~~or~~], Limited Entry Landowner, and Conservation Permits After Vouchers Have Been Redeemed.

(1) A person who has redeemed a voucher and obtained a CWMU [~~or~~], limited entry landowner, or conservation permit may surrender the permit after the deadline provided in Subsection R657-42-4(3) for CWMU permits [~~and~~] or after the season opening date for limited entry landowner permits or conservation permits, for the purpose of:

(a) death in accordance with Section 23-19-38, Subsection (2) and Subsection R657-42-5(4);

(b) injury or illness in accordance with Section 23-19-38 and Subsection (2);

(c) deployment or mobilization in the interest of national defense or national emergency in accordance with Section 23-19-38.2 and Subsection (2); or

(d) an error occurring in issuing the permit in accordance with Subsection (2) and Rule R657-50.

(2)(a) The permittee and the landowner association operator or affiliated conservation organization must sign an affidavit stating that the permittee has not participated in any hunting activity.

(b) The permittee and landowner association operator or affiliated conservation organization signatures must be notarized.

(c) The affidavit and unused permit must be submitted to the division.

(3)(a) The division may reissue a voucher to a landowner association operator or conservation organization, or reallocate a surrendered permit in accordance with Section 23-19-38 and as provided in Subsections (b) and (c).

(b) The division may reallocate a surrendered permit:

(i) originally issued by the division through the big game drawing process in accordance with Section R657-42-6; or

(ii) originally issued by the division through a voucher redemption in the form of a new voucher issued to the landowner association operator or to the affiliated conservation organization.

(c) Reissuance of vouchers or reallocation of permits under this section may only occur in the year in which the surrendered permit was valid.

KEY: wildlife, permits

Date of Enactment or Last Substantive Amendment: [~~March 16, 2015~~]**2020**

Notice of Continuation: April 12, 2018

Authorizing, and Implemented or Interpreted Law: 23-19-1; 23-19-38; 23-19-38.2

NOTICE OF PROPOSED RULE			
TYPE OF RULE: Amendment			
Utah Admin. Code Ref (R no.):	R657-57	Filing No.	52443

Agency Information

1. Department:	Natural Resources		
Agency:	Wildlife Resources		
Room no.:	Suite 2110		
Building:	Department of Natural Resources		
Street address:	1594 West North Temple		
City, state:	Salt Lake City, UT		
Mailing address:	PO Box 146301		
City, state, zip:	Salt Lake City, UT 84114-6301		
Contact person(s):			
Name:	Phone:	Email:	
Staci Coons	801-450-3093	stacicoons@utah.gov	

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

General Information

2. Rule or section catchline:
Division Variance Rule
3. Purpose of the new rule or reason for the change:
This rule is established to provide authority, standards, and procedures for granting remedial relief to persons precluded from obtaining or using a wildlife document because of an event or condition beyond their control.
4. Summary of the new rule or change:
The proposed amendments to this rule: 1) add a wildlife exposition permit to the list of documents the Division of Wildlife Resources (Division) can mitigate for; and 2) limit the number of times a variance can be granted for a

specified permit.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

The proposed rule amendments either clarify current regulations or establish a new time frame for the surrendering of specified permits, all of these changes can be initiated within the current workload and resources of the Division, therefore, the Division has determined that these amendments do not create a cost or savings impact to the state budget or the Division's budget since the changes will not increase workload and can be carried out with existing budget.

B) Local governments:

Since the proposed amendments make adjustments to current regulations and specify time limits for variance requests, this filing does not create any direct cost or savings impact to local governments. Nor are local governments indirectly impacted because this rule does not create a situation requiring services from local governments.

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

The proposed rule amendments will not directly impact small businesses because a service is not required of them.

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

The proposed rule amendments will not directly impact non-small businesses because a service is not required of them.

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

These amendments do not have the potential to create a cost impact to those individuals wishing to participate in hunting opportunities.

F) Compliance costs for affected persons:

The Division has determined that these amendments will not create additional costs for those participating in big game hunting in Utah.

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

Regulatory Impact Table

Fiscal Cost	FY2020	FY2021	FY2022
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head approval of regulatory impact analysis:

The executive director of the Department of Natural Resources, Brian Steed, has reviewed and approved this fiscal analysis.

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

After conducting a thorough analysis, it was determined that these proposed rule amendments will not result in a fiscal impact to businesses.

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

Brian Steed, Executive Director

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Section 23-14-18	Section 23-14-19	
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Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:	01/31/2020
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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:	Mike Fowlks, Director	Date:	12/12/2019
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R657. Natural Resources, Wildlife Resources.

R657-57. Division Variance Rule.

R657-57-1. Purpose and Authority.

(1) Under authority of Sections 23-14-18 and 23-14-19 this rule is established to provide authority, standards and procedures for granting remedial relief to persons precluded from obtaining or using a wildlife document because of an event or condition beyond their control.

R657-57-4. Division Variance Authority Scope.

(1)(a) The Division may grant a season extension variance extending the hunting season on an applicant's wildlife document to the same or substantially similar hunt in the following year, provided:

- (i) the variance request involves a wildlife document for a:
 - (A) once-in-a-lifetime hunt under Rule R657-5;
 - (B) conservation permit hunt under Rule R657-41;
 - (C) limited entry landowner permit hunt under Rule R657-43;
 - (D) poaching-reported reward permit hunt under Rule R657-5; ~~or~~
 - (E) CWMU hunt obtained through the operator or landowner under Section R657-37-~~9~~9; or
 - (F) a wildlife exposition permit under Rule R657-55;
- (ii) the applicant was substantially precluded during the prescribed hunting season from using a wildlife document because

of a qualifying event or condition set forth in Section R657-57-6; and

(A) the qualifying event or condition was not the result of the applicant's willful misconduct or gross negligent acts or omissions; and

(B) the applicant was unsuccessful in harvesting an animal for which the wildlife document was issued; and

(iii) the season extension occurs the following year and is restricted to the same species, gender, unit, weapon type, and season as the original wildlife document;

(iv) any changes in unit descriptions and season dates in the extension year are applied; and

(v) the variance is otherwise requested and issued in compliance with the standards, requirements and procedures set forth in this rule. (b) Any waiting period associated with a wildlife document for which a season extension variance is granted begins on the date the original wildlife document is obtained.

(2)(a) The Division may grant a variance by restoring forfeited bonus points and waiving an incurred waiting period, provided:

(i) the variance request involves a wildlife document for a:

- (A) limited entry hunt or once-in-a-lifetime hunt; or
- (B) any other hunt that triggers a waiting period to participate in a Division administered drawing;

(ii) the applicant was substantially precluded during the prescribed hunting season from using a wildlife document because of a qualifying event or condition set forth in Section R657-57-6; and

(A) the qualifying event or condition was not the result of the applicant's willful misconduct or gross negligent acts or omissions; and

(B) the applicant was unsuccessful in harvesting an animal for which the wildlife document was issued; and

(iii) the variance is otherwise requested and issued in compliance with the standards, requirements and procedures set forth in this rule.

(b) The Division may not restore a bonus point on a wildlife document that did not cause a bonus point forfeiture.

(3)(a) The Division may grant a variance by restoring forfeited preference points, provided:

(i) the variance request involves a wildlife document obtained through a Division administered drawing and for which preference points are awarded to unsuccessful applicants and forfeited by successful applicants;

(ii) the applicant was substantially precluded during the prescribed hunting season from using a wildlife document because of a qualifying event or condition set forth in Section R657-57-6; and

(A) the qualifying event or condition was not the result of the applicant's willful misconduct or gross negligent acts or omissions; and

(B) the applicant was unsuccessful in harvesting an animal for which the wildlife document was issued; and

(iii) the variance is otherwise requested and issued in compliance with the standards, requirements and procedures set forth in this rule.

(4)(a) The Division may grant a variance by awarding a bonus or preference point to a person who filed an untimely wildlife document application in a Division administered drawing, provided:

(i) the variance request involves a wildlife document for any hunt identified in Subsections (2)(a)(i) or (3)(a)(i);

(ii) the applicant was significantly impaired from filing a timely application in a Division administered drawing because of a qualifying event or condition set forth in Section R657-57-6;

(iii) the untimely application was rejected and a bonus or preference point was not awarded for the selected species;

(iv) the applicant would have been eligible to receive the bonus or preference point had the application been timely filed; and

(v) the variance is otherwise requested and issued in compliance with the standards, requirements and procedures set forth in this rule.

(5)(a) An individual applying for a variance on a permit awarded through a Division administered drawing may only apply for and receive one season extension variance for each permit received.

(b) An individual applying for a variance on a Conservation permit, CWMU permit redeemed from a private voucher, or a Limited Entry Landowner Permit, may apply for and receive a maximum of two season extension variances for each permit received.

(c) An individual who has already been provided the maximum number of season extensions for their relevant permit, but who is still unable to hunt, is limited to restoration of preference or bonus points, a refund, or both, so long as they otherwise qualify.

(d) An individual receiving a variance for a CWMU permit or Limited Entry Landowner permit redeemed from a private voucher must receive permission from the CWMU Operator or respective landowner to hunt during the variance period.

(6)(a) A Division administered drawing for purposes of [subsection] Subsections (2) and (5) does not include a drawing conducted at a wildlife exposition pursuant to Rule R657-55.

(6)(b) Permits distributed through a wildlife exposition pursuant to Rule R657-55 are eligible for the same variance relief and are subject to the same variance restrictions as permits distributed via a Division administered drawing.

(7) The Division may not refund wildlife document fees, except as authorized in Sections 23-19-38, 23-19-38.2 and R657-42-5.

R657-57-8. Division Review of Variance Applications.

(1) The Division will:

(a) review variance applications submitted pursuant to this rule;

(b) determine facts relative to variance requests;

(c) apply the provisions of this rule to relevant facts; and

(d) grant or deny variance requests in accordance with this rule.

(2) Any variance request granted or denied shall be reviewed and approved by the Division director/designee before notice of decision is provided to the variance request applicant.

KEY: wildlife, permits

Date of Enactment or Last Substantive Amendment: ~~August 9, 2018~~ 2020

Notice of Continuation: July 19, 2018

Authorizing, and Implemented or Interpreted Law: 23-14-18; 23-14-19

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code Ref (R no.):	R657-62	Filing No.	52444
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Agency Information

1. Department:	Natural Resources	
Agency:	Wildlife Resources	
Room no.:	Suite 2110	
Building:	Department of Natural Resources	
Street address:	1594 W North Temple	
City, state:	Salt Lake City, UT	
Mailing address:	PO Box 146301	
City, state, zip:	Salt Lake City, UT 84114-6301	
Contact person(s):		
Name:	Phone: Email:	
Staci Coons	801-450-3093	stacicoons@utah.gov

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

General Information

2. Rule or section catchline:

Drawing Application Procedures

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

This rule is being amended pursuant to Wildlife Board meetings conducted for taking public input and reviewing the Division of Wildlife Resources' (Division) drawing application process.

4. Summary of the new rule or change:

The proposed amendments to this rule: 1) allow for the acceptance of group applications for bonus points only in the drawing application; 2) allow an applicant to edit or modify group and individual applications during the application period; 3) removes the permit quota for youth management buck hunts; 4) establishes a list of permits that do not require the forfeiture of points if purchased over the counter; 5) allows up to four youth to apply together in a group for general any bull elk permits; 6) clarifies the restriction of obtaining once in a lifetime permits in the same year.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

The proposed rule amendments clarify current regulations and allow for additional youth application opportunities, all of these changes can be initiated within the current workload and resources of the Division,

therefore, the Division has determined that these amendments do not create a cost or savings impact to the state budget or the Division's budget since the changes will not increase workload and can be carried out with existing budget.

