

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 Government Operations, produces the *Bulletin* under authority of Section 63G-3-402.

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

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

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

Office of Administrative Rules, Salt Lake City 84114

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EDITOR'S NOTES

Incorrect ID Numbers on Filings

The Office of Administrative Rules was recently made aware that there were some processing issues which resulted in filings being published with an incorrect ID number.

The filing on Rule R277-727 was published in the May 1, 2021, with an ID number of 53415. The number should have been 53417. The effective date notice published in the July 1, 2021, Bulletin was correct.

No. 53417 (New Rule) R277-727: School Meals Program

Published: 05/01/2021

Effective: 06/24/2021

Two filings were published with the same ID number in the July 1, 2021, Bulletin. The filing on Rule R311-209 had an ID number of 53586. The filing on Rule R311-212 also had the ID number of 53586. The ID number 53586 on the filing for Rule R311-209 is correct.

The filing for Rule R311-212 should have had the filing ID number of 53587. It was correct when it was filed with our Office but the number got changed by the time it was published.

The Office regrets any confusion this may have caused. Any questions can be sent to rulesonline.utah.gov.

End of the Editor's Notes Section

NOTICES OF PROPOSED RULES

A state agency may file a **PROPOSED RULE** when it determines the need for a substantive change to an existing rule. With a **NOTICE OF PROPOSED RULE**, an agency may create a new rule, amend an existing rule, repeal an existing rule, or repeal an existing rule and reenact a new rule. Filings received between June 16, 2021, 12:00 a.m., and July 01, 2021, 11:59 p.m. are included in this, the July 15, 2021, 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 August 16, 2021. 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 November 12, 2021, the agency may notify the Office of Administrative Rules that it wants to make the **PROPOSED RULE** effective. The agency sets the effective date. The date may be no fewer than seven calendar days after the close of the public comment period nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file a **CHANGE IN PROPOSED RULE** in response to comments received. If the Office of Administrative Rules does not receive a **NOTICE OF EFFECTIVE DATE** or a **CHANGE IN PROPOSED RULE**, the **PROPOSED RULE** lapses.

The public, interest groups, and governmental agencies are invited to review and comment on **PROPOSED RULES**. *Comment may be directed to the contact person identified on the **RULE ANALYSIS** for each rule.*

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

The Proposed Rules Begin on the Following Page

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R23-31	Filing ID 53609

Agency Information

1. Department:	Government Operations	
Agency:	Facilities Construction and Management	
Room no.:	Third Floor	
Building:	Taylorsville State Office Building	
Street address:	4315 S 2700 W	
City, state and zip:	Taylorsville, UT 84129-2128	
Mailing address:	PO Box 141160	
City, state and zip:	Salt Lake City, UT 84114-1160	
Contact person(s):		
Name:	Phone:	Email:
Jim Russell	801-957-7191	jimrussell@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R23-31. Executive Residence Mansion
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
Section 67-1-8.1 is amended effective July 1, 2021, to substitute the Division of Facilities Construction and Management (DFCM) for the State Building Board as the entity to which the Executive Residence Committee reports. The amendment of the statute requires the amendment of this rule.
4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):
Substitutes references to the DFCM for the State Building Board; standardizes the name of the Governor's Mansion or Residence as the Thomas Kearns Mansion; states this rule now complies with S.B. 57 passed in the 2021 General Session; corrects the authorizing statute reference to Subsection 63A-5b-305(2)(c); clarifies the definitions of the Preservation Zones; and makes minor grammatical changes. S.B. 181 passed in the 2021 General Session also legislatively mandated that the name of the Department of Administrative Services be changed to the Department of Government Operations. "Administrative

Services" has been replaced with "Government Operations" in the rule title.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
A) State budget:
None--The rule change substitutes DFCM for the Building Board with respect to the entity that the Executive Residence Commission (ERC) reports to and modifies preservation zones at the Kearns Mansion that will not have any impact on the state budget.
B) Local governments:
None--Salt Lake County and Salt Lake City, the relevant local governments, have no jurisdiction over, management responsibility for or substantive involvement with the Kearns Mansion.
C) Small businesses ("small business" means a business employing 1-49 persons):
None--No changes in the requirements for or scope of works of third-party contractors are anticipated.
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):
None--No changes in the requirements for or scope of works of third-party contractors are anticipated.
E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <i>agency</i>):
None--No such entities have jurisdiction over, responsibility for the management of or substantive involvement with the Kearns Mansion.
F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):
None--There are no impacted entities other than the Building Board, DFCM, and ERC and there will be no costs for an impacted entity to adhere to this rule change.
G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):
There is no fiscal impact on businesses. Jenney Rees, Executive Director
6. A) 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	FY2022	FY2023	FY2024
State Government	\$0	\$0	\$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

B) Department head approval of regulatory impact analysis:
I approve of the fiscal analysis. Jenney Rees, Executive Director

Citation Information

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

Subsection 63A-5b-305(2)(c)	Subsection 67-1-8.1(8)	Subsection 67-1-8.1(3)
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Public Notice Information

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

A) Comments will be accepted until: 08/16/2021

10. This rule change MAY become effective on: 08/23/2021

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

Agency Authorization Information

Agency head or designee, and title:	James R. Russell, Director, DFCM	Date:	06/10/2021
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R23. ~~Administrative Services~~ Government Operations, Facilities Construction and Management.

R23-31. Executive Residence Commission.

R23-31-1. Purpose.

The purpose of this rule is to ~~comply with S.B. 203 of the 2011 General Session of the Utah Legislature which amends the provisions of Section 67-1-8.1~~ outline the duties of the Executive Residence Commission.

R23-31-2. Authority and Applicability.

This rule is authorized under Section 63A-5b-~~103(1)(e)~~305(2)(c), which ~~directs the Building Board~~ authorizes the director of the Division of Facilities Construction and Management (DFCM) to make rules necessary for the discharge of ~~the~~ DFCM's duties ~~of the Division of Facilities Construction and Management~~. ~~This is a new rule to implement S.B. 203 of the 2011 General Session of the Utah Legislature which amends Section 67-1-8.1.~~

R23-31-3. Definitions.

(1) ~~Except as otherwise stated in this rule, t~~ Terms used in this rule are defined in Section 67-1-8.1.

(2) In addition, ~~:-~~

~~(a) "Board" means the State Building Board established pursuant to Section 63A-5-101.~~

~~(b) "Commission" means the Executive Residence Commission established pursuant to Section 67-1-8.1.~~

~~(c) "Executive Residence" includes the:~~

~~(i) Thomas Kearns Mansion;~~

~~(ii) Carriage House building; and~~

~~(iii) Grounds and landscaping surrounding the Thomas Kearns Mansion and the Carriage House building.~~

~~(d-) "Preservation Zones" are those zones described in Rule 23-31-[6]5.~~

R23-31-4. Preservation Zones of the ~~Governor~~ Thomas Kearns Mansion.

(1) Preservation Zone One: ~~[-]~~ The following applies to Preservation Zone One:

(a) Zone One contains very important character ~~[-]~~ defining features, consisting of all floor, wall and ceiling finishes. All decorative elements and furnishings existing as of May 10, 2011 have been carefully researched and selected to reflect the historic significance of the ~~Executive Residence~~ Thomas Kearns Mansion. Zone One is described in Rule R23-31-[6]5.

(b) Any changes to the decorative elements and furnishings in Zone One will need the review and recommendation of the Commission to ~~the Board~~ DFCM. Approval may be given by ~~the~~

~~State Building Board~~DFCM after considering input from the Commission and the State Historic Preservation Officer.

(c) There must be compelling reasons presented to ~~the Board~~DFCM for changes to the decorative elements and furnishings in Zone One.

(d) Notwithstanding the above, and provided that the Zone One characteristics are not affected, it is recognized that the ~~Residence~~Thomas Kearns Mansion acts as the temporary home of the First Family. Placement of personal art and memorabilia is encouraged throughout the ~~Residence~~Thomas Kearns Mansion to personalize the spaces and allow the ~~Residence~~Thomas Kearns Mansion to provide a home life for the Governor and the Governor's family. The placement of said personal art and memorabilia shall be carefully considered to ensure that character[-]-defining features are preserved.

(2) Preservation Zone Two. The following applies to Preservation Zone Two:

(a) The area described in Rule R23-31-~~6~~5 as Zone Two has been previously altered, but contains some Zone One character[-]-defining features, which features shall be considered part of Zone One. Examples of such features ~~are~~include: ceiling plasterwork, woodwork, certain wall locations, fireplaces, windows and window surrounds, original flooring, light fixtures and other character[-]-defining features.

(b) Temporary furnishings may be altered without going through the Commission; but the Commission shall be made aware of any such alteration request in writing.

(c) Any changes to Zone Two may be done without any review or approval by the Commission or ~~the Board~~DFCM.

R23-31-5. Specific Descriptions of the Preservation Zones for Purposes of this Rule.

The following provides the specific descriptions of the Preservation Zones for purposes of this Rule R23-31:

(1) Thomas Kearns Mansion Exterior:

(a) All exterior surfaces are considered Preservation Zone One.

(2) Thomas Kearns Mansion Floor One (Main Level):

(a) All areas on the main level are considered Preservation Zone One.

(3) Thomas Kearns Mansion Floor Two:

(a) Main stairs and north stairs and well area are considered Preservation Zone One.

(b) The private residence area on level two is considered Preservation Zone Two with the following exceptions which are considered Preservation Zone One:

(i) Private Quarters Entry Hall

(A) Permanent fixtures

(B) Wall treatments

(C) Wall sconces

(D) Flooring

(ii) Den/Living Room

(A) Birdseye maple

(B) Flooring

(C) Fireplace

(D) Plasterwork

(E) Woodwork

(iii) Dining Room/TV Area

(A) Plaster[-]work

(B) Fireplace

(C) Woodwork

(D) Flooring

(iv) All Bedrooms

(A) Fireplaces where applicable

(B) Permanent fixtures

(C) Wall treatments

(D) Wall sconces

(E) Flooring

(4) Thomas Kearns Mansion Floor Three

(a) All areas on level three are considered Preservation Zone

One, ~~with the following exceptions which are Preservation Zone Two:~~

~~(i) Serving kitchen, pantry and hallway to restrooms~~

~~(ii) Private bedroom on level three is considered Preservation~~

~~Zone Two with the following exceptions which are Preservation Zone One:~~

~~(A) Permanent fixtures~~

~~(B) Wall treatments~~

~~(C) Wall sconces~~

~~(D) Flooring~~

~~(E) Decorative plaster~~

~~(F) Woodwork]~~

(5) Thomas Kearns Mansion Basement Level

(a) All areas on basement level are considered Preservation Zone Two with the following exceptions which are Preservation Zone One:

(i) All wood doors and historic wood partition

(ii) Windows and window surrounds

(6) Carriage House Exterior

(a) All exterior surfaces are considered Preservation Zone One

(7) Carriage House Interior

(a) All interior areas are considered Preservation Zone One with the following exceptions which are Preservation Zone Two:

(i) Executive Security control room and office area

~~**R23-31-6. Provisions of Section 67-1-8.1 Shall Govern.**~~

~~All provisions of the Section 67-1-8.1, whether or not referred to in this rule, shall govern the Commission and all other agencies, entities and persons as provided for in Section 67-1-8.1.~~

R23-31-~~7~~6. Report to the ~~Building Board~~Executive Director.

DFCM shall report to ~~the Board about~~the Executive Director of the Department of Government Operations about the Commission as needed.

KEY: Governor's Mansion, Executive Residence Commission, preservation

Date of Enactment or Last Substantive Amendment: ~~2021~~July 11, 2011]

Notice of Continuation: May 26, 2021

Authorizing, and Implemented or Interpreted Law: 63A-5-103(1)(e); 67-1-8.1(3); 67-1-8.1(8)

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Repeal and Reenact		
Utah Admin. Code Ref (R no.):	R51-4	Filing ID 53652

Agency Information

1. Department:	Agriculture and Food
Agency:	Administration
Street address:	350 N Redwood Road

City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 146500	
City, state and zip:	Salt Lake City, UT 84114-6500	
Contact person(s):		
Name:	Phone:	Email:
Amber Brown	801-982-2204	ambermbrown@utah.gov
Kelly Pehrson	801-982-2202	kwpehrson@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R51-4. ADA Complaint Procedure
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
The rule changes are needed to expand civil rights grievance procedures for the Department of Agriculture and Food (Department) to include violations outside of the Americans with Disabilities Act (ADA). This change is needed to make the rule consistent with recently updated Department policy.
4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):
This rule has been rewritten to expand the guidelines for civil rights grievance procedures handled by the Department to include violations of the Civil Rights Act, Rehabilitation Act, or Age Discrimination Act, in addition to the ADA. While the basic complaint, investigation, and appeal procedures remain the same, this rule has been rewritten for clarity and timelines have been shortened in some cases.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
A) State budget:
These changes will not impact the state budget because grievances can generally be handled within existing budgets as was the case in the past. Because the State ADA Coordinating Committee no longer exists, this rule requires that the Commissioner be consulted if additional appropriations are needed to complete an investigation.

B) Local governments:			
These changes do not impact local governments because they do not handle employee or customer grievances for the Department.			
C) Small businesses ("small business" means a business employing 1-49 persons):			
There are no costs or savings to small businesses because the Department does not charge any fee or pay any grievant who has alleged a civil rights violation.			
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):			
There are no costs or savings to non-small businesses because the Department does not charge any fee or pay any grievant who has alleged a civil rights violation.			
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>):			
There are no cost or savings to other persons because the Department does not charge any fee or pay any grievant who has alleged a civil rights violation.			
F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):			
There are no compliance costs for affected persons because the Department does not assess any fees or penalties as part of the civil rights complaint process.			
G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):			
These rule changes will not have a fiscal impact on businesses. Craig W. Buttars, Commissioner			
6. A) 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	FY2022	FY2023	FY2024
State Government	\$0	\$0	\$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
B) Department head approval of regulatory impact analysis:			
The Commissioner of the Department of Agriculture and Food, Craig W. Buttars, has reviewed and approves the regulatory impact analysis.			

Citation Information

7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:		
Section 4-2-103	Section 62A-5a-101	Section 63G-3-201

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. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	08/16/2021
10. This rule change MAY become effective on:	
08/23/2021	
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.	

Agency Authorization Information

Agency head or designee, and title:	Craig W. Buttars, Commissioner	Date:	07/01/2021
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R51. Agriculture and Food, Administration.

[R51 4. ADA Complaint Procedure.

R51 4 1. Authority and Purpose.

~~A. This rule is promulgated pursuant to Section 63G-3-201. The Department of Agriculture and Food adopts and defines complaint procedures to provide for prompt and equitable resolution of complaints filed in accordance with Title II of the Americans With Disabilities Act, pursuant to 28 CFR 35.107, July 1, 1992 Ed.~~

~~B. No qualified individual with a disability, by reason of disability, shall be excluded from participation in or be denied the benefits of the services, programs, or activities of this department, or be subjected to discrimination by this department.~~

R51 4 2. Definitions.

~~A. "The ADA Coordinator" means the Department of Agriculture and Food coordinator or his designee who has responsibility for investigating and providing prompt and equitable resolution of complaints filed by qualified individuals with disabilities in accordance with the Americans With Disabilities Act, or provisions of this rule.~~

~~B. "The ADA State Coordinating Committee" means that committee with representatives designated by the directors of the following agencies:~~

- ~~(1) Office of Planning and Budget;~~
- ~~(2) Department of Human Resource Management;~~
- ~~(3) Division of Risk Management;~~
- ~~(4) Division of Facilities Construction Management, and~~
- ~~(5) Office of the Attorney General.~~

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

~~D. "Major life activities" means such functions as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.~~

~~E. "Individual with a disability" means a person who has a disability which limits one of the major life activities and who meets the essential eligibility requirement for the receipt of services or the participation in programs or activities provided by the Department of Agriculture and Food, or who would otherwise be an eligible applicant for vacant state positions, as well as those who are employees of the state.~~

R51 4 3. Filing of Complaints.

~~A. The complaint shall be filed in a timely manner to assure prompt, effective assessment and consideration of the facts, but no later than 180 days from the date of the alleged act of discrimination. However, any complaint alleging an act of discrimination occurring between January 26, 1992 and the effective date of this rule may be filed within 60 days of the effective date of this rule.~~

~~B. The complaint shall be filed with the department's ADA Coordinator in writing or in another acceptable format suitable to the individual.~~

~~C. Each complaint shall:~~
~~(1) include the individual's name and address;~~
~~(2) include the nature and extent of the individual's disability;~~
~~(3) describe the department's alleged discriminatory action in sufficient detail to inform the department of the nature and date of the alleged violation;~~
~~(4) describe the action and accommodation desired, and~~
~~(5) be signed by the individual or by a legal representative.~~
~~D. Complaints filed on behalf of classes or third parties shall describe or identify by name, if possible, the alleged victims of discrimination.~~

R51-4-4. Investigation of Complaint.

~~A. The ADA coordinator shall conduct an investigation of each complaint received. The investigation shall be conducted to the extent necessary to assure all relevant facts are determined and documented. This may include gathering all information listed in Rule R51-4-3(C) if it is not made available by the individual.~~

~~B. When conducting the investigation, the coordinator may seek assistance from the department's legal, human resource and budget staff in determining what action, if any, shall be taken on the complaint. Before making any decision that would involve:~~

~~(1) an expenditure of funds which is not absorbable within the agency's budget and would require appropriation authority;~~
~~(2) facility modifications; or~~
~~(3) reclassification or reallocation in grade, the coordinator shall consult with the ADA State Coordinating Committee.~~

R51-4-5. Issuance of Decision.

~~A. Within 15 working days after receiving the complaint, the ADA Coordinator shall issue a decision outlining in writing or in another acceptable or suitable format stating what action, if any, shall be taken on the complaint.~~

~~B. If the coordinator is unable to reach a decision within the 15 working day period, he shall notify the individual with a disability in writing or by another acceptable suitable format why the decision is being delayed and what additional time is needed to reach a decision.~~

R51-4-6. Appeals.

~~A. The individual may appeal the decision of the ADA Coordinator by filing an appeal within five working days from the receipt of the decision.~~

~~B. The appeal shall be filed in writing with the department's executive director or a designee other than the department's ADA Coordinator.~~

~~C. The filing of an appeal shall be considered as authorization by the individual to allow review of all information, including information classified as private or controlled, by the department's executive director or designee.~~

~~D. The appeal shall describe in sufficient detail why the coordinator's decision is in error, is incomplete or ambiguous, is not supported by the evidence, or is otherwise improper.~~

~~E. The executive director or designee shall review the factual findings of the investigation and the individual's statement regarding the inappropriateness of the coordinator's decision and arrive at an independent conclusion and recommendation. Additional investigations may be conducted if necessary to clarify questions of fact before arriving at an independent conclusion. Before making any decision that would involve:~~

~~(1) an expenditure of funds which is not absorbable and would require appropriation authority;~~
~~(2) facility modifications; or~~
~~(3) reclassification or reallocation in grade, he shall also consult with the State ADA Coordinating Committee.~~

~~F. The decision shall be issued within ten working days after receiving the appeal and shall be in writing or in another acceptable or suitable format to the individual.~~

~~G. If the executive director or his designee is unable to reach a decision within the ten working day period, he shall notify the individual in writing or by another acceptable or suitable format why the decision is being delayed and the additional time needed to reach a decision.~~

R51-4-8. Relationship to Other Laws.

~~This rule does not prohibit or limit the use of remedies available to individuals under the Utah State Personnel Management Act, Title 67, Chapter 19 of the Utah Code; the Federal ADA Complaint Procedures, 28 CFR Subpart F, beginning with Part 35.170, July 1, 1992 edition; or any other Utah State or federal law that provides equal or greater protection for the rights of individuals with disabilities.]~~

R51-4. Americans with Disabilities Act and Civil Rights Grievance Procedures.

R51-4-1. Authority and Purpose.

1) This rule is authorized by Section 63G-3-201, Subsection 4-2-103(1)(i), and to effectuate the state policies in Section 62A-5a-101 and other provisions protecting individual civil rights.

2) The purpose of this rule is to provide for the prompt and equitable resolution of a complaint against the department, alleging any violation of the nondiscrimination provisions of Title VI of the Civil Rights Act of 1964, Pub. L. 88-352, 78 Stat. 241; Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. 12102; Section 504 of the Rehabilitation Act of 1973, Pub. L. 93-112; or the Age Discrimination Act of 1975, 42 U.S.C. 6101-6107.

3) This rule is not intended to supersede Rule R495-878 from the Department of Human Services, but to establish a procedure by which the department handles a grievance based on a potential violation of Title VI of the Civil Rights Act of 1964, Pub. L. 88-352, 78 Stat. 241; Title II of the Americans with Disabilities Act of 1990, 42 USC 12102; Section 504 of the Rehabilitation Act of 1973, Pub. L. 93-112; or the Age Discrimination Act of 1975, 42 USC 6101-6107, by an employee of the department. In the event this rule conflicts with state or federal law, or with the specific statutory duties of the Department of Human Services, those laws shall govern.

R51-4-2. Definitions.

1) "ADA" means Title II of the Americans with Disabilities Act of 1990, 42 USC 12101.

2) "Grievance Coordinator" means the employee assigned by the commissioner to facilitate the prompt and equitable resolution of complaints alleging discrimination and a violation of the nondiscrimination provisions of Title VI of the Civil Rights Act of 1964, Pub. L. 88-352, 78 Stat. 241; Title II of the Americans with Disabilities Act of 1990, 42 USC 12102; Section 504 of the Rehabilitation Act of 1973, Pub. L. 93-112; or the Age Discrimination Act of 1975, 42 USC 6101-6107.

3) "Commissioner" means the commissioner of the Department of Agriculture and Food or their designee.

4) "Complainant" means an individual who believes they have been discriminated against by an employee of the department, or that individual's authorized representative.

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

6) "Department Coordinator" means an individual assigned by the commissioner to investigate allegations of discrimination by an employee of the department.

7) "LEP" means limited English proficiency.

8) "Section 504" means Section 504 of the Rehabilitation Act of 1973, Pub. L. 93-112.

R51-4-3. Filing of Complaints.

1) A complainant may file a complaint alleging the violation of the nondiscrimination provisions of Title VI of the Civil Rights Act of 1964, Pub. L. 88-352, 78 Stat. 241; Title II of the Americans with Disabilities Act of 1990, 42 USC 12102; Section 504 of the Rehabilitation Act of 1973, Pub. L. 93-112; or the Age Discrimination Act of 1975, 42 USC 6101-6107, by an employee of the department.

2) A complainant shall file a complaint with the department's Grievance Coordinator, unless the complaint includes allegations against the Grievance Coordinator, in which case the complaint shall be filed with the commissioner.

3) A complainant may file a written, oral, or electronic complaint to:

a) Grievance Coordinator, Department of Agriculture and Food 350 N. Redwood Road Salt Lake City, Utah 84116;

b) dhscivilrightscomplaint@utah.gov; or

c) (801) 538-4187 (TTY) or Utah Relay 711.

4) To facilitate a thorough investigation, the complainant shall, to the extent possible, file a written, oral, or electronic complaint with the department Grievance Coordinator no later than 30 days from the date of the alleged circumstances giving rise to the complaint. The complaint may not be filed more than 180 days from the date of the alleged circumstances giving rise to the complaint.

5) A complaint shall, to the extent possible, include the following information, and a complaint form is available online at <http://hs.utah.gov/>:

a) a detailed description of the alleged circumstances that caused the complaint, including dates and locations;

b) the name and contact information of each person involved in those circumstances;

c) a detailed description of any action taken by the complainant to address the complaint; and

d) the desired result, accommodation, or outcome that the complainant is seeking from the department.

6) The complaint form shall be signed by the complainant or by a legal representative.

7) A complaint filed on behalf of a class or third party shall describe or identify by name, if possible, each alleged victim of discrimination.

R51-4-4. Investigation of Complaints.

1) Within ten days of receipt of the complaint, the Grievance Coordinator shall assign the investigation of the complaint to the applicable Department Coordinator.

2) Within ten days of receipt of the complaint from the Grievance Coordinator, the Department Coordinator shall:

a) notify the complainant in writing or electronically that an investigation of the complaint has commenced; and

b) provide the deadline by which the complainant shall receive correspondence regarding the outcome of the investigation, which unless additional time is required under Subsection R51-4-4(10), shall not exceed 60 days.

3) The Grievance Coordinator shall be provided a copy of this correspondence from the Department Coordinator.

4) The Department Coordinator shall gather and document available relevant information.

5) When conducting the investigation, the Department Coordinator may seek assistance from the department's legal, human resource, and budget staff in determining what action, if any, shall be taken on the complaint.

6) Before the Department Coordinator makes any decision that would involve an expenditure of funds that is not absorbable within the department's budget and would require appropriation authority, facility modifications, or reclassification or reallocation in grade, they shall consult with the commissioner.

7) The Grievance Coordinator shall retain a copy of the complaint at the department's main office.

8) If the Department Coordinator, with the approval of the commissioner, believes the department is unable to adequately address the complaint for good cause shown, such as lack of resources or subject matter experience, the department may coordinate with the Department of Human Services or another agency to have the complaint transferred or may work in partnership with any agency to resolve each issue cited in the complaint.

9) The Department Coordinator, or designee under the direction of the Department Coordinator, shall conduct the investigation into the complaint and draft a proposed response to the complaint.

10) If the Department Coordinator is unable to complete the investigation and make a recommendation within the 60 day timeframe, the complainant and the Grievance Coordinator shall be notified of the reason and date by which the complainant shall receive a response. This response date should not exceed 30 days.

R51-4-5. Issuance of Decision.

Within the time indicated in the deadline, the Department Coordinator shall issue a decision outlining in writing or in another suitable format what action, if any, shall be taken on the complaint.

R51-4-6. Recommendation and Decision.

1) Completion of the investigation shall result in a decision that the alleged circumstances occurred, did not occur, or could not be substantiated.

a) If the alleged circumstances did occur, then the recommendation shall also include suggestions to address barriers in the future involving similar circumstances.

b) If the alleged circumstances could not be substantiated, but the Department Coordinator is able to identify areas where department practices may be improved, then suggestions may be made to address barriers in the future involving similar alleged circumstances.

c) The Department Coordinator shall be responsible for drafting the initial correspondence to the complainant.

2) The correspondence shall be sent by the Department Coordinator to the commissioner and to the complainant. A copy of the correspondence shall be sent to the Grievance Coordinator and maintained in a department file.

3) Within ten business days of the conclusion of the investigation, the Department Coordinator will notify the complainant in writing concerning the outcome of the investigation.

a) The Department Coordinator shall maintain a record of the date that the written response is sent to the complainant to indicate that the complaint is completed.

4) The commissioner shall take reasonable steps to implement the recommendation, including the suggestions to ameliorate barriers in the future involving similar circumstances.

5) Any of the department deadlines may be reasonably extended for extenuating circumstances. Each extension of time shall be confirmed in writing to the complainant.

6) All documents and correspondence regarding the investigation, recommendation, and decision shall be maintained in a department file and retained for the time set forth in the department's document retention policy in coordination with the Department of Human Resources.

R51-4-7. Appeals.

1) The complainant may appeal the Department Coordinator's decision to the commissioner within ten working days of the complainant's receipt of the Department Coordinator's decision.

2) The appeal shall be in writing.

3) The commissioner may name a designee to assist on the appeal. The Grievance Coordinator and Department Coordinator may not be the commissioner's designee for the appeal.

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

5) The commissioner shall review the Department Coordinator's decision and the points raised on appeal prior to reaching a decision. The commissioner may direct additional investigation as necessary.

6) The commissioner shall consult with staff from other state agencies that may be affected by the decision, including, the Office of Planning and Budget, the Division of Risk Management, the Division of Facilities Construction Management, and the Office of the Attorney General before making any decision that would:

a) involve an expenditure of funds that would require a new appropriation; or

b) require facility modifications.

7) The commissioner shall issue a final decision within 15 working days after receiving the complainant's appeal. The decision shall be in writing, and shall be delivered to the complainant.

8) If the commissioner is unable to reach a final decision within 15 working days, the complainant shall be notified in writing why the final decision is being delayed and the additional time needed to reach a final decision. This response time should not exceed 15 days.

R51-4-8. Relationship to Other Laws.

1) This rule does not prohibit or limit the use of any remedy available to individuals under the Utah Anti-Discrimination Complaint Procedures, Section 67-19-32; the Federal ADA Complaint Procedures, 28 CFR Subpart F, beginning with Part 35.170, July 1, 1992 edition; or any other Utah state or federal law that provides equal or greater protection for the rights of individuals with disabilities.