B) Local governments:

Since the proposed amendments make adjustments to current regulations and allows for additional youth application opportunities this filing does not create any direct cost or savings impact to local governments. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.

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

The proposed rule amendments will not directly impact small businesses because a service is not required from them.

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

The proposed rule amendments will not directly impact non-small businesses because a service is not required from them.

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

These amendments do not have the potential to create a cost impact to those individuals wishing to participate in hunting opportunities.

F) Compliance costs for affected persons:

The Division has determined that these amendments will not create additional costs for those participating in big game hunting in Utah.

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

Regulatory Impact Table

Fiscal Cost	FY2020	FY2021	FY2022
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0

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

H) Department head approval of regulatory impact analysis:

The executive director of the Department of Natural Resources, Brian Steed, has reviewed and approved this fiscal analysis.

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

After conducting a thorough analysis, it was determined that these proposed rule amendments will not result in a fiscal impact to businesses.

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

Brian Steed, Executive Director

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Section 23-14-18	Section 12-14-19	
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Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until: 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:	Mike Fowlks, Director	Date:	12/12/2019
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R657. Natural Resources, Wildlife Resources.

R657-62. Drawing Application Procedures.

R657-62-1. Purpose and Authority.

(1) Under authority of Sections 23-14-18 and 23-14-19, the Wildlife Board has established this rule for drawing applications and procedures.

(2) Specific season dates, bag and possession limits, areas open, number of permits and other administrative details that may change annually are published in the respective guidebooks of the Wildlife Board.

R657-62-7. Group Applications.

(1) When applying as a group all applicants in the group with valid applications and who are eligible to possess the permit or certificate of registration applied for shall receive a permit or certificate of registration ~~where~~ if the group is successful in the drawing.

(2) Group members must apply for the same hunt choices.

(3) When applying as a group, if the available permit or certificate of registration quota is not large enough to accommodate the group size, the group application will not be considered.

R657-62-8. Bonus Points.

(1) Bonus points are used to improve odds for drawing permits.

(2)(a) A bonus point is awarded for:

(i) each valid unsuccessful application when applying for limited-entry permits; or

(ii) each valid application when applying for bonus points.

(b) Bonus points are awarded by species for[?];

(i) limited-entry deer including cooperative wildlife management unit buck deer and management buck deer;

(ii) limited-entry elk including cooperative wildlife management unit bull elk and management bull elk;

(iii) limited-entry pronghorn including cooperative wildlife management unit buck pronghorn;

(iv) once-in-a-lifetime species including cooperative wildlife management units;

(v) limited entry bear;

(vi) restricted bear pursuit;

(vii) antlerless moose;

(viii) ewe Rocky Mountain bighorn sheep;

(xi) ewe desert bighorn sheep;

(x) cougar; and

(xi) turkey.

(3)(a) A person may not apply in the drawing for both a permit and a bonus point for the same species.

(b) A person may not apply for a bonus point if that person is ineligible to apply for a permit for the respective species.

(c) Group applications ~~will not~~ may be accepted when applying for bonus points.

(d) A person may apply for bonus points only during the applicable drawing application for each species.

(4)(a) Fifty percent of the permits for each hunt unit will be reserved for applicants with the greatest number of bonus points.

(b) Based on the applicant's first choice, the reserved permits will be designated by a random drawing number to eligible applicants with the greatest number of bonus points for each species.

(c) If reserved permits remain, the reserved permits will be designated by a random number to eligible applicants with the next greatest number of bonus points for each species.

(d) The procedure in Subsection (c) will continue until all reserved permits are issued or no applications for that species remain.

(e) Any reserved permits remaining and any applicants who are not selected for reserved permits will be returned to the applicable drawing.

(5)(a) Each applicant receives a random drawing number for:

(i) each species applied for; and

(ii) each bonus point for that species.

(6) Bonus points are forfeited if a person obtains a permit through the drawing for that bonus point species including any permit obtained after the drawing.

(7) Bonus points are not forfeited if:

(a) a person is successful in obtaining a conservation permit, expo permit, sportsman permit, or harvest objective bear permit;

(b) a person obtains a landowner or a cooperative wildlife management unit permit from a landowner; or

(c) a person obtains a poaching-reported reward permit.

(8) Bonus points are not transferable.

(9) Bonus points are averaged and rounded down when two or more applicants apply together on a group application.

(10)(a) Bonus points are tracked using social security numbers or division-issued customer identification numbers.

(b) The division shall retain electronic copies of applications from 1996 to the current drawings for the purpose of researching bonus point records.

(c) Any requests for researching an applicant's bonus point records must be submitted within the time frames provided in Subsection (b).

(d) Any bonus points on the division's records shall not be researched beyond the time frames provided in Subsection (b).

(e) The division may void or otherwise eliminate any bonus point obtained by fraud, deceit, misrepresentation, or in violation of law.

R657-62-9. Preference Points.

(1) Preference points are used in the applicable drawings to ensure that applicants who are unsuccessful in the drawing will have first preference in the next year's drawing.

(2)(a) A preference point is awarded for:

(i) each valid, unsuccessful application applying for a general buck deer, antlerless deer, antlerless elk, doe pronghorn,

Sandhill Crane, Sharp-tailed grouse, Greater sage grouse or Swan permit; or

(ii) each valid application when applying only for a preference point in the applicable drawings.

(b) Preference points are awarded by species for:

- (i) general buck deer;
- (ii) antlerless deer;
- (iii) antlerless elk;
- (iv) doe pronghorn;
- (v) Sandhill Crane;
- (vi) Sharp-tailed Grouse;
- (vii) Greater sage grouse; and
- (viii) Swan.

(3)(a) A person may not apply in the drawing for both a preference point and a permit for the species listed in (2)(b).

(b) A person may not apply for a preference point if that person is ineligible to apply for a permit.

~~Preference points shall not be used when obtaining remaining permits.~~

(4) Preference points for the applicable species are forfeited if a person obtains a general buck deer, antlerless deer, antlerless elk, doe pronghorn, Sandhill Crane, Sharp-tailed grouse, Greater sage grouse or Swan permit, whether obtained through [the drawing,] a division drawing or over the counter, except points are not forfeited if a person obtains one or more of the following:

- (a) youth archery buck deer permit;
- (b) mitigation permits issued to a landowner R657-44, not including mitigation permit vouchers;
- (c) antlerless elk control permits; and
- (d) a general landowner buck deer permit or landowner appreciation permit issued pursuant to R657-43.

(5) Preference points are not transferable.

(6) Preference points are averaged and rounded down when two or more applicants apply together on a group application.

(7)(a) Preference points are tracked using social security numbers or division-issued customer identification numbers.

(b) The division shall retain copies of electronic applications from 2000 to the current applicable drawings for the purpose of researching preference point records.

(c) Any requests for researching an applicant's preference point records must be submitted within the time frames provided in Subsection (b).

(d) Any preference points on the division's records shall not be researched beyond the time frames provided in Subsection (b).

(e) The division may eliminate any preference point obtained by fraud, deceit, misrepresentation, or in violation of law.

R657-62-11. Corrections, Withdrawals and Resubmitting Applications.

(1)(a) If an error is found on the application, the applicant may be contacted for correction.

(b) The division reserves the right to correct or reject applications.

(2)(a) An applicant may withdraw their application from the permit or certificate of registration drawing by the date published in the respective guidebook of the Wildlife Board.

(b) ~~An~~ The division may establish time periods when an applicant may [resubmit] withdraw, modify, or edit their application [after withdrawing a previous application,] for [the] a permit or certificate of registration drawing [by the date published in the respective guidebook of the Wildlife Board].

(c) Handling fees, hunting or combination license fees and donations will not be refunded. ~~Resubmitted applications will~~

(d) If an individual withdraws an application and then resubmits a new application, the resubmitted application may incur a handling fee.

(3) To withdraw, edit, or modify an entire group application, all applicants must withdraw, edit, or modify their individual applications.

R657-62-18. Big Game.

(1) Permit Applications

(a) Limited entry, Cooperative Wildlife Management Unit, Once-in-a-Lifetime, Management Bull Elk, Management Buck Deer, General Buck Deer, and Youth General Any Bull Elk permit applications.

(i) A person must possess or obtain a valid hunting or combination license to apply for or obtain a big game permit.

(ii) Applicants must meet all age requirements, proof of hunter education requirements and youth restrictions as provided in rule R657-5.

(iii) A person may obtain only one permit per species of big game, including limited entry, cooperative wildlife management unit, once-in-a-lifetime, conservation, landowner and general permits, except antlerless permits as provided in the Antlerless Addendum and permits as provided in Rule R657-42.

(b) A resident may apply in the big game drawing for the following permits:

(i) only one of the following:

(A) buck deer - limited entry and cooperative wildlife management unit;

(B) bull elk - limited entry and cooperative wildlife management unit; or

(C) buck pronghorn - limited entry and cooperative wildlife management unit; and

(ii) only one once-in-a-lifetime permit, including once-in-a-lifetime cooperative wildlife management unit permits.

(c) A nonresident may apply in the big game drawing for the following permits:

(i) all of the following:

(A) buck deer - limited entry;

(B) bull elk - limited entry;

(C) buck pronghorn - limited entry; and

(D) all once-in-a-lifetime species.

(ii) Nonresidents may not apply for cooperative management units through the big game drawing.

(d) A resident or nonresident may apply in the big game drawing by unit for:

(i) a ~~statewide~~ general archery buck deer permit; ~~or~~

(ii) for general any weapon buck deer; ~~or~~

(iii) for general muzzleloader buck deer; ~~or~~ and

(iv) a dedicated hunter certificate of registration.

(2) Youth

(a) For purposes of this section "youth" means any person 17 years of age or younger on July 31.

(b) Youth applicants who apply for a general buck deer permit,

(i) Youth will automatically be considered in the youth drawing based upon their birth date.

(ii) 20% of general buck deer permits in each unit are reserved for youth hunters.

(iii) Up to four youth may apply together for youth general deer permits.

(iv) Preference points shall be used when applying.
(v) Any reserved permits remaining and any youth applicants who were not selected for reserved permits shall be returned to the general buck deer drawing.

~~[(c) Youth applicants who apply for a management buck deer permit~~

~~(i) will automatically be considered in the youth drawing based upon their birth date.~~

~~(ii) 30% of management buck deer permits in each unit are reserved for youth hunters.~~

~~(iii) Bonus points shall be used when applying~~

~~(iv) Any reserved permits remaining and any youth applicants who were not selected for reserved permits shall be returned to the management buck deer drawing.]~~

(3) ~~[Senior]~~Reserved

~~[(a) For purposes of this section "senior" means any person 65 years of age or older on the opening day of the management buck deer archery season published in the guidebook of the Wildlife Board for taking big game.~~

~~(b) Senior applicants who apply for a management buck deer permit~~

~~(i) will automatically be considered in the senior drawing based upon their birth date.~~

~~(ii) 30% of management buck deer permits in each unit are reserved for senior hunters.~~

~~(iii) Bonus points shall be used when applying.~~

~~(c) Any reserved permits remaining and any senior applicants who were not selected for reserved permits shall be returned to the management buck deer drawing.]~~

(4) Drawing Order.