KEY: ~~[developmentally]grievance procedures, disabled persons[, discrimination, grievances]~~

Date of Enactment or Last Substantive Amendment: ~~[1992]~~2021

Notice of Continuation: February 5, 2021

Authorizing, and Implemented or Interpreted Law: 63G-3-201; 4-2-103(1)(i); 62A-5a-101

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code Ref (R no.): R68-25

Filing ID
53641

Agency Information

1. Department:	Agriculture and Food	
Agency:	Plant Industry	
Street address:	350 N Redwood Road	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 146500	
City, state and zip:	Salt Lake City, UT 84114-6500	
Contact person(s):		
Name:	Phone:	Email:
Amber Brown	801-982-2204	ambermbrown@utah.gov
Cody James	801-982-2376	codyjames@utah.gov
Kelly Pehrson	801-982-2202	kwpehrson@utah.gov

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

General Information

2. Rule or section catchline:

R68-25. Industrial Hemp Research Pilot Program for Processors

3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):

Changes are necessary to update this rule to make it clearer, more consistent with other rules, allow for additional specificity in licensing, and allow the Department of Agriculture and Food (Department) to manage the industrial hemp program more effectively. Changes are also needed to clarify the definition of THC to include other THC analogs beyond Delta-9-THC to allow the Department to limit these products with these analogs, consistent with changes the Department has filed to other rules.

4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):

Definitions are added or updated to be more consistent with statute and other rules. The THC definition is updated to include THC analogs as defined under the Utah Controlled Substances Act. General clarifications are added to this rule to make it easier to understand. Four tiers of industrial hemp licenses are created that will allow the Department to license processors based on their specific processing practices. The transportation section of this rule is updated to ensure that industrial hemp is tracked properly and to add accountability for processors. Violations are added to address issues the Department has seen with processing of raw industrial hemp concentrate.

Fiscal Information

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

A) State budget:

There would be some cost to the state budget in the second and third year because we plan to reduce licensing fees for Tier 2-4 licensees. The Department is planning to charge \$2,000 (the current fee) for a Tier 1 license, \$1,500 for Tier 2, \$1,000 for Tier 3, and \$500 for Tier 4. The Department estimates that 30 current processors will register as Tier 2 licensees, 30 as Tier 3, and 15 as Tier 4. If this occurs, the Department will lose a total of \$74,500 worth of revenue for a total cost of \$67,500 to the Department. The Department doesn't feel the cost to administer the program will change dramatically.

B) Local governments:

There are no costs or savings to local governments because they do not operate as industrial hemp licensees or regulate industrial hemp licensees.

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

There would be some savings to small businesses who are able to pay less for an industrial hemp processor license during year 2 and 3 (FY '22 and FY '23). The Department estimates that 75% of current licensees are small businesses and that 30 will opt for Tier 2 licenses, 30 for Tier 3 licenses, and 15 for Tier 4 licenses rather than a Tier 1 license. This will amount to a total of \$67,500 savings for licensees or \$50,625 savings for small businesses and \$16,875 for non-small businesses.

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

There would be some savings to small businesses who are able to pay less for an industrial hemp processor license during year 2 and 3 (FY '22 and FY '23). The Department estimates that 75% of current licensees are small businesses and that 30 will opt for Tier 2 licenses, 30 for Tier 3 licenses, and 15 for Tier 4 licenses rather than a Tier 1 license. This will amount to a total of \$67,500 savings

for licensees or \$50,625 savings for small businesses and \$16,875 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):

There would be no costs or savings to other persons because they do not regulate or operate as industrial hemp processing licensees.

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

The compliance costs for affected persons will decrease if they opt to obtain a Tier 2 - 4 license in FY '22 or FY '23. Those who get a Tier 2 license will save \$500 each, those who get a Tier 3 license will save \$1,000 each, and those who get a Tier 4 license will save \$1,500 each.

G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):

These rule changes will allow businesses to get a license that more accurately represents their processing practices and will allow them to save money. This rule change will not pose a negative fiscal impact on businesses. Craig W. Buttars, Commissioner

6. A) 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	FY2022	FY2023	FY2024
State Government	\$0	\$67,500	\$67,500
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$	\$
Non-Small Businesses	\$0	\$	\$
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$67,500	\$67,500
Fiscal Benefits			
State Government	\$0	\$0	\$0

Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$50,625	\$50,625
Non-Small Businesses	\$0	\$16,875	\$16,875
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$67,500	\$67,500
Net Fiscal Benefits	\$0	\$0	\$0

B) Department head approval of regulatory impact analysis:

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

Citation Information

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

Subsection		
4-41-103(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. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:	08/16/2021
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10. This rule change MAY become effective on: 08/23/2021

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

Agency Authorization Information

Agency head or designee, and title:	Craig W. Buttars, Commissioner	Date:	06/28/2021
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**R68. Agriculture and Food, Plant Industry.
R68-25. Industrial Hemp [Research Pilot] Program for Processors.**

R68-25-1. Authority and Purpose.

Pursuant to Subsection 4-41-103(4), this rule establishes the standards, practices, procedures, and requirements for

participation in the Utah Industrial Hemp [Research Pilot] Program for the [5] processing and handling of industrial hemp.

R68-25-2. Definitions.

- 1) "CBD" means cannabidiol (CAS #13956-29-1).
- 2) "Cannabinoid" means any:
 - a) naturally occurring derivative of cannabigerolic acid (CAS 25555-57-1); or
 - b) any chemical compound that is both structurally and chemically similar to a derivative of cannabigerolic acid.
- 3) "Cannabinoid concentrate" means:
 - a) the product of any chemical or physical process applied to naturally occurring biomass that concentrates or isolates the cannabinoids contained in the biomass; and
 - b) any amount of a natural, derivative, or synthetic cannabinoid in the synthetic cannabinoid's purified state.

[2]4) "Department" means the Utah Department of Agriculture and Food.

5) "Final product" means a reasonably homogenous industrial hemp product in its final packaged form created using the same standard operating procedures and the same formulation.

[3]6) "Industrial Hemp" means any part of a cannabis plant, whether growing or not, with a concentration of less than 0.3% tetrahydrocannabinol by weight

[4]7) "Handle" or "Handling" means possessing, transporting, or storing industrial hemp for any period of time.

[5]8) "Processing" means any action taken to prepare industrial hemp, or material derived from industrial hemp, [or all parts of harvesting, extraction, refining, altering, manufacturing, or making industrial hemp into a finished industrial hemp product ready] for market.

[6]9) "Processor" means a person licensed by the department to [engage in processing industrial hemp extracting and manufacturing industrial hemp and hemp products] process industrial hemp or a material derived from industrial hemp.

[7]10) "Manufacturing" means storing, preparing, packaging, or labeling of industrial hemp or hemp products.

11) "Raw plant material" or "Raw concentrate" means industrial hemp plant material or concentrate that is not in final product form.

[8]12) "THC" means total composite tetrahydrocannabinol, including delta -9- tetrahydrocannabinol, [and]tetrahydrocannabinolic acid, and any THC analogs as defined in Subsection 58-37-4(2)(a)(iii)(AA).

[9]13) "Third-party laboratory" means a laboratory [which] that has no direct interest in a grower or processor of industrial hemp or industrial hemp products that is capable of performing mandated testing utilizing validated methods.

R68-25-3. Industrial Hemp Processor Licenses.

1) The department shall issue the following industrial hemp processor licenses:

a) a Tier One license, which allows a licensee to receive, store, extract, transport, and sell raw plant material or raw concentrate, and manufacture finished industrial hemp product;

b) a Tier Two license, which allows a licensee to receive raw plant material and extract it into raw concentrate to store, sell, or transport;

c) a Tier Three license, which allows a licensee to receive, store, package, and label finished industrial hemp product; and

d) a Tier Four license, which allows a licensee to receive, store, transport, or sell raw concentrate, raw plant material, or

finished industrial hemp product, and perform minimal processing for the purpose of storage only.

2) A Tier One processor may accept industrial hemp derived cannabinoid concentrate with greater than 0.3% THC concentration from another Tier One processor or a Tier two processor.

R68-25-~~[3]~~4. Application Requirements.

1) The applicant shall be a minimum of [~~eighteen~~-(18)] years old.

2) The applicant is not eligible to receive a license if they have:

- a) been convicted of a felony or its equivalent; or
- b) been convicted of a drug-related misdemeanor within the last ten [~~(10)~~]years.

3) An applicant seeking an industrial hemp processing license shall submit the following to the department:

- a) a complete application form provided by the department;
- b) a physical description of the processing facility;
- c) a plan review of the building, facilities, and equipment;
- d) a photographic aerial map and street address for each building or site where industrial hemp will be processed, handled, or stored;
- e) the planned source of industrial hemp material;
- f) a statement of the intended end use or disposal for [~~all parts~~]each part of the industrial hemp plant and hemp material; and
- g) a research plan.

4) An applicant shall submit a nationwide criminal history from the FBI completed within three [~~(3)~~]months of their application.

5) The applicant shall submit a fee as approved by the legislature in the fee schedule.

6) The department shall deny any applicant who does not submit [~~all~~]the required information.

7) Each applicant for a Tier one, Tier Two, or Tier Three license shall be required to register as a food establishment under Section 4-5-301 pursuant to the requirements of Section R68-25-7.

R68-25-~~[4]~~5. Processing Facility Restrictions.

1) A licensee shall not process or store leaf or floral material from industrial hemp in any structure that is used for residential purposes.

2) A licensee shall not process or store industrial hemp within 1,000 feet of a school or a public recreational area.

3) A licensee shall not process or handle industrial hemp or hemp material from any person who is not licensed by the department or from a person outside the state who is not authorized by the laws of that state.

4) A licensee shall not permit a person under the age of [~~eighteen~~-(18)] to handle living plants, viable plant parts, viable seeds, leaf material, or floral material.

5) A licensee shall submit a nationwide criminal history from the FBI to the department for each employee with access to [~~hemp~~]material [~~or product~~]which contains, or may contain, over 0.3% THC [~~or has the potential to contain over 0.3% THC~~]within the first month of employment.

R68-25-~~[5]~~6. [~~CBD~~]Extraction Methods.

1) In addition to the requirements of Section R68-25-~~[3]~~4, an applicant seeking to engage in the extraction of [~~CBD~~]cannabinoid concentrate from industrial hemp shall submit to

the department a detailed description of the proposed extraction method.

2) The applicant shall describe the proposed process for the removal of [~~all~~]any harmful solvents added during the extraction process, if applicable.

3) The applicant shall describe the safety measures proposed to protect the public and employees from dangers associated with extraction methods.

4) The department may deny a license for methods [~~which~~]that pose a significant risk to public health and safety.

5) The department shall not allow the use of butane or propane in any extraction method.

R68-25-~~[6]~~7. Processing Practices.

1) The department incorporates by reference 21 CFR 111, Current Good Manufacturing Practice in Manufacturing, Packaging, Labeling, or Holding Operations for Dietary Supplements for a licensee engaged in processing a CBD product intended for human consumption.

2) The department incorporates by reference 21 CFR [~~110~~]117, Current Good Manufacturing Practice [~~in Manufacturing, Packing, or Holding~~], Hazard analysis, and Risk-Based Preventive Controls for Human Food for a licensee engaged in processing non-~~[CBD]~~cannabinoid products for human or animal consumption.

3) [~~All other licensed p~~]Processors shall comply with the federal Food Drug and Cosmetic Act, 21 U.S.C. Chapter 9, and [~~all~~]any other applicable state laws and regulations relating to product development, product manufacturing, consumer safety, and public health.

R68-25-~~[7]~~8. Required Reports.

1) A licensee shall submit a completed Production Report on a form provided by the department by December 31st.

2) A licensee shall submit a report of the results of the research as set forth in the research plan by December 31st.

3) The failure to submit a timely completed form may result in the denial of a renewal license.

R68-25-~~[8]~~9. Additional Records.

1) The licensee shall keep records of receipt for [~~all~~]any industrial hemp material obtained including:

- a) the date of receipt;
- b) quantity received; [~~and~~]
- c) an identifying lot number created by the licensee; and
- d) the seller's information including [;]:
 - i) the seller's department license number;
 - ii) seller's contact information; and
 - iii) the address of the facility or growing area from which the industrial hemp material was shipped.

2) The licensee shall keep records that include the following information for each batch of industrial hemp material processed [~~containing the following information~~]:

- a) the date of processing;
- b) the lot number of the material;
- c) the amount processed;
- d) the type of processing; and
- e) any lab test conducted on the industrial hemp material or product during the processing.

3) The licensee shall keep records of [~~all~~]any tests conducted with the identifying lot number.

4) A licensee processing a cannabinoid product shall keep records required by 21 CFR 111 including:

_____ a) written procedures for preventing microbial contamination;

_____ b) documentation of training of employees;

_____ c) cleaning logs of equipment;

_____ d) procedures for cleaning the physical facility;

_____ e) documentation of your qualification of supplier; and

_____ f) documentation of calibration of machinery.

_____ 5) A licensee processing a non-cannabinoid product shall keep records as required by 21 CFR 117 including:

_____ a) written procedures for preventing microbial contamination;

_____ b) documentation of training of employees;

_____ c) cleaning logs of equipment;

_____ d) procedures for cleaning the physical facility; and

_____ e) documentation of calibration of machinery.

[4]6) [All-]Records shall be maintained for a minimum of three [3-]years.

[5]7) [All-]Records are subject to review by department officials at the time of inspection or upon request.

R68-25-9]10. Testing.

1) For industrial hemp products that will be used for human consumption or absorption the product shall be tested for the following before being made available for retail sale:

a) cannabinoid profile;

b) solvents;

c) pesticides;

d) microbials; and

e) heavy metals.

2) The testing shall be completed by a third-[-]party laboratory.

3) The department shall conduct random testing of industrial hemp products and materials.

4) The sample taken by the department shall be the official sample.

R68-25-1[0]1. Inspections and Sampling.

1) The department shall have complete and unrestricted access to [all-]industrial hemp plants, seeds, and materials and all land, buildings, and other structures used to process industrial hemp.

2) Samples of each industrial hemp product may be randomly taken from the facilities by department officials.

3) The department may[shall] review [all-]records kept in accordance with rule requirements.

4) The department shall notify a licensee of test results greater than 0.3% THC.

5) Any laboratory test with a result greater than 0.3% THC may be considered a violation of the terms of the license and may result in an immediate license revocation.

6) Any laboratory test of a final product with a result of 1% THC or greater [of final product will]shall be turned over to the appropriate law enforcement agency and revocation of the processor license [will]shall be immediate.

7) The department shall notify the licensee of any solvents, metals, microbials, or pesticides found during testing.

8) The presence of deleterious or harmful substances may be considered a violation of the terms of the license and may result in a license revocation.

R68-25-1[4]2. Storage of Industrial Hemp and Hemp Material.

1) A licensee may store hemp and hemp products provided:

a) the licensee notifies the department of the location of the storage facility;

b) the licensee informs the department of the type and amount of the product being stored in the storage facility;

c) the storage facility is outside of the public view; and

d) the storage facility is secured with physical containment such as walls, fences, locks, and with an alarm system to provide maximum reasonable security.

2) A licensee may store [hemp product]a cannabinoid concentrate that exceeds [the-]0.3% THC provided:

a) the [product]concentrate is kept in a secure room;

b) the [product]concentrate is kept separate from other hemp products;

c) access to the [product]concentrate is limited; and

d) a record is kept of the amount of [product]concentrate being stored and when it is being moved.

3) [All-s]Storage facilities shall be maintained in accordance with the practice adopted in R68-25-[6]7.

4) [All-s]Storage facilities and records are subject to random inspection by department officials.

R68-25-1[2]3. Transportation of Industrial Hemp Material.

[1-]A licensee may move nonviable hemp product without an industrial hemp transportation permit.

_____ 2) An industrial hemp transportation permit is required for each day and each vehicle used to move industrial hemp or industrial hemp products.

_____ 3) The licensee shall submit an industrial hemp transportation permit request form provided by the department.

_____ 4) Requests for an industrial hemp transportation permit shall be submitted to the department at least five (5) business days prior to movement.

_____ 5) An industrial hemp transportation permit authorizes the transportation of industrial hemp materials only within the borders of the state.

_____ 6) The department may deny any application for an industrial hemp transportation permit that is not completed in accordance with this rule.

_____ 7) A licensee extracting CBD shall not transport any product until the department has been notified of the THC test results for the product being transported.]1) A printed transport manifest shall accompany each transport of any industrial hemp material within the possession of an industrial hemp processor.

2) The manifest shall contain the following information:

a) the address and license number of the departure location;

b) the physical address and license number of the receiving location;

c) the strain name, quantities by weight, and unique identification numbers of each industrial hemp material to be transported;

d) date and time of departure;

e) estimated date and time of arrival; and

f) name and signature of each agent accompanying the industrial hemp material.

3) The transport manifest may not be voided or changed after departing from the original industrial hemp licensee.

4) A copy of the transport manifest shall be given to the receiving industrial hemp licensee.

5) The receiving industrial hemp licensee shall ensure that the industrial hemp material received is as described in the transport manifest and shall:

- a) record the amounts received for each strain; and
- b) document any differences between the quantity specified in the transport manifest and the quantities recorded.
- 6) During transportation, industrial hemp material shall be:
 - a) shielded from the public view;
 - b) secured; and
 - c) temperature controlled if perishable.
- 7) An industrial hemp licensee shall contact the department within 24 hours if a vehicle transporting industrial hemp material is involved in an accident that involves product loss.
- 8) Only the registered agents of an industrial hemp licensee may occupy a transporting vehicle.
- 9) If a cannabinoid concentrate with a THC concentration above 0.3% is transported to a Tier One industrial hemp processor, a copy of the transport manifest shall be provided to the department within three days.

R68-25-1[3]4. Restriction on the Sale and Transfer of Industrial Hemp Material.

- 1) A licensee shall not sell or transfer living plants, viable plants, viable seed, leaf material, or floral material to any person not licensed by the department.
- 2) A licensee shall not sell or transfer living plants, viable seed, leaf material, or floral material to any person outside the state who is not authorized by the laws of that state.
- 3) ~~The~~A licensee may sell stripped stalks, fiber, and nonviable seed to the general public provided the product's THC level is less than 0.3%.

R68-25-1[4]5. Renewal.

- 1) A licensee shall resubmit ~~at~~the documents required in Section R68-25-[3]4, with updated information, before December 31st of the current year.
- 2) The department may deny a renewal for an incomplete application.
- 3) The department may deny renewal for any licensee who has violated any portion of this rule or state law.

R68-25-1[5]6. Violation.

- 1) It is a violation to process industrial hemp or industrial hemp material on a site not approved by the department as listed on the license or within 1,000 feet of a school or public recreational area.
- 2) It is a violation to process industrial hemp or industrial hemp material from a source that is not approved by the department.
- 3) A licensee shall not allow unsupervised public access to hemp processing facilities.
- 4) It is a violation to employ a person under the age of ~~eighteen~~(18) in the processing or handling of industrial hemp or its products.
- 5) It is a violation to sell a product to the general public in violation of this section or state laws governing the final product.
- 6) It is a violation to add ~~CBD~~cannabinoids to a food product.
- 7) It is a violation to process raw concentrate without an industrial hemp processor license.
- [7]8) It is a violation to fail to keep records required by this section.
- [8]9) It is a violation for a licensee to allow an employee that has been convicted of a felony or its equivalent access to hemp material or product which contains over 0.3% THC or has the potential to contain over 0.3% THC.

[9]10) It is a violation for a licensee to allow an employee that has been convicted of a drug-related misdemeanor within the last ten ~~(10)~~years access to hemp material or product which contains over 0.3% THC or has the potential to contain over 0.3% THC.

11) It is a violation to possess cannabinoid concentrate without an industrial hemp processing license.

KEY: cannabidiol, hemp products, hemp extraction, hemp oil
Date of Enactment or Last Substantive Amendment: ~~(October 31, 2018)~~2021
Authorizing, and Implemented or Interpreted Law: 4-41-103(4)

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Repeal		
Utah Admin. Code Ref (R no.):	R68-31	Filing ID 53637

Agency Information

1. Department:	Agriculture and Food	
Agency:	Plant Industry	
Street address:	350 N Redwood Road	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 146500	
City, state and zip:	Salt Lake City, UT 84114-6500	
Contact person(s):		
Name:	Phone:	Email:
Amber Brown	801-982-2204	ambermbrown@utah.gov
Cody James	801-982-2376	codyjames@utah.gov
Kelly Pehrson	801-982-2202	kwpehrson@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R68-31. Cannabis Licensing Process
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
This rule is no longer needed because the makeup and functions of the Cannabis Production Establishment Licensing Board were established in statute under S.B. 192, passed during the 2021 General Session.
4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the

substantive differences between the repealed rule and the reenacted rule):

This repeal will result in no change to the cannabis licensing process as all information is now incorporated in statute. This rule is repealed in its entirety.

Fiscal Information

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

A) State budget:

There should be no impact on the state budget because the Department of Agriculture and Food (Department) will continue to staff the new board as was done in the past.

B) Local governments:

There should be no impact on local governments because they do not administer or serve on the Cannabis Production Establishment Licensing Board.

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

There should be no impact on small businesses because the licensing board will operate in the same way it has in the past and the Department's cannabis program will not change.

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

There should be no impact on non-small businesses because the licensing board will operate in the same way it has in the past and the Department's cannabis program will not change.

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

Other persons should not be affected by this rule change because they are not impacted by the Cannabis Production Establishment Licensing Board.

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

The compliance costs for affected persons will not change because the compliance requirements and fees charged by the Department will remain the same.

G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):

This rule change should not have a fiscal impact on businesses in Utah. Craig W. Buttars, Commissioner

6. A) 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	FY2022	FY2023	FY2024
State Government	\$0	\$0	\$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

B) Department head approval of regulatory impact analysis:

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

Citation Information

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

Section 4-41a-201

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. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:	08/16/2021
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10. This rule change MAY become effective on:	08/23/2021
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NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

Agency Authorization Information

Agency head or designee, and title:	Craig W. Buttars, Commissioner	Date:	06/25/2021
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R68. Agriculture and Food, Plant Industry.

~~**R68-31. Cannabis Licensing Process.**~~

~~**R68-31-1. Authority and Purpose.**~~

~~Pursuant to Subsection 4-41a-201(2)(a)(iii) and Section 4-2-103, this rule establishes the Cannabis Production Establishment Licensing Board and the process for issuing a cannabis production establishment license.~~

~~**R68-31-2. Definitions.**~~

- ~~1) "Cannabis cultivation facility" means a person that:

 - a) possesses cannabis;
 - b) grows or intends to grow cannabis; and
 - c) sells or intends to sell cannabis to a cannabis cultivation facility, a cannabis processing facility, or a medical cannabis research licensee.~~
- ~~2) "Cannabis processing facility" means a person that:

 - a) acquires or intends to acquire cannabis from a cannabis production establishment;
 - b) possesses cannabis with the intent to manufacture a cannabis product;
 - c) manufactures or intends to manufacture a cannabis product from unprocessed cannabis or a cannabis extract; and
 - d) sells or intends to sell a cannabis product to a medical cannabis pharmacy or a medical cannabis research licensee.~~
- ~~3) "Cannabis production establishment" means a cannabis cultivation facility, a cannabis processing facility, or an independent cannabis testing laboratory.~~
- ~~4) "Department" means the Utah Department of Agriculture and Food.~~
- ~~5) "Independent cannabis testing laboratory" means a person that:

 - a) conducts a chemical or other analysis of cannabis or cannabis product; or
 - b) acquires, possesses, and transports cannabis or a cannabis product with the intent to conduct a chemical or other analysis of the cannabis or cannabis product.~~

~~**R68-31-3. Cannabis Production Establishment Licensing Board Established.**~~

~~1) The department shall establish a Cannabis Production Establishment Licensing Board to evaluate cannabis production establishment applications and issue cannabis production establishment licenses.~~

- ~~2) The Cannabis Production Establishment Licensing Board shall be composed of six members:

 - a) the Commissioner of the department or designee;
 - b) the Deputy Commissioner of the department;
 - c) the Regulatory Services Division Director;
 - d) the State Chemist and Laboratory Division Director; and
 - e) the Plant Industry Division Director.~~
- ~~3) The Commissioner or the commissioner's designee shall serve as chair of the Cannabis Production Establishment Licensing Board.~~
- ~~4) The Commissioner or the commissioner's designee may not vote except in the event of a tie, in which case the Commissioner or the commissioner's designee shall cast the deciding vote.~~
- ~~5) Attendance of four members of the Cannabis Production Establishment Licensing Board shall constitute a quorum.~~

~~**R68-31-4. Duties of the Cannabis Production Establishment Licensing Board.**~~

- ~~1) The Cannabis Production Establishment Licensing Board is responsible for the issuing of any type of cannabis production establishment license.~~
- ~~2) The Cannabis Production Establishment Licensing Board shall:

 - a) review the application for compliance with:
 - i) Title 4, Chapter 41a, Cannabis Production Establishments;
 - ii) Rule R68-30;
 - iii) Rule R68-27;
 - iv) Rule R68-28; and
 - v) Rule R68-29;
 - b) conduct a public hearing to consider the applications;
 - c) approve the department's license application forms and checklists; and
 - d) make a determination on the application.~~
- ~~3) The Commissioner shall schedule a public hearing of the Cannabis Production Establishment Licensing Board if a cannabis production establishment:

 - a) changes ownership by 20% or more;
 - b) changes or adds a location;
 - c) upgrades to a Tier 1 Processing License;
 - d) changes extraction or formulation Standard Operating Procedures;
 - e) adds an industrial hemp processing or cultivation license to the same location as their medical production facility; or
 - f) as necessary based on the recommendation of the department.~~
- ~~4) The Cannabis Production Establishment Licensing Board shall meet each year in December to consider cannabis production establishment license renewal applications:

 - a) During that meeting, a representative from each renewing facility shall be present in person, electronically, or shall submit information prior to the meeting for the Board to consider.
 - b) The information considered at the meeting from each renewing facility shall include:
 - i) the amount of biomass produced during the year;
 - ii) the projected biomass to be produced the following year;
 - iii) the amount of hemp waste the facility currently holds;
 - iv) the current square footage or acres of growing area the facility is utilizing; and
 - v) The projected square feet or acres of growing area a facility will be utilizing in the following year.~~

~~5) The department's licensing authority is plenary and is not subject to review pursuant to Subsection 4-41a-201(13).~~

~~**R68-31-5. Cannabis Production Establishment Licensing Board Electronic Meetings.**~~

~~1) The following provisions govern any meeting of the Cannabis Production Establishment Licensing Board.~~

~~a) Notice of the meeting shall specify the anchor location where the members of the Cannabis Production Establishment Licensing Board not participating electronically or by telephone 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 posted on the Public Notice Website. 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 Cannabis Production Establishment Licensing Board members at least 24 hours before the meeting. The notice shall describe how a member may participate in the meeting electronically or by telephone.~~

~~d) When notice is given of the possibility of a member appearing electronically or by telephone, any member 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 Cannabis Production Establishment Licensing Board.~~

~~e) At the commencement of the meeting, or at such time as any member initially appears electronically or by telephone, the chair shall identify for the record all those who are appearing by telephone or electronically.~~

~~f) Votes by members of the Cannabis Production Establishment Licensing Board who are not at the physical location of the meeting shall be confirmed by the chair.~~

~~g) The anchor location, unless otherwise designated in the notice, shall be at the offices of the Department of Agriculture and Food.~~

~~i) The anchor location is the physical location from which the electronic meeting originates or from which the participants are connected.~~

~~ii) 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.~~

~~**R68-31-6. Application for Cannabis Processing Facility and Independent Cannabis Testing Laboratory.**~~

~~1) No cannabis processing facility or independent cannabis testing laboratory license application shall be recommended to the Cannabis Production Establishment Licensing Board for consideration until:~~

~~a) a complete application including documents and supplemental materials on the department's application checklist have been submitted to the department;~~

~~b) a department official has inspected the premises; and~~

~~c) a department official has conducted an investigation as described in Section R68-31-8.~~

~~2) An incomplete application will be returned to the applicant.~~

~~3) The department shall forward to the Cannabis Production Establishment Licensing Board the information and recommendation to aid in the license determination.~~

~~**R68-31-7. Cannabis Cultivation Facility Application.**~~

~~1) The department shall accept application for a cannabis cultivation facility license in January, April, July, and October of each year.~~

~~2) Applications for a cannabis cultivation facility will be considered as needed based on the market need and available licenses.~~

~~3) Applications shall be voided at the end of December each year.~~

~~4) The application fee shall be paid for each application submitted for review.~~

~~**R68-31-8. Department Review.**~~

~~1) The department's investigation shall:~~

~~a) verify required documents and supplemental materials have been submitted with the application;~~

~~b) confirm the information in the application is correct;~~

~~c) conduct the criminal background check required in Section 4-41a-202; and~~

~~d) confirm that operating and business plans comply with state laws and administrative rules.~~

~~2) The department may require additional information from an applicant.~~

~~3) The department shall submit the cannabis processing facility or independent cannabis testing laboratory application to the Cannabis Production Establishment Licensing Board with information and a recommendation within 30 days of receiving a completed cannabis processing facility or independent cannabis testing laboratory application.~~

~~4) The department shall submit a cannabis cultivation facility application to the Cannabis Production Establishment Licensing Board when the department finds a need based on market needs and available licenses.~~

~~**R68-31-9. Public Hearing.**~~

~~1) The Cannabis Production Establishment Licensing Board shall make licensing determination during a public hearing where the application was considered.~~

~~2) The Cannabis Production Establishment Licensing Board shall allow prospective applicants to make a presentation at the public hearing in which their application is considered.~~

~~3) The Cannabis Production Establishment Licensing Board shall notify the prospective applicant a minimum of 10 business days in advance of the public hearing where their application is being considered.~~

~~4) The Cannabis Production Establishment Licensing Board may limit the time available for presentations by the applicants.~~

~~**KEY: cannabis, cannabis production, licensing, Cannabis Production Establishment Licensing Board**~~

~~**Date of Enactment or Last Substantive Amendment: September 25, 2020**~~

~~**Authorizing, and Implemented or Interpreted Law: 4-2-103; 4-41a-201(2)(iii)**~~

NOTICE OF PROPOSED RULE		
TYPE OF RULE: New		
Utah Admin. Code Ref (R no.):	R68-36	Filing ID 53642

Agency Information

1. Department:	Agriculture and Food	
Agency:	Plant Industry	
Street address:	350 N Redwood Road	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 146500	
City, state and zip:	Salt Lake City, UT 84114-6500	
Contact person(s):		
Name:	Phone:	Email:
Amber Brown	801-982-2204	amberebrown@utah.gov
Cody James	801-982-2376	codyjames@utah.gov
Kelly Pehrson	801-982-2202	kwpehrson@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R68-36. Industrial Hemp Testing Laboratory
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
This rule is needed because Section 4-41.103.4 requires that the Department of Agriculture and Food (Department) provide rules regarding the requirements for industrial hemp laboratory permits.
4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):
This new rule provides guidelines for the issuance of industrial hemp laboratory permits, including: application requirements, laboratory requirements, recordkeeping and security requirements, and guidance regarding steps a permittee should take when non-compliant material exceeding the acceptable hemp THC level is identified.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
A) State budget:
The Department estimates that the cost to the state budget to administer this new program would be approximately \$80,000 per year to pay for 1/2 of a full time equivalent (FTE) for office staff and 1/2 of an FTE for an inspector.