(a) Permits for the big game drawing shall be drawn in the following order:

(i) limited entry, cooperative wildlife management unit and management buck deer;

(ii) limited entry, cooperative wildlife management unit and management bull elk;

(iii) limited entry and cooperative wildlife management unit buck pronghorn;

(iv) once-in-a-lifetime;

(v) general buck deer -- lifetime license;

(vi) general buck deer -- dedicated hunter;

(vii) general buck deer - youth;

(viii) general buck deer; and

(ix) youth general any bull elk.

(b) Any person who draws one of the following permits is not eligible to draw a once-in-a-lifetime permit:

(i) limited entry, Cooperative Wildlife Management unit or management buck deer;

(ii) limited entry, Cooperative Wildlife Management unit or management bull elk; or

(iii) a limited entry or Cooperative Wildlife Management unit buck pronghorn.

(c) If any permits listed in Subsection (a)(i) through (a)(iii) remain after the big game drawing after all choices have been evaluated separately for residents and nonresidents, a second evaluation will be done allowing cross-over usage of remaining resident and nonresident permit quotas.

(5) Groups

(a) Limited Entry

(i) Up to four people may apply together for limited entry deer, elk or pronghorn; or resident cooperative wildlife management unit permits.

(b) Group applications are not accepted for management buck deer or bull elk permits.

(c) Group applications are not accepted for Once-in-a-lifetime permits.

(d) General season

(i) Up to four people may apply together for general deer permits.

(ii) Up to ~~[two]~~four youth may apply together for youth general any bull elk permits.

(iii) Up to four youth may apply together for youth general deer permits.

(6) Waiting Periods

(a) Deer waiting period.

(i) Any person who draws or obtains a limited entry, premium limited entry, management, or cooperative wildlife management unit buck deer permit through the big game drawing process may not apply for or receive any of these permits again for a period of ~~[two]~~five seasons.

(ii) A waiting period does not apply to:

(A) general archery, general any weapon, general muzzleloader, conservation, sportsman, poaching-reported reward permits;

(B) cooperative wildlife management unit, limited entry, premium limited entry, or landowner buck deer permits obtained through the landowner; or

(C) buck deer wildlife expo permits, as provided in R657-55-6.

(b) Elk waiting period.

(i) Any person who draws or obtains a limited entry, management or cooperative wildlife management unit bull elk permit through the big game drawing process may not apply for or receive any of these permits for a period of five seasons.

(ii) A waiting period does not apply to:

(A) general archery, general any weapon, general muzzleloader, conservation, sportsman, poaching-reported reward permits;

(B) cooperative wildlife management unit or limited entry landowner bull elk permits obtained through the landowner; or

(C) bull elk wildlife expo permits, as provided in R657-55-6.

(c) Pronghorn waiting period.

(i) Any person who draws or obtains a buck pronghorn or cooperative wildlife management unit buck pronghorn permit through the big game drawing may not apply for or receive any of these permits thereafter for a period of two seasons.

(ii) A waiting period does not apply to:

(A) conservation, sportsman, poaching-reported reward permits; or

(B) cooperative wildlife management unit or limited entry landowner buck pronghorn permits obtained through the landowner; or

(C) buck pronghorn wildlife expo permits, as provided in R657-55-6.

(d) Once-in-a-lifetime species waiting period.

(i) Any person who draws or obtains a permit for any bull moose, bison, Rocky Mountain bighorn sheep, desert bighorn sheep or mountain goat through the big game drawing or sportsman permit drawing may not ~~[apply for or]~~receive ~~[an]~~another once-in-a-lifetime permit ~~[for the same species]~~in the big game drawing or sportsman permit drawing in the same year.

(ii) Except as provided in Subsection (iii), once-in-a-lifetime restrictions do not apply to obtaining wildlife expo permits for once-in-a-lifetime species in the wildlife expo drawing, as provided in R657-55.

(iii) Any person who obtains a wildlife expo permit for a once-in-a-lifetime species is subject to the once-in-a-lifetime restrictions applicable to obtaining a subsequent permit for the same species through a division application and drawing process, as provided in R657-62 and the guide books of the Wildlife Board for taking big game.

(iv) A person who has been convicted of unlawfully taking a once-in-a-lifetime species may not apply for or obtain a permit for that species.

(e) Cooperative Wildlife Management Unit and landowner permits.

(i) Waiting periods and once-in-a-lifetime restrictions do not apply to purchasing limited entry landowner or cooperative wildlife management unit permits obtained through a landowner, except as provided in Subsection (ii).

(ii) Waiting periods are incurred and applied for the purpose of applying in the big game drawing as a result of obtaining a cooperative wildlife management unit bull moose permit through a landowner.

KEY: wildlife, permits

Date of Enactment or Last Substantive Amendment: ~~July 22, 2019~~ 2020

Notice of Continuation: April 9, 2019

Authorizing, and Implemented or Interpreted Law: 23-14-18; 23-14-19

NOTICE OF PROPOSED RULE			
TYPE OF RULE: Amendment			
Utah Admin. Code Ref (R no.):	R746-8-405a	Filing No.	52464

Agency Information

1. Department:	Public Service Commission		
Agency:	Administration		
Building:	Heber M. Wells Building		
Street address:	160 E 300 S, Fourth Floor		
City, state:	Salt Lake City, Utah		
Mailing address:	PO Box 4558		
City, state, zip:	Salt Lake City, Utah 84114-4558		
Contact person(s):			
Name:	Phone:	Email:	
Michael Hammer	801-530-6729	michaelhammer@utah.gov	
Please address questions regarding information on this notice to the agency.			

General Information

2. Rule or section catchline:

New Technology Equipment Distribution Program (NTEDP)

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

The purpose of this filing is to remove the NTEDP, a pilot program set to terminate under the existing rule on December 31, 2021. The pilot program has never reached maximum participation and recent changes in the law, specifically eligible wireless customers' ability to receive Utah Universal Service Fund Lifeline subsidies beginning in 2019, caused the Public Service Commission (PSC) to conclude continuation of the pilot program was duplicative of the Lifeline program and therefore not in the public interest.

4. Summary of the new rule or change:

This rule amendment removes Section R746-8-405a.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

None--This amendment is not anticipated to affect the state budget. Administration and operation of the Relay Utah program will continue without the NTEDP as it did before the pilot program started.

B) Local governments:

None--This amendment is not anticipated to affect local governments' budgets. Local governments do not play any role in administration of the NTEDP.

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

None--This amendment is not anticipated to affect small businesses. Small businesses do not play any role in administration of the NTEDP.

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

None--This amendment is not anticipated to affect non-small businesses, except to the extent that the PSC will no longer be purchasing devices from the provider from whom the PSC has been purchasing devices under the NTEDP.

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):

None--Because people eligible for the NTEDP should be eligible for Lifeline subsidies out of the Utah Universal Service Fund that can provide the individual with a smartphone at no cost, or eligible for another device like a caption telephone under the existing Relay Utah

program, this amendment is not anticipated to measurably affect other persons.

F) Compliance costs for affected persons:

None--Because people eligible for the NTEDP should be eligible for Lifeline subsidies out of the Utah Universal Service Fund that can provide the individual with a smartphone at no cost, or eligible for another device like a caption telephone under the existing Relay Utah program, this amendment should not have a measurable net effect on those seeking subsidies or the fund from which they are drawn.

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

Regulatory Impact Table

Fiscal Cost	FY2020	FY2021	FY2022
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head approval of regulatory impact analysis:

PSC Chair Thad LeVar 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 removal of this section should not have any fiscal impact on businesses. The small number of individuals who previously received a device under the NTEDP will be able to continue using those devices. Going forward, eligible individuals will be able to receive Lifeline subsidies that can provide the individual with a smartphone at no cost, or eligible for other devices like a caption telephone under the existing Relay Utah program.

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

Thad LeVar, PSC Chair

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 54-8b-10

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:	Thad LeVar, Chair	Date:	12/16/2019
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R746. Public Service Commission, Administration.

R746-8. Utah Universal Public Telecommunications Service Support Fund (UUSF).

~~[R746-8-405a. New Technology Equipment Distribution Program (NTEDP).~~

- ~~(1) Authority and Purpose.~~
- ~~(a) This rule section is promulgated pursuant to Utah Code Subsection 54-8b-10(3)(b).~~
- ~~(b) The purposes of the NTEDP are:~~
- ~~(i) to explore the feasibility of using tablet devices and/or unlocked cellular telephones to address the telecommunication needs of the deaf, hard of hearing, and severely speech-impaired communities;~~

~~(ii) to determine how best to manage a program in which tablet devices and/or unlocked cellular telephones are provided; and~~
~~(iii) to determine the level of support services that would be required if tablet devices and/or unlocked cellular telephone devices are provided.~~
~~(2) Duration. The NTEDP shall terminate no later than December 31, 2021.~~
~~(3) Participation.~~
~~(a) An individual who wishes to participate in the NTEDP shall:~~
~~(i) submit a completed application form to the Relay Utah office;~~
~~(ii) provide medical documentation of:~~
~~(A) deafness;~~
~~(B) hardness of hearing; or~~
~~(C) severe speech impairment;~~
~~(iii) demonstrate that:~~
~~(A) the individual is receiving assistance from a low-income public assistance program administered by a state agency; or~~
~~(B) has an income of 200% of the Federal Poverty Guideline or less for the current year;~~
~~(iv)(A) if applying for a tablet, certify that the individual has consistent access to a WiFi network; or~~
~~(B) if applying for an unlocked cellular telephone, certify that the individual has a service plan in place with a wireless telecommunications provider; and~~
~~(v) certify that the individual is able and willing to comply with Subsection (4).~~
~~(b) Priority may be given to applicants who have previously participated in the Commission's Relay Utah program.~~
~~(c) An applicant who is not selected to participate may request to be placed on a waiting list.~~
~~(d) Participation shall be limited to ten additional participants in each six month period of the pilot program.~~
~~(4) Participant obligations.~~
~~(a) An individual who is chosen to participate in the NTEDP shall:~~
~~(i) participate in an entrance interview with the Relay Utah office;~~
~~(ii) complete online surveys as instructed by the Relay Utah office;~~
~~(iii) promptly comply with all instructions from the Relay Utah office to download apps;~~
~~(iv) promptly respond to requests from the Relay Utah office for information and feedback;~~
~~(v) maintain the device in the storage case provided;~~
~~(vi) retain all original device packaging, instructions, and information;~~
~~(vii) contact the manufacturer's customer service department for assistance with technical support;~~
~~(viii) promptly report to the Relay Utah office:~~
~~(A) software and hardware failures; and~~
~~(B) damage to the device;~~
~~(ix) take financial responsibility for loss of, or damage to, the device if caused by the individual's misuse or negligence; and~~
~~(x) immediately return the device to the Relay Utah office if the individual:~~
~~(A) moves from the State of Utah;~~
~~(B) is disqualified by the Relay Utah office from further participation in the NTEDP; or~~

~~(C) chooses to terminate the individual's participation in the NTEDP.~~
~~(b) An individual who is chosen to participate in the NTEDP may not:~~
~~(i) reformat or attempt to reformat the device;~~
~~(ii) allow any other person to use the device, except as necessary to assist the participant with telecommunications; or~~
~~(iii) install software, apps, or other programs not authorized by the Relay Utah office.~~
~~(c) A participant who fails to comply with this Subsection (4) may be disqualified from further participation in the NTEDP.~~
~~(5) All devices distributed as part of the NTEDP shall remain the property of the State of Utah Public Service Commission.]~~

KEY: Utah universal service fund, surcharges and disbursements, speech/hearing challenges, assistive devices and technology
Date of Enactment or Last Substantive Amendment: [April 30, 2019]2020
Authorizing, and Implemented or Interpreted Law: 54-3-1; 54-4-1; 54-8b-15; 54-8b-10

NOTICE OF PROPOSED RULE			
TYPE OF RULE: Amendment			
Utah Admin. Code Ref (R no.):	R746-409-1	Filing No. 52459	No.

Agency Information

1. Department:	Public Service Commission		
Agency:	Administration		
Building:	Heber M. Wells Building		
Street address:	160 E 300 S, Fourth Floor		
City, state:	Salt Lake City, Utah		
Mailing address:	PO Box 4558		
City, state, zip:	Salt Lake City, Utah 84114-4558		
Contact person(s):			
Name:	Phone:	Email:	
Michael Hammer	801-530-6729	michaelhammer@utah.gov	

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

General Information

2. Rule or section catchline:
General Provisions
3. Purpose of the new rule or reason for the change:
Consistent with the Utah Code and federal requirements, the Public Service Commission (PSC) has a rule in place that incorporates by reference provisions of the Code of Federal Regulations pertaining to pipeline safety. Because the PSC recently approved the construction of a

liquefied natural gas facility in Utah, this amendment incorporates an additional provision of the Code of Federal Regulations that pertains to liquefied natural gas facilities.

4. Summary of the new rule or change:

Section R746-409-1 is being amended to incorporate by reference 49 CFR Part 193, pertaining to liquefied natural gas facilities.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

None--There are no anticipated costs or savings to the state budget associated with this amendment.

B) Local governments:

None--There are no anticipated costs or savings to local governments associated with this amendment.

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

None--There are no anticipated costs or savings to small businesses associated with this amendment.

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

None--There are no anticipated costs or savings to non-small businesses associated with this amendment.

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**):

None--Section 54-13-3 and federal requirements pertaining to Utah's participation in the Federal Pipeline Safety Grant program require states to adopt certain federal pipeline safety regulations, as applicable, to entities under state jurisdiction. An entity that elects to construct a liquefied natural gas facility may incur costs to satisfy the federal safety standards but any such costs are a product of the election to construct such a facility and the state statutory and federal requirements to abide such standards, not this amendment.

F) Compliance costs for affected persons:

None--Section 54-13-3 and federal requirements pertaining to Utah's participation in the Federal Pipeline Safety Grant program require states to adopt certain federal pipeline safety regulations, as applicable, to entities under state jurisdiction. An entity that elects to construct a liquefied natural gas facility may incur costs to satisfy the federal safety standards but any such costs

are a product of the election to construct such a facility and the state statutory and federal requirements to abide such standards, not this amendment.

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

Regulatory Impact Table			
Fiscal Cost	FY2020	FY2021	FY2022
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head approval of regulatory impact analysis:

PSC Chair Thad LeVar 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 amendment should not impact businesses. The only business the amendment directly affects is an entity that constructs or operates a liquefied natural gas facility. As mentioned, Section 54-13-3 and federal requirements pertaining to Utah's participation in the Federal Pipeline Safety Grant program require states to adopt certain federal pipeline safety regulations, as applicable, to entities under state jurisdiction. An entity that elects to construct a liquefied natural gas facility may incur costs to satisfy the federal safety standards but any such costs are a product of the election to construct such a facility and the state statutory and federal requirements to abide such standards, not this amendment.

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

Thad LeVar, Chair

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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 54-13-3		
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Incorporations by Reference Information

(If this rule incorporates more than two items by reference, please include additional tables.)

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)	Code of Federal Regulations, Title 49
Publisher	Office of the Federal Register
Date Issued	2019
Issue, or version	2019

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:	01/31/2020
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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,	Thad LeVar, Chair	Date:	12/13/2019
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and title:			
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R746. Public Service Commission, Administration.

R746-409. Pipeline Safety.

R746-409-1. General Provisions.

A. Scope and Applicability -- Pursuant to Title 54, Chapter 13, the following rules shall apply to persons engaged in the transportation of gas as defined in CFR Title 49 Parts 191 and 192.

B. Adoption of parts of CFR Title 49 -- The Commission adopts and incorporates by this reference the following parts of CFR Title 49, effective September 1, 2019:

1. Part 190 with the exclusion of Part 190.223 which is superseded by Title 54, Chapter 13, Part 8, Violation of chapter -- Penalty;

2. Part 191;

3. Part 192;

4. Part 193;

[4]5. Part 198; and

[5]6. Part 199.

C. Persons engaged in the transportation of gas, including distribution of gas through a master-metered system, shall comply with the requirements of CFR Title 49, identified in Section R746-409-1.B, including all minimum safety standards.

KEY: rules and procedures, safety, pipelines

Date of Enactment or Last Substantive Amendment: ~~January 9, 2018~~ 2020

Notice of Continuation: March 31, 2016

Authorizing, and Implemented or Interpreted Law: 54-13-3; 54-13-5; 54-13-6

NOTICE OF PROPOSED RULE			
TYPE OF RULE: Repeal			
Utah Admin. Code Ref (R no.):	R982-700	Filing No.	52463

Agency Information

1. Department:	Workforce Services		
Agency:	Administration		
Building:	Olene Walker Building		
Street address:	140 E 300 S		
City, state:	Salt Lake City, Utah		
Mailing address:	PO Box 45244		
City, state, zip:	Salt Lake City, UT 84145-0244		
Contact person(s):			
Name:	Phone:	Email:	
Amanda McPeck	B. 801-517-4709	ampeck@gmail.com	

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

General Information

2. Rule or section catchline:
Employment Opportunities Website

3. Purpose of the new rule or reason for the change:
This rule is no longer necessary. Section 35A-2-203 sufficiently defines the Department of Workforce Services' (Department) responsibility in maintaining a website dedicated to providing information regarding employment opportunities throughout the state. Therefore, the Department proposes repealing this rule.

4. Summary of the new rule or change:
This rule is repealed in its entirety.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:
There is no anticipated cost or savings to the state budget. The administration of the Workforce Services employment opportunities website will not change with the repeal of this rule.

B) Local governments:
There is no anticipated cost or savings to local governments. The administration of the Workforce Services employment opportunities website will not change with the repeal of this rule.

C) Small businesses ("small business" means a business employing 1-49 persons):
There is no regulatory impact creating financial cost to small businesses. This rule is being repealed.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons):
There is no regulatory impact creating financial cost to non-small businesses. This rule is being repealed.

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 regulatory impact creating financial cost to other persons. This rule is being repealed.

F) Compliance costs for affected persons:
There are no compliance costs for affected persons. The repeal of this rule requires no action or compliance 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 Table			
Fiscal Cost	FY2020	FY2021	FY2022
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head approval of regulatory impact analysis:

The executive director of the Department of Workforce Services, Jon Pierpont, 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 repeal will not result in a fiscal impact to businesses.

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

Jon Pierpont, 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	35A-2-203		
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Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:	01/31/2020
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10. This rule change MAY become effective on:	02/07/2020
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NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	Jon Pierpont, Executive Director	Date:	12/16/2019
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R982. Workforce Services, Administration.

~~[R982-700. Employment Opportunities Website.~~

~~R982-700-100. Employment Opportunities to be Posted on Department Website.~~

~~_____ The Department will maintain a website dedicated to providing information regarding employment opportunities available throughout the state allowing employers to post job vacancy information in accordance with 35A-2-203.~~

~~KEY: website~~

~~Date of Enactment or Last Substantive Amendment: January 29, 2015~~

~~Authorizing, and Implemented or Interpreted Law: 35A-2-203]~~

End of the Notices of Proposed Rules Section

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the agency is required to review the rule. This review is intended to help the agency determine, and to notify the public, that the administrative rule in force is still authorized by statute and necessary. Upon reviewing a rule, an agency may: repeal the rule by filing a **PROPOSED RULE**; continue the rule as it is by filing a **FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (REVIEW)**; or amend the rule by filing a **PROPOSED RULE** and by filing a **REVIEW**. By filing a **REVIEW**, the agency indicates that the rule is still necessary.

A **REVIEW** is not followed by the rule text. The rule text that is being continued may be found in the online edition of the *Utah Administrative Code* available at <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.):	R23-26	Filing No. 50042

Agency Information

1. Department:	Administrative Services	
Agency:	Facilities Construction and Management	
Building:	State Office Building	
Street address:	4110 State Office Building	
City, state, zip:	Salt Lake City, Utah 84114	
Contact person(s):		
Name:	Phone:	Email:
Mike Kelley	801-538-3105	mkelley@agutah.gov

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

General Information

2. Rule catchline:	Dispute Resolution
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 pursuant to Subsection 63A-5-208(6) and under the authority of the Utah State Building Board, Subsection 63A-5-103(2).
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:	

There have been no written comments received during the last five-year review period from interested persons.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

The purpose of this rule is to establish a process for resolving disputes involved with contracts under the Division's procurement authority. This rule is authorized pursuant to Subsection 63A-5-208(6) and under the authority of the Utah State Building Board, Subsection 63A-5-103(2). The Utah State Building Board voted unanimously to continue the rule at its September 4, 2019, meeting.

Agency Authorization Information

To the agency: Information requested on this form is required by Section 63G-3-305. Incomplete forms will be returned to the agency for completion, possibly delaying the effective date.

Agency head or designee, and title:	Mike Kelley, Assistant Attorney General	Date:	12/09/2019
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R68-20	Filing No. 50148

Agency Information

1. Department:	Agriculture and Food
Agency:	Plant Industry
Street address:	350 North Redwood Road

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

City, state, zip:	Salt Lake City, Utah 84115	
Mailing address:	PO Box 146500	
City, state, zip:	Salt Lake City, UT 84114-6500	
Contact person(s):		
Name:	Phone:	Email:
Bracken Davis	801-538-7188	brackendavis@utah.gov
Kelly Pehrson	801-538-7102	kwpehrson@utah.gov
Robert Hougaard	801-538-7180	rhougaard@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
Utah Organic Standards
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 4-2-103(1)(i), Sections 4-3-201, 4-4-102, 4-5-104, 4-9-103, 4-11-103, 4-12-3, 4-14-106, 4-16-103, and 4-32-109, and Subsection 4-37-109(2) authorize the Department of Agriculture and Food (Department) to regulate the labeling of agricultural products in the state. This rule establishes the necessary requirements a producer has to meet in order to be considered organic and be authorized to use that term on the label.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
The Department has not received comments on this rule during the last 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 in order for the state to provided organic certification for producers. Therefore, this rule should be continued.