The Department proposes charging \$2,000 as the fee for an industrial hemp laboratory permit. Given that this is a new program, it is difficult to know how many laboratories will apply for this permit; however, The Department is estimating three laboratories will apply to the Department in the first year and two more each additional year, which will bring in \$6,000 of revenue in the first year, and \$4,000 in years two and three.

B) Local governments:

There are no costs or savings to local governments because they do not regulate industrial hemp laboratories, nor do they operate as industrial hemp laboratories.

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

The costs to small businesses include the permitting fee for those that wish to obtain an industrial hemp laboratory permit. The Department estimates that approximately 50% of permittees will be small businesses for a total cost of \$3,000 in year one and \$2,000 in years two and three.

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

The costs to non-small businesses include the permitting fee for those that wish to obtain an industrial hemp laboratory permit. The Department estimatea that approximately 50% of permittees will be non-small businesses for a total cost of \$3,000 in year one and \$2,000 in years two and three.

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

Other persons should not be affected by this new rule because they will not operate as industrial hemp laboratories or be affected by them.

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

The compliance costs for affected persons include the cost of obtaining an industrial hemp testing laboratory permit, or \$2,000 per permittee.

G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):

This rule will have a limited fiscal impact on businesses because interested laboratories will have to pay a permitting fee; however, those laboratories will benefit from being able to offer testing services to the industrial hemp industry in Utah. Craig W. Buttars, Commissioner

6. A) 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	FY2022	FY2023	FY2024
State Government	\$80,000	\$80,000	\$80,000
Local Governments	\$0	\$0	\$0
Small Businesses	\$3,000	\$2,000	\$2,000
Non-Small Businesses	\$3,000	\$2,000	\$2,000
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$86,000	\$84,000	\$84,000
Fiscal Benefits			
State Government	\$6,000	\$4,000	\$4,000
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$6,000	\$4,000	\$4,000
Net Fiscal Benefits	\$(80,000)	\$(80,000)	\$(80,000)
B) Department head approval of regulatory impact analysis:			
The Commissioner of the Department of Agriculture and Food, Craig W. Buttars, has reviewed and approves the regulatory impact analysis.			

Citation Information

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

Section 4-41-103.4		
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Incorporations by Reference Information

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

	First Incorporation
Official Title of Materials Incorporated (from title page)	Cannabis Inflorescence: Standards of Identity, Analysis, and Quality Control, 2014 Revisions
Publisher	American Herbal Pharmacopoeia
Date Issued	2014
Issue, or version	2014 Version

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

	Second Incorporation
Official Title of Materials Incorporated (from title page)	OECD Principles of Good Laboratory Practice and Compliance Monitoring
Publisher	Organization for Economic Cooperation and Development
Date Issued	1997
Issue, or version	1997 Version

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. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:	08/16/2021
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10. This rule change MAY become effective on:	08/23/2021
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NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

Agency Authorization Information

Agency head or designee, and title:	Craig W. Buttars, Commissioner	Date:	06/28/2021
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R68. Agriculture and Food, Plant Industry.
R68-36. Industrial Hemp Testing Laboratory.
R68-36-1. Authority and Purpose.

1) Pursuant to Section 4-41-103.4, this rule establishes the application process, qualifications, and requirements to obtain and maintain an industrial hemp testing laboratory permit.

R68-36-2. Definitions.

1) "Acceptable hemp THC level" means a total composite tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis if laboratory testing confirms a result within a measurement of uncertainty that includes the total composite tetrahydrocannabinol concentration of 0.3%.

2) "Applicant" means any person or business entity who applies for an industrial hemp testing laboratory permit.

3) "Batch" means a quantity of:

a) industrial hemp extract produced on a particular date and time, following clean up until the next clean up during which lots of industrial hemp are used;

b) industrial hemp product produced on a particular date and time, following clean up to the next clean up during which industrial hemp extract is used; or

c) industrial hemp dried and cured on a particular date and time

4) "Cannabinoid product" means a chemical compound extracted from a hemp product that:

a) is processed into a medicinal dosage form; and

b) contains an acceptable hemp THC level.

5) "CBD" means cannabidiol.

6) "Department" means the Utah Department of Agriculture and Food.

7) "DEA registration" means a laboratory that has an active registration and is certified to handle controlled substances as an industrial hemp testing laboratory with the Drug Enforcement Authority (DEA).

8) "Industrial hemp testing laboratory" means a facility or business who:

a) conducts a chemical or other analysis of industrial hemp or an industrial hemp product; or

b) acquires, possesses, and transports industrial hemp or industrial hemp product with the intent to conduct a chemical or other analysis of the industrial hemp or industrial hemp product.

9) "Industrial hemp" means any part of a cannabis plant, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3% on a dry weight basis.

10) "Industrial hemp testing laboratory permit" means a permit that the department issues to a laboratory qualified to test industrial hemp under the state hemp production plan.

11) "Industrial hemp retailer permit" means a permit that the department issues to a retailer who sells or markets any industrial hemp product.

12) "Industrial hemp product" means a product derived from, or made by processing industrial hemp plants or industrial hemp plant parts.

13) "Licensee" means a person authorized by the department to grow, process or possess industrial hemp.

14) "Lot" means the hemp crop acreage designated by a licensed hemp grower and as reported in the grower report.

15) "Measurement of Uncertainty" means the parameter associated with the result of a measurement that characterizes the dispersion of the values that could reasonably be attributed to the particular quantity subject to measurement.

16) "Non-compliant material" means a hemp plant or hemp product that does not comply with Title 4, Chapter 41, Hemp and Cannabinoid Act, including a cannabis plant or product that contains a concentration of 0.3% tetrahydrocannabinol or greater by dry weight.

17) "Remediated Biomass" means hemp that has failed an initial test that is combined with shredded plant material for the purpose of remediation.

18) "Tetrahydrocannabinol" or "THC" means total composite tetrahydrocannabinol, including delta-9 tetrahydrocannabinol, tetrahydrocannabinolic acid, and any THC analogs as defined in Subsection 58-37-4(2)(a)(iii)(AA).

R68-36-3. Industrial Hemp Testing Laboratory Permit.

1) An applicant wishing to test industrial hemp shall apply on a form provided by the department for a permit to become an industrial hemp testing laboratory.

2) An industrial hemp testing laboratory permit shall allow a laboratory to receive industrial hemp or industrial hemp product from a licensed industrial hemp grower or processor in order to conduct compliance testing as required by Section 4-41-103.1, Rule R68-22, and Sections R68-24-6, R68-25-9, R68-26-4, R68-26-6, and R68-32-8.

3) An industrial hemp testing laboratory permit shall allow a laboratory to receive industrial hemp from a licensed industrial hemp grower or processor to conduct non-compliance testing as requested by the licensee.

4) A complete application shall include:

a) the required fee as approved by the legislature in the fee schedule;

b) a copy of a current DEA registration; and

c) statements, forms, diagrams, operation plans, and other applicable documents required in the application packet to be accepted and processed by the department.

5) Prior to approving an application, the department may contact any applicant and request additional supporting documentation or information.

6) Prior to issuing an industrial hemp testing laboratory permit, the department shall inspect the proposed premises to determine if the applicant complies with state law.

7) The department may conduct face-to-face interviews with an applicant if needed to determine the best-qualified applicants for the number of permits needed.

8) An industrial hemp testing laboratory permit shall expire on December 31 of the year of issue.

9) An industrial hemp testing laboratory permit may not be sold or transferred.

R68-36-4. Industrial Hemp Testing Laboratory Requirements.

1) On or after January 1, 2022, an industrial hemp testing laboratory shall be registered with the DEA in accordance with the Controlled Substances Act, 21 USC 823 (f), 21 CFR 1301.13, and 7 CFR 990.

2) An industrial hemp testing laboratory shall:

a) establish written standard operating procedures (SOPs) for each test being conducted;

b) establish an internal SOP that shall address testing and retesting industrial hemp material;

c) ensure that any SOPs are consistent with Cannabis Inflorescence: Standards of Identity, Analysis, and Quality Control, 2014 Revisions, published by the American Herbal Pharmacopoeia;

d) establish quality assurance protocols that:

i) ensure the validity and reliability of test results;

ii) ensure consistent, accurate, analytical performance; and

iii) include an effective disposal procedure, in accordance with state and federal laws for non-compliant samples;

e) require grinding of any pre- or post-harvest testing sample to ensure homogeneity of plant material prior to testing;

f) ensure that:

i) pre-harvest testing measures the total THC concentration in a sample submitted for analysis;

ii) the laboratory performs chemical analysis on the sample using post-decarboxylation or other similarly reliable methods where total THC concentration level considers the potential to convert delta-9-tetrahydrocannabinolic acid (THCA) into THC;

ii) test results reflect the total available THC derived from the sum of the THC and THCA content; and

iii) testing of final products measures total composite tetrahydrocannabinol, and that the total delta-9 tetrahydrocannabinol concentration level is determined and reported on a dry weight basis;

h) calculate and include the measurement of uncertainty when THC concentration test results are reported and that:

i) the method used to calculate the measurement of uncertainty may include one listed in the AOAC Standard Method Performance Requirements 2019.003 found at <https://www.aoac.org/resources/smpr-2019003/>, or any equivalent method approved by the department;

ii) the measurement of uncertainty is estimated and reported with test results;

iii) each industrial hemp testing laboratory uses appropriate, validated methods and procedures for testing activities and evaluating the measurement of uncertainty; and

iv) the range of the measurement of uncertainty is reported as a +/- value and uses the same unit as the hemp THC threshold, such as +/- 0.05, following best practices for significant figures and rounding;

i) follow validated analytical methods, such as those published by AOAC, American Herbal Pharmacopoeia, the Environmental Protection Agency (EPA), the Food and Drug Administration (FDA), or another reputable scientific organization, or notify the department of an alternative scientifically valid testing methodology the lab is following for each required test;

i) an industrial hemp testing laboratory may not use an alternative testing method without prior review from the department;

ii) an alternative testing protocol shall only be considered if it is comparable to the baseline mandated in the 2018 Farm Bill and established under the United States Department of Agriculture (USDA) Final Rule establishing a Domestic Hemp Production Program published at 7 CFR Part 990;

iii) alternative procedures shall be validated by the USDA in writing;

iv) the department shall review any monograph or analytical method followed by an industrial hemp testing laboratory to ensure the methodology produces scientifically accurate results prior to the use of an alternative testing methods to conduct the required tests; and

v) method performance specifications shall ensure analytical tests are sufficiently sensitive for the purposes of the detectability requirements of this rule;

j) provide the department with documentation showing that the industrial hemp testing laboratory has obtained and maintained the International Organization for Standardization (ISO) 17025:2017 accreditation. An industrial hemp testing laboratory may be permitted prior to ISO 17025:2017 accreditation provided the industrial hemp testing laboratory:

i) adopts and follows minimum good laboratory practices which satisfy the OECD Principles of Good Laboratory Practice and

Compliance Monitoring published by the Organization for Economic Co-operation and development; and

ii) becomes ISO 17025:2017 accredited within 18 months.

3) The department incorporates the following materials by reference:

a) Cannabis Inflorescence: Standards of Identity, Analysis, and Quality Control, 2014 Revisions, published by the American Herbal Pharmacopoeia; and

b) OECD Principles of Good Laboratory Practice and Compliance Monitoring, 1997 version, published by the Organization for Economic Co-operation and Development.

R68-36-5. Information Sharing.

1) An industrial hemp testing laboratory performing THC testing to ensure compliance with this rule shall share the test results with the licensee, the department, and the USDA.

2) An industrial hemp testing laboratory shall:

a) report each test result, whether passing or failing;

b) ensure that each testing report used to determine compliance shall be marked "official compliance test";

c) ensure that any THC testing used for the purpose of monitoring THC levels throughout the growing season should not be marked "official compliance test";

d) ensure that any testing that shows THC levels above 1% are provided to the department; and

e) retain a legible copy of each test result marked as an "official compliance test" for a period of three years from the date of analysis and is made available to the department upon request.

R68-36-6. Security Requirements.

1) An industrial hemp testing laboratory shall have a locked and secured storage area with limited access provided only to employees that are approved to access non compliant material.

2) Any material shall be stored in the locked and secured area until it can be destroyed according to the industrial hemp testing laboratory disposal plan.

3) An industrial hemp testing laboratory shall identify each employee who will have access to noncompliant material.

4) An industrial hemp testing laboratory shall provide a nationwide criminal history from the FBI, completed within three months of the application, for each employee who will have access to noncompliant material.

R68-36-7. Test Results Exceeding 0.3% THC Concentration in Pre-Harvest Testing.

1) Any sample test result where the total THC concentration of the sample is higher than the acceptable hemp THC level shall be conclusive evidence that one or more cannabis plants or plant products from the lot represented by the sample contain a THC concentration in excess of that allowed.

2) If the results of a test conclude that the THC concentration levels of a sample are higher than the acceptable hemp THC level, the industrial hemp testing laboratory shall promptly notify the producer, the department and the USDA.

3) A noncompliant sample may be re-tested, at the expense of the licensee, if they believe that the original THC concentration levels were in error.

4) An industrial hemp testing laboratory shall follow the same procedures used in the initial test for any retests.

5) Re-test results will be shared with the licensee, the department, and the USDA.

6) If the industrial hemp material is >1% total THC content the industrial hemp testing laboratory must notify law enforcement.

7) Remediated biomass submitted for official compliance testing shall follow the same procedures used to conduct the initial test.

R68-36-8. Inventory Log Failed Samples.

1) Industrial hemp samples submitted to the industrial hemp testing laboratory that are noncompliant shall be tracked and monitored in an inventory log until each laboratory test has been completed.

2) The inventory log under Subsection (1) shall include the following:

- a) the date and time the test sample was received;
- b) each sample used for testing and the test results;
- c) the identity of the agent conducting the test;
- d) the weight and disposal of the noncompliant materials;
- e) the identity of who disposed of the noncompliant material; and
- f) any theft or loss or suspected theft or loss of noncompliant material.

R68-36-9. Destruction of Noncompliant Material.

1) An industrial hemp testing laboratory shall destroy any noncompliant material in accordance with state and federal laws and regulations.

2) The noncompliant material shall be rendered unusable prior to leaving the industrial hemp testing laboratory.

3) Noncompliant material shall be rendered unusable by grinding and incorporating the noncompliant material with other ground materials so the resulting mixture is at least fifty percent non-hemp waste by volume or by other methods approved by the department before implementation.

4) Materials used to grind and incorporate with noncompliant hemp material fall into two categories:

- a) compostable; or
 - b) non-compostable.
- 5) Compostable waste is hemp waste to be disposed of as compost or in another organic waste method mixed with:
- a) food waste;
 - b) yard waste; or
 - c) vegetable-based grease or oils.
- 6) Non-compostable waste is industrial hemp waste to be disposed of in a landfill or another disposal method, such as incineration, mixed with:
- a) paper waste;
 - b) cardboard waste;
 - c) plastic waste; or
 - d) soil.

7) If a laboratory needs to transport noncompliant material they must first obtain a transport permit from the department.

8) Noncompliant material may be held by a laboratory for no longer than 90 days.

R68-36-10. Change in Operation Plans.

1) An independent hemp testing laboratory shall notify the department prior to making any changes to:

- a) the facility's name;
- b) a location;
- c) testing methods, equipment, remodeling, expansion, reduction or physical, non-cosmetic alteration of the lab; or
- d) written operating procedures.

2) An industrial hemp testing laboratory may not implement changes to the approved operation plan without department approval.

3) The department shall respond to the request for changes within 15 business days.

4) The department shall approve requested changes unless approval would lead to a violation of the applicable laws and rules of the state.

5) The department shall specify the reason for the denial of a change to the operation plan.

R68-36-11. Renewals.

1) A licensee shall resubmit the documents required in Section R68-36-3 with updated information, before December 31st of the current year.

2) The department may deny a renewal for an incomplete application.

3) The department may deny renewal for any licensee who has violated any portion of this rule or state law.

4) If the industrial hemp testing laboratory DEA registration expires or is revoked by the DEA, the industrial hemp testing permit issued by the department shall also be revoked.

5) The department shall renew a permit unless renewal would lead to a violation of the applicable laws and rules of the state.

R68-36-12. Proficiency Testing.

1) The department shall establish a proficiency testing program for hemp testing laboratories.

2) Each laboratory shall participate in the designated proficiency testing program with satisfactory performance as determined by the department.

R68-36-13. Violation Categories.

Pursuant to Title 4, Chapter 2, Administration, the department may issue the following violations:

1) Public Safety Violations: \$3,000 - \$5,000 per violation. This category is for violations that present a direct threat to public health or safety including:

- a) refusal to allow inspection;
- b) refusal to participate in proficiency testing;
- c) failure to comply with testing requirements;
- d) failure to report testing results;
- e) unauthorized personnel on the premises;
- f) permitting criminal conduct on the premises;
- g) engaging in or permitting a violation of Title 4, Chapter 41, Hemp and Cannabinoid Act, that amounts to a public safety violation as described in this subsection.

2) Regulatory Violations: \$1,000 - \$5,000 per violation. This category is for violations involving this rule and other applicable state rules including:

- a) failure to maintain DEA registration;
- c) failure to keep and maintain records;
- d) failure to follow the waste and disposal requirements;

or

- e) engaging in or permitting a violation of Title 4, Chapter 41, Hemp and Cannabinoid Act, or this rule that amounts to a regulatory violation as described in this subsection.

3) Permitting Violations: \$500- \$5,000 per violation. This category is for violations involving industrial hemp testing laboratory permitting requirements including:

- a) an unauthorized change to the operating plan;

b) failure to notify the department of changes to the operating plan;

c) failure to follow the operating plan as approved by the department;

d) engaging in or permitting a violation of this rule or Title 4, Chapter 4, Hemp and Cannabinoid Act that amounts to a licensing violation as described in this subsection; or

e) failure to respond to violations.

4) The department shall calculate penalties based on the level of violation, and the adverse effect or potential adverse effect at the time of the incidents giving rise to the violation.

KEY: industrial hemp laboratory, industrial hemp testing
Date of Enactment or Last Substantive Amendment: 2021
Authorizing, and Implemented or Interpreted Law: 4-41-103.4

NOTICE OF PROPOSED RULE

TYPE OF RULE: Repeal

Utah Admin. Code Ref (R no.):	R277-503	Filing ID	53645
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Agency Information

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

General Information

2. Rule or section catchline:
R277-503. Licensing Routes
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
This rule sunset by its own terms on June 30, 2020, and has been replaced by other licensing rules.
4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):

The rule is being repealed in its entirety and the substance of this rule has been moved to Board Rule R277-301, Educator Licensing.

Fiscal Information

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

A) State budget:

This rule change is not expected to have fiscal impact on state government revenues or expenditures. This repeal moves the authority and purpose to Board Rule R277-301. That new rule specifies the types of licenses and license areas of concentration available and does not have fiscal impact.

B) Local governments:

This rule change will not have fiscal impact on local governments' revenues or expenditures. This repeal moves the authority and purpose to Board Rule R277-301. That new rule specifies the types of licenses and license areas of concentration available and does not have fiscal impact.

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

This rule change is not expected to have fiscal impact on small businesses' revenues or expenditures. This repeal moves the authority and purpose to Board Rule R277-301. That new rule specifies the types of licenses and license areas of concentration available and does not have 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 (North American Industry Classification System (NAICS) 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. This proposed repeal of 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.

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

This rule change is not expected to have fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities. This repeal moves the authority and purpose to Board Rule R277-301. That new rule specifies the types of licenses and license areas of concentration available and does not have fiscal impact.

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

There are no compliance costs for affected persons. This repeal moves the authority and purpose to Board Rule R277-301. That new rule specifies the types of licenses and license areas of concentration available and does not have fiscal impact.

G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):

There are no 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. In addition, this rule repeal is not expected to have direct fiscal impact on small businesses. Sydnee Dickson, State Superintendent

6. A) 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	FY2022	FY2023	FY2024
State Government	\$0	\$0	\$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

B) Department head approval of regulatory impact analysis:

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

Citation Information

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

Article X, Section 3	Section 53E-3-501	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. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until: 08/16/2021

10. This rule change MAY become effective on: 08/23/2021

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

Agency Authorization Information

Agency head or designee, and title:	Angie Stallings, Deputy Superintendent of Policy	Date:	06/30/2021
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R277. Education, Administration.

~~R277-503. Licensing Routes.~~

~~R277-503-1. 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-3-501, which directs the Board to establish rules and minimum standards for the qualification and licensing of~~

educators and ancillary personnel who provide direct student services; 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:~~

~~(a) provide minimum eligibility requirements for applicants for teacher licenses;~~

~~(b) provide explanation and criteria of various teacher licensing routes;~~

~~(c) provide criteria and procedures for licensed teachers to earn endorsements; and~~

~~(d) require all applicants for licenses to submit to a criminal background check.~~

R277-503-2. Definitions.

~~(1) "Alternative Routes to Licensure advisors" or "ARL advisors" means:~~

~~(a) a specialist designated by the Superintendent with specific professional development and educator licensing expertise; and~~

~~(b) a curriculum specialist designated by the Superintendent.~~

~~(2)(a) "Career and technical education" or "CTE" means organized educational programs that:~~

~~(i) prepare individuals for a wide range of high skill, high-demand careers;~~

~~(ii) provide all students with a seamless education system from public education to post-secondary education, driven by a Plan for College and Career Readiness; and~~

~~(iii) provide students competency-based instruction, hands-on experiences, and certified occupational skills, culminating in further education and meaningful employment.~~

~~(b) CTE areas of study include:~~

~~(i) agriculture;~~

~~(ii) business and marketing;~~

~~(iii) family and consumer sciences;~~

~~(iv) health science;~~

~~(v) information technology;~~

~~(vi) skilled and technical sciences; and~~

~~(vii) technology and engineering education.~~

~~(3) "Competency-based" means a teacher training approach structured for an individual to master and demonstrate content and teaching skills and knowledge at the individual's own pace and sometimes in alternative settings.~~

~~(4) "Core academic subject" means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography.~~

~~(5) "Council for Accreditation of Educator Preparation" or "CAEP" means the nationally recognized organization that provides accreditation of professional teacher education programs in institutions offering baccalaureate and graduate degrees for the preparation of k-12 teachers.~~

~~(6) "Endorsement" means a supplemental qualification to a teaching license that is based on content area mastery obtained through a higher education major or minor or through a state-approved endorsement program.~~

~~(7) "LEA," for purposes of this rule, includes the Utah Schools for the Deaf and the Blind.~~

~~(8) "Letter of authorization" means a formal approval given to an individual, such as an out-of-state candidate or a first-year ARL candidate who:~~

~~(a) is employed by an LEA in a position requiring a professional educator license;~~

~~(b) has not completed the requirements for an ARL license or a Level 1, 2, or 3 license; or~~

~~(c) has not completed necessary endorsement requirements.~~

~~(9) "Level 1 license" means a Utah professional educator license issued by the Board to an applicant who has met all ancillary requirements established by law or rule, and:~~

~~(a) completed an approved preparation program;~~

~~(b) completed an alternative preparation program;~~

~~(c) is approved pursuant to an agreement under the NASDTEC Interstate Contract; or~~

~~(d) completed the requirements of R277-511.~~

~~(10) "Level 2 license" means a Utah professional educator license issued by the Board after satisfaction of all requirements for a Level 1 license and:~~

~~(1) satisfaction of requirements under R277-522 for teachers whose employment as a Level 1 licensed educator began after January 1, 2003 in a Utah public LEA or accredited private school;~~

~~(2) at least three years of successful education experience in a Utah public LEA or accredited private school or one year of successful education experience in a Utah public LEA or accredited private school and at least three years of successful education experience in a public LEA or accredited private school outside of Utah;~~

~~(3) additional requirements established by law or rule.~~

~~(11) "Level 3 license" means a Utah professional educator license issued by the Board to an educator who holds a current Utah Level 2 license and has also received:~~

~~(a) National Board Certification;~~

~~(b) a doctorate in education or in a field related to a content area in a unit of the public education system or an accredited private school; or~~

~~(i) holds a Speech Language Pathology area of concentration; and~~

~~(ii) has obtained American Speech Language Hearing Association (ASHA) certification.~~

~~(12) "National Association of State Directors of Teacher Education and Certification" or "NASDTEC" means the educator information clearinghouse that maintains an interstate reciprocity agreement and database for its members regarding educators whose licenses have been suspended or revoked.~~

~~(13) "National Council for Accreditation of Teacher Education" or "NCATE" means the nationally recognized organization that accredits the education units providing baccalaureate and graduate degree programs for the preparation of teachers and other professional personnel for elementary and secondary schools.~~

~~(14) "Pedagogical knowledge" means practices and strategies of teaching, classroom management, preparation and planning that are in addition to an educator's content knowledge of an academic discipline.~~

~~(15) "Regional accreditation" means formal approval of a school that has met standards considered to be essential for the operation of a quality school program by the following organizations:~~

~~(a) Middle States Commission on Higher Education;~~

~~(b) New England Association of Schools and Colleges;~~

~~(c) North Central Association Commission on Accreditation and School Improvement;~~

~~(d) Northwest Accreditation Commission;~~

~~(e) Southern Association of Colleges and Schools; and~~

~~(f) Western Association of Schools and Colleges: Senior College Commission.~~

~~(16) "Restricted endorsement" means a qualification available only to teachers in necessarily existent small school settings based on content area knowledge obtained through a Board-approved~~

program of study or demonstrated through passage of a Board-designated test.

(17) "State-approved Endorsement Plan" or "SAEP" means a plan in place developed between the Superintendent and a licensed educator to direct the completion of endorsement requirements by the educator.