Agency Authorization Information

To the agency: Information requested on this form is required by Section 63G-3-305. Incomplete forms will be returned to the agency for completion, possibly delaying the effective date.		
Agency head or designee,	Kerry Gibson, Commissioner	Date: 11/26/2019

and title:			
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R307-103	Filing No. 50576

Agency Information

1. Department:	Environmental Quality	
Agency:	Air Quality	
Street address:	195 N 1950 W	
City, state, zip:	Salt Lake City, Utah 84116-3085	
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 catchline:
Administrative Procedures
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
The Utah Administrative Procedures Act (UAPA), Subsection 63G-4-102(6), allows state administrative agencies to enact rules "affecting or governing adjudicative proceedings," so long as the rules are adopted according to the Utah Administrative Rulemaking Act and conform to the requirements of UAPA. Rule R307-103 establishes administrative procedures that are tailored to the Division of Air Quality's (DAQ) administrative needs and the needs of those affected by the agency's actions. The procedures in Rule R307-103 ensure consistency in the Division's administrative actions and give constitutional due process and fair notice to the regulated community and the public of their and DAQ's roles and responsibilities in the agency's actions.
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:
Rule R307-103 has not been amended since the last five-year review in February 2015. No comments have been received in that time period.
5. A reasoned justification for continuation of this

rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

Rule R307-103 sets forth administrative processes for DAQ and the regulated community to ensure constitutional due process for the regulated community and the public. Therefore, this rule should be continued.

Agency Authorization Information

To the agency: Information requested on this form is required by Section 63G-3-305. Incomplete forms will be returned to the agency for completion, possibly delaying the effective date.

Agency head or designee, and title:	Bryce Bird, Director	Date:	11/20/2019
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R307-165	Filing No. 50584
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Agency Information

1. Department:	Environmental Quality	
Agency:	Air Quality	
Street address:	195 N 1950 W	
City, state, zip:	Salt Lake City, Utah 84116-3085	
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 catchline:

Emission Testing

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 19-2-104(1)(a) allows the Air Quality Board to make rules "...regarding the control, abatement, and prevention of air pollution from all sources..." One component of preventing air pollution is testing to ensure that control equipment is working properly.

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 submitted on this rule since the last five-year review.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

Rule R307-165 establishes the frequency of emission testing requirements for all areas in the state. Without periodic testing, there is no guarantee that pollution control equipment is working properly. Therefore, this rule should be continued.

Agency Authorization Information

To the agency: Information requested on this form is required by Section 63G-3-305. Incomplete forms will be returned to the agency for completion, possibly delaying the effective date.

Agency head or designee, and title:	Bryce Bird, Director	Date:	11/20/2019
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R307-201	Filing No. 50585
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Agency Information

1. Department:	Environmental Quality	
Agency:	Air Quality	
Street address:	195 N 1950 W	
City, state, zip:	Salt Lake City, Utah 84116-3085	
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 catchline:

Emission Standards: General Emission Standards

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 19-2-104(1)(b) allows the Air Quality Board to make rules "establishing air quality standards." Standards are needed to ensure that emissions of air pollution do not harm public health.

<p>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:</p> <p>No comments have been received since the last five-year review.</p> <p>5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:</p> <p>Standards are needed to ensure that emissions of air pollution do not harm public health. This rule establishes emission standards statewide. Therefore, this rule should be continued.</p>

Agency Authorization Information

To the agency: Information requested on this form is required by Section 63G-3-305. Incomplete forms will be returned to the agency for completion, possibly delaying the effective date.

Agency head or designee, and title:	Bryce Bird, Director	Date:	11/20/2019
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R307-202	Filing No. 50587

Agency Information

1. Department:	Environmental Quality	
Agency:	Air Quality	
Street address:	195 N 1950 W	
City, state, zip:	Salt Lake City, Utah 84116-3085	
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 catchline:
Emission Standards: General Burning
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

<p>Subsection 19-2-104(1)(a) allows the Air Quality Board to make rules "...regarding the control, abatement, and prevention of air pollution from all sources..." Rule R307-202 sets forth the conditions under which burning of yard clippings is allowed, forbids burning at community waste disposal sites, and the burning of trash or garbage. Rule R307-202 does not regulate fireplaces or outdoor grills.</p> <p>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:</p> <p>No comments have been received since the last five-year review.</p> <p>5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:</p> <p>Rule R307-202 is necessary to specify time windows when local officials may allow burning for yard cleanup, and to set forth the kinds of burning for which permits are not needed; and should be continued. In addition, Rule R307-202 is a component of Utah's State Implementation Plan, and cannot be deleted without EPA approval. Therefore, this rule should be continued.</p>
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Agency Authorization Information

To the agency: Information requested on this form is required by Section 63G-3-305. Incomplete forms will be returned to the agency for completion, possibly delaying the effective date.

Agency head or designee, and title:	Bryce Bird, Director	Date:	11/20/2019
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R307-203	Filing No. 50593

Agency Information

1. Department:	Environmental Quality	
Agency:	Air Quality	
Street address:	195 N 1950 W	
City, state, zip:	Salt Lake City, Utah 84116-3085	
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 catchline:

Emission Standards: Sulfur Content of Fuels

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

Rule R307-203 establishes the maximum amount of sulfur that may be contained in coal and oil burned in industrial processes and residential heating, thus holding down the emissions of sulfur dioxide from these processes. Subsection 19-2-104(1)(a) authorizes the Air Quality Board to make rules "...regarding the control, abatement, and prevention of air pollution from all sources and the establishment of the maximum quantity of air contaminants that may be emitted by any air contaminant source."

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

No written comments have been received since the last five-year review.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

Sulfur dioxide is harmful to human health, which is the basis for EPA's listing of sulfur dioxide as a principal pollutant. Without this rule, users could burn coal or oil with higher sulfur content, thus emitting more sulfur dioxide into the atmosphere. In addition, Rule R307-203 is a component of Utah's State Implementation Plan, and cannot be deleted without EPA approval. Therefore, this rule should be continued.

Agency Authorization Information

To the agency: Information requested on this form is required by Section 63G-3-305. Incomplete forms will be returned to the agency for completion, possibly delaying the effective date.

Agency head or designee, and title:	Bryce Bird, Director	Date:	11/20/2019
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R307-204	Filing No.	50598
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Agency Information

1. Department:	Environmental Quality
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Agency:	Air Quality	
Street address:	195 N 1950 W	
City, state, zip:	Salt Lake City, Utah 84116-3085	
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 catchline:

Emission Standards: Smoke Management

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 19-2-104(1)(a) allows the Air Quality Board to make rules "...regarding the control, abatement, and prevention of air pollution from all sources and the establishment of the maximum quantity of air contaminants that may be emitted by any air contaminant source." Rule R307-204 protects the public health by controlling the release and impact of particulate pollution associated with prescribed and controlled fires in the . Rule R307-204 also describes the operational procedures to follow when prescribed fires, wildland fires, or wildland fire use events take place on specific lands in Utah owned or managed by state and federal land management agencies. Rule R307-204 does not apply to agricultural activities specified in Section 19-2-114.

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:

One substantive amendment was made to Rule R307-204 in 2019 (Filing No. 43808) to include requirements established by the Legislature set forth in HB 15 from the 2019 General Session. Other proposed amendments were put forward to reduce redundancies, eliminate outdated portions, and streamline the rule. No comments were received since the last five-year review.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

Rule R307-204 protects the public health by controlling the release and impact of particulate pollution associated with prescribed and controlled fires in the . Smoke has become a dominant public complaint, supporting the need for this regulation. Additionally, Rule R307-204 is a component of Utah's State Implementation Plan, and it cannot be deleted without EPA approval. Therefore, this

rule should be continued.

Agency Authorization Information

To the agency: Information requested on this form is required by Section 63G-3-305. Incomplete forms will be returned to the agency for completion, possibly delaying the effective date.

Agency head or designee, and title:	Bryce Bird, Director	Date:	11/20/2019
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R307-205	Filing No. 50588
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Agency Information

1. Department:	Environmental Quality	
Agency:	Air Quality	
Street address:	195 N 1950 W	
City, state, zip:	Salt Lake City, Utah 84116-3085	
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 catchline:
Emission Standards: Fugitive Emissions and Fugitive Dust

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

The Air Quality Board is required by Subsection 19-2-101(2) to "...achieve and maintain levels of air quality which will protect human health and safety..." In addition, Subsection 19-2-104(1)(a) allows the Board to make rules "regarding the control, abatement, and prevention of air pollution from all sources and the establishment of the maximum quantity of air contaminants that may be emitted by any air contaminant source..." Also, Subsection 19-2-09(2)(a) allows the Board to "establish emission control requirements by rule that in its judgment may be necessary to prevent, abate, or control air pollution that may be statewide or may vary from area to area, taking into account varying local

conditions." Finally, Subsection 19-2-104(3)(e) allows the Board to "...prepare and develop a comprehensive plan or plans for the prevention, abatement, and control of air pollution in this state." Rule R307-205 protects the public health by reducing emissions from industries, gravel pits, constructions sites, haul trucks, mines, and tailings ponds, as authorized by the above statutes.

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 were received since the last five-year review.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

Rule R307-205 reduces emissions from industries, gravel pits, construction sites, haul trucks, mines, and tailings ponds. In addition, dust complaints make up a significant portion of complaints received by the Division of Air Quality. Therefore, this rule should be continued.

Agency Authorization Information

To the agency: Information requested on this form is required by Section 63G-3-305. Incomplete forms will be returned to the agency for completion, possibly delaying the effective date.

Agency head or designee, and title:	Bryce Bird, Director	Date:	11/20/2019
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R307-206	Filing No. 50596
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Agency Information

1. Department:	Environmental Quality	
Agency:	Air Quality	
Street address:	195 N 1950 W	
City, state, zip:	Salt Lake City, Utah 84116-3085	
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 catchline:
Emission Standards: Abrasive Blasting
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Rule R307-206 sets forth performance standards and maximum concentration of contaminants allowed in the air for operations that clean or prepare a surface by forcefully propelling a stream of abrasive material against the surface. Subsection 19-2-104(1)(a) allows the Air Quality Board to make rules "...regarding the control, abatement, and prevention of air pollution from all sources and the establishment of the maximum quantity of air contaminants that may be emitted by any air contaminant source."
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:
Two revisions were made in 2015 due to edits from HB 229 (Filing No. 39747 and No. 39748). No comments have been received since the last five-year review.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule protects the health of citizens when abrasive blasting operations are underway. In addition, this rule is a component of Utah's State Implementation Plan (SIP), and it cannot be deleted from the SIP without EPA approval. Therefore, this rule should be continued.

Agency Authorization Information

To the agency: Information requested on this form is required by Section 63G-3-305. Incomplete forms will be returned to the agency for completion, possibly delaying the effective date.

Agency head or designee, and title:	Bryce Bird, Director	Date:	11/20/2019
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R307-207	Filing No. 50590

Agency Information

1. Department:	Environmental Quality
Agency:	Air Quality
Street address:	195 N 1950 W
City, state, zip:	Salt Lake City, Utah 84116-3085
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 catchline:
Emission Standards: Residential Fireplaces and Stoves
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Rule R307-207 establishes visible emission from residential solid fuel burning devices and fireplaces. The Air Quality Board is required by Subsection 19-2-101(2) to "...achieve and maintain levels of air quality which will protect human health and safety..." In addition, Subsection 19-2-104(1)(a) allows the Board to make rules "...regarding the control, abatement, and prevention of air pollution from all sources and the establishment of the maximum air quantity of air contaminants that may be emitted by any air contaminant source...."
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 were received regarding Rule R307-207 since the last five-year review.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
Rule R307-207 establishes visible emission standards necessary to control PM10 throughout Utah. In addition, this rule is a component of Utah's State Implementation Plan (SIP), and it cannot be deleted from the SIP without the EPA's approval. Therefore, this rule should be continued.

Agency Authorization Information

To the agency: Information requested on this form is required by Section 63G-3-305. Incomplete forms will be returned to the agency for completion, possibly delaying the effective date.

Agency head or designee, and title:	Bryce Bird, Director	Date:	11/20/2019
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref	R307-305	Filing

(R no.):		No. 50605
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Agency Information

1. Department:	Environmental Quality	
Agency:	Air Quality	
Street address:	195 N 1950 W	
City, state, zip:	Salt Lake City, Utah 84116-3085	
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 catchline:
Nonattainment and Maintenance Areas for PM10: Emission Standards

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

Rule R307-305 sets visible emission limits, testing methods and schedules, and compliance schedules for sources of air pollution that are regulated under Utah's PM10 state implementation plan to protect public health. Subsection 19-2-104(1)(a) allows the Air Quality Board to make rules "...regarding the control, abatement, and prevention of air pollution from all sources and the establishment of the maximum quantity of air contaminants that may be emitted by any air contaminant source."

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

There have been no comments on this rule since the last five-year review.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

Emission limits and testing of emissions, which this rule outlines, help to ensure that industrial facilities are operating properly and emitting the least possible pollution to protect human health. Additionally, Rule R307-305 is a component of Utah's State Implementation Plan and cannot be deleted without EPA approval. Therefore, this rule should be continued.

Agency Authorization Information

To the agency: Information requested on this form is required by Section 63G-3-305. Incomplete forms will be returned to the agency for completion, possibly delaying the effective date.

Agency head or designee, and title:	Bryce Bird, Director	Date:	11/20/2019
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R307-306	Filing No. 50617
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Agency Information

1. Department:	Environmental Quality	
Agency:	Air Quality	
Street address:	195 N 1950 W	
City, state, zip:	Salt Lake City, Utah 84116-3085	
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 catchline:
PM10 Nonattainment and Maintenance Areas: Abrasive Blasting

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 establishes requirements that apply to abrasive blasting operations in PM10 nonattainment and maintenance areas. Subsection 19-2-104(1)(a) allows the Air Quality Board to make rules "...regarding the control, abatement, and prevention of air pollution from all sources and the establishment of the maximum quantity of air contaminants that may be emitted by any air contaminant source."

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

There have been no comments on this rule since the last five-year review.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule outlines emission limits that help to ensure that industrial facilities are operating properly and emitting the least possible pollution to protect human health and the environment. This rule is also part of Utah's State Implementation Plan and cannot be deleted without EPA approval. Therefore, this rule should be continued.

Agency Authorization Information

To the agency: Information requested on this form is required by Section 63G-3-305. Incomplete forms will be returned to the agency for completion, possibly delaying the effective date.

Agency head or designee, and title:	Bryce Bird, Director	Date:	11/20/2019
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R307-307	Filing No. 50628
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Agency Information

1. Department:	Environmental Quality	
Agency:	Air Quality	
Street address:	195 N 1950 W	
City, state, zip:	Salt Lake City, Utah 84116-3085	
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 catchline:
Road Salting and Sanding

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

Rule R307-307 sets limits on the sodium chloride, magnesium chloride, calcium chloride, and potassium chloride that may be included in salt used on roads. The limits are needed to reduce the particulate matter that is harmful to human health, and are one of the measures included in Utah's State Implementation Plan (SIP) for

PM10 and PM2.5. Subsection 19-2-104(1)(a) allows the Air Quality Board to make rules "...regarding the control, abatement, and prevention of air pollution from all sources and the establishment of the maximum quantity of air contaminants that may be emitted by any air contaminant source."

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

There have been no comments since the last five-year review.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

The limits in this rule are needed to reduce particulate matter, and are one of the measures included in Utah's State Implementation Plan for PM10 and PM2.5 and cannot be deleted without EPA's approval. Therefore, this rule should be continued.

Agency Authorization Information

To the agency: Information requested on this form is required by Section 63G-3-305. Incomplete forms will be returned to the agency for completion, possibly delaying the effective date.

Agency head or designee, and title:	Bryce Bird, Director	Date:	11/20/2019
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R307-309	Filing No. 50607
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Agency Information

1. Department:	Environmental Quality	
Agency:	Air Quality	
Street address:	195 N 1950 W	
City, state, zip:	Salt Lake City, Utah 84116-3085	
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 catchline:

Nonattainment and Maintenance Areas for PM10 and PM2.5: Fugitive Emissions and Fugitive Dust

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

Rule R307-309 regulates the amount of dust and fugitive emissions that are allowed to leave the site of any source of air pollution. These regulations are part of Utah's State Implementation Plan (SIP) to control particulate matter in geographic areas where levels of pollution have exceeded federal health standards in the past; the plan is incorporated by reference under Section R307-110-10. The plan is required under the Clean Air Act, 42 U.S.C. 7410. Subsection 19-2-104(1) authorizes the Air Quality Board to make rules "(a) regarding the control, abatement, and prevention of air pollution from all sources and the establishment of the maximum quantity of air contamination that may be emitted by any air contaminant source"; and "(b) establishing air quality standards." Subsection 19-2-104(3)(q) authorizes the Board to make rules to "meet the requirements of federal air pollution laws."

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:

Rule R307-309 was amended one time since the last five-year review (Filing No. 41628). The amendment was to clarify language and make the rule approvable by the EPA. During the public comment period comments were submitted by the EPA and other interested stakeholders. No comments were received since the last five-year review from persons supporting or opposing this rule.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

Rule R307-309 protects the public health by reducing emissions from industries, gravel pits, construction sites, haul trucks, mines, and tailings ponds. In addition, Rule R307-309 is required under the State Implementation Plan (SIP) incorporated by reference under Section R307-110-10. Because the rule is part of the SIP, it cannot be deleted without EPA approval. Therefore, this rule should be continued.

Agency Authorization Information

To the agency: Information requested on this form is required by Section 63G-3-305. Incomplete forms will be returned to the agency for completion, possibly delaying the effective date.

Agency head or designee,	Bryce Bird, Director	Date:	11/20/2019
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and title:

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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R307-310	Filing No. 50613
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Agency Information

1. Agency:	Environmental Quality, Air Quality	
Room no.:	Fourth Floor	
Street address:	195 N 1950 W	
City, state, zip:	Salt Lake City, UT 84116-3085	
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 catchline:
Salt Lake County: Trading of Emission Budgets for Transportation Conformity

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 19-2-104(1)(a) allows the Air Quality Board to make rules "...regarding the control, abatement, and prevention of air pollution from all sources and the establishment of the maximum quantity of air contaminants that may be emitted by any air contaminant source." In addition, Subsection 19-2-104(3)(e) allows the Board to "...prepare and develop a comprehensive plan or plans for the prevention, abatement, and control of air pollution in this state." Rule R307-310 protects the public health by setting forth a mechanism to trade PM10 for NOx to demonstrate conformity with Salt Lake County PM10 SIP.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

There have been no comments on this rule since the last five-year review.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

Rule R307-310 establishes a conformity budget for Salt Lake County. This budget allows continued funding of transportation projects in Salt Lake County. Rule R307-310 is a component of Utah's State Implementation Plan (SIP) and cannot be deleted without EPA's approval. Therefore, this rule should be continued.

Agency Authorization Information

To the agency: Information requested on this form is required by Section 63G-3-305. Incomplete forms will be returned to the agency for completion, possibly delaying the effective date.

Agency head or designee, and title:	Bryce Bird, Director	Date:	11/20/2019
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R307-311	Filing No. 50609
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Agency Information

1. Agency:	Environmental Quality, Air Quality		
Room no.:	Fourth Floor		
Street address:	195 N 1950 W		
City, state, zip:	Salt Lake City, UT 84116-3085		
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 catchline:
Utah County: Trading of Emission Budgets for Transportation Conformity

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

Section 19-2-104 states that the Air Quality Board may make rules "...regarding the control, abatement, and prevention of air pollution from all sources and the establishment of the maximum quantity of air pollutants that may be emitted by an air pollutant source." In addition, Subsection 19-2-104(3)(e) allows the Board to "...prepare and develop a comprehensive plan or plans

for the prevention, abatement, and control of air pollution in this state." Rule R307-311 protects the public health by setting forth a mechanism to trade PM10 for NOx to demonstrate conformity with Utah County PM10 SIP.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

This is the first five-year review for Rule R307-311. No comments were received since the inception of the 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:

Rule R307-311 establishes a conformity budget for Utah County. This budget allows continued funding of transportation projects in Utah County. Rule R307-311 is a component of Utah's State Implementation Plan (SIP) and cannot be deleted without EPA's approval. Therefore, this rule should be continued.

Agency Authorization Information

To the agency: Information requested on this form is required by Section 63G-3-305. Incomplete forms will be returned to the agency for completion, possibly delaying the effective date.

Agency head or designee, and title:	Bryce Bird, Director	Date:	11/20/2019
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R307-841	Filing No. 50663
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Agency Information

1. Agency:	Environmental Quality, Air Quality		
Room no.:	Fourth Floor		
Street address:	195 N 1950 W		
City, state, zip:	Salt Lake City, UT 84116-3085		
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 catchline:

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Residential Property and Child Occupied Facility Renovation

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

Rule R307-841 is one of three Air Quality rules that implements Subsection 19-2-104(1)(i) which authorizes the Air Quality Board to make rules to implement the lead-based paint requirements for training, certification, and performance of 15 U.S.C.A 2601 et seq., Toxic Substances Control Act, Subchapter IV--Lead Exposure Reduction, Sections 402 and 406.

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:

Rule R307-841 has undergone two amendment processes. The first was May 2016 (Filing No. 40207) and the second being in May of 2017 (Filing No. 41100). No comments have been received since the last five-year review of Rule R307-841 from persons supporting or opposing this rule.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

Rule R307-841 contains necessary requirements for Utah to have lead-based paint program regulatory oversight in Utah for renovation projects conducted in target housing and child-occupied facilities. Without Rule R307-841, Utah would not have authority to implement the federal requirements and implementation would be carried out by the Environmental Protection Agency. Therefore, this rule should be continued.

Agency Authorization Information

To the agency: Information requested on this form is required by Section 63G-3-305. Incomplete forms will be returned to the agency for completion, possibly delaying the effective date.

Agency head or designee, and title:	Bryce Bird, Director	Date:	11/20/2019
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R307-842	Filing No.	50665
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Agency Information

1. Agency:	Environmental Quality, Air Quality
Room no.:	Fourth Floor
Street address:	195 N 1950 W

City, state, zip:	Salt Lake City, UT 84116-3085	
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 catchline:
Lead-Based Paint Activities

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

Rule R307-842 is one of three Air Quality rules that implements Subsection 19-2-104(1)(i) which authorizes the Air Quality Board to make rules to implement the lead-based paint requirements for training, certification, and performance of 15 U.S.C.A 2601 et seq., Toxic Substances Control Act, Subchapter IV--Lead Exposure Reduction, Sections 402 and 406.

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:

One amendment to Rule R307-842 has been made since the last five-year review (Filing No. 41001) and was completed in May 2017. There have been no comments received from persons supporting or opposing this rule since the last five-year review.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

Rule R307-842 contains necessary requirements for Utah to have lead-based paint program regulatory oversight in Utah for renovation projects conducted in target housing and child-occupied facilities. Without Rule R307-842, Utah would not have authority to implement the federal requirements and implementation would be carried out by the Environmental Protection Agency. Therefore, this rule should be continued.