(18) "Teacher Education Accreditation Council" or "TEAC" means the nationally recognized organization which provides accreditation of professional teacher education programs in institutions offering baccalaureate and graduate degrees for the preparation of K-12 teachers.

R277-503-3. Licensing Eligibility.

(1) For a license applicant following the traditional college or university license, the license applicant shall:

(a) complete a Board approved college or university teacher preparation program;

(b) be recommended for licensing; and

(c) satisfy all other requirements for educator licensing required by law; or

(2) For a license applicant following an alternative licensing route, the license applicant shall:

(a) have a bachelors degree or higher from an accredited higher education institution in an area related to the position the applicant is seeking;

(b) have skills, talents or abilities, as evaluated by the employing entity, making the applicant appropriate for a licensed teaching position and eligible to participate in an ARL program; and

(c) while participating in an alternative licensing program, be approved for employment under an ARL license.

(3) An ARL program may not exceed three school years.

(4) A license applicant seeking a Level 1 Utah educator license, or an area of concentration, or an endorsement in a core academic subject area shall submit passing scores on a Board-designated content test, where tests are available, prior to the issuance of a renewable license or endorsement.

(5) For each endorsement in a core academic area to be posted on the license, a teacher shall submit passing scores on a Board-designated content tests, where tests are available.

(6) A licensure candidate recommended for a Utah Level 1 license who does not submit a passing score on the test designated in Subsection(4) is not eligible for licensure until achieving a passing score.

(7) All educators licensed under this rule shall also:

(a) complete the background check required under Section 53A-6-401;

(b) satisfy the professional development requirements of R277-500; and

(c) be subject to all Utah licensing requirements and professional standards.

R277-503-4. Licensing Routes—Traditional and Alternative Routes.

(1) An applicant seeking a Utah educator license shall successfully complete the accredited program or legislatively mandated program consistent with this rule.

(2) To be recognized by the Board, an institution of higher education teacher preparation program shall be:

(a) Nationally accredited by:

(i) CAEP;

(ii) NCATE; or

(iii) TEAC; and

(b) approved by the Board to recommend for licensure in the license area, or endorsements, or both in designated areas.

(3)(a) An applicant who meets the eligibility requirements in Section R277-503-3, and is assigned to teach exclusively in an online setting, is eligible to begin the ARL program.

(b) Upon completion of the ARL program, the applicant shall earn a license area of concentration that is restricted to providing instruction in an online setting.

R277-503-5. Alternative Routes to Licensure (ARL).

(1) To be eligible to begin the ARL program, an applicant for a school position requiring an elementary license area of concentration shall have a bachelors degree and at least 27 semester hours of applicable content courses distributed among elementary curriculum areas provided under R277-700-4.

(2) To be eligible to begin the ARL program, an applicant for a school position requiring a secondary license area of concentration shall hold at least a bachelors degree and:

(a) a degree major or major equivalent directly related to the assignment; or

(b) have completed all Board-designated content coursework required for the relevant endorsement.

(3) To be eligible to begin the ARL program, an applicant for a CTE school position who does not meet the requirements in R277-503-4(2) shall meet the requirements for a CTE license area of concentration as provided in R277-518.

(4) To be eligible for acceptance in the ARL program, an applicant shall be employed in a position at a Utah public or accredited private school where the applicant:

(a) receives a teaching assignment where the applicant has primary instruction responsibility for the assigned students;

(b) is designated the teacher of record for assigned courses for all school accountability and educator evaluation purposes;

(c) is responsible for the instructional planning of the courses including developing, adapting, and implementing the curriculum to meet student needs;

(d) analyzes and assesses student progress and adjusts instruction, materials, and delivery strategies to meet the students' needs;

(e) has final responsibility for determining student grades and credit for the courses taught by the applicant;

(f) is assigned in:

(i) a 7-12 secondary setting and employed at least 0.5 FTE in the applicant's eligible content areas; or

(ii) a K-6 elementary setting and employed at least 0.5 FTE and is responsible to teach language arts and reading, mathematics, science, and social studies or is employed in a state-sponsored dual immersion program; and

(g) shall be formally evaluated twice each school year consistent with R277-531, Public Educator Evaluation Requirements (PEER).

R277-503-6. Licensing by Agreement.

(1) An individual employed by an LEA shall satisfy the minimum requirements of R277-503-3 as a teacher with appropriate skills, training or ability for an identified licensed teaching position in the LEA.

(2) An applicant shall obtain an ARL application for licensing from the Board's web site.

(3) After evaluation of a candidate's transcripts and Board-designated content test score, the ARL advisors and the candidate shall determine the specific content knowledge and pedagogical knowledge required of the license applicant to satisfy the requirements for licensing.

~~_____ (4) The ARL advisors may identify higher education courses, district sponsored coursework, Board approved professional development, or Board approved competency tests to prepare or indicate content, content specific, and developmentally appropriate pedagogical knowledge required for licensing.~~

~~_____ (5) An applicant who has been employed as an educator under a competency based license or as a full time instructional paraeducator may offer that experience in lieu of one or more pedagogy courses as follows:~~

~~_____ (a) The applicant has had at least three years of experience as an educator or paraeducator;~~

~~_____ (b) The applicant's experience has been successful based on documentation from the LEA; and~~

~~_____ (c) The Superintendent and employing LEA have approved the applicant's experience in lieu of pedagogy courses.~~

~~_____ (6) An employing LEA shall assign a trained mentor to work with an applicant for licensing by agreement.~~

~~_____ (7)(a) An LEA shall supervise and assess a license applicant's classroom performance for a minimum of one school year if the applicant teaches full time or a minimum of two school years if the applicant teaches part time.~~

~~_____ (b) An LEA may request assistance from an institution of higher education or the ARL advisors in monitoring and assessing an applicant.~~

~~_____ (8)(a) An LEA shall assess a license applicant's disposition as a teacher following a minimum of one school year full time teaching experience.~~

~~_____ (b) An LEA may request assistance in assessment under Subsection (8)(a).~~

~~_____ (9) The ARL advisors shall annually review and evaluate a license applicant following training, assessments or course work, and the full time teaching experience and evaluation by the LEA.~~

~~_____ (10) Consistent with evidence and documentation received, the ARL advisors may recommend a license applicant to the Board for a Level 1 educator license.~~

R277-503-7. Licensing by Competency.

~~_____ (1) An LEA may employ an individual as a teacher if the individual:~~

~~_____ (a) has appropriate skills, training, or ability for an identified licensed teaching position in the LEA; and~~

~~_____ (b) satisfies the minimum requirements of Section R277-503-3.~~

~~_____ (2)(a) An employing LEA, in consultation with the applicant and the ARL advisors, shall identify Board approved content knowledge and pedagogical knowledge examinations.~~

~~_____ (b) The applicant shall pass designated examinations demonstrating the applicant's adequate preparation and readiness for licensing.~~

~~_____ (3) An employing LEA shall assign a trained mentor to work with an applicant for licensing by competency.~~

~~_____ (4) An LEA shall monitor and assess a license applicant's classroom performance during a minimum of one year full time or two years part time teaching experience.~~

~~_____ (5) An LEA shall assess a license applicant's disposition for teaching following a minimum of one year full time teaching experience.~~

~~_____ (6) An LEA may request assistance in the monitoring or assessment of a license applicant's classroom performance or disposition for teaching.~~

~~_____ (7) Following the one year training period, an LEA and the Superintendent shall verify all aspects of preparation including content~~

~~knowledge, pedagogical knowledge, classroom performance skills, and disposition for teaching to the ARL advisors.~~

~~_____ (8) If all evidence/documentation is complete and satisfactory, the Superintendent shall recommend an applicant for a Level 1 educator license.~~

~~_____ (9) An ARL candidate under Section R277-503-5 shall be issued an ARL license or license area as appropriate that is presumed to expire at the end of the school year.~~

~~_____ (10) An ARL license may be extended annually for two subsequent school years with the following documentation of progress in the ARL program:~~

~~_____ (a) a copy of the supervisor's successful end of year evaluation;~~

~~_____ (b) copies of transcripts and test results, or both, showing completion of required coursework;~~

~~_____ (c) verification of working with a trained mentor; and~~

~~_____ (d) satisfaction of the full time full year experience.~~

R277-503-8. LEA Specific Competency-based Licenses.

~~_____ (1)(a) An LEA may apply to the Board for a Level 1 competency based license for an applicant to fill a position in the LEA.~~

~~_____ (b) The application shall demonstrate that other licensing routes for the applicant are untenable or unreasonable.~~

~~_____ (2) An employing LEA shall request a Level 1 competency based license no later than 60 days after the date of the individual's first day of employment.~~

~~_____ (3) An application for a Level 1 competency based license from the LEA for an individual to teach one or more core academic subjects shall provide documentation of:~~

~~_____ (a) the individual's bachelors degree; and~~

~~_____ (b)(i) for a K-6 grade teacher, the satisfactory results of the state test including subject knowledge and teaching skills in the required core academic subjects under Subsection 53E-6-306(3)(a)(ii) as approved by the Board; or~~

~~_____ (ii) for a teacher in grades 7-12, demonstration of a high level of competency in each of the core academic subjects in which the teacher teaches by passing the state core academic subject test required under Subsection R277-503-3(4), in each of the core academic subjects in which the teacher teaches at the Superintendent established passing score.~~

~~_____ (4) An application for a Level 1 competency based license from an LEA for non core teachers in grades K-12 shall provide documentation of:~~

~~_____ (a) a bachelors degree, associates degree or skill certification; and~~

~~_____ (b) skills, talents or abilities specific to the teaching assignment, as determined by the LEA.~~

~~_____ (5) Following receipt of documentation and consistent with Subsection 53E-6-306(2), the Superintendent shall approve a Level 1 competency based license.~~

~~_____ (6) If an individual with a Level 1 competency based license leaves the LEA before the end of the employment period, the LEA shall notify the Superintendent regarding the end of employment date.~~

~~_____ (7) An individual's Level 1 competency based license shall be valid only in the LEA that originally requested the competency based license.~~

~~_____ (8) A written copy of a Level 1 competency based license shall prominently state the name of the LEA followed by LEVEL 1-LEA SPECIFIC COMPETENCY BASED LICENSE.~~

~~_____ (9)(a) An LEA may change the assignment of a competency based license holder and provide notice to the Superintendent;~~

~~(b) The Superintendent may require additional competency-based documentation for the teacher to remain qualified.~~

~~(10) A Level 1 competency-based license is equivalent to the Level 1 license as described in R277-500 and R277-502 as to length and professional development expectations, and subject to the same renewal procedures except that an individual may renew a Level 1 competency-based license.~~

~~(11) A Level 2 competency-based license may be issued to a Level 1 competency-based license holder if that individual successfully completes the Entry years Enhancement program as detailed in R277-522.~~

~~(12) A Level 2 competency-based license is equivalent to the Level 2 license as described in R277-500 and R277-502 as to length and professional development expectations.~~

~~(13) A Level 3 competency-based license may be issued to a Level 2 competency-based license holder if that individual holds a doctorate in education or in a field related to a content unit of the public education system from an accredited institution.~~

~~(14) A Level 3 competency-based license is equivalent to the Level 3 license as described in R277-500 and R277-502 as to length and professional development expectations.~~

~~(15) If an individual holds a Utah license, an application for an LEA specific competency-based license shall be subject to additional Superintendent review based upon the following criteria:~~

- ~~(a) license level;~~
 - ~~(b) current license status;~~
 - ~~(c) area of concentration and endorsements on Utah license;~~
- and

~~(d) circumstances justifying the LEA specific license.~~

~~(16)(a) If an application is not approved based on the Superintendent's review of the criteria provided in Section R277-503-4, appropriate licensure procedures shall be recommended to the requesting LEA.~~

~~(b) An applicant may be required to:~~

- ~~(i) renew an expired license;~~
- ~~(ii) apply for an endorsement;~~
- ~~(iii) pass appropriate Board approved tests consistent with Subsection R277-503-3(4);~~
- ~~(iv) obtain an additional area of concentration;~~
- ~~(v) apply to Alternative Route to Licensure; or~~
- ~~(vi) satisfy other reasonable standards.~~

R277-503-9. Endorsement Routes.

~~(1)(a) An applicant shall successfully complete one of the following programs for an endorsement:~~

- ~~(i) a Board approved institution of higher education educator preparation program with endorsements;~~
- ~~(ii) assessment, approval, and recommendation by a designated and subject appropriate Board specialist; or~~
- ~~(iii) a Board approved Utah institution of higher education or Utah LEA sponsored endorsement program that includes content knowledge and content specific pedagogical knowledge approved by the Superintendent.~~

~~(b)(i) The Superintendent shall be responsible for final recommendation and approval for programs described in Subsections (1)(a)(i) and (ii).~~

~~(ii) A university or LEA shall be responsible for final review and recommendation of programs described in Subsection (1)(a)(iii); and the Superintendent shall be responsible for final approval.~~

~~(2)(a) A restricted endorsement shall be available and limited to teachers in necessarily existent small schools as determined under R277-445.~~

~~(b) Teacher qualifications shall include at least nine semester hours of Superintendent approved university level courses in each course taught by the teacher holding a restricted endorsement.~~

~~(3) All provisions that directly affect the health and safety of students required for endorsements, such as prerequisites for drivers education teachers or coaches, shall apply to applicants seeking endorsements through all routes under this rule.~~

~~(4) Prior to an individual taking courses, exams or seeking a recommendation in the ARL licensing program, the individual shall have LEA and Superintendent authorization.~~

R277-503-10. Sunset Clause.

~~(1) This rule will sunset on June 30, 2020.~~

~~(2) Notwithstanding, Subsection (1), the Superintendent shall grant an Associate Educator license to an ARL candidate in good standing with the candidate's ARL program prior to June 30, 2020.~~

~~(3) An educator who receives an Associate Educator license under Subsection (2) may receive a Professional Educator license by completing the candidate's approved ARL program.~~

~~(4) The Superintendent may not accept new applications for the ARL program after November 1, 2019.~~

KEY: teachers, alternative licensing

Date of Enactment or Last Substantive Amendment: July 31, 2019

Notice of Continuation: November 15, 2016

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-501(1)(a); 53E-3-401(4)]

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code Ref (R no.):	R277-605	Filing ID 53644
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Agency Information

1. Department:	Education	
Agency:	Administration	
Building:	Board of Education	
Street address:	250 E 500 S	
City, state and zip:	Salt Lake City, UT 84111	
Mailing address:	PO Box 144200	
City, state and zip:	Salt Lake City, UT 84114-4200	
Contact person(s):		
Name:	Phone:	Email:
Angie Stallings	801-538-7830	Angie.stallings@schools.utah.gov

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

General Information

2. Rule or section catchline:

R277-605. Coaching Standards and Athletic Clinics

3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):

Utah State Board of Education asked stakeholders to review this rule as it was nearing the deadline for its five-year review. Two local education agencies (LEAs) recommended strengthened language regarding anti-bullying training and supervision of students.

4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):

This rule incorporates existing training requirements for coaches and leaders regarding bullying, and clarifies responsibilities of coaches and leaders for supervising students at the end of an activity.

Fiscal Information

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

A) State budget:

This rule change is not expected to have fiscal impact on state government revenues or expenditures. The amendments apply specifically to LEAs.

B) Local governments:

This rule change is not expected to have significant fiscal impact on local governments' revenues or expenditures. The amendments clarify existing rules and requirements for coaches and should not meaningfully change processes or procedures for LEAs.

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

This rule change is not expected to have fiscal impact on small businesses' revenues or expenditures. The amendments apply specifically to LEAs.

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

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

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

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

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

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

There are no compliance costs for affected persons. The amendments clarify existing rules and requirements for coaches and should not meaningfully change processes or procedures for LEAs.

G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):

There are no 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. In addition, this rule change is not expected to have direct fiscal impact on small businesses. Sydnee Dickson, State Superintendent

6. A) 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	FY2022	FY2023	FY2024
State Government	\$0	\$0	\$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

B) Department head approval of regulatory impact analysis:

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

Citation Information

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

Article X, Section 3	Subsection 53E-3-501(1)(b)	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. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:	08/16/2021
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10. This rule change MAY become effective on:	08/23/2021
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NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

Agency Authorization Information

Agency head or designee, and title:	Angie Stallings, Deputy Superintendent of Policy	Date:	6/30/2021
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R277. Education, Administration.

R277-605. Coaching Standards and Athletic Clinics.

R277-605-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;

(b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and

(c) Subsection 53E-3-501(1)(b), which directs the Board to adopt rules regarding access to programs.

(2) The purpose of this rule is to specify standards for school athletic and activity coaches and standards for athletic clinics and workshops.

R277-605-2. Athletics and the Core Curriculum.

High school competitive sports programs shall be supplementary to the high school curriculum.

R277-605-3. Coaches and School Activity Leaders as Supervisors and Role Models.

(1) Coaches and other designated school leaders shall diligently supervise student athletes at all times while on school-sponsored activities, including supervising students:

(a) on the field, court, or other competition or performance sites;

(b) in locker rooms, in seating areas, in eating establishments, and in lodging facilities; and

(c) while traveling.

(2) Coaches and designated school leaders are responsible for a student as long as a student remains on school grounds following a school-sponsored activity, subject to LEA policy, consistent with this rule.

~~(2)3~~ A coach or other designated school leader shall be an exemplary role model and may not use alcoholic beverages, tobacco, controlled substances, or participate in promiscuous sexual relationships while on school-sponsored activities.

~~(3)4~~ Coaches, assistants and advisors shall act in a manner consistent with Section 53G-8-209 and may not:

(a) use foul, abusive, or profane language while engaged in school related activities; or

(b) permit hazing, demeaning, or assaultive behavior, whether consensual or not, including behavior involving physical violence, restraint, improper touching, or inappropriate exposure of body parts not normally exposed in public settings, forced ingestion of any substance, or any act which would constitute a crime against a person or public order under Utah law.

(5) Coaches, assistants, and advisors shall complete LEA training on bullying, cyber-bullying, hazing, and retaliation, consistent with Subsection R277-613-4(5).

R277-605-4. Athletic and Activity Clinics.

(1) School personnel, activity leaders, coaches, advisors, and other personnel may not require students to attend out-of-school camps, clinics, or workshops for which the personnel, activity leaders, coaches, or advisors receive remuneration from a source other than the school or district in which they are employed.

(2) Required or voluntary participation in summer or other off-season clinics, workshops, and leagues may not be used as eligibility criteria for team membership, participation in extracurricular activities, or for the opportunity to try out for school-sponsored programs.

KEY: extracurricular activities

Date of Enactment or Last Substantive Amendment:
2021~~December 8, 2016~~

Notice of Continuation: October 14, 2016
 Authorizing, and Implemented or Interpreted Law: Art X Sec 3;
 53E-3-401(4); 53E-3-501(1)(b)

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R277-607	Filing ID 53646

Agency Information

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

General Information

2. Rule or section catchline:
R277-607. Absenteeism and Truancy Prevention
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
This rule is being amended to provide clarity regarding what a "punitive action" is in relation to S.B. 219 passed in the 2021 General Session.
4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):
The amendment provides a definition of what is and is not considered punitive action for the 21-22 SY regarding the truancy moratorium and actions a local education agency (LEA) may take in responding to chronically absent students.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
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A) State budget:
This rule change is not expected to have independent fiscal impacts on state government revenues or expenditures. The amendments are due to S.B. 219 (2021).
B) Local governments:
This rule change is not expected to have independent fiscal impact on local governments' revenues or expenditures. The amendments are due to S.B. 219 (2021).
C) Small businesses ("small business" means a business employing 1-49 persons):
This rule change is not expected to have fiscal impact on small businesses' revenues or expenditures. The amendments are due to S.B. 219 (2021).
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):
There are no non-small businesses in the industry in question, Elementary and Secondary Schools (North American Industry Classification System (NAICS) 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. This proposed rule change is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses and it does not require any expenditures of, or generate revenue for non-small businesses.
E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <i>agency</i>):
This rule change is not expected to have fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities. The amendments are due to S.B. 219 (2021).
F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):
There are no independent compliance costs for affected persons. The amendments are due to S.B. 219 (2021).
G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):
There are no 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. In addition, this rule change is not expected to have direct fiscal impacts on small businesses. Sydnee Dickson, State Superintendent

6. A) 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	FY2022	FY2023	FY2024
State Government	\$0	\$0	\$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

B) Department head approval of regulatory impact analysis:

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

Citation Information

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

Subsection 53E-3-501(1)(c)(iv)	Article X, Section 3	Subsection 53E-3-502(8)
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. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until: 08/16/2021

10. This rule change MAY become effective on: 08/23/2021

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

Agency Authorization Information

Agency head or designee, and title:	Angie Stallings, Deputy Superintendent of Policy	Date:	06/30/2021
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R277. Education, Administration.

R277-607. Absenteeism and Truancy Prevention.

R277-607-1. 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; and
 - (c) Section 53G-6-206, which directs educational entities and parents working on behalf of children to make efforts to resolve school attendance problems of school-age minors who are or who should be enrolled in an LEA.
- (2) The purpose of this rule is to direct an LEA to create policies for truancy procedures and compulsory education.

R277-607-2. Definitions.

- (1) "Absence" means the same as that term is defined in Subsection 53G-6-201(1).
- (2) "Behavioral health" means the impact a student's actions can have on a student's physical or mental health and includes conditions in which services provided by social workers, counselors, psychiatrists, neurologists, behavior analyst, psychologists, and physicians would be appropriate.

(3) "Mental health" means the same as that term is defined in Subsection R277-625-2(2).

([2]4) "Notice of truancy" is a citation issued consistent with Section 53G-6-203.

(5) "Punitive action" means

(a) a Notice of truancy;

(b) a notice of compulsory education violation consistent with Section 53G-6-202; and

(c) does not mean any other supports or alternative interventions as determined by an LEA.

([3]6) "Truant" means the same as that term is defined in Subsection 53G-6-201(7).

([4]7) "Unexcused absence" means a student's absence from school for reasons other than those deemed a valid excuse.

([5]8) "Valid excuse" means the same as that term is defined in Subsection 53G-6-201(9).

R277-607-3. Absenteeism and Truancy Policy Requirements.

(1) An LEA shall:

(a) develop an absenteeism and truancy policy that:

(i) encourages regular, punctual attendance of students, consistent with Section 53G-8-211 and Title 53G Public Education System -- Local Administration, Chapter 6 Participation in Public Schools, Part 2 Compulsory Education;

(ii) ensures valid excused absences for mental health or behavioral health are not used to circumvent Free Appropriate Public Education (FAPE) requirements or other educational services requirement under federal law including the Individuals with Disabilities Education Act (IDEA); and

(iii) ensure between March 17, 2021 and June 1, 2022 that no punitive action is taken against a student or student's parent for being truant.

(b) review the LEA's absenteeism and truancy policy regularly;

(c) create and operate an attendance review team as described in Subsection (3);

(d) review attendance data annually and consider revisions to the absenteeism and truancy policy to encourage student attendance;[~~and~~]

(e) make the absenteeism and truancy policy available for review by parents or interested parties[~~;~~]; and

(f) as described in Subsection 53G-8-211(2)(b), ensure that the LEA does not refer a student to a court for being truant between March 17, 2021 and June 1, 2022.

(2) An LEA may issue a notice of truancy to a student consistent with the LEA's absenteeism and truancy policy and Section 53G-6-203.

(3) An LEA's attendance review team shall:

(a) consist of:

(i) administrators including those responsible for:

(A) academic instruction;

(B) health and wellness;

(C) student support services; and

(D) attendance data;

(ii) where possible, community agencies; and

(iii) may include the LEA's multi-disciplinary team;

(b) review attendance data to inform actions and tiered interventions development at least monthly;

(c) create a systematic LEA and school level response for the LEA's absenteeism and truancy policy including:

(i) practice improvement; and

(ii) prevention and intervention strategies; and

(d) promote shared accountability and continuous improvement related to an LEA's absenteeism and truancy policy including a school level attendance plan developed at the end of the previous school year.

R277-607-4. Compulsory Education Procedures.

(1) An LEA shall develop compulsory education procedures as part of the LEA's absenteeism and truancy policy described in Section R277-607-3.

(2) The compulsory education procedures shall:

(a) provide a process for notice to parents about the absenteeism and truancy policy;

(b) require notice to parents regarding the progress of a student's discipline and consequences for violation of the truancy policy;

(c) provide an appeals process to contest:

(i) a notice of truancy; or

(ii) any disciplinary actions against a student pursuant to the absenteeism and truancy policy or;

(d) establish definitions not provided in law or this rule necessary to implement the absenteeism and truancy policy and compulsory education procedures;

(e) include definitions of:

(i) "approved school activity" under Subsection 53G-6-201(9)(c); and

(ii) "any other excuse" under Subsection 53G-6-201(9)(e);

(f) include criteria and procedures for preapproval of extended absences consistent with Section 53G-6-205; and

(g) establish programs and meaningful incentives which promote regular, punctual student attendance.

(3) An LEA shall publish the appeals process described in Subsection R277-607-4(2)(c) for use by a student or the student's parents.

KEY: compulsory education, truancy

Date of Enactment or Last Substantive Amendment: 2021[August 12, 2020]

Notice of Continuation: June 5, 2020

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-401(4); 53G-6-206

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R277-609	Filing ID 53647

Agency Information

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

Contact person(s):		
Name:	Phone:	Email:
Angie Stallings	801-538-7830	Angie.stallings@schools.utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R277-609. Standards for LEA Discipline Plans and Emergency Safety Interventions
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
This rule is being amended to reflect updates to several juvenile justice reform bills via H.B. 285 and H.B. 286 passed in the 2021 General Session.
4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):
The amendments are updates to two code citations that will be renumbered effective September 1, 2021.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
A) State budget:
This rule change is not expected to have independent fiscal impact on state government revenues or expenditures. The amendments to rule are due to H.B. 285 and H.B. 286 (2021).
B) Local governments:
This rule change is not expected to have independent fiscal impact on local governments' revenues or expenditures. The amendments to rule are due to H.B. 285 and H.B. 286 (2021).
C) Small businesses ("small business" means a business employing 1-49 persons):
This rule change is not expected to have independent fiscal impact on small businesses' revenues or expenditures. The amendments to rule are due to H.B. 285 and H.B. 286 (2021).
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):
There are no non-small businesses in the industry in question, Elementary and Secondary Schools (North American Industry Classification System (NAICS) 611110).

Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. This proposed rule change is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses and it does not require any expenditures of, or generate revenue for non-small businesses.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency):
This rule change is not expected to have independent fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities. The amendments to rule are due to H.B. 285 and H.B. 286 (2021).
F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):
There are no compliance costs for affected persons. The amendments to rule are due to H.B. 285 and H.B. 286 (2021).

G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):
There are no 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. In addition, this rule change is not expected to have direct fiscal impact on small businesses. Sydnee Dickson, State Superintendent of the Utah State Board of Education

6. A) 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	FY2022	FY2023	FY2024
State Government	\$0	\$0	\$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
B) Department head approval of regulatory impact analysis:			
The State Superintendent of the Utah State Board of Education, Sydnee Dickson, has reviewed and approved this fiscal analysis.			

Citation Information

7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:		
Subsection 53E-3-501(1)(b)(v)	Article X, Section 3	Section 53G-8-302
Section 53E-3-401	Section 53G-8-702	Section 53G-8-202
Section 53E-3-509		

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. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	08/16/2021

10. This rule change MAY become effective on:	08/23/2021
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of	

Administrative Rules on or before the date designated in Box 10.

Agency Authorization Information

Agency head or designee, and title:	Angie Stallings, Deputy Superintendent of Policy	Date:	06/30/2021
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R277. Education, Administration.

R277-609. Standards for LEA Discipline Plans and Emergency Safety Interventions.

R277-609-1. Authority and Purpose.

- (1) This rule is authorized by:
- (a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;
- (b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law;
- (c) Subsection 53E-3-501(1)(b)(v), which requires the Board to establish rules concerning discipline and control;
- (d) Section 53E-3-509, which requires the Board to adopt rules that require a local school board or governing board of a charter school to enact gang prevention and intervention policies for all schools within the board's jurisdiction;

- (e) Section 53G-8-702, which requires the Board to adopt rules regarding training programs for school principals and school resource officers;

- (f) Section 53G-8-202, which directs local school boards and charter school governing boards to adopt conduct and discipline policies and directs the Board to develop model policies to assist local school boards and charter school governing boards; and

- (g) Section 53G-8-302, which describes the instances when a school employee may use reasonable and necessary physical restraint.

- (2)(a) The purpose of this rule is to outline requirements for school discipline plans, restorative practices and related policies.