Agency Authorization Information

To the agency: Information requested on this form is required by Section 63G-3-305. Incomplete forms will be returned to the agency for completion, possibly delaying the effective date.

Agency head or	Bryce Bird, Director	Date:	11/20/2019
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designee, and title:			
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R343-2	Filing No. 50827

Agency Information

1. Agency:	Financial Institutions, Nondepository Lenders	
Room no.:	201	
Street address:	324 STATE ST	
City, state, zip:	Salt Lake City UT 84111-2321	
Mailing address:	PO Box 146800	
City, state, zip:	Salt Lake City UT 84111-6800	
Contact person(s):		
Name:	Phone:	Email:
Paul Allred	801-538-8761	pallred@utah.gov

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

General Information

2. Rule catchline:
Mortgage Lenders, Brokers and Servicers Fees
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Under Section 70D-2-203, the Department of Financial Institutions shall, by rule, set fees to be paid to the commissioner.
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 supporting or opposing written comments have been received by the Nondepository Lenders concerning this rule.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule sets an annual renewal fee and examination fees to be paid to the commissioner as required by Section 70D-2-203. Therefore, this rule should be continued.

Agency Authorization Information

To the agency: Information requested on this form is required by Section 63G-3-305. Incomplete forms will be returned to the agency for completion, possibly delaying the effective date.			
Agency head or designee, and title:	Edward Leary, Commissioner	Date:	12/03/2019

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R343-3	Filing No. 50832

Agency Information

1. Department:	Financial Institutions	
Agency:	Nondepository Lenders	
Room no.:	201	
Street address:	324 STATE ST	
City, state, zip:	Salt Lake City UT 84111-2321	
Mailing address:	PO Box 14680	
City, state, zip:	Salt Lake City UT 84111-6800	
Contact person(s):		
Name:	Phone:	Email:
Paul Allred	801-538-8761	pallred@utah.gov

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

General Information

2. Rule catchline:
Mortgage Lenders, Brokers and Servicers Definitions
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Under Section 70D-3-102, this rule applies to mortgage lenders, brokers, or servicers who engage in the business of mortgage lending, brokering, or servicing and are required to license with the commissioner.
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 supporting or opposing written comments have been received by the agency concerning this rule.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule provides definitions that apply to mortgage lenders, brokers, or servicers who engage in the

business of mortgage lending, brokering, or servicing and are required to license with the commissioner. Therefore, this rule should be continued.

Agency Authorization Information

To the agency: Information requested on this form is required by Section 63G-3-305. Incomplete forms will be returned to the agency for completion, possibly delaying the effective date.

Agency head or designee, and title:	Edward Leary, Commissioner	Date:	12/03/2019
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R343-4	Filing No. 50835

Agency Information

1. Department:	Financial Institutions	
Agency:	Nondepository Lenders	
Room no.:	201	
Street address:	324 STATE ST	
City, state, zip:	Salt Lake City UT 84111-2321	
Mailing address:	PO Box 14680	
City, state, zip:	Salt Lake City UT 84111-6800	
Contact person(s):		
Name:	Phone:	Email:
Paul Allred	801-538-8761	pallred@utah.gov

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

General Information

2. Rule catchline:
Application Forms and Procedures for Mortgage Lenders
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Under Section 70D-3-203, the Department of Financial Institutions shall by rule establish the form, content, and procedure for filing applications for licensure.
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 supporting or opposing written comments have been received by the agency concerning this rule.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule prescribes license application form specifications, contents, and procedures for submitting the application as required under Section 70D-3-203. Therefore, this rule should be continued.

Agency Authorization Information

To the agency: Information requested on this form is required by Section 63G-3-305. Incomplete forms will be returned to the agency for completion, possibly delaying the effective date.

Agency head or designee, and title:	Edward Leary, Commissioner	Date:	12/03/2019
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R343-5	Filing No. 50842

Agency Information

1. Department:	Financial Institutions	
Agency:	Nondepository Lenders	
Room no.:	201	
Street address:	324 STATE ST	
City, state, zip:	Salt Lake City UT 84111-2321	
Mailing address:	PO Box 14680	
City, state, zip:	Salt Lake City UT 84111-6800	
Contact person(s):		
Name:	Phone:	Email:
Paul Allred	801-538-8761	pallred@utah.gov

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

General Information

2. Rule catchline:
Mortgage Loan Originator Surety Bond Requirements
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Under Section 70D-3-205, this rule establishes surety bond requirements for mortgage loan originator licensees.
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 supporting or opposing written comments have been received by the agency concerning this rule.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule establishes surety bond requirements for mortgage loan originator licensees as required under Section 70D-3-205. Therefore, this rule should be continued.

Agency Authorization Information

To the agency: Information requested on this form is required by Section 63G-3-305. Incomplete forms will be returned to the agency for completion, possibly delaying the effective date.

Agency head or designee, and title:	Edward Leary, Commissioner	Date:	12/03/2019
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R343-6	Filing No. 50836

Agency Information

1. Department:	Financial Institutions	
Agency:	Nondepository Lenders	
Room no.:	201	
Street address:	324 STATE ST	
City, state, zip:	Salt Lake City UT 84111-2321	
Mailing address:	PO Box 14680	
City, state, zip:	Salt Lake City UT 84111-6800	
Contact person(s):		
Name:	Phone:	Email:
Paul Allred	801-538-8761	pallred@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
Mortgage Loan Originator Challenge of Nationwide Database Information

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

Under Section 70D-3-206, the Department of Financial Institutions is required to establish the procedure for mortgage loan originators or applicants to challenge information in the nationwide database.

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 supporting or opposing written comments have been received by the agency concerning 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:

A mortgage loan originator or applicant may challenge the factual accuracy of information entered by the Department into the nationwide database. This rule establishes the procedure to challenge that information under Section 70D-3-206. Therefore, this rule should be continued.

Agency Authorization Information

To the agency: Information requested on this form is required by Section 63G-3-305. Incomplete forms will be returned to the agency for completion, possibly delaying the effective date.

Agency head or designee, and title:	Edward Leary, Commissioner	Date:	12/03/2019
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R343-7	Filing No. 50837

Agency Information

1. Department:	Financial Institutions	
Agency:	Nondepository Lenders	
Room no.:	201	
Street address:	324 STATE ST	
City, state, zip:	Salt Lake City UT 84111-2321	
Mailing address:	PO Box 14680	
City, state, zip:	Salt Lake City UT 84111-6800	
Contact person(s):		
Name:	Phone:	Email:
Paul Allred	801-538-8761	pallred@utah.gov

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

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

General Information

2. Rule catchline:

Mortgage Loan Originator Education and Written Test Requirements

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

Under Sections 70D-3-301, 70D-3-302, and 70D-3-303, the Department of Financial Institutions must establish education and written test requirements for mortgage loan originators who are required to be licensed under Title 70D.

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 supporting or opposing written comments have been received by the agency concerning 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:

An applicant must satisfy pre-licensing education and written testing requirements to be eligible to apply for a mortgage loan originator license under Title 70D. This rule establishes these requirements. Therefore, this rule should be continued.

Agency Authorization Information

To the agency: Information requested on this form is required by Section 63G-3-305. Incomplete forms will be returned to the agency for completion, possibly delaying the effective date.

Agency head or designee, and title:	Edward Leary, Commissioner	Date:	12/03/2019
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R343-8	Filing No. 50846

Agency Information

1. Department:	Financial Institutions
Agency:	Nondepository Lenders
Room no.:	201
Street address:	324 STATE ST
City, state, zip:	Salt Lake City UT 84111-2321
Mailing address:	PO Box 14680

City, state, zip:	Salt Lake City UT 84111-6800
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Contact person(s):

Name:	Phone:	Email:
Paul Allred	801-538-8761	pallred@utah.gov

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

General Information

2. Rule catchline:

Mortgage Loan Originator Record Requirements and Reports of Condition

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

Under Section 70D-3-401, the Department of Financial Institutions by rule requires that appropriate business records are created, maintained, submitted, and produced for inspection by mortgage loan originators.

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 supporting or opposing written comments have been received by the agency concerning 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:

Mortgage loan originators required to be licensed under Title 70D are required to create records related to the underwriting, valuation of collateral, or extension of credit for a mortgage loan. This rule establishes these requirements. Therefore, this rule should be continued.

Agency Authorization Information

To the agency: Information requested on this form is required by Section 63G-3-305. Incomplete forms will be returned to the agency for completion, possibly delaying the effective date.

Agency head or designee, and title:	Edward Leary, Commissioner	Date:	12/03/2019
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R501-18	Filing No. 51196

Agency Information

1. Department:	Human Services	
Agency:	Administration, Administrative Services, Licensing	
Building:	MASOB	
Street address:	195 N 1950 W	
City, state, zip:	SALT LAKE CITY, UT, 84116	
Mailing address:	195 N 1950 W	
City, state, zip:	SALT LAKE CITY, UT, 84116	
Contact person(s):		
Name:	Phone:	Email:
Jonah Shaw	801-538-4219	jshaw@utah.gov
Janice Weinman	385-321-5586	jweinman@utah.gov
Elisabeth Kitchens	385-303-2953	ehkitchens@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
Recovery Residence Services
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 Section 62A-2-101. As established in Section 62A-2-101, this rule guides the basic health and safety standards for recover residences, as well as the administrative requirements.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
No comments have been received.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule must remain in effect in order to not jeopardize the safety and administrative standards required for recovery residential services. Therefore, this rule should be continued.

Agency Authorization Information

To the agency: Information requested on this form is

required by Section 63G-3-305. Incomplete forms will be returned to the agency for completion, possibly delaying the effective date.			
Agency head or designee, and title:	Amanda Slater, Director	Date:	12/05/2019

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R590-88	Filing No. 51334

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:
Prohibited Transactions Between Producers And Unauthorized Multiple Employer Trusts
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Section 31A-2-201 authorizes the Insurance Commissioner to write rules to implement the provisions of the Insurance Code, Title 31A. Section 31A-23a-402 authorizes the Insurance Commissioner to set guidelines for determining what unfair discrimination is and to make rules defining unfair marketing acts or practices. This rule identifies prohibited transactions of unauthorized multiple employer trusts and sets sanctions to be applied against those participating in these prohibited transactions.
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:

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

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 protects consumers from agents and organizations selling insurance for unauthorized multiple employer trusts. This insurance is not backed by a licensed insurer. This rule also provides sanctions against producers that transact this type of business. Therefore, this rule should be continued.

Agency Authorization Information

To the agency: Information requested on this form is required by Section 63G-3-305. Incomplete forms will be returned to the agency for completion, possibly delaying the effective date.

Agency head or designee, and title:	Steve Gooch, Information Specialist	Date:	12/16/2019
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R651-101	Filing No. 51606
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Agency Information

1. Department:	Natural Resources	
Agency:	Parks and Recreation	
Room no.:	3710	
Street address:	1594 W North Temple	
City, state, zip:	Salt Lake City, Utah 84114	
Mailing address:	PO Box 146001	
City, state, zip:	Salt Lake City, UT 84114	
Contact person(s):		
Name:	Phone:	Email:
Tammy Wright	801-538-7359	tammywright@utah.gov

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

General Information

2. Rule catchline:
Adjudicative Proceedings
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

Subsection 63G-4-102(6) of the Administrative Procedures Act allows agencies to formulate rules regarding Adjudicative Proceedings if the rule conforms to the requirements of the chapter. Section 79-4-201 states the Division of Parks and Recreation (Division) is under the policy direction of the board, the Division does issue permits and licenses which require an adjudicative proceeding process.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

No written comments were received.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

The Division issues a variety of licenses and permits which would require an adjudicative process to settle disputes that arise when licenses or permits are revoked, suspended, or denied. These licenses and permits are related to commercial vessel operations, commercial use of parks, public and private events, and general park access. Therefore, this rule should be continued.