- (b) An LEA's written policies shall include provisions to develop, implement, and monitor the policies for the use of emergency safety interventions in all schools and for all students within each LEA's jurisdiction.

R277-609-2. Definitions.

- (1) "Discipline" includes:
- (a) imposed discipline; and
- (b) self-discipline.
- (2) "Disruptive student behavior" includes:
- (a) the grounds for suspension or expulsion described in Section 53G-8-205; and
- (b) the conduct described in Subsection 53G-8-209(2)(b).
- (3) "Electronic cigarette product" has the same meaning as that term is defined in Section 76-10-101.

- (4)(a) "Emergency safety intervention" or "ESI" means the use of seclusionary time out or physical restraint when a student presents an immediate danger to self or others.

- (b) An "emergency safety intervention" is not for disciplinary purposes.

- (5) "Emergency safety intervention committee" or "ESI Committee" means an emergency safety intervention committee described in Section R277-609-7.

(6) "Evidence-based" means the same as defined in Section 53G-8-211.

(7) "Functional Behavior Assessment" or "FBA" means a systematic process of identifying problem behaviors and the events that reliably predict occurrence and non-occurrence of those behaviors and maintain the behaviors across time.

(8) "Immediate danger" means the imminent danger of physical violence or aggression towards self or others, which is likely to cause serious physical harm.

(9) "Imposed discipline" means a code of conduct prescribed for the highest welfare of the individual and of the society in which the individual lives.

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

(11) "Physical restraint" has the same meaning as the defined in Section 53G-8-301.

(12) "Plan" means an LEA and school-wide written model for prevention and intervention addressing student behavior management, restorative practices, and discipline procedures for students.

(13) "Positive behavior interventions and support" means an implementation framework for maximizing the selection and use of evidence-based prevention practices along a multi-tiered continuum that supports the academic, social, emotional, and behavioral competence of a student.

(14) "Program" means an instructional or behavioral program including:

(a) contracted services offered by private providers under the direct supervision of public school staff;

(b) a program that receives public funding; or

(c) a program for which the Board has regulatory authority.

(15) "Policy" means standards and procedures that include:

(a) the provisions of Section 53G-8-202 and additional standards, procedures, and training adopted in an open meeting by a local board of education or charter school board that:

(i) defines hazing, bullying, and cyber-bullying;

(ii) prohibits hazing and bullying;

(iii) requires training regarding:

(A) the prevention of hazing, bullying, cyber-bullying, and discipline among school employees and students; and

(B) the use of restorative practices, positive behavior interventions and supports, and emergency safety interventions; and

(iv) provides for enforcement through employment action or student discipline.

(16) "Qualifying minor" means a school-age minor who:

(a) is at least nine years old; or

(b) turns nine years old at any time during the school year.

(17) "Restorative justice program" means the same as that term is defined in Section 53G-8-211.

(18) "Restorative practice" means the building and sustaining of relationships among students, school personnel, families and community members to build and strengthen social connections within communities and hold individuals accountable to restore relationships when harm has occurred.

(19) "School" means any public elementary or secondary school or charter school.

(20) "School employee" means:

(a) a school teacher;

(b) a school staff member;

(c) a school administrator; or

(d) any other person employed, directly or indirectly, by an LEA.

(21) "Seclusionary time out" means that a student is:

(a) placed in a safe enclosed area by school personnel in accordance with the requirements of Rules R392-200 and R710-4;

(b) purposefully isolated from adults and peers; and

(c) prevented from leaving, or reasonably believes that the student will be prevented from leaving, the enclosed area.

(22) "Section 504 accommodation plan," required by Section 504 of the Rehabilitation Act of 1973, means a plan designed to accommodate an individual who has been determined, as a result of an evaluation, to have a physical or mental impairment that substantially limits one or more major life activities.

(23) "Self-Discipline" means a personal system of organized behavior designed to promote self-interest while contributing to the welfare of others.

(24) "Student with a qualifying offense" means a qualifying minor who committed an alleged class C misdemeanor, infraction, status offense on school property, or truancy.

R277-609-3. Incorporation of Least Restricted Behavioral Interventions (LRBI) Technical Assistance Manual by Reference.

(1) This rule incorporates by reference the LRBI Technical Assistance Manual, dated September 2015, which provides guidance and information in creating successful behavioral systems and supports within Utah's public schools that:

(a) promote positive behaviors while preventing negative or risky behaviors; and

(b) create a safe learning environment that enhances all student outcomes.

(2) A copy of the manual is located at:

(a)

<https://www.schools.utah.gov/safehealthyschools/programs/behavior-support?mid=5333&tid=2>; and

(b) the Utah State Board of Education.

R277-609-4. LEA Responsibility to Develop Plans.

(1) An LEA or school shall develop and implement a board approved comprehensive LEA plan or policy for student and classroom management, school discipline and restorative practices.

(2) An LEA shall include administration, instruction and support staff, students, parents, community council, and other community members in policy development, training, and prevention implementation so as to create a community sense of participation, ownership, support, and responsibility.

(3) A plan described in Subsection (1) shall include:

(a) the definitions of Section 53G-8-210;

(b) written standards for student behavior expectations, including school and classroom management;

(c) effective instructional practices for teaching student expectations, including:

(i) self-discipline;

(ii) citizenship;

(iii) civic skills; and

(iv) social emotional skills;

(d) systematic methods for reinforcement of expected behaviors;

(e) uniform and equitable methods for correction of student behavior;

(f) consistent processes to collect student discipline data and incident or infraction data, including collection of the number of days of student suspensions;

(g) uniform and equitable methods for at least annual school level data-based evaluations of efficiency and effectiveness;

(h) an ongoing staff development program related to development of:

- (i) student behavior expectations;
- (ii) effective instructional practices for teaching and reinforcing behavior expectations;
- (iii) effective intervention strategies; and
- (iv) effective strategies for evaluation of the efficiency and effectiveness of interventions;

(i) procedures for ongoing training of appropriate school personnel in:

- (i) crisis management;
 - (ii) emergency safety interventions; and
 - (iii) LEA policies related to emergency safety interventions consistent with evidence-based practice;
- (j) policies and procedures relating to the use and abuse of alcohol, controlled substances, electronic cigarette products, and other harmful trends by students;

(k) policies and procedures for responding to possession or use of electronic cigarette products by a student on school property as required by Subsection 53G-8-203(3);

(k) policies and procedures, consistent with requirements of Rule R277-613, related to:

- (i) bullying;
 - (ii) cyber-bullying;
 - (iv) hazing; and
 - (v) retaliation;
- (l) policies and procedures for the use of emergency safety interventions for all students consistent with evidence-based practices including prohibition of:

(i) physical restraint, subject to the requirements of Section R277-609-5, except when the physical restraint is allowed as described in Subsection 53G-8-302(2);

- (ii) prone, or face-down, physical restraint;
- (iii) supine, or face-up, physical restraint;
- (iv) physical restraint that obstructs the airway of a student or adversely affects a student's primary mode of communication;

(v) mechanical restraint, except:

- (A) protective or stabilizing restraints;
- (B) restraints required by law, including seatbelts or any other safety equipment when used to secure students during transportation; and

(C) any device used by a law enforcement officer in carrying out law enforcement duties;

(vi) chemical restraint, except as:

(A) prescribed by a licensed physician, or other qualified health professional acting under the scope of the professional's authority under State law, for the standard treatment of a student's medical or psychiatric condition; and

(B) administered as prescribed by the licensed physician or other qualified health professional acting under the scope of the professional's authority under state law;

(vii) seclusionary time out, subject to the requirements of Section R277-609-5, except when a student presents an immediate danger of serious physical harm to self or others; and

(viii) for a student with a disability, emergency safety interventions written into a student's IEP, as a planned intervention, unless:

(A) school personnel, the family, and the IEP team agree less restrictive means have been attempted;

(B) a FBA has been conducted; and

(C) a positive behavior intervention, based on data analysis has been written into the plan and implemented;

(m) direction for dealing with bullying and disruptive students;

(n) direction for schools to determine the range of behaviors and establish the continuum of administrative procedures that may be used by school personnel to address student behavior, including students who engage in disruptive student behaviors as described in Section 53G-8-210;

(o) identification, by position, of an individual designated to issue notices of disruptive and bullying student behavior;

(p) identification of individuals who shall receive notices of disruptive and bullying student behavior;

(q) a requirement to provide for documentation of an alleged class B misdemeanor or a nonperson class A misdemeanor prior to referral of students with an alleged class B misdemeanor or a nonperson class A misdemeanor to juvenile court;

(r) strategies to provide for necessary adult supervision;

(s) a requirement that policies be clearly written and consistently enforced;

(t) notice to employees that violation of this rule may result in employee discipline or action;

(u) gang prevention and intervention policies in accordance with Subsection 53E-3-509(1);

(v) provisions that account for an individual LEA's or school's unique needs or circumstances, including:

- (i) the role of law enforcement;
- (ii) emergency medical services; and
- (iii) a provision for publication of notice to parents and school employees of policies by reasonable means; and
- (iv) a plan for referral for a student with a qualifying office to alternative school-related interventions, including:

(A) a mobile crisis outreach team, as defined in Section ~~[78A-6-105]~~80-1-102;

(B) a receiving center operated by the Division of Juvenile Justice Services in accordance with Section ~~[62A-7-104]~~80-5-102;

(C) a youth court; or

(w) a comparable restorative justice program.

(4) A plan described in Subsection (1) may include:

- (a) the provisions of Subsection 53E-3-509(2); and
- (b) a plan for training administrators and school resource officers in accordance with Section 53G-8-702.

R277-609-5. Physical Restraint and Seclusionary Time Out.

(1) When used consistently with an LEA plan under Subsection R277-609-4(1):

(a) a physical restraint must be immediately terminated when:

(i) a student is no longer an immediate danger to self or others; or

(ii) a student is in severe distress; and

(b) the use of physical restraint shall be for the minimum time necessary to ensure safety and a release criteria, as outlined in LEA policies, must be implemented.

(2) If a public education employee physically restrains a student, the school or the public education employee shall provide notice as soon as reasonably possible and before the student leaves the school as described in Section R277-609-10 to the student's parent.

(3) A public education employee may not use physical restraint on a student for more than the shortest of the following before stopping, releasing, and reassessing the intervention used:

(a) the amount of time described in the LEA's emergency intervention training program;

- (b) 30 minutes; or
- (c) when law enforcement arrives.
- (4) A public education employee may not use physical restraint as a means of discipline or punishment.
- (5) If a public education employee uses seclusionary time out, the public education employee shall:
 - (a) use the minimum time necessary to ensure safety;
 - (b) use release criteria as outlined in LEA policies;
 - (c) ensure that any door remains unlocked consistent with the fire and public safety requirements described in R392-200 and R710-4;
 - (d) maintain the student within line of sight of the public education employee;
 - (e) use the seclusionary time out consistent with the LEA's plan described in Section R277-609-4; and
 - (f) ensure that the enclosed area meets the fire and public safety requirements described in R392-200 and R710-4.
- (6) If a student is placed in seclusionary time out, the school or the public education employee shall provide notice as soon as reasonably possible and before the student leaves the school to:
 - (a) the student's parent; and
 - (b) school administration.
- (7) A public education employee may not place a student in a seclusionary time out for more than 30 minutes.
- (8) In addition to the notice described in Subsection (7), if a public education employee places a student in seclusionary time out for more than fifteen minutes, the school or the public education employee shall immediately provide notice to:
 - (a) the student's parent or guardian; and
 - (b) school administration.
- (9) Seclusionary time out may only be used for maintaining safety.
- (10) A public education employee may not use seclusionary time out as a means of discipline or punishment.

R277-609-6. Implementation.

- (1) An LEA shall implement strategies and policies consistent with the LEA's plan required in Section R277-609-4.
- (2) An LEA shall develop, use and monitor a continuum of intervention strategies to assist students, including students whose behavior in school falls repeatedly short of reasonable expectations, by teaching student behavior expectations, reinforcing student behavior expectations, re-teaching behavior expectations, followed by effective, evidence-based interventions matched to student needs prior to suspension or court referral.
- (3) An LEA shall implement positive behavior interventions, supports, and restorative practices as part of the LEA's continuum of behavior interventions strategies.

R277-609-7. LEA Emergency Safety Intervention (ESI) Committees.

- (1) An LEA shall establish an Emergency Safety Intervention (ESI) Committee.
- (2) An LEA's ESI Committee:
 - (a) shall include:
 - (i) at least two administrators;
 - (ii) at least one parent or guardian of a student enrolled in the LEA, appointed by the LEA; and
 - (iii) at least two certified educational professionals with behavior training and knowledge in both state rules and LEA discipline policies;

- (b) shall meet often enough to monitor the use of emergency safety intervention in the LEA;
- (c) shall determine and recommend professional development needs; and
- (d) shall develop policies for local dispute resolution processes to address concerns regarding disciplinary actions; and
- (e) shall ensure that each emergency incident where a school employee uses an emergency safety intervention is documented in the LEA's student information system and reported to the Superintendent through the Board's UTREx system.

R277-609-8. LEA Reporting.

- (1) An LEA shall have procedures for the collection, maintenance, and periodic review of documentation or records of the use of emergency safety interventions at schools within the LEA.
- (2) The Superintendent shall define the procedures for the collection, maintenance, and review of records described in Subsection (1).
- (3) An LEA shall provide documentation of any school, program or LEA's use of emergency safety interventions to the Superintendent annually.
- (4)(a) An LEA shall submit all required UTREx discipline data and incident or infraction data elements, and suspensions to the Superintendent no later than June 30 of each year.
- (b) Beginning in the 2018-19 school year, an LEA shall submit all required UTREx discipline data and incident or infraction data elements as part of the LEA's daily UTREx submission.

R277-609-9. Special Education Exception(s) to this Rule.

- (1) An LEA shall have in place, as part of its LEA special education policies, procedures, or practices, criteria and steps for using emergency safety interventions consistent with state and federal law.
- (2) The Superintendent shall periodically review:
 - (a) all LEA special education behavior intervention, procedures, and manuals; and
 - (b) emergency safety intervention data as related to IDEA eligible students in accordance with Utah's Program Improvement and Planning System.

R277-609-10. Parent Notification and Court Referral.

- (1) LEA policies shall provide procedures for qualifying minors and their parents to participate in decisions regarding consequences for disruptive student behavior.
- (2) An LEA shall establish policies that:
 - (a) provide notice to parents and information about resources available to assist a parent in resolving the parent's school-age minors' disruptive behavior;
 - (b) provide for notices of disruptive behavior to be issued by schools to qualifying minors and parents consistent with:
 - (i) numbers of disruptions, suspensions, and timelines in accordance with Section 53G-8-210;
 - (ii) school resources available;
 - (iii) cooperation from the appropriate juvenile court in accessing student school records, including:
 - (A) attendance;
 - (B) grades;
 - (C) behavioral reports; and
 - (D) other available student school data; and
 - (c) provide due process procedures for minors and parents to contest allegations and citations of disruptive student behavior.

(3)(a) When an emergency safety intervention is used to protect a student or others from harm, a school shall:

- (i) provide notice to the student's parent as soon as reasonably possibly and before the student leaves the school;
- (ii) provide notice to school administration; and
- (iii) provide documentation of the emergency safety intervention to the LEA's ESI Committee described in R277-609-7.

(b) In addition to the notice described in Subsection (3)(a), if the use of an emergency safety intervention occurs for more than fifteen minutes, the school shall immediately provide a second notification to:

- (i) the student's parent or guardian; and
- (ii) school administration.

(d) A notice described in Subsection (3)(a) shall be documented within student information systems (SIS) records.

(4)(a) A school shall provide a parent or guardian with a copy of any notes or additional documentation taken during the use of the emergency safety intervention upon request of the parent or guardian.

(b) Within 24 hours of the school using an emergency safety intervention with a student, a school shall provide notice to a parent or guardian that the parent or guardian may request a copy of any notes or additional documentation taken during the use of the emergency safety intervention.

(c) A parent or guardian may request a time to meet with school staff and administration to discuss the use of an emergency safety intervention.

R277-609-11. Model Policies.

(1) The Superintendent shall develop, review regularly, and provide to LEA boards model policies to address disruptive student behavior and appropriate consequences.

(2) The Superintendent shall provide technical assistance to LEAs in developing and implementing policies and training employees in the appropriate use of physical force and emergency safety interventions to the extent of resources available.

R277-609-12. LEA Compliance.

If an LEA fails to comply with this rule, the Superintendent may withhold funds in accordance with Rule R277-114 or impose any other sanction authorized by law.

KEY: disciplinary actions, disruptive students, emergency safety interventions

Date of Enactment or Last Substantive Amendment: ~~August 12, 2020~~ **2021**

Notice of Continuation: November 14, 2019

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-401(4); 53E-3-501(1)(b)(v); 53E-3-509; 53G-8-202; 53G-8-702, 53G-8-302

NOTICE OF PROPOSED RULE		
TYPE OF RULE: New		
Utah Admin. Code Ref (R no.):	R277-930	Filing ID 53651

Agency Information

1. Department:	Education
Agency:	Administration

Building:	Board of Education	
Street address:	250 E 500 S	
City, state and zip:	Salt Lake City, UT 84111	
Mailing address:	PO Box 144200	
City, state and zip:	Salt Lake City, UT 84114-4200	
Contact person(s):		
Name:	Phone:	Email:
Angie Stallings	801-538-7830	Angie.stallings@schools.utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R277-930. English Language Learner Software
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
This rule is being enacted to outline the process for distributing English language learner software funds allocated by the Legislature for distribution to local education agencies (LEAs).
4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):
This rule establishes a distribution formula for LEAs and an application process for LEAs to receive funds for English language learner software.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
A) State budget:
This rule change is not expected to have independent fiscal impact on state government revenues or expenditures. This rule creates a process to distribute to LEAs English language learner software funds appropriated by the Legislature.
B) Local governments:
This rule change is not expected to have independent fiscal impact on local governments' revenues or expenditures. This rule creates a process to distribute to LEAs English language learner software funds appropriated by the Legislature.
C) Small businesses ("small business" means a business employing 1-49 persons):

This rule change is not expected to have independent fiscal impact on small businesses' revenues or expenditures. This rule creates a process to distribute to LEAs English language learner software funds appropriated by the Legislature.

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

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

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

This rule change is not expected to have independent fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities. This rule creates a process to distribute to LEAs English language learner software funds appropriated by the Legislature.

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

There are no independent compliance costs for affected persons. This rule creates a process to distribute to LEAs English language learner software funds appropriated by the Legislature.

G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):

There are no 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. In addition, this rule change is not expected to have direct fiscal impact on small businesses. Sydnee Dickson, State Superintendent of the Utah State Board of Education

6. A) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in

this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table			
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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

B) Department head approval of regulatory impact analysis:

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

Citation Information

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

Subsection 53E-3-501(1)(c)(iv)	Article X, Section 3	Subsection 53E-3-502(8)
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. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until: 08/16/2021

10. This rule change MAY become effective on: 08/23/2021

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

Agency Authorization Information

Agency head or designee, and title:	Angie Stallings, Deputy Superintendent of Policy	Date:	06/30/2021
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**R277. Education, Administration.
R277-930. English Language Learner Software.
R277-930-1. Authority and Purpose.**

- (1) This rule is authorized by:
 - (a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;
 - (b) Subsection 53E-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and
 - (c) Section 53F-2-419, which directs the Board to allocate funds to LEAs to fund English language learner software.
- (2) The purpose of this rule is to establish procedures for allocating and reimbursing funds to an LEA for English language learner software in accordance with Section 53F-2-419.

R277-930-2. Definitions.

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

R277-930-3. Allocation Procedures.

- (1) The Superintendent shall determine the amount available to each LEA for English language learner software under Section 53F-2-419 by adding:
 - (a) the base amount available to the LEA in accordance with the LEA Base Allocation Table using the LEA's October 1 student count from the prior school year; and
 - (b) a per student amount for each LEA calculated using the number of eligible students from the LEA's October 1 student count from the prior school year and the funds remaining from the legislative allocation after setting aside the amounts identified in Subsection (1)(a).
- (2) The Superintendent shall notify each LEA of the LEA's projected funding amount by July 1 annually.
- (3) An LEA shall submit an application to the Superintendent to notify the Superintendent of the LEA's intent to participate and receive funds under the English language learner software program.

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

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

TABLE
LEA Base Allocation

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

KEY: software, allocating, reimbursing
Date of Enactment of Last Substantive Amendment: 2021
Authorizing, and Implemented or Interpreted Law: Art X, Sec 3; 53E-3-401; 53F-4-219

NOTICE OF PROPOSED RULE		
TYPE OF RULE: New		
Utah Admin. Code Ref (R no.):	R392-106	Filing ID 53643

Agency Information

1. Department:	Health	
Agency:	Disease Control and Prevention, Environmental Services	
Room no.:	Second Floor	
Building:	Cannon Health Building	
Street address:	288 N 1460 W	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 142102	
City, state and zip:	Salt Lake City, UT. 84114-2102	
Contact person(s):		
Name:	Phone:	Email:
Karl Hartman	801-538-6191	khartman@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R392-106. Microenterprise Home Kitchen Sanitation

3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):

The Department of Health (Department) has developed this rule as required in the Microenterprise Home Kitchen Act (Subsection 26-15c-105(2)), which requires that the Department make rules regarding sanitation, equipment, and maintenance requirements for microenterprise home kitchens.

4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):

The Microenterprise Home Kitchen Sanitation rule establishes minimum standards for the sanitation, operation, and maintenance of a microenterprise home kitchen and, in order to safeguard public health and ensure that food is safe, unadulterated, and honestly presented, provides for the prevention and control of health hazards associated with a microenterprise home kitchen.

Fiscal Information

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

A) State budget:

Enacting Rule R392-106 will not result in a cost or benefit to the state budget because this proposed rule does not require a change to state operations or programs, and it does not include requirements for the payment of fines or fees to the state.

B) Local governments:

Enacting Rule R392-106 will not result in a cost or benefit to a local health department that permits a microenterprise home kitchen according to the requirements of Rule R392-106 because this proposed rule contains a provision that allows the local health department to impose a fee for a microenterprise home kitchen permit in an amount that reimburses the local health department for the cost of regulating the microenterprise home kitchen. The local health department will charge a permit fee and may charge an additional fee to conduct a foodborne illness investigation, as needed. Sections 26-15c-103 and 26-15c-105 allow for these fees, but do not require the fees to be uniform statewide, so costs associated with these fees will vary from one local health department to another, and therefore, cannot be estimated at this time and cannot be obtained until after this rule is enacted.

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

Enacting Rule R392-106 may result in an inestimable fiscal cost to small businesses that operate a microenterprise home kitchen according to the requirements of Rule R392-106. The full fiscal impact to small businesses cannot be estimated as the necessary

data are unavailable, and the cost to the state to obtain said data is prohibitively costly and cannot be obtained until after the rule is enacted. Unavailable data include the number of microenterprise home kitchen permits a local health department will issue, the cost of the permit fee, as authorized in Section 26-15-103, and an analysis of the time and resources spent preparing a home kitchen to qualify as a permitted establishment.

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

Not Applicable. By definition, there cannot be any non-small microenterprise home kitchen businesses in Utah.

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 Rule R392-106 will result in an inestimable direct cost to any individual who applies for a microenterprise home kitchen permit. The full fiscal impact to the individual cannot be estimated as the necessary data are unavailable, and the cost to the state to obtain said data is prohibitively costly and cannot be obtained until after the rule is enacted. Unavailable data include the cost of the permit fee, as authorized in Section 26-15-103, and an analysis of the time and resources spent by the individual to prepare a home kitchen to qualify as a permitted establishment.

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

Affected persons are as follows:
Small business: Could be any kitchen that meets the minimum standards. Inestimable fiscal cost.
Persons: Any individual who applies for a microenterprise home kitchen permit. Inestimable fiscal cost.

G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):

There is no known fiscal impact on business at this time. Nathan Checketts, Interim Executive Director

6. A) 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	FY2022	FY2023	FY2024
State Government	\$0	\$0	\$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
B) Department head approval of regulatory impact analysis:			
The Interim Executive Director of the Department of Health, Nathan Checketts, has reviewed and approved this fiscal analysis.			

Citation Information

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

Section 26-1-5	Subsection 26-1-30(23)	Section 26-15-2
Subsection 26-15c-105(2)		

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. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:	08/16/2021
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10. This rule change MAY become effective on:	08/23/2021
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency	

must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

Agency Authorization Information

Agency head or designee, and title:	Nathan Checketts, Interim Executive Director	Date:	06/29/2021
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R392. Health, Disease Control and Prevention, Environmental Services.

R392-106. Microenterprise Home Kitchen Sanitation.

R392-106-1. Authority and Purpose.

(1) This rule is authorized under Sections 26-1-5 and 26-15-2, and Subsections 26-15c-105(2) and 26-1-30(23).

(2) This rule establishes minimum standards for the sanitation, operation, and maintenance of a microenterprise home kitchen, as defined in Section 26-15c-102, and, in order to safeguard public health and ensure that food is safe, unadulterated, and honestly presented, provides for the prevention and control of health hazards associated with a microenterprise home kitchen.

R392-106-2. Applicability.

This rule applies to a microenterprise home kitchen, as defined, and does not apply to any other type of food establishment.

R392-106-3. Definitions.

As used in this rule:

(1) "Clean" means the condition of being visibly free from dirt, soil, stain, leftover food particles, or other materials not intended to be a part of the object in question.

(2) "Department" means the Utah Department of Health.

(3) "Employee" means a person who works in a microenterprise home kitchen, including the operator, whether for monetary compensation or not and regardless of relationship to the operator.

(4) "FDA Food Code" or "Food Code" means the version of U.S. Public Health Service, Food and Drug Administration, Model Food Code as incorporated by reference with exceptions and amendments in Rule R392-100.

(5) "Food" has the same meaning as defined in Section 26-15c-102.

(6) "HACCP Plan" means a written document that delineates the formal procedures for following the Hazard Analysis and Critical Control Point principles developed by The National Advisory Committee on Microbiological Criteria for Foods.

(7) "Hot water" means water heated to a temperature of not less than 110 deg F at the outlet.

(8) "Hermetically sealed container" means a container that is designed and intended to be secure against the entry of microorganisms and, in the case of low acid canned foods, to maintain the commercial sterility of its contents after processing.

(9) "Imminent health hazard" means a significant threat or danger to health that is considered to exist when there is evidence sufficient to show that a product, practice, circumstance, or event creates a situation that requires immediate correction or cessation of operation to prevent injury based on the number of potential injuries and the nature, severity, and duration of the anticipated injury. An imminent health hazard may include an emergency such as a fire, flood, extended interruption of electrical or water service, wastewater backup, misuse of poisonous or toxic materials, onset of an apparent

foodborne illness outbreak, gross insanitary occurrence or condition, or other circumstances that may endanger public health.

(10) "Linens" means fabric items such as cloth hampers, cloth napkins, table cloths, wiping cloths, and work garments including cloth gloves.

(11) "Local health department" has the same meaning as defined in Section 26A-1-102.

(12) "Local health officer" means the director of the jurisdictional local health department or a designated representative.

(13) "Microenterprise home kitchen" has the same meaning as defined in Section 26-15c-102.

(14) "Molluscan shellfish" means any edible species of fresh or frozen oysters, clams, mussels, and scallops or edible portions thereof.

(15) "Operator" means a person who resides in the private home and who owns, manages, or controls, or who has the duty to manage or control, a microenterprise home kitchen.

(16) "Plumbing fixture" means a receptacle or device that is connected to the water supply system of the premises; or discharges wastewater or liquid-borne waste materials to the drainage system of the premises.

(17) "Ready-to-eat" has the same meaning as defined in Subsection 26-15c-102(6).

(18) "Sanitized" means the application of cumulative heat or chemicals on cleaned food, ice, or potable water contact surfaces that, when evaluated for efficacy, is sufficient to yield a reduction of 5 logs, which is equal to a 99.999% reduction, of representative disease microorganisms of public health importance.

(19) "Time or temperature control food" or "TCS" has the same meaning as defined in Subsection 26-15c-102(7).

(20) "Wastewater" means sewage, industrial waste, or other liquid or waterborne substances causing or capable of causing pollution of waters of the state.

R392-106-4. General Requirements.

(1) The operator shall:

(a) comply with the provisions of this rule; and

(b) be responsible for the conduct of employees to ensure compliance with this rule.

(2) Microenterprise home kitchens are exempt from the requirements of Rule R392-100, Food Service Sanitation, unless otherwise stated in this rule.

(3) An employee who works with unpackaged food, food equipment or utensils, or food-contact surfaces for a microenterprise home kitchen is a food handler and shall meet the requirements of Rule R392-103.

(4) At least one employee shall:

(a) be certified in food safety management according to the requirements of Rule R392-101; and

(b) maintain proof of food safety management certification available for review by the local health officer upon request.

R392-106-5. Microenterprise Home Kitchen Permit Requirements.

(1) An operator shall operate a microenterprise home kitchen only after obtaining a valid permit to operate issued by a local health department that has jurisdiction over the geographical area in which the home kitchen is located.

(2) An operator shall only qualify for a microenterprise home kitchen permit if:

(a) food that is served at the microenterprise home kitchen is processed in compliance with state and federal regulations; and

(b) the microenterprise home kitchen operates only during the hours approved in the microenterprise home kitchen permit.

(3) A local health department shall impose a fee for a microenterprise home kitchen permit in an amount that reimburses the local health department for the cost of regulating the microenterprise home kitchen.

(4)(a) Until July 1, 2022, the number of microenterprise home kitchen permits issued by a local health department may not exceed:

(i) for a county of the first or second class, 15% of the total number of permits issued by the local health department to food service establishments as defined in Section 26-15a-102; or

(ii) for a county of the third through sixth class, 70% of the total number of permits issued by the local health department to food service establishments as defined in Section 26-15a-102.

(b) For a local health department with jurisdiction over two or more counties, the permit limitation established under Subsection (4)(a) shall be calculated separately for each county within the local health department's jurisdiction.

(c) After July 1, 2022, the requirements relating to permit limits as specified in Subsection (4) are repealed.

(5) An operator applying for a microenterprise home kitchen permit shall provide to the local health department:

(a) a written application with a statement of consent to enter the premises where food is prepared, cooked, or stored for the microenterprise home kitchen; and

(b) written standard operating procedures that include:

(i) food and food types that will be stored, handled, and prepared;

(ii) the proposed procedures and methods of food preparation and handling;

(iii) procedures, methods, and schedules for cleaning utensils and equipment;

(iv) procedures and methods for the disposal of refuse; and

(v) a plan for maintaining time or temperature control food at the appropriate temperatures for each TCS food.

(6) A local health officer may require local health department approval of the procedures and plans specified in Subsection (5)(b) before issuing a microenterprise home kitchen permit.

(7) In addition to a fee charged under Subsection (3), if the local health department is required to inspect the microenterprise home kitchen as a source of an adulterated food or an outbreak of illness caused by a contaminated food and finds, as a result of that inspection, that the microenterprise home kitchen has produced an adulterated food or was the source of an outbreak of illness caused by a contaminated food, the local health department may charge and collect from the microenterprise home kitchen a fee for that inspection.

(8) The operator shall ensure that a microenterprise home kitchen permit:

(a) is not transferred to a location that is different from the microenterprise home kitchen described in the application and plans submitted as required in Subsection (5);

(b) is renewed on an annual basis until the operator discontinues microenterprise home kitchen operations; and

(c) is restricted to the location and hours listed on the permit application.

(9) Nothing in this rule prevents a local health officer from revoking a microenterprise home kitchen permit issued by the local health department if the operation of the microenterprise home kitchen violates the terms of:

(a) the permit
(b) this rule; or
(c) Chapter 26-15c.
(10) If a permit application is denied, or a permit is revoked, the microenterprise home kitchen operator may request information from a local health officer that includes:
(a) the specific reasons and rule citations for permit denial; and
(b) any actions the applicant must take to qualify, or requalify, for a permit.
(11) In accordance with Subsection 26-15c-105(4) and this rule, the operator shall comply with the following permit requirements:
(a) time or temperature control food shall be prepared, cooked, and served on the same day;
(b) food that is sold or provided to a consumer may not be consumed onsite at the microenterprise home kitchen operation;
(c) food that is sold or provided to a consumer shall be picked up by or delivered directly to the consumer:
(i) in a manner that protects the food from contamination as required in Section R392-106-10; and
(ii) in accordance with the time and temperature requirements specified in Section R392-106-11;
(d) food preparation may not involve processes that require a HACCP plan, or the production, service, or sale of raw milk or raw milk products;
(e) the operator may only sell or provide food directly to consumers and may not sell or provide food to any wholesaler or retailer;
(f) molluscan shellfish may not be served or sold; and
(g) the operator shall provide the consumer with a notification that, while a permit has been issued by the local health department, the kitchen may not meet all of the requirements of a commercial retail food establishment.
(12) A local health department issuing a microenterprise home kitchen permit may not require submission of plans and specifications before construction or remodel of a kitchen facility except for the plans and procedures required in Subsection (5);
(13) The local health officer shall ensure that:
(a) a microenterprise home kitchen permit includes a statement that reads, "This location is permitted under modified FDA requirements."; and
(b) the operator is provided the opportunity to update the information required in Subsection (5)(b) without requiring the operator to renew the permit.

R392-106-6. Construction and Maintenance Requirements.

The operator shall ensure that:
(1) materials for use on indoor floor, wall, and ceiling surfaces of a microenterprise home kitchen are smooth, durable, and easily cleanable for areas where food is stored, prepared, or held under temperature control;
(2) if used, mats and duckboards are designed to be removable and easily cleanable;
(3) physical facilities are maintained in good repair;
(4) physical facilities are cleaned as often as necessary to keep them clean and free of debris;
(5) the interior of a microenterprise home kitchen is well lit by natural or artificial light whenever food is being prepared;
(6) linens used for the microenterprise home kitchen are stored and laundered separately from household laundry and that soiled laundry is stored to prevent contamination of food and equipment; and

(7) a microenterprise home kitchen has:
(a) at least one handwashing station:
(i) provided with:
(A) warm water;
(B) hand cleaning liquid, powder, or bar soap; and
(C) individual, disposable hand towels or other hand drying equipment as approved by the local health officer, and;
(ii) conveniently located in:
(A) the food preparation area;
(B) the food dispensing area;
(C) the warewashing area; and
(D) the toilet room;
(b) a properly maintained kitchen sink installed with running hot water and cold water under pressure; and
(c) a toilet room that is:
(i) available to employees during all hours of operation; and
(ii) equipped with proper handwashing facilities as described in Subsection (7)(a)(i).

R392-106-7. Equipment Requirements.

The operator shall ensure that:
(1) materials that are used in the construction of utensils and food contact surfaces of equipment are designed to retain their characteristic qualities under normal use conditions;
(2) food contact surfaces are smooth, easily cleanable, and in good repair;
(3) utensils are maintained in a sanitary manner between uses;
(4) non-food contact surfaces are made of materials ordinarily used in residential settings and are kept clean;
(5) fixed floor-mounted and table-mounted equipment are sanitized between uses;
(6) sponges are not used to clean or sanitize utensils or food-contact surfaces;
(7) linens are not used in contact with food;
(8) ventilation in food preparation and warewashing areas is designed and maintained to allow the escape of gases, odors, steam, heat, grease, vapors, and smoke from the kitchen;
(9) plumbing fixtures are kept clean from the accumulation of residue and debris;
(10) except for transport not to exceed four hours, a non-mechanical container such as a cooler is not used for temperature control of TCS foods regardless of whether the container is used with or without ice or reusable ice packs;
(11) an operational non-fixed temperature-measuring device is located in each mechanically refrigerated unit or hot food storage unit;
(12) the microenterprise home kitchen is equipped with at least one food temperature measuring device that:
(a) has a small diameter probe;
(b) does not have sensors or stems constructed of glass unless the thermometer with a glass sensor or stem is encased in a shatterproof coating such as a candy thermometer;
(c) is easily readable;
(d) is readily accessible; and
(e) is properly calibrated.
(13) receptacles and waste handling units for refuse and recyclables containing materials with food residue are:
(a) durable;
(b) cleanable;
(c) insect and rodent resistant;

- (d) leakproof;
- (e) nonabsorbent;
- (f) designed and constructed to have tight-fitting lids, doors, or covers; and
- (g) maintained:
 - (i) covered;
 - (ii) in good repair; and
 - (iii) inaccessible to insects and rodents;
- (14) refuse and recyclables are removed from the microenterprise home kitchen premises at a frequency that will minimize the development of objectionable odors and other conditions that attract or harbor insects and rodents; and
- (15) the microenterprise home kitchen is furnished or equipped with adequate electrical power to ensure uninterrupted service during food preparation and food storage, and when storing any time or temperature control food.

R392-106-8. Requirements for Cleaning Equipment and Utensils.

- The operator shall ensure that:
- (1) the food-contact surfaces of equipment and utensils are:
 - (a) clean to sight and touch;
 - (b) cleaned and sanitized:
 - (i) before each use with a different type of raw animal food such as beef, fish, lamb, pork, or poultry;
 - (ii) each time there is a change from working with raw foods to working with ready-to-eat foods;
 - (iii) between uses with raw fruits and vegetables and with time or temperature control foods;
 - (iv) before using or storing a food temperature measuring device; and
 - (v) at any time during the operation when contamination may have occurred; and
 - (c) cleaned throughout the day at least every four hours if used with time or temperature control foods;
 - (2) the food-contact surfaces of cooking equipment and pans are kept free of encrusted grease deposits and other soil accumulations;
 - (3) the nonfood-contact surfaces of equipment are kept free of an accumulation of dust, dirt, food residue, and other debris;
 - (4) utensils and equipment contacting food that is not a time or temperature control food are cleaned:
 - (a) at any time when contamination may have occurred;
 - (b) at least every 24 hours; and
 - (c) in equipment such as ice bins and beverage dispensing nozzles and enclosed components of equipment such as ice makers, cooking oil storage tanks and distribution lines, beverage and syrup dispensing lines or tubes, coffee bean grinders, and water vending equipment:
 - (i) at a frequency specified by the manufacturer; or
 - (ii) at a frequency necessary to preclude accumulation of soil or mold;
 - (5) when employees use a kitchen sink for dishwashing, washed utensils and equipment are rinsed, after cleaning and prior to sanitizing, by using a distinct, separate water rinse;
 - (6) after cleaning and sanitizing, equipment and utensils are air-dried or used after adequate draining;
 - (7) the wash, rinse, and sanitizer solutions are maintained clean;
 - (8) clean and sanitized equipment and utensils are stored:
 - (a) in a self-draining position that allows air drying; and
 - (b) covered or inverted;

- (9) single-service and single-use articles are not reused;
- (10) linens that do not come in direct contact with food are laundered between operations if they become wet, sticky, or visibly soiled;
- (11)(a) cloths in-use for wiping food spills are:
 - (i) maintained dry; and
 - (ii) used for no other purpose;
- (b) cloths in-use for wiping counters and other equipment surfaces are:
 - (i) held between uses in a container of chemical sanitizer solution at a concentration specified under Subsection R392-106-9(3); and
 - (ii) laundered daily when used;
- (c) cloths in-use for wiping surfaces in contact with raw animal foods are kept separate from cloths used for other purposes;
- (d) dry wiping cloths and the chemical sanitizing solutions specified in Subsection R392-106-8(13)(b)(i) in which wet wiping cloths are held between uses are free of food debris and visible soil;
- (e) containers of chemical sanitizing solutions specified in Subsection R392-106-8(13)(b)(i) in which wet wiping cloths are held between uses are stored off the floor and used in a manner that prevents contamination of food, equipment, utensils, linens, and single-service, or single-use articles; and
- (f) single-use disposable sanitizer wipes are EPA-approved for foodservice and used in accordance with manufacturer's label directions; and
- (12) soiled linens are:
 - (a) stored and laundered separately from household laundry; and
 - (b) stored to prevent contamination of food, clean equipment, clean utensils, and single-service and single-use articles.

R392-106-9. Requirements for Sanitizing Equipment and Utensils.

- The operator shall ensure that:
- (1) employees sanitize equipment and utensils in chemical manual or mechanical operations after being cleaned as required in Section R392-106-8, through the application of sanitizing chemicals by immersion, manual swabbing, brushing, or pressure spraying methods, using a solution as specified under Subsection R392-106-9(2);
 - (2) chemical sanitizers, including chemical sanitizing solutions generated on-site, and other chemical antimicrobials applied to food-contact surfaces:
 - (a) meet requirements specified in 40 CFR 180.940 and 40 CFR 180.2020; and
 - (b) are used in accordance with the EPA-registered label directions;
 - (3) the concentration of chemical sanitizer solution is maintained as follows:
 - (a) chlorine sanitizer solutions has a minimum concentration and temperature of 50 to 100 ppm at 100°F with an associated contact time of 7 seconds; and
 - (b) quaternary ammonium compound solutions have a minimum temperature of 75°F and a concentration as indicated by the manufacturer's label directions; and
 - (4) employees are provided with a test kit or other device that accurately measures the concentration in parts per million of chemical sanitizer solution.

R392-106-10. Food Safety Requirements.

- (1) The operator may not offer for sale;

(a) a raw time or temperature control food such as raw fish, raw milk, or raw shellfish;

(b) any food requiring special processes that would necessitate a HACCP plan, as defined in FDA Food Code;

(c) fish;

(i) that was not commercially and legally caught; or

(ii) that was caught or harvested from waters of the state of Utah;

(d) molluscan shellfish;

(e) food in a hermetically sealed container that was not obtained, either directly or indirectly, from a regulated food processing plant;

(f) liquid milk and milk products that were not obtained from sources that comply with Grade A standards specified by the Department of Agriculture and Food by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

(g) mushrooms that were picked in the wild;

(h) game animals that were not raised, slaughtered, and processed according to rules governing meat and poultry as specified by the Department of Agriculture and Food by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; or

(i) food containing meat or poultry products that were not inspected under Section 4-32-106 or inspected by the United States Department of Agriculture.

(2) The operator shall:

(a) take steps to avoid any potential contamination to:

(i) food;

(ii) equipment;

(iii) utensils; or

(iv) unwrapped single-service and single-use articles; and

(b) prevent an individual from entering the food preparation, food storage, and warewashing areas while food is being prepared:

(i) if the individual is known to be suffering from:

(A) symptoms associated with acute gastrointestinal illness; or

(B) a communicable disease that is transmissible through food; or

(ii) if the individual is unnecessary to the microenterprise home kitchen operation while food is being prepared.

(3) The operator shall ensure that:

(a) food is safe, unadulterated, and honestly presented;

(b) food is offered for human consumption in a way that does not mislead or misinform the consumer;

(c) food or color additives, colored overwraps, or lights are not used to misrepresent the true appearance, color, or quality of a food;

(d) food packages are in good condition and protect the integrity of the contents so that the food is not exposed to adulteration or potential contaminants;

(e)(i) raw eggs are received and maintained in a clean and sound condition, and are held in refrigerated equipment that maintains an ambient temperature of 45 degrees or less;

(ii) eggs are stored in a manner that does not allow for contamination;

(iii) eggs are not collected or stored in a previously used egg carton or package that is not designed or intended for reuse;

(iv) pasteurized eggs or egg products are substituted for raw eggs in the preparation of foods such as Caesar salad, hollandaise or Bearnaise sauce, mayonnaise, meringue, eggnog, ice cream, and egg-fortified beverages that are not cooked; and

(v) raw, unpasteurized eggs are used in recipes that will not be cooked only if the microenterprise home kitchen has a consumer advisory, as required in Subsection R392-106-11(4);

(f) ice for use as a food or a cooling medium is made from potable water;

(g) ice is not used in food or beverages after use as a medium for cooling the exterior surfaces of food or food packages;

(h) food only contacts surfaces of equipment and utensils that are cleaned and sanitized as specified in Sections R392-106-8 and R392-106-9 or single-service and single-use articles;

(i) food is protected from contamination by storing the food in a manner that does not allow for contamination;

(j) items not ordinarily found in a home kitchen are placed or stored away from food preparation and food storage areas;

(k) food is protected from cross contamination by:

(i) separating raw animal foods during storage, preparation, and holding from:

(A) raw ready-to-eat food, and

(B) cooked ready-to-eat food;

(ii) separating types of raw animal foods from each other such as beef, fish, lamb, pork, and poultry during storage, preparation, and holding, except when combined as ingredients, by:

(A) using separate equipment for each type of food;

(B) arranging each type of food in equipment so that cross contamination of one type with another is prevented; and

(C) preparing each type of food at different times or in separate areas;

(iii) cleaning hermetically sealed containers of food of visible soil before opening;

(iv) protecting food containers that are received packaged together in a case or overwrap from cuts when the case or overwrap is opened;

(v) storing and segregating damaged, spoiled, or recalled food in designated areas within the microenterprise home kitchen that are separated from food, equipment, utensils, linens, and single-service and single-use articles; and

(vi) separating fruits and vegetables before they are washed from ready-to-eat food;

(l) raw fruits and vegetables are thoroughly washed in potable water to remove soil and other contaminants before being cut, combined with other ingredients, cooked, served, or offered for human consumption in ready-to-eat form;

(m) food is prepared, handled, or stored only in kitchen and food storage areas except when cooking in an open-air barbecue, grill, or outdoor wood-burning oven as permitted;

(n) except for containers holding food that can be readily and unmistakably recognized such as dry pasta, working containers holding food or food ingredients that are removed from their original packages for use in the microenterprise home kitchen, such as cooking oils, flour, herbs, potato flakes, salt, spices, and sugar are identified with the common name of the food;

(o) animals are kept outside of food preparation and storage areas;

(p) food and food contact surfaces are protected from physical hazards such as broken glass, hair or fur, and metal or wood debris;

(q) ready-to-eat food is protected from contamination during storage, preparation, handling, and transport;

(r) ready-to-eat TCS food sold outside of the microenterprise home kitchen is maintained at the proper holding temperature as required in Subsection R392-106-11(3);

(s) prior to consumption, the operator or employee provides written or verbal notification to the consumer if a food contains one or more common food allergens; and

(t) food is protected from contamination that may result from a factor or source not specified elsewhere in this rule.

(5) Nothing in this rule relinquishes the authority of the Utah Department of Agriculture and Food to administer the state meat, poultry, and poultry products inspection program at a level at least equal to the standards imposed under 21 U.S.C. Sections. 451 to 695.

R392-106-11. Food Temperature Requirements.

The operator shall ensure that:

(1) any food requiring cooking, thawing, cooling, freezing, or reheating before sale is cooked, frozen, or reheated as required in Part 3-4 of the FDA Food Code;

(2)(a) stored frozen foods are maintained frozen, and commercially processed foods which are labeled to be kept frozen are kept frozen until cooked or sold;

(b) commercially processed foods labeled to be kept frozen that are thawed under refrigeration at 41°F or below in accordance with the manufacturer's directions:

(i) have date marking or other record keeping to indicate when the food entered refrigeration; and

(ii) are discarded seven days after entering the refrigerator;

(3) except during preparation, cooking, or cooling, time or temperature control food is maintained:

(a) at 135°F or higher, or

(b) at 41°F or lower;

(4) except for whole-muscle intact beef steak, if raw animal-derived food is sold undercooked:

(a) the consumer is notified as to which food is being sold undercooked; and

(b) the consumer is informed by way of effective written means that there is a significantly increased risk of consuming such foods:

(5)(a) ready-to-eat, TCS food prepared and held at a temperature as required in Subsection (3) is clearly marked to indicate the date or day on which the food was prepared, which is the same date on which the food shall be consumed, sold, or discarded;

(b) ready-to-eat, TCS food prepared and packaged by a food processing plant, and opened and held for more than 24 hours at a temperature as required in Subsection (3):

(i) is clearly marked at the time the original container is opened in a microenterprise home kitchen to indicate the date or day by which the food shall be consumed, sold, or discarded, with the day the original container is opened being counted as day 1, and the day or date marked by the microenterprise home kitchen not exceeding a manufacturer's use-by date if the manufacturer determined the use-by date based on food safety;

(6) a refrigerated, ready-to-eat, TCS food ingredient or a portion of a refrigerated, ready-to-eat, TCS food that is subsequently combined with additional ingredients or portions of food retains the date marking of the earliest-prepared or first-prepared ingredient; and

(7) a food specified in Subsection R392-106-11(5) is discarded if it:

(a) exceeds the temperature and time combination specified in Section R392-106-11, except time that the product is frozen;

(b) is in a container or package that does not bear a date or day; or

(c) is appropriately marked with a date or day that exceeds a temperature and time combination as specified in Section R392-106-11.

R392-106-12. Poisonous or Toxic Materials.

The operator shall ensure that:

(1) containers of poisonous or toxic materials and personal care items bear a legible manufacturer's label;

(2) working containers used for storing poisonous or toxic materials such as cleaners and sanitizers taken from bulk supplies are clearly and individually identified with the common name of the material;

(3) poisonous or toxic materials are stored so they cannot contaminate food, equipment, utensils, linens, and single-service and single-use articles by:

(a) separating the poisonous or toxic materials with spacing or partitioning; and

(b) locating the poisonous or toxic materials in an area that is not above food, equipment, utensils, linens, and single-service or single-use articles;

(4) only those poisonous or toxic materials that are required for the operation and maintenance of a microenterprise home kitchen, such as for the cleaning and sanitizing of equipment and utensils and the control of insects and rodents, are allowed in a microenterprise home kitchen;

(5) poisonous or toxic materials are:

(a) used according to:

(i) Rule R392-100 and local health department regulations;

(ii) manufacturer's label directions, and, for a pesticide, the manufacturer's label directions specify that use is allowed in a food preparation area;

(iii) the conditions of certification for use of the pest control materials; and

(iv) additional conditions that may be established by the local health officer; and

(b) applied in a manner that prevents:

(i) a hazard to employees or other persons; and

(ii) contamination including toxic residues due to drip, drain, fog, splash or spray on food, equipment, utensils, linens, and single-service and single-use articles;

(6) restricted use pesticides are not used in a microenterprise home kitchen unless:

(a) completed by or under the direction of a licensed Utah pesticide applicator; and

(b) pesticide application practices comply with Rule R68-7, Utah Pesticide Control Rule;

(7) a container previously used to store chemical materials is not used to store, transport, or dispense a food or beverage;

(8) rodent bait is contained in a covered, tamper-resistant bait station; and

(9) tracking powder is not be used inside of a microenterprise home kitchen unless the powder is non-toxic, such as flour or talcum powder, and is used in such a manner that it cannot contaminate food, equipment, utensils, linens, and single-service or single-use articles.

R392-106-13. Personal Cleanliness and Protection from Contamination.

The operator shall ensure that:

(1) employees do not contact exposed, ready-to-eat food with their bare hands and use suitable utensils such as deli tissue, spatulas, tongs, single-use gloves, or dispensing equipment;

(2) employees minimize bare hand and arm contact with exposed food that is not in a ready-to-eat form;

(3) employees use single-use gloves, as needed, for only one task such as working with ready-to-eat food, for no other purpose, and discard when damaged or soiled, or when interruptions occur in the operation;

(4) employees keep their hands and exposed portions of their arms clean using the cleaning procedure specified in Subpart 2-301.12 of the FDA Food Code immediately before engaging in handling of food or clean equipment and utensils and:

(a) after touching bare human body parts other than clean hands and clean, exposed portions of arms;

(b) after using the toilet room;

(c) after coughing, sneezing, using a handkerchief or disposable tissue, using tobacco, eating, or drinking;

(d) after handling soiled equipment or utensils;

(e) during food preparation, as often as necessary to remove soil and contamination and to prevent cross contamination when changing tasks;

(f) when switching between working with raw food and working with ready-to-eat food;

(g) before donning gloves to initiate a task that involves working with food; and

(h) after engaging in other activities that contaminate the hands;

(5) a sign or poster is placed near each handwashing station in a conspicuous location that notifies employees to wash their hands;

(6) employees clean their hands in a handwashing station as required in Subsection R392-106-6(7)(a);

(7) employees keep their fingernails trimmed, filed, and maintained so the edges and surfaces are cleanable and not rough;

(8) employees do not wear fingernail polish or artificial fingernails when working with exposed food unless wearing intact gloves in good repair;

(9) employees do not wear jewelry including medical information jewelry on their arms and hands except for a plain ring such as a wedding band;

(10)(a) employees wear clean outer clothing to prevent contamination of food, equipment, utensils, linens, and single-service and single-use articles; and

(b) employees dress or change clothing outside of the kitchen facility;

(11) employees wear hair restraints such as hats, hair coverings or nets, beard restraints, and clothing that covers body hair, that are designed and worn to effectively keep their hair from contacting:

(a) exposed food;

(b) clean equipment, utensils, and linens; and

(c) unwrapped single-service and single-use articles;

(12) employees do not use a utensil more than once to taste food that is to be sold; and

(13) the microenterprise home kitchen is maintained free of insects, rodents, and other pests, and their presence is controlled and prevented by:

(a) routinely inspecting incoming shipments of food and supplies;

(b) routinely inspecting the microenterprise home kitchen for evidence of pests; and

(c) using pest management methods, if pests are found, such as trapping devices, eliminating harborage, or other means of pest control.

R392-106-14. Supervision, Employee Health, and Contamination Events.

(1) The operator or the operator's designee shall be present at the microenterprise home kitchen and in charge of operations during all hours of operation.

(2) The operator or operator's designee shall ensure that:

(a) persons unnecessary to the microenterprise home kitchen operation are not allowed in the microenterprise home kitchen during food preparation;

(b) employees entering the microenterprise home kitchen comply with this rule;

(c) employees are effectively cleaning their hands as specified in Subsection R392-106-13(4);

(d) employees are visibly observing foods as they are received to determine that they are delivered at the proper temperatures, protected from contamination, unadulterated, and accurately presented, and are placing foods into appropriate storage locations;

(e) employees are properly cooking TCS food;

(f) employees are using proper methods to rapidly cool TCS food;

(g) consumers who order partially cooked TCS food of animal origin are informed that the food is not cooked sufficiently to ensure its safety, as required in Subsection R392-106-11(4);

(h) employees are properly sanitizing cleaned equipment and utensils;

(i) employees are preventing cross-contamination of ready-to-eat food with bare hands as specified in Subsection R392-106-13(1);

(j) employees are properly trained in food safety, as required in Subsection R392-106-4(3), including food allergy awareness;

(k) employees are informed in a verifiable manner of their responsibility to report, to the operator or operator's designee, information about their health and activities as they relate to diseases that are transmissible through food, as specified under Subsection R392-106-14(4); and

(l) written procedures, where required in this rule or by the local health officer, are maintained and implemented as required.

(3) The operator or operator's designee, and employees shall abide by Subpart 2-201 of the FDA Food Code in reporting of diseases, symptoms, and the exclusion or restriction of those working in the microenterprise home kitchen.

(4) Microenterprise home kitchen employees experiencing persistent sneezing, coughing, or a runny nose that causes discharges from the eyes, nose, or mouth may not work with exposed food; clean equipment, utensils, and linens; or unwrapped single-service or single-use articles.

(5) A microenterprise home kitchen shall have procedures for employees to follow when responding to vomiting or diarrheal events that involve the discharge of vomitus or fecal matter onto surfaces in the microenterprise home kitchen. The procedures shall address the specific actions employees must take to minimize the spread of contamination and the exposure of employees, consumers, food, and surfaces to vomitus or fecal matter.

R392-106-15. Inspections, Corrective Actions, and Prevention of Foodborne Disease.

(1) A local health officer shall:

(a) inspect a facility that requests a microenterprise home kitchen permit only for:

(i) an initial inspection, no more than one week before the microenterprise home kitchen is scheduled to begin operation;

(ii) an unscheduled inspection, if the local health department conducts the inspection;

(A) within three days before or after the day on which the microenterprise home kitchen is scheduled to begin operation; or

(B) during operating hours of the microenterprise home kitchen; or

(iii) a subsequent inspection if:

(A) the local health department provides the operator with reasonable advanced notice of the inspection; or

(B) the local health department has a valid reason to suspect that the microenterprise home kitchen is the source of an adulterated food or of an outbreak of illness caused by a contaminated food;

(b) ensure compliance with this rule when inspecting a microenterprise home kitchen facility; and

(c) document the reason for an inspection on an inspection report form approved by the Department after the permitting inspection, keep a copy of that documentation on file with the microenterprise home kitchen's permit, and provide a copy of that documentation to the operator.

(2) When a local health officer presents proper identification and provides notice of the intent to conduct an inspection, the operator shall allow the local health officer to determine if the microenterprise home kitchen is in compliance with this rule by allowing access to the establishment, allowing inspection, and providing information and records specified in this rule.

(3) If an operator denies access to the local health officer, the local health officer shall:

(a) inform the operator that:

(i) the operator is required to allow access to the local health officer as specified under Subsection R392-106-15(2);

(ii) access is a condition of the acceptance and retention of a permit to operate as specified under Section R392-106-5;

(iii) the permit may be revoked in accordance with Subsection R392-106-5(9); and

(iv) if access is denied, an order issued by an appropriate authority allowing access may be obtained;

(b) make a final request for access; and

(c) if the operator continues to refuse access, provide details of the denial of access on an inspection report form.