Agency Authorization Information

To the agency: Information requested on this form is required by Section 63G-3-305. Incomplete forms will be returned to the agency for completion, possibly delaying the effective date.

Agency head or designee, and title:	Jeff Rasmussen, Director	Date:	12/11/2019
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R651-223	Filing No. 51626
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Agency Information

1. Department:	Natural Resources	
Agency:	Parks and Recreation	
Room no.:	3710	
Street address:	1594 W North Temple	
City, state, zip:	Salt Lake City, Utah 84114	
Mailing address:	PO Box 146001	
City, state, zip:	Salt Lake City, UT 84029	
Contact person(s):		
Name:	Phone:	Email:
Tammy Wright	801-538-7359	tammywright@utah.gov

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

General Information

2. Rule catchline:

Vessel Accident Reportage

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

This rule was created by the statutory provision defined in Subsections 73-18-13(3)(a) and (b) that states: "The board shall adopt rules governing the notification and reporting procedure for vessels involved in accidents and these rules shall be consistent with federal requirements." The statute was created due to the enactment of Title 33, Chapter 1, Subchapter S, Part 173, Subpart C, Subsection 173.51-173.59 of the Code of Federal Regulations dealing with Vessel Casualty and Accident Reporting.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

No written comments were received.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

Title 33, Chapter 1, Subchapter S, Part 173, Subpart C, Subsection 173.51-173.59 of the Code of Federal Regulations mandates that the states meet the requirements and any violations will result in a loss of Recreational Boating Safety funds from the United States Coast Guard. Therefore, this rule should be continued.

Agency Authorization Information

To the agency: Information requested on this form is required by Section 63G-3-305. Incomplete forms will be returned to the agency for completion, possibly delaying the effective date.

Agency head or designee, and title:	Jeff Rasmussen, Director	Date:	12/11/2019
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R651-409	Filing No. 51634
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Agency Information

1. Department:	Natural Resources
Agency:	Parks and Recreation

Room no.:	116	
Street address:	1594 W North Temple	
City, state, zip:	Salt Lake City, Utah 84114	
Mailing address:	PO Box 146001	
City, state, zip:	Salt Lake City, UT 84114	
Contact person(s):		
Name:	Phone:	Email:
Tammy Wright	801-538-7359	tammywright@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:

Minimum amounts of Liability Insurance Coverage For An Organized Practice or Sanctioned Race.

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 an insurance requirement as defined under Subsections 41-22-29(1)(a) and (b) for either an organized practice or race that is held within facilities designated by the division. Any organization sponsoring or sanctioning an event must carry liability insurance in specific amounts listed within Subsection 41-22-29(5) as granted by Title 63G, Chapter 3.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

No comments have been received during the last five year review either supporting or opposing this rule.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule is necessary in order to meet the liability insurance requirements listed within Subsections 41-22-29(1)(a) and (b) along with Subsection 41-22-29(5). Therefore, this rule should be continued.

Agency Authorization Information

To the agency: Information requested on this form is required by Section 63G-3-305. Incomplete forms will be returned to the agency for completion, possibly delaying the effective date.

Agency head or designee, and title:	Jeff Rasmussen, Director	Date:	12/11/2019
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R651-412	Filing No. 51636

Agency Information

1. Department:	Natural Resources	
Agency:	Parks and Recreation	
Room no.:	116	
Street address:	1594 W North Temple	
City, state, zip:	Salt Lake City, Utah 84029	
Mailing address:	PO Box 146001	
City, state, zip:	Salt Lake City, UT 84029	
Contact person(s):		
Name:	Phone:	Email:
Tammy Wright	801-538-7359	tammywright@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
Curriculum Standards for OHV Education Programs Offered by Non-Division Entities
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 defines that the Utah State Parks Board shall develop Off Highway Vehicle (OHV) education curriculum standards that should be met from public and private organizations as defined in Section 41-22-31.
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 during the last five year review either supporting or opposing this rule.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule is necessary in order to meet the OHV education curriculum standards requirement listed within Section 41-22-31. Therefore, this should be continued.

Agency Authorization Information

To the agency: Information requested on this form is required by Section 63G-3-305. Incomplete forms will be returned to the agency for completion, possibly delaying

the effective date.		
Agency head or designee, and title:	Jeff Rasmussen, Director	Date: 12/11/2019

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R651-634	Filing No. 51673

Agency Information

1. Department:	Natural Resources	
Agency:	Parks and Recreation	
Room no.:	116	
Street address:	1594 W North Temple	
City, state, zip:	Salt Lake City, Utah 84029	
Mailing address:	PO Box 146001	
City, state, zip:	Salt Lake City, UT 84029	
Contact person(s):		
Name:	Phone:	Email:
Tammy Wright	801-538-7359	tammywright@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
Nonresident OHV User Permits and Fees
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 establishes requirements as defined in Subsection 41-22-35(4) for procedures associated with Off Highway Vehicle (OHV) non resident permit fees, display, acceptable evidence, eligibility for events and eligibility for manufacturers. Each non resident OHV permit owner must follow the items within Subsection 41-22-35 as granted by Title 63G, Chapter 3.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
No comments have been received during the last five year review either supporting or opposing this rule.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule is necessary in order to meet the OHV user fee

requirements listed within Section 41-22-35. Therefore, this rule should be continued.

Agency Authorization Information

To the agency: Information requested on this form is required by Section 63G-3-305. Incomplete forms will be returned to the agency for completion, possibly delaying the effective date.

Agency head or designee, and title:	Jeff Rasmussen, Director	Date:	12/11/2019
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R651-635	Filing No. 51672
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Agency Information

1. Department:	Natural Resources	
Agency:	Parks and Recreation	
Room no.:	116	
Street address:	1594 W North Temple	
City, state, zip:	Salt Lake City, Utah 84029	
Mailing address:	PO Box 146001	
City, state, zip:	Salt Lake City, UT 84029	
Contact person(s):		
Name:	Phone:	Email:
Tammy Wright	801-538-7359	tammywright@utah.gov

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

General Information

2. Rule catchline:
Commercial Use of Division Managed Park Areas

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

Section 79-4-201 states the division is under the policy direction of the board; Section 79-4-204 states the division is authorized to enter agreements; and Section 79-4-304 gives the Board rulemaking authority governing the use of the state park system.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

No written comments were received.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule is necessary to insure the safety of individuals, protection of resources, and allow recreational opportunities within the parks that the Division of Parks and Recreation (Division) cannot provide. The Division has hundreds of events and recreational opportunities that are permitted within our parks each year through this process. The process allows for the Division to minimize user conflicts and unsafe operations while maximizing the visitor experience. Therefore, this rule should be continued.

Agency Authorization Information

To the agency: Information requested on this form is required by Section 63G-3-305. Incomplete forms will be returned to the agency for completion, possibly delaying the effective date.

Agency head or designee, and title:	Jeff Rasmussen, Director	Date:	12/11/2019
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End of the Five-Year Notices of Review and Statements of Continuation Section

NOTICES OF FIVE-YEAR REVIEW EXTENSIONS

Rulewriting agencies are required by law to review each of their administrative rules within five years of the date of the rule's original enactment or the date of last review (Section 63G-3-305). If the agency finds that it will not meet the deadline for review of the rule (the five-year anniversary date), it may file a **NOTICE OF FIVE-YEAR REVIEW EXTENSION (EXTENSION)** with the Office of Administrative Rules. The **EXTENSION** permits the agency to file the review up to 120 days beyond the anniversary date.

Agencies have filed **EXTENSIONS** for the rules listed below. The "Extended Due Date" is 120 days after the anniversary date.

EXTENSIONS are governed by Subsection 63G-3-305(6).

NOTICE OF FIVE-YEAR REVIEW EXTENSION		
Utah Admin. Code Ref (R no.):	R81-4e	Filing No. 50201

Agency Information

1. Department:	Alcoholic Beverage Control	
Agency:	Administration	
Street address:	1625 S 900 W	
City, state, zip:	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
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
Resort Licenses
3. Reason for requesting the extension and the new deadline date:
The reason for this extension is to allow the rule to continue long enough for the repeal (Filing No. 52425 published in the January 1, 2020 Bulletin) to be made effective. The new deadline is 05/07/2020.

Agency Authorization Information

To the agency: Information requested on this form is required by Section 63G-3-305. Incomplete forms will be returned to the agency for completion, possibly delaying the effective date.			
Agency head or designee, and title:	Salvador Petilos, Executive Director	Date:	12/12/2019

End of the Notices of Five-Year Review Extensions 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. 44119 (AMD): R156-31b. Nurse Practice Act Rule

Published: 11/01/2019

Effective: 12/09/2019

No. 44120 (AMD): R156-37f. Controlled Substance

Database Act Rule

Published: 11/01/2019

Effective: 12/09/2019

No. 44117 (AMD): R156-44a. Nurse Midwife Practice Act Rule

Published: 11/01/2019

Effective: 12/09/2019

Education

Administration

No. 44128 (AMD): R277-108. Annual Assurance of Compliance by Local School Boards

Published: 11/01/2019

Effective: 12/10/2019

No. 44125 (AMD): R277-407. School Fees

Published: 11/01/2019

Effective: 12/10/2019

No. 44126 (AMD): R277-468. Parent/Guardian Review of Public Education Curriculum and Review of Complaint

Published: 11/01/2019

Effective: 12/10/2019

No. 44127 (AMD): R277-927. Teacher and Student Success Act (TSSA) Program

Published: 11/01/2019

Effective: 12/10/2019

Environmental Quality

Air Quality

No. 44042 (AMD): R307-110-10. Section IX, Control Measures for Area and Point Sources, Part A, Fine

Particulate

Published: 10/01/2019

Effective: 12/05/2019

Health

Disease Control and Prevention, Environmental

No. 44056 (AMD): R392-100. Food Service Sanitation

Published: 10/01/2019

Effective: 12/12/2019

No. 44033 (AMD): R392-510. Utah Indoor Clean Air Act

Published: 10/01/2019

Effective: 12/12/2019

Disease Control and Prevention, Epidemiology

No. 44112 (AMD): R386-80. Local Public Health Emergency Funding Protocols

Published: 10/01/2019

Effective: 12/12/2019

Human Services

Services for People with Disabilities

No. 43915 (AMD): R539-2. Service Coordination

Published: 08/15/2019

Effective: 12/04/2019

NOTICES OF RULE EFFECTIVE DATES

Labor Commission

Boiler, Elevator and Coal Mine Safety
No. 44121 (AMD): R616-3-10. Hydraulic Elevator Piping
Published: 11/01/2019
Effective: 12/11/2019

Workforce Services

Housing and Community Development
No. 44130 (REP): R990-11. Community Development Block
Grants (CDBG)
Published: 11/01/2019
Effective: 12/09/2019

Lieutenant Governor

Elections
No. 44123 (AMD): R623-1. Lieutenant Governor's
Procedure for Regulation of Lobbyist Activities
Published: 11/01/2019
Effective: 12/09/2019

End of the Notices of Rule Effective Dates Section