(4) The local health officer shall document at least the following on an inspection report form:

(a) specific factual observations of noncompliant conditions or other deviations from this rule that require correction by the operator including:

(i) failure of the operator to demonstrate the knowledge of foodborne illness prevention; and

(ii) failure of employees and the operator to report a disease or medical condition as required in Subsection R392-106-14(3); and

(b) time frame for correction of violations.

(5) At the conclusion of the inspection the local health officer shall provide a copy of the completed inspection report and the notice to correct violations to the operator or the operator's designee, and request a signed acknowledgement of receipt.

(6)(a) The local health officer shall inform a person who declines to sign an acknowledgement of receipt of inspectional findings that:

(i) an acknowledgment of receipt is not an agreement with findings;

(ii) refusal to sign an acknowledgement of receipt will not affect the operator's obligation to correct the violations noted in the inspection report within the time frames listed; and

(iii) a refusal to sign an acknowledgement of receipt is noted in the inspection report and conveyed to the historical record for the microenterprise home kitchen; and

(b) the local health officer shall then make a final request that the operator or operator's designee sign an acknowledgement of receipt of inspectional findings.

(7) The local health officer shall treat the inspection report as a public document and shall make it available for disclosure.

(8) Repeat violations may prompt further compliance and enforcement actions, including a subsequent inspection.

(9)(a) An operator shall immediately discontinue operations and notify the local health department if an imminent health hazard exists.

(b) If operations are discontinued as required by the local health officer or in response to an imminent health hazard, the operator shall obtain approval from the local health officer before resuming operations.

(10) A local health officer may conduct subsequent inspections, as needed and in accordance with Subsection R392-106-15(1)(a)(iii), to ensure the timely resolution of inspection findings after providing the operator with reasonable advanced notice about the inspection.

R392-106-16. Water Supply System.

The operator shall ensure that:

(1) sinks are supplied with potable hot water and cold water from:

(a) an approved public water system as defined in Section 19-4-102;

(b) a source that meets the local health department's regulations regarding the safety of drinking water if the local health department with jurisdiction over the microenterprise home kitchen has regulations regarding the safety of drinking water; or

(c) a water source that is tested at least once per month for bacteriologic quality, and at least once in every three-year period for lead and copper; and

(2) food preparation and food sales are discontinued in the event of a disruption of potable water service lasting more than ten minutes.

R392-106-17. 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 be given effect without the invalidated provision or application.

KEY: microenterprise, home kitchen, food, public health

Date of Enactment or Last Substantive Amendment: 2021

Authorizing, and Implemented or Interpreted Law: 26-15c-105(2); 26-1-5; 26-1-30(23); 26-15-2(1)

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code Ref (R no.): R592-1

Filing ID
53653

Agency Information

1. Department:	Insurance	
Agency:	Title and Escrow Commission	
Room no.:	Suite 2300	
Building:	Taylorsville State Office Building	
Street address:	4315 S 2700 W	
City, state and zip:	Taylorsville, UT 84129	
Mailing address:	PO Box 146901	
City, state and zip:	Salt Lake City, UT 84114-6901	
Contact person(s):		
Name:	Phone:	Email:
Steve Gooch	801-957-9322	sgooch@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R592-1. Title Insurance Licensing
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
This rule is being changed as a result of Executive Order 2021-12. During the review of this rule, the Utah Insurance Department (Department) discovered a number of minor issues that needed to be amended. The Title and Escrow Commission approved these changes in a June 30, 2021, meeting by a vote of 3 to 0.
4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):
The majority of the changes are being done to fix style issues to bring the rule text more in line with current rulewriting standards and to make the language of the rule more clear. It also updates Section R592-1-6 to use the Department's current language. It does not add, remove, or change any regulations or requirements.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
A) State budget:
There is no anticipated cost or savings to the state budget. The changes are clerical in nature and do not add, remove, or change regulations.

B) Local governments:			
There is no anticipated cost or savings to local governments. This rule applies to insurance licensees and has no bearing on local governments.			
C) Small businesses ("small business" means a business employing 1-49 persons):			
There is no anticipated cost or savings to small businesses. The changes are clerical in nature and do not add, remove, or change regulations.			
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):			
There is no anticipated cost or savings to non-small businesses. The changes are clerical in nature and do not add, remove, or change regulations.			
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>):			
There is no anticipated cost or savings to any other persons. The changes are clerical in nature and do not add, remove, or change regulations.			
F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):			
There are no compliance costs for any affected persons. Any affected persons are already required to comply with the provisions of the rule, and the changes do not add, remove, or change regulations.			
G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):			
After conducting a thorough analysis, it was determined that this proposed rule amendment will not result in a fiscal impact to businesses. Jonathan T. Pike, Commissioner			
6. A) 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	FY2022	FY2023	FY2024
State Government	\$0	\$0	\$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
B) Department head approval of regulatory impact analysis:			
The Commissioner of Department of Insurance, Jonathan T. Pike, has reviewed and approved this fiscal analysis.			

Citation Information

7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:		
Subsection 31A-2-404(2)(a)(ii)	Subsection 31A-2-404(2)(b)	

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. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	08/16/2021

10. This rule change MAY become effective on:	08/23/2021
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.	

Agency Authorization Information

Agency head or designee, and title:	Steve Gooch, Public Information Officer	Date:	07/01/2021
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R592. Insurance, Title and Escrow Commission.

R592-1. Title Insurance Licensing.

R592-1-1. Authority.

This rule is promulgated ~~pursuant to Subsections 31A-2-404(2)(a)(ii) and (b), which direct~~ by the Title and Escrow Commission pursuant to Subsections 31A-2-404(2)(a)(ii) and 31A-2-404(2)(b) ~~to make rules pertaining to the licensing of a title licensee and require the Title and Escrow Commission's concurrence in the issuance and renewal of title licensee licenses~~.

R592-1-2. Purpose and Scope.

(1) The purpose of this rule is to establish the Commission's preliminary concurrence in the commissioner's decision to issue or renew a title license under Subsection 31A-2-404(2)(b):

~~(a) to establish rules for the licensing of a title licensee; and~~
~~(b) to concur in the issuance and renewal of a title license in accordance with Section 31A-2-404(2)(b).~~

(2) This rule applies to ~~all~~ a title licensee[s] and an applicant[s] for a title insurance license ~~or renewal of a title insurance license~~.

R592-1-3. Definitions.

Terms used in this rule are defined in Sections 31A-1-301 and 31A-2-402 ~~"Title licensee" has the same meaning as found in Section 31A-2-402(3).~~

R592-1-4. Licensing.

The Commission ~~hereby~~ grants ~~its~~ preliminary concurrence to ~~the commissioner for the issuing~~ ~~ance~~ or ~~renewing~~ ~~at~~ of title insurance licenses ~~issued by the commissioner~~, subject to final concurrence as specified in Section R592-1-5, to an applicant that:

(1) complies with Sections 31A-23a-104, 31A-23a-105, 31A-23a-106, 31A-23a-107, 31A-23a-108, and 31A-23a-204 ~~for initial application~~; ~~and~~

(2) complies with Section 31A-23a-202 ~~as an applicant~~ for ~~a~~ renewal of a license; and

(3) meets ~~all other~~ each requirement[s] for the issuance of a license.

R592-1-5. Commission Concurrence with License Issuance or Renewal.

(1) The commissioner will report to the ~~Title and Escrow~~ Commission, at an interval and in a format acceptable to the commissioner and the Commission, the name[s] of each title licensee and applicant ~~s or licensees~~ who is issued:

(a) ~~who were issued~~ an initial license; ~~and~~ or

(b) ~~who were issued~~ a renewal license.

(2) ~~At a meeting of the Commission~~ In an open and public meeting, the Commission shall:

(a) give final concurrence; or

(b) ~~shall~~ not concur with the licensing ~~action~~ decision of the commissioner.

(3) If the Commission ~~votes to~~ does not concur with a licensing ~~action~~ decision of the commissioner ~~for a licensee~~, the commissioner shall commence an administrative proceeding under the Utah Administrative Procedures Act to deny, revoke, suspend, limit, or place on probation ~~that~~ the license.

R592-1-6. Severability.

~~[If any section, term, or provision of this rule shall be adjudged invalid for any reason, such judgment shall not affect, impair or invalidate any other section, term, or provision of this rule and the remaining sections, terms, and provisions shall be and remain in full force.~~

R592-1-7. Enforcement Date.

~~The commissioner will begin enforcing this rule upon the rule's effective date]~~If any provision of this rule, Rule R592-1, or its application to any person or situation is held invalid, such invalidity does not affect any other provision or application of this rule that can be given effect without the invalid provision or application. The remainder of this rule shall be given effect without the invalid provision or application.

KEY: title insurance

Date of Enactment or Last Substantive Amendment:

2021~~[September 30, 2005]~~

Notice of Continuation: September 1, 2020

Authorizing, and Implemented or Interpreted Law: 31A-2-402

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code Ref (R no.):	R592-5	Filing ID 53654
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Agency Information

1. Department:	Insurance	
Agency:	Title and Escrow Commission	
Room no.:	Suite 2300	
Building:	Taylorsville State Office Building	
Street address:	4315 S 2700 W	
City, state and zip:	Taylorsville, UT 84129	
Mailing address:	PO Box 146901	
City, state and zip:	Salt Lake City, UT 84114-6901	
Contact person(s):		
Name:	Phone:	Email:
Steve Gooch	801-957-9322	sgooch@utah.gov

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

General Information

2. Rule or section catchline:
R592-5. Title Insurance Product or Service Approval for a Dual Licensed Title Licensee
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):

This rule is being changed in compliance with Executive Order 2021-12. During the review of this rule, the Utah Insurance Department (Department) discovered a number of minor issues that needed to be amended. The Title and Escrow Commission approved these changes in a June 30, 2021, meeting by a vote of 3 to 0.

4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):

The majority of the changes are being done to fix style issues to bring this rule text more in line with current rulewriting standards and to make the language of the rule more clear. It also updates Section R592-5-5 to use the Department's current language. It does not add, remove, or change any regulations or requirements.

Fiscal Information

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

A) State budget:

There is no anticipated cost or savings to the state budget. The changes are clerical in nature and do not add, remove, or change regulations.

B) Local governments:

There is no anticipated cost or savings to local governments. This rule applies to insurance licensees and has no bearing on local governments.

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

There is no anticipated cost or savings to small businesses. The changes are clerical in nature and do not add, remove, or change regulations.

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

There is no anticipated cost or savings to non-small businesses. The changes are clerical in nature and do not add, remove, or change regulations.

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

There is no anticipated cost or savings to any other persons. The changes are clerical in nature and do not add, remove, or change regulations.

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

There are no compliance costs for any affected persons. Any affected persons are already required to comply with the provisions of this rule, and the changes do not add, remove, or change regulations.

G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):

After conducting a thorough analysis, it was determined that this proposed rule amendment will not result in a fiscal impact to businesses. Jonathan T. Pike, Commissioner

6. A) 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	FY2022	FY2023	FY2024
State Government	\$0	\$0	\$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

B) Department head approval of regulatory impact analysis:

The Commissioner of the Department of Insurance, Jonathan T. Pike, has reviewed and approved this fiscal analysis.

Citation Information

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

Section 31A-2-404	Section 31A-2-405	
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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. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:	08/16/2021
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10. This rule change MAY become effective on: 08/23/2021

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

Agency Authorization Information

Agency head or designee, and title:	Steve Gooch, Public Information Officer	Date:	07/01/2021
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R592. Insurance, Title and Escrow Commission.

R592-5. Title Insurance Product or Service Approval for a Dual Licensed Title Licensee.

R592-5-1. Authority.

This rule is promulgated by the Title and Escrow Commission pursuant to Sections 31A-2-404 and 31A-2-405[~~which direct the Title and Escrow Commission to make rules to administer the provisions related to title insurance~~].

R592-5-2. Purpose and Scope.

(1) The purpose of this rule is to set forth [the] requirements for a dual licensed title licensee to obtain:

(a) approval from the [insurance] commissioner pursuant to Subsection 31A-2-405(2); [and] or

(b) expedited approval from the [Title and Escrow] Commission pursuant to Subsection 31A-2-405(3).

(2) This rule applies to [all] a dual licensed title licensee[s] and an applicant[s] for a title insurance license or renewal of a title insurance license.

R592-5-3. Definitions.

[For the purposes of this rule, the commissioner adopts the definitions.] Terms used in this rule are defined in Sections 31A-1-301[~~]~~ and 31A-2-402[~~and the following~~]. Additional terms are defined as follows:

(1)[(a) "Dual licensed title licensee" has the same meaning as set forth in 31A-2-402.

_____(b) "Dual licensed title licensee", as defined in Section 31A-2-402, does not mean:

(~~i~~) a title licensee who holds an inactive license under Subsections 31A-2-402(3)(b)(i), (ii) ~~and~~ or (iii); or

(~~ii~~) a title licensee who holds an education provider certificate.

(2) "Need for expedited approval" means a significant hardship to the buyer or seller in the transaction.

(3) "Principal" means a person from whom a dual licensee has received compensation for submitting a transaction under one or more of ~~his or her~~ the licensee's dual licenses. Examples include ~~but are not limited to,~~ a mortgage company, a real estate broker, an agency title insurance producer, a builder, or a developer.

(4) "Title insurance product" means the insuring, guaranteeing, or indemnifying of owners of real or personal property or the holders of liens or encumbrances on that property, or others interested in the property against loss or damage suffered by reason of liens or encumbrances upon, defects in, or the unmarketability of the title to the property, or invalidity or unenforceability of any liens or encumbrances on the property.

(5) "Title insurance service" has the same meaning as the definition of "escrow" found in Subsection 31A-1-301(~~56~~61).

R592-5-4. Filing Requirements, Processes and Procedures.

(1) Only a dual licensed title licensee ~~can~~ may file a request for approval for the provision of a title insurance product or service.

(2) A complete filing consists of:

~~(a)~~ a filing fee pursuant to Section 31A-3-103; ~~and either~~ and:

(~~b~~) a "Dual Licensee Request [~~F~~]for Approval for the Provision of a Title Insurance Product or Service" form; or

(~~e~~) a "Dual Licensee Request [~~F~~]for Expedited Approval for the Provision of a Title Insurance Product or Service" form.

(3) A filing to request approval of a "Dual Licensee Request for Approval for the Provision of a Title Insurance Product or Service" form must:

(a) be sent electronically to the commissioner via email to pforms.uid@utah.gov; and

(b) include credit card information in the payment section of the form.

(4) An expedited filing to request approval of a "Dual Licensee Request for Expedited Approval for the Provision of a Title Insurance Product or Service" form must:

(a) include a completed [~~S~~]section 6, [~~Reason for Requesting Expedited Approval~~]explaining the significant hardship to the buyer or seller, on the "Dual Licensee Request for Expedited Approval for the Provision of a Title Insurance Product or Service" form;

(b) be sent electronically to the Chair of the [~~Title and Escrow~~]Commission via email to pforms.uid@utah.gov; and

(c) include credit card information in the payment section of the form.

(5) Approval or disapproval will be sent to the filer via return email.

R592-5-5. Severability.

~~If any section, term, or provision of this rule shall be adjudged invalid for any reason, such judgment shall not affect, impair or invalidate any other section, term, or provision of this rule and the remaining sections, terms, and provisions shall be and remain in full force.~~

~~R592-5-6. Penalties.~~

~~A person found, after a hearing or other regulatory process, to be in violation of this rule shall be subject to penalties as provided under Sections 31A-2-308 and 31A-2-405.~~

~~R592-5-7. Enforcement Date.~~

~~The commissioner will begin enforcing this rule 15 days after the rule's effective date. If any provision of this rule, Rule R592-5, or its application to any person or situation is held invalid, such invalidity does not affect any other provision or application of this rule that can be given effect without the invalid provision or application. The remainder of this rule shall be given effect without the invalid provision or application.~~

KEY: title dual licensees

Date of Enactment or Last Substantive Amendment: ~~2021~~October 26, 2007]

Notice of Continuation: September 13, 2017

Authorizing, and Implemented or Interpreted Law: 31A-2-404

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R592-6	Filing ID 53655

Agency Information

1. Department:	Insurance
Agency:	Title and Escrow Commission
Room no.:	Suite 2300
Building:	Taylorville State Office Building
Street address:	4315 S 2700 W
City, state and zip:	Taylorville, UT 84129
Mailing address:	PO Box 146901
City, state and zip:	Salt Lake City, UT 84114-6901
Contact person(s):	
Name:	Phone: Email:
Steve Gooch	801-957-9322 sgooch@utah.gov

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

General Information

2. Rule or section catchline:
R592-6. Unfair Inducements and Marketing Practices in Obtaining Title Insurance Business
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):

This rule is being changed as a result of Executive Order 2021-12. During the review of this rule, the Utah Insurance Department (Department) discovered a number of minor issues that needed to be amended. The Title and Escrow Commission approved these changes in a June 30, 2021, meeting by a vote of 3 to 0.

4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):

The majority of the changes are being done to fix style issues to bring the rule text more in line with current rulewriting standards and to make the language of the rule more clear. It does not add, remove, or change any regulations or requirements.

Fiscal Information

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

A) State budget:

There is no anticipated cost or savings to the state budget. The changes are clerical in nature and do not add, remove, or change regulations.

B) Local governments:

There is no anticipated cost or savings to local governments. This rule applies to insurance licensees and has no bearing on local governments.

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

There is no anticipated cost or savings to small businesses. The changes are clerical in nature and do not add, remove, or change regulations.

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

There is no anticipated cost or savings to non-small businesses. The changes are clerical in nature and do not add, remove, or change regulations.

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

There is no anticipated cost or savings to any other persons. The changes are clerical in nature and do not add, remove, or change regulations.

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

There are no compliance costs for any affected persons. Any affected persons are already required to comply with the provisions of the rule, and the changes do not add, remove, or change regulations.

G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):

After conducting a thorough analysis, it was determined that this proposed rule amendment will not result in a fiscal impact to businesses. Jonathan T. Pike, Commissioner

6. A) 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	FY2022	FY2023	FY2024
State Government	\$0	\$0	\$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

B) Department head approval of regulatory impact analysis:

The Commissioner of the Department of Insurance, Jonathan T. Pike, has reviewed and approved this fiscal analysis.

Citation Information

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

Subsection 31A-2-404(2)		
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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. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:	08/16/2021
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10. This rule change MAY become effective on:	08/23/2021
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NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

Agency Authorization Information

Agency head or designee, and title:	Steve Gooch, Public Information Officer	Date:	07/01/2021
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R592. Insurance, Title and Escrow Commission.

R592-6. Unfair Inducements and Marketing Practices in Obtaining Title Insurance Business.

R592-6-1. Authority.

This rule is promulgated by the Title and Escrow Commission pursuant to Subsection 31A-2-404(2), ~~which authorizes the Title and Escrow Commission ("the Commission") to make rules for the administration of the Insurance Code related to title insurance, including rules related to standards of conduct for a title insurer, agency title insurance producer, or individual title insurance producer.~~

R592-6-2. Purpose and Scope.

(1) ~~[This rule identifies]~~ The purpose of this rule is to identify practices that constitute unfair methods of competition because the practices create unfair inducements for the placement of title insurance business.

(2) This rule applies to any person identified in Subsection 31A-23a-402(2)(a).

R592-6-3. Definitions.

~~[This rule incorporates the definitions set forth]~~ Terms used in this rule are defined in Sections 31A-1-301 and 31A-2-402, ~~and adopts the following].~~ Additional terms are defined as follows:

- (1) "Bona fide real estate transaction" means:
- (a) a preliminary title report is issued to a seller or listing agent in conjunction with the listing of a property; or
 - (b) a commitment for title insurance is ordered, issued, or distributed in a purchase and sale transaction showing the name of the

proposed buyer and the sales price, or in a loan transaction showing the proposed lender and loan amount.

(2)(a) "Business activities" include sporting events, sporting activities, musical events, and art events.

(b) "Business activities" do not include awards banquets, recognition events, or similar activities sponsored by or for clients, or commercial travel.

(3)(a) "Business meals" include breakfast, brunch, lunch, dinner, cocktails, and tips.

(b) "Business meals" do not include awards banquets, recognition events, or similar activities sponsored by or for clients.

(4)(a) "Client" means any person, or group, who influences, or who may influence, the placement of title insurance business or who is engaged in a business, profession, or occupation of:

(i) buying or selling interests in real property; ~~and~~ or

(ii) making loans secured by interests in real property.

(b) "Client" includes real estate agents, real estate brokers, mortgage brokers, lending or financial institutions, builders, developers, subdividers, attorneys, consumers, escrow companies, and the employees, agents, representatives, solicitors, and groups or associations of any of the foregoing.

(5) "Discount" means the furnishing or offering to furnish title insurance, services constituting the business of title insurance, or escrow services for a total charge less than the amounts set forth in the applicable rate schedules filed pursuant to Sections 31A-19a-203 or 31A-19a-209.

(6) "Official trade association publication" means:

(a) a membership directory, provided its exclusive purpose is that of providing the distribution of an annual roster of the association's members to the membership and other interested parties; or

(b) an annual, semiannual, quarterly, or monthly publication containing information and topical material for the benefit of the members of the association.

(7) "Title insurance business" means the business of title insurance and the conducting of escrow.

(8) "Title producer" means a title insurer, agency title insurance producer, or individual title insurance producer.

(9) "Trade association" means a recognized association of persons, a majority of whom are clients or persons whose primary activity involves real property.

R592-6-4. Prohibited Unfair Methods of Competition.

A person identified in ~~[Sub]~~Section R592-6-2 who provides or offers to provide, directly or indirectly, any of the following benefits to any client has violated Section 31A-23a-402 and has engaged in an unfair method of competition.

(1) Furnishing a title insurance commitment when the title producer is aware that no policy is intended to be issued without one of the following:

(a) sufficient evidence in the file of the title producer that a bona fide real estate transaction or listing agreement exists; or

(b) a request from a proposed insured to issue a title insurance commitment together with a payment of a minimum cancellation fee of \$200.

(2) Paying any charges for the cancellation of an existing title insurance commitment issued by a competing organization, unless that commitment discloses a defect that gives rise to a claim on an existing policy.

(3) Furnishing escrow services pursuant to Section 31A-23a-406:

(a) for a charge less than the charge filed pursuant to Subsection 31A-19a-209(5); or

(b) for a charge less than the actual cost of providing the services.

(4) Waiving all or any part of established fees or charges for services that are not the subject of rates or escrow charges filed with the commissioner.

(5) Deferring or waiving any payment for insurance or services otherwise due and payable, including a series of real estate transactions for the same parcel of property.

(6) Furnishing services not reasonably related to a bona fide title insurance, escrow, settlement, or closing transaction, including non-related delivery services, accounting assistance, or legal counseling.

(7) Paying for, furnishing, or waiving all or any part of the rental or lease charge for space that is occupied by any client.

(8) Renting or leasing space from any client, regardless of the purpose, at a rate that is excessive or inadequate when compared with rental or lease charges for comparable space in the same geographic area, or paying rental or lease charges based in whole or in part on the volume of business generated by any client.

(9) Furnishing any part of a title producer's facilities, including conference rooms or meeting rooms, to a client or its trade association, for anything other than providing escrow or title services, or related meetings, without receiving a fair rental or lease charge comparable to other rental or lease charges for facilities in the same geographic area.

(10) Co-habiting or sharing office space with a client of a title producer.

(11) Furnishing all or any part of the time or productive effort of any employee of the title producer, [-]including a secretary, clerk, messenger, or escrow officer, to any client.

(12) Paying for all or any part of the salary of a client or an employee of any client.

(13) Paying, or offering to pay, either directly or indirectly, salary, commissions, or any other consideration to any employee who is at the same time licensed as a real estate agent or real estate broker, or as a mortgage lender or mortgage company subject to Section 31A-2-405 and [Section]Rule R592-5.

(14)(a) Payment or prepayment of the following:

(i) fees or charges of a professional, including an appraiser, surveyor, engineer, or attorney, whose services are required by any party or client to structure or complete a particular transaction; or

(ii) fees or charges of a client or party to the transaction, for example, subordination, loan, or HOA payoff request fees, that are required by any party or client to structure or complete a particular transaction.

(b) Subsection (14)(a) does not prohibit pre-payment of overnight mail and delivery fees that will be recovered through closing a transaction.

(15) Sponsoring, cosponsoring, subsidizing, contributing fees, prizes, gifts, food, or otherwise providing anything of value for an activity of a client, except as allowed under [Subs]Section R592-6-5. Activities include open houses at homes or property for sale, meetings, breakfasts, luncheons, dinners, conventions, installation ceremonies, celebrations, outings, cocktail parties, hospitality room functions, open house celebrations, dances, fishing trips, gambling trips, sporting events of [all]-any kind[s], hunting trips or outings, golf or ski tournaments, artistic performances, and outings in recreation areas or entertainment areas.

(16) Sponsoring, cosponsoring, subsidizing, supplying prizes or labor, except as allowed under [Subs]Section R592-6-5, or otherwise providing things of value for promotional activities of a client. Title producers may attend activities of a client if there is no additional cost to the title producer, other than their own entry fees, registration fees,

and meals; the fees may not be greater than those charged to clients or others attending the function.

(17) Providing gifts or anything of value to a client in connection with social events such as birthdays or job promotions. A letter or card in these instances will not be interpreted as a thing of value.

(18) Furnishing or providing access to the following, even for a cost:

(a) building plans;

(b) construction critical path timelines;

(c) "For Sale by Owner" lists;

(d) surveys;

(e) appraisals;

(f) credit reports;

(g) mortgage leads for loans;

(h) rental or apartment lists; or

(i) printed labels.

(19) Issuing a newsletter that is property specific or that highlights specific customers.

(20) Providing access to real property information that the title producer pays to produce, develop, or maintain, except:

(a) providing to a client, through any means including copies, a property profile that includes only the following:

(i) the last vesting deed of public record;

(ii) a plat map reproduction, locator map, or both;

(iii) tax and property characteristics information from the Treasurer's and Assessor's offices; and

(iv) covenants, conditions, and restrictions; and

(b) Providing a client access to closing software that is related to a specific transaction identified in the title commitment.

(21)(a) Providing title or escrow services on real property where an existing or anticipated investment loan or financing has been or will be provided by the title producer or its owners or employees.

(b) Subsection (21)(a) does not apply to transactions involving seller financing.

(22)(a) Engaging in the following advertising activity:

(i) paying for any advertising on behalf of a client;

(ii) advertising jointly with a client on signs for subdivision or condominium projects or for the sale of a lot or lots in a subdivision or units in a condominium project;

(iii) placing an advertisement in a publication, including an internet web page and its links, that is hosted, published, produced for, or distributed by or on behalf of a client;

(iv) placing an advertisement that fails to comply with Section 31A-23a-402 and [Section]Rule R590-130;

(v) placing an advertisement that:

(A) is not purely self-promotional; or

(B) is in an official trade association publication that does not offer any title producer an equal opportunity to advertise in the publication and at the standard rates other advertisers in the publication are charged;

(vi) advertising with free or paid social media services that are not open and available to the general public; or

(vii) paying a fee to share, like, respond to, comment on, or increase the visibility, ranking, or distribution of any social media involving a client or a client's social media page.

(b) Nothing in Subsection (22)(a) prohibits the following:

(i) advertising independently that the title producer has provided title insurance for a particular subdivision or condominium project, but the title producer may not indicate that all future title insurance will be written by that title producer; or

(ii)(A) writing or posting on social media services about an event that directly involves the title producer and a client; and

(B) referencing or linking to the event on the client's social media page or the client company's social media page.

(23) Using interests in other business entities, including I.R.C. Section 1031 qualified intermediaries and escrow companies to enter into any agreement, arrangement, or understanding, or to pursue any course of conduct designed to avoid the provisions of this rule.

(24) For self-promotional open houses:

(a) holding more than two self-promotional open houses per calendar year for each owned or occupied facility, including branch offices;

(b) spending more than \$15 per guest per self-promotional open house;

(c) making guest expenditures on items in the form of a gift, gift certificate, or coupon; or

(d) holding a self-promotional open house on a client's premises.

(25) Making a donation to a charitable organization created, controlled, or managed by a client.

(26) Making a charitable donation that:

(a) is paid in cash;

(b) is paid by negotiable instrument to a payee other than the charitable organization;

(c) is distributed to anyone other than the charitable organization; or

(d) provides a benefit to a client.

(27) Distributing outside the regular course of business to clients, consumers, and members of the general public, self-promotional items that:

(a) have a value of more than \$10, including taxes, setup fees, and shipping;

(b) are edible;

(c) are personalized in the donee's name; or

(d) are given to clients or trade associations for redistribution.

(28) Making expenditures for business meals or business activities on behalf of any person, whether a client or not, as a method of advertising if:

(a) the person representing the title producer is not present during the business meal or business activity;

(b) a substantial title insurance business discussion does not occur directly before, during, or after the business meal or business activity;

(c) the total cost of the business meal, the business activity, or both exceeds \$50 per person, per day;

(d) more than three individuals from an office of a client are provided a business meal or business activity in a single day; or

(e) the entire business meal or business activity takes place on a client's premises.

(29) Conducting a continuing education program that:

(a) is not approved by the appropriate regulatory agency;

(b) addresses matters other than title insurance, escrow, or related subjects;

(c) is less than one hour in duration;

(d) involves expenditure of more than \$15 per person including the cost of meals and refreshments; or

(e) is conducted at more than one individual, physical office location of a client per calendar quarter.

(30) Acknowledging a wedding, birth, or adoption of a child, or a funeral of a client or a member of the client's immediate family with flowers or gifts exceeding \$75.

R592-6-5. Permitted Methods of Competition.

The following are permitted methods of competition. In the event of a conflict between [Subs]Sections R592-6-4 and R592-6-5, [Subs]Section R592-6-5 is controlling.

(1) A title producer may donate time to serve on a trade association committee and may also serve as an officer for the trade association.

(2) A title producer may provide clients access to water, beverages, and edible treats at the title producer's premises.

(3) A title producer may provide to a client the documents used to produce a title commitment and may provide access to them through any means.

R592-6-6. Severability.

If any provision of this rule, Rule R592-6, or its application to any person or situation is held invalid, such invalidity does not affect any other provision or application of this rule that can be given effect without the invalid provision or application. The remainder of this rule shall be given effect without the invalid provision or application.

KEY: title insurance

Date of Enactment or Last Substantive Amendment: [~~May 24,~~ 2021

Notice of Continuation: June 10, 2019

Authorizing, and Implemented or Interpreted Law: 31A-2-404

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code Ref (R no.): R657-9

Filing ID
53636

Agency Information

1. Department:	Natural Resources	
Agency:	Wildlife Resources	
Room no.:	2110	
Building:	Department of Natural Resources	
Street address:	1594 W North Temple	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 146301	
City, state and zip:	Salt Lake City, UT 84114-6301	
Contact person(s):		
Name:	Phone: Email:	
Staci Coons	801-450-3093	stacicoons@utah.gov

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

General Information

2. Rule or section catchline:

R657-9. Taking Waterfowl, Wilson's Snipe and Coot

3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):

This rule is being amended pursuant to Regional Advisory Council and Wildlife Board meetings conducted annually for taking public input and reviewing the Division of Wildlife Resources' (DWR) rule regulating the take of waterfowl.

4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):

The proposed amendments to this rule: 1) incorporate Waterfowl Management Areas into definitions as per H.B. 295, passed in the 2020 General Session, this bill requires an annual permit to perform commercial guide services on all identified Waterfowl Management areas; 2) add Utah Lake Wetland Preserve to the list of Waterfowl Management area with firearm, crossbow and archery tackle restrictions; 3) add Utah Lake Wetland Preserve to the list of Waterfowl Management areas with dog restrictions; and 4) restrict the constructing of new permanent blinds on waterfowl management areas.

Fiscal Information

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

A) State budget:

The proposed rule amendments add Utah Lake Wetland Preserve to the already established list of Waterfowl Management areas with weapon and dog restrictions. These changes can be initiated within the current workload and resources of the DWR, therefore, the DWR has determined that these amendments do not create a cost or savings impact to the state budget or the DWR's budget since the changes will not increase workload and can be carried out with existing budget. However, the permitting requirements established in H.B. 295 (2020) for commercial guiding and outfitting on newly identified Waterfowl Management Areas could result in an increase in state budget due to the \$650 Special Use Permit and application fee. See "Small Businesses" below for the breakdown.

B) Local governments:

Since the proposed amendments adds an area to an already established list of Waterfowl Management areas with restrictions, 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 directly impact small businesses if they are in the business of guiding waterfowl

hunts on Waterfowl Management Areas because a Special Use Permit will now be required of them. It is estimated that there are 12 - 15 guiding outfits currently in the . The application fee is \$150 as per the approved fee schedule with the Special Use Permit cost being \$500 per year.

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 taking waterfowl on waterfowl management units in the state.

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

DWR has determined that this amendment could create additional costs for those guiding waterfowl hunters on Waterfowl Management Units approximately \$650 additional dollars per year.

G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):

After conducting a thorough analysis, it was determined that this proposed rule amendment will likely result in a fiscal impact to small businesses who provide a guiding service on Waterfowl Management Areas. Brian Steed, Executive Director

6. A) 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	FY2022	FY2023	FY2024
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$7,800 to \$9,750	\$7,800 to \$9,750	\$7,800 to \$9,750\$
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0

Total Fiscal Cost	\$7,800 to \$9,750	\$7,800 to \$9,750	\$7,800 to \$9,750
Fiscal Benefits			
State Government	\$7,800 to \$9,750	\$7,800 to \$9,750	\$7,800 to \$9,750
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$7,800 to \$9,750	\$7,800 to \$9,750	\$7,800 to \$9,750
Net Fiscal Benefits	\$0	\$0	\$0
B) 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.			

Citation Information

7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:		
Section 23-14-18	Section 23-14-19	Section 23-32-101 et seq.

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. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	08/16/2021

10. This rule change MAY become effective on:	08/23/2021
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.	

Agency Authorization Information

Agency head or designee, and title:	Rory Reynolds, Division Director	Date:	06/24/2021
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**R657. Natural Resources, Wildlife Resources.
R657-9. Taking Waterfowl, Wilson's Snipe and Coot.
R657-9-1. Purpose and Authority.**

(1) Under authority of Sections 23-14-18 and 23-14-19, and in accordance with 50 CFR 20, 50 CFR 32.64 and 50 CFR 27.21, 2004 edition, which is incorporated by reference, the Wildlife Board has established this rule for taking waterfowl, Wilson's snipe, and coot.

(2) Specific dates, areas, limits, requirements and other administrative details which may change annually are published in the guidebook of the Wildlife Board for taking waterfowl, Wilson's snipe and coot.

R657-9-2. Definitions.

(1)(a) Terms used in this rule are defined in Section 23-13-2.

(b) The terms provided in Subsections 58-79-102(1) through (7) are incorporated by reference.

(2) In addition:

(a) "Bait" means shelled, shucked or unshucked corn, wheat or other grain, salt or other feed that lures, attracts or entices birds.

(b) "Baiting" means the direct or indirect placing, exposing, depositing, distributing, or scattering of salt, grain, or other feed that could serve as a lure or attraction for migratory game birds to, on, or over any areas where hunters are attempting to take them.

(c) "CFR" means the Code of Federal Regulations.

(d) "Daily Bag Limit" means the maximum number of migratory game birds of a single species or combination (aggregate) of species permitted to be taken by one person in any one day during the open season in any one specified geographic area for which a daily bag limit is prescribed.

(e) "Dark geese" means the following species: cackling, Canada, white-fronted and brant.

(f) "Light geese" means the following species: snow, blue and Ross'.

(g) "Live decoys" means tame or captive ducks, geese or other live birds.

(h) "Off-highway vehicle" means any motor vehicle designed for or capable of travel over unimproved terrain.

(i) "Permanent waterfowl blind" means any waterfowl blind that is left unattended overnight and that is not a portable structure capable of immediate relocation.

(j) "Possession limit" the maximum number of migratory game birds of a single species or a combination of species permitted to be possessed by any one person when lawfully taken in the United States in any one specified geographic area for which a possession limit is prescribed.

(k) "Sinkbox" means any type of low floating device, having a depression, affording the hunter a means of concealment beneath the surface of the water.

(l) "Transport" means to ship, export, import or receive or deliver for shipment.

(m) "Waterfowl" means ducks, mergansers, geese, brant and swans.

(n) "Waterfowl blind" means any manufactured place of concealment, including boats, rafts, tents, excavated pits, or similar structures, which have been designed to partially or completely conceal a person while hunting waterfowl.

(o) "Waterfowl Management Area" means the following properties owned or managed by the division primarily for the

conservation, production, or recreational harvest of ducks, mergansers, geese, brant, swans, and other waterfowl:

- (i) Bicknell Bottoms
- (ii) Brown's Park
- (iii) Blue Lake
- (iv) Clear Lake
- (v) Desert Lake
- (vi) Farmington Bay
- (vii) Fitzgerald
- (viii) Howard Slough
- (ix) Harold Crane
- (x) Locomotive Springs
- (xi) Mallard Springs
- (xii) Manti Meadows
- (xiii) Mills Meadows
- (xiv) Ogden Bay
- (xiv) Public Shooting Grounds
- (xv) Powell Slough
- (xvi) Redmond Marsh
- (xvii) Rock Island
- (xviii) Salt Creek
- (xix) Stewart Lake
- (xx) Timpie Springs
- (xxi) Topaz
- (xxii) Warm Springs
- (xxiii) Willard Spur

R657-9-9. Use of Weapons on State Waterfowl Management Areas.

(1) A person may not discharge a firearm, crossbow, or archery tackle on the Bicknell Bottoms, Blue Lake, Brown's Park, Clear Lake, Desert Lake, Farmington Bay, Harold S. Crane, Howard Slough, Locomotive Springs, Mills Meadows, Ogden Bay, Powell Slough, Public Shooting Grounds, Salt Creek, Stewart's Lake, Timpie Springs and Topaz Waterfowl Management areas or Utah Lake Wetland Preserve during any time of the year, except:

- (a) the use of authorized weapons as provided in ~~Utah Admin. Code~~ Section R657-9-7 during waterfowl hunting seasons for lawful hunting activities;
- (b) as otherwise authorized by the Division in special use permit, certificate of registration, administrative rule, proclamation, or order of the Wildlife Board; or
- (c) for lawful purposes of self-defense.

R657-9-28. Use of Dogs.

(1) An individual may not use or permit a dog to harass, pursue, or take protected wildlife unless otherwise allowed for in the Wildlife Code, administrative rules issued under Wildlife Code, or a guidebook of the Wildlife Board.

(2) Dogs may be used to locate and retrieve turkey during open turkey hunting seasons.

(3) Dogs are generally allowed on state wildlife management and waterfowl management areas, subject to the following conditions.

- (a) Dogs are not allowed on the following state wildlife management areas and waterfowl management areas between March 10 and August 31 annually or as posted by the Division:
 - (i) Annabella;
 - (ii) Bear River Trenton Property Parcel;
 - (iii) Bicknell Bottoms;
 - (iv) Blue Lake;
 - (v) Browns Park;

- (vi) Bud Phelps;
- (vii) Clear Lake;
- (viii) Desert Lake;
- (ix) Farmington Bay;
- (x) Harold S. Crane;
- (xi) Hatt's Ranch
- (xii) Howard Slough;
- (xiii) Huntington;
- (xiv) James Walter Fitzgerald;
- (xv) Kevin Conway;
- (xvi) Locomotive Springs;
- (xvii) Manti Meadows;
- (xviii) Mills Meadows;
- (xix) Montes Creek;
- (xx) Nephi;
- (xxi) Ogden Bay;
- (xxii) Pahvant;
- (xxiv) Public Shooting Grounds;
- (xxv) Redmond Marsh;
- (xxvi) Richfield;
- (xxvii) Roosevelt;
- (xxviii) Salt Creek;
- (xxix) Scott M. Matheson Wetland Preserve;
- (xxx) Steward Lake;
- (xxxi) Timpie Springs;
- (xxxii) Topaz Slough;
- (xxxiii) Utah Lake Wetland Preserve;
- ~~(xxxiv)~~ Vernal; and
- ~~(xxxiv)~~ Willard Bay.

(b) The Division may establish special restrictions for Division-managed properties, such as on-leash requirements and temporary or locational closures for dogs, and post them at specific Division properties and at Regional offices;

(c) Organized events or group gatherings of twenty-five (25) or more individuals that involve the use of dogs, such as dog training or trials, that occur on Division properties may require a special use permit as described in Rule R657-28; and

(d) Dog training may be allowed in designated areas on Lee Kay Center and Willard Bay WMA by the Division without a special use permit.

R657-9-34. Waterfowl Blinds on Waterfowl Management Areas.

(1) Waterfowl blinds on division waterfowl management areas may be constructed or used as follows:

(a) waterfowl blinds may not be left unattended overnight, except for blinds constructed entirely of non-woody, vegetative materials that naturally occur where the blind is located;

(b) trees and shrubs on waterfowl management areas that are live or dead standing may not be cut or damaged except as expressly authorized in writing by the division;

(c) excavating soil or rock on waterfowl management areas above or below water surface is strictly prohibited, except as expressly authorized in writing by the division;

(d) rock and soil material may not be transported to waterfowl management areas for purposes of constructing a blind; and

(e) waterfowl blinds may not be constructed or used in any area or manner, which obstructs vehicular or pedestrian travel on dikes.

(2) The restrictions set forth in Subsection (1)(a) through Subsection (1)(e) do not apply to the following waterfowl management areas:

(a) Farmington Bay Waterfowl Management Area - West and North of Unit 1, Turpin Unit, and Doug Miller Unit;

(b) Howard Slough Waterfowl Management Area - West and South of the exterior dike separating the waterfowl management area's fresh water impoundments from the Great Salt Lake;

(c) Ogden Bay Waterfowl Management Area - West of Unit 1, Unit 2, and Unit 3; and

(d) Harold Crane Waterfowl Management Area - one half mile North and West of the exterior dike separating the waterfowl management area's fresh water impoundments from Willard Spur.

(3)(a) The restrictions set forth in Subsection (1)(a) through Subsection (1)(c) do not apply to blinds on Willard Spur Waterfowl Management Area.

(b) The placement or use of any permanent blind on Willard Spur Waterfowl Management Area requires written permission from UDWR and FFSL.

(4) Waterfowl blinds constructed or maintained on waterfowl management areas in violation of this section may be removed or destroyed by the division without notice.

(5) Any unoccupied, permanent waterfowl blind located on state land open to public access for hunting may be used by any person without priority to the person that constructed the blind. It being the intent of this rule to make such blinds available to any person on a first-come, first-serve basis.

(6) Waterfowl blinds or decoys cannot be left unattended overnight on state land open to public access for hunting in an effort to reserve the particular location where the blinds or decoys are placed.

(7) A person may not construct a new permanent blind on a waterfowl management area after June 3, 2021.

KEY: wildlife, birds, migratory birds, waterfowl

Date of Enactment or Last Substantive Amendment: [February 23,] 2021

Notice of Continuation: August 1, 2016

Authorizing, and Implemented or Interpreted Law: 23-14-19; 23-14-18; 50 CFR part 20

NOTICE OF PROPOSED RULE		
TYPE OF RULE: New		
Utah Admin. Code Ref (R no.):	R714-164	Filing ID 53703

Agency Information

1. Department:	Public Safety
Agency:	Highway Patrol
Building:	Calvin Rampton Complex
Street address:	4501 S 2700 W
City, state and zip:	Salt Lake City, UT 84119-5994
Mailing address:	PO Box 141100
City, state and zip:	Salt Lake City, UT 84114-1100
Contact person(s):	
Name:	Phone: Email:

Tim Kincaid	801-580-9931	tkincaid@utah.gov
Kim Gibb	801-556-8198	kgibb@utah.gov
Matt Spillman	801-698-2186	mspillman@utah.gov

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

General Information

2. Rule or section catchline:
R714-164. School Bus Inspection, Maintenance and Auditing Requirements
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
This rule is being enacted as a result of the passage of H.B. 143 during the 2020 General Session, which became effective on January 1, 2021.
4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):
As authorized by Section 53-8-211, this rule establishes standards governing the following: 1) the safety inspection of school buses; 2) maintenance of school bus drivers' hours of service records, vehicle condition reports, and school bus maintenance and repair records; 3) validation that defects discovered during the inspection process have been corrected prior to returning a school bus to service; and 4) audits conducted by the division related to school bus safety operations of each entity performing inspections under Section 53-8-211 to ensure compliance with this rule.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
A) State budget:
There is not an anticipated cost or savings to the state budget because this rule only establishes the standards for school bus inspection, maintenance, and auditing required under Section 53-8-211.
B) Local governments:
There is not an anticipated cost or savings to the local governments because this rule only establishes the standards for school bus inspection, maintenance, and auditing required under Section 53-8-211.

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

There is not an anticipated cost or savings to small businesses because this rule only establishes the standards for school bus inspection, maintenance, and auditing required under Section 53-8-211.

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

There is not an anticipated cost or savings to non-small businesses because this rule only establishes the standards for school bus inspection, maintenance, and auditing required under Section 53-8-211.

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 not an anticipated cost or savings to persons other than small businesses, non-small businesses, state, or local government entities because this rule only establishes the standards for school bus inspection, maintenance, and auditing required under Section 53-8-211.

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

There is not an anticipated compliance cost for affected persons because this rule only establishes the standards for school bus inspection, maintenance, and auditing required under Section 53-8-211.

G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):

This rule should not have an impact on businesses because it only establishes the standards that apply for the inspection of a school bus performed by the Utah Highway Patrol, an education entity, an external maintenance facility or an internal maintenance facility, the maintenance of required records, and department audit and inspection procedures. Jess L. Anderson, Commissioner

6. A) 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	FY2022	FY2023	FY2024
State Government	\$0	\$0	\$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

B) Department head approval of regulatory impact analysis:

The Commissioner of the Department of Public Safety, Jess L. Anderson, has reviewed and approved this fiscal analysis.

Citation Information

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

Section 53-8-211		
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Incorporations by Reference Information

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

	First Incorporation
Official Title of Materials Incorporated (from title page)	Utah School Bus Inspection Facility Entities
Publisher	Utah Department of Public Safety
Date Issued	01/01/2021
Issue, or version	01/01/2021

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

	Second Incorporation
Official Title of Materials Incorporated (from title page)	Utah School Bus Inspection Non-Facility Entities
Publisher	Utah Department of Public Safety
Date Issued	01/01/2021
Issue, or version	01/01/2021

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. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	08/16/2021

10. This rule change MAY become effective on:	08/23/2021
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.	

Agency Authorization Information

Agency head or designee, and title:	Tim Kincaid, Captain Utah Highway Patrol	Date:	06/30/2021
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R714. Public Safety, Highway Patrol.

R714-164. School Bus Inspection, Maintenance and Auditing Requirements.

R714-164-1. Authority.

This rule is authorized by Sections 53-8-211.

R714-164-2. Purpose.

- (1) The purpose of this rule is to set standards governing:
- (a) the safety inspection of school buses;
 - (b) maintenance of:
 - (i) school bus drivers' hours of service records;
 - (ii) vehicle condition reports; and
 - (iii) school bus maintenance and repair records,
 - (c) validation that defects discovered during the inspection process have been corrected prior to returning a school bus to service; and
 - (d) audits conducted by the division related to school bus safety operations of each entity performing inspections under Section 53-8-211 to ensure compliance with this rule.

R714-164-3. Definitions.

- (1) Terms used in this rule are defined in Sections 53-3-102 and 53-8-211, and 49CFR Subpart A 390.5 (October 1, 2011).
- (2) In addition:

(a) "Department" means the Utah Department of Public Safety;

(b) "External maintenance facility" means a third party retained by an education entity for the purpose of maintaining and inspecting the school buses it utilizes;

(c) "Internal maintenance facility" means equipment owned and individuals employed by an education entity for the purpose of maintaining and inspecting the school buses it utilizes;

(d) "Multi-function school activity bus" means a vehicle that meets all criteria of a school bus with the exception of the following traffic control devices:

- (i) stop arms;
- (ii) overhead loading lights;
- (iii) school bus yellow coloring;
- (iv) yellow retro reflective sheeting; and
- (v) required identification markings; and

(e) "School bus" means any vehicle operated by an education entity with a seating capacity of 11 or more, including the driver, used for the purpose of transporting students and equipped in accordance with the rules regarding design and operation as specified by Sections 41-6a-1304 and 53-8-211.5, and the most recent edition of Standards for Utah School Buses and Operation.

R714-164-4. Applicability.

(1) This rule applies to each education entity operating school buses, either owned or leased, with education entity employees acting as drivers or operators.

(2) Requirements of this rule apply to school buses and multi-function school activity buses, with the exception of the criteria listed in Subsection R714-164(3)(d).

(3) Vehicles not meeting the criteria of a school bus or multi function school activity bus shall not be considered or inspected by education entities as part of the requirements of Section 53-8-211 or this rule.

(4) This rule does not preclude any vehicle inspection requirements under Rule R714-162.

R714-164-5. School Bus Safety Inspections.

(1) Each education entity operating an internal maintenance facility shall conduct an annual inspection of each school bus it utilizes in accordance with the Utah School Bus Inspection-Facility Entities Manual, which can be found at <https://highwaypatrol.utah.gov/wp-content/uploads/sites/21/2020/12/SCHOOL-BUS-INSPECTION-2020-FULL.pdf> and is incorporated by reference.

(2) Each education entity utilizing an external maintenance facility shall:

- (a) ensure each school bus it utilizes receives an annual inspection in accordance with the Utah Motor Vehicle Inspection Program; and
- (b) conduct an additional annual inspection of each school bus it utilizes in accordance with the Utah School Bus Inspection - Non Facility Entities manual, which can be found at <https://highwaypatrol.utah.gov/wp-content/uploads/sites/21/2020/12/SCHOOL-BUS-INSPECTION-2020-NON-FACILITY.pdf>, and is incorporated by reference.

(3) School bus specific inspections conducted by education entities, shall be completed by a certified inspector.

- (4) A certified inspector shall:
- (a) be 18 years of age or older;
 - (b) be employed by the education entity;

(c) successfully complete required online training and pass required certification testing; and

(d) complete online recertification training and testing every 5 years, which shall be completed within 6 months of the inspector certification expiration.

R714-164-6. School Bus Drivers' Hours of Service Records.

(1) Each education entity shall maintain hours of service records for school bus drivers for a period of one year.

(2) The records shall be maintained in a manner that is readily available for review and inspection, and shall include:

(i) the time the driver reports to work each day;

(ii) the time the driver is released from work each day;

(iii) the total number of hours the driver is on-duty each day; and

(iv) any time for which the driver is compensated by any employer other than the education entity.

R714-164-7. School Bus Drivers' Vehicle Condition Reports.

(1) Each education entity shall require its drivers to prepare a report for a school bus prior to the driver's operation of the school bus.

(2) The report shall include, at a minimum, the condition of the following parts and accessories:

(a) service brakes;

(b) steering mechanism;

(c) lighting devices and reflectors;

(d) tires;

(e) wheels, rims, fastening devices;

(f) horn;

(g) windshield wipers and washers;

(h) rear vision mirrors;

(i) seats and seat barriers;

(j) emergency exits; and

(k) emergency equipment.

(3) Each school bus condition report must identify the school bus and list any defect or deficiency discovered by, or reported to the driver which could affect the safe operation of the school bus or result in a mechanical breakdown.

(4) Each school bus condition report must be prepared and submitted to the education entity even if no defect or deficiency is discovered by, or reported to the driver.

(5) Prior to requiring or permitting a driver to operate a school bus, each education entity or its agent shall:

(a) repair any defect or deficiency listed on the driver's school bus condition report which would likely affect the safe operation of the school bus; and

(b) certify on the original driver school bus condition report that:

(i) the defect or deficiency has been repaired; or

(ii) repairs are unnecessary before the school bus is operated again.

(6) Each education entity shall maintain the original driver school bus condition report and the certification of repairs, if any, for a period of one year from the date the school bus condition report was created.

(a) These records shall be readily available for review and inspection in accordance with Section R714-164-9.

R714-164-8. School Bus Maintenance and Repair Records.

(1) Each education entity shall have a maintenance program approved by the division that requires an education entity or its agent to:

(a) ensure each school bus receives required safety inspections annually in accordance with this rule;

(b) ensure that no school bus is operated without a passing safety inspection being completed within the previous 12-months;

(c) ensure each school bus receives periodic maintenance of components critical to the safe operation of the school bus at regular manufacturer suggested intervals;

(d) ensure each school bus driver is properly trained to perform and record school bus condition reports as required by Section R714-164-7;

(e) establish a process to verify and repair any defect or deficiency discovered as a result of performing the requirements of Section R714-164-7; and

(f) establish a process to verify and repair any defect or deficiency discovered as a result of an inspection conducted by the Highway Patrol pursuant to Subsection 53-8-211(3)(a) and Section R714-164-9.

(2) The education entity or agent shall maintain a record of each school bus for a period of one year that shall include:

(a) the identification of each school bus including serial number, year, make and number if so marked;

(b) the date and mileage of any inspection, maintenance, or repair that was performed;

(c) the identification of any items found which would likely adversely affect the safe operation of the school bus;

(d) the certification that any defect or deficiency discovered has been corrected prior to the school bus being returned to service; and

(e) the name or names of the individuals who performed the inspection, maintenance, or repair.

(3) The record described in Section R714-164-7 shall be maintained in a manner that is readily available for review and inspection in accordance with Section R714-164-9.

R714-164-9. Department Audit and Inspection Procedures.

(1) The department shall conduct audits and inspections as needed to enforce state rule and laws related to the safety and operation of a school bus.

(2) The department's authorized employees or agents may:

(a) enter, inspect, and examine any lands, buildings, and equipment of a local education entity, a privately operated business contracted with a local education entity, or a privately owned entity operating as an education entity;

(b) inspect and copy any accounts, books, records and documents in order to administer and enforce state rule and law;

(c) examine an education entity's vehicle and driver records required under this rule;

(d) perform random safety inspections on a minimum of 20% of the school buses operated by an education entity;

(e) in cooperation and consultation with the Utah State Board of Education, the Utah Association of Pupil Transportation, and other stakeholders establish an out-of-service threshold, which shall be evaluated every three years starting in January 2024 and published to all education entities;

(f) perform additional record examinations and vehicle safety inspections when an education entity's out-of-service failure rate fails to meet the Department's established out-of-service threshold;

(g) verify that any violations discovered during an audit or inspection are corrected; and

(h) make publicly available the results of audits or inspections.

KEY: school bus, school bus safety inspection, school bus maintenance and auditing

Date of Enactment or Last Substantive Amendment: 2021

Authorizing, and Implemented or Interpreted Law: 53-8-211

End of the Notices of Proposed Rules Section

NOTICES OF 120-DAY (EMERGENCY) RULES

An agency may file a **120-DAY (EMERGENCY) RULE** when it finds that regular rulemaking procedures would:

- (a) cause an imminent peril to the public health, safety, or welfare;
- (b) cause an imminent budget reduction because of budget restraints or federal requirements; or
- (c) place the agency in violation of federal or state law (Subsection 63G-3-304(1)).

As with a **PROPOSED RULE**, a **120-DAY RULE** is preceded by a **RULE ANALYSIS**. This analysis provides summary information about the **120-DAY RULE** including the name of a contact person, justification for filing a **120-DAY RULE**, anticipated cost impact of the rule, and legal cross-references.

Following the **RULE ANALYSIS**, the text of the **120-DAY RULE** is printed. New text is underlined (example) and text to be deleted is struck out with brackets surrounding the deleted text (~~example~~). An emergency rule that is new is entirely underlined. Likewise, an emergency rule that repeals an existing rule shows the text completely struck out. A row of dots in the text (.) indicates that unaffected text was removed to conserve space.

A **120-DAY RULE** is effective when filed with the Office of Administrative Rules, or on a later date designated by the agency. A **120-DAY RULE** is effective for 120 days or until it is superseded by a permanent rule. Because of its temporary nature, a **120-DAY RULE** is not codified as part of the *Utah Administrative Code*.

The law does not require a public comment period for **120-DAY RULES**. However, when an agency files a **120-DAY RULE**, it may file a **PROPOSED RULE** at the same time, to make the requirements permanent.

Emergency or **120-DAY RULES** are governed by Section 63G-3-304, and Section R15-4-8.

NOTICE OF EMERGENCY (120-DAY) RULE		
Utah Admin. Code Ref (R no.):	R68-25-2	Filing ID: 53639

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

Agency Information

1. Department:	Agriculture and Food	
Agency:	Plant Industry	
Street address:	350 N Redwood Road	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 146500	
City, state and zip:	Salt Lake City, UT 84114-6500	
Contact person(s):		
Name:	Phone:	Email:
Amber Brown	801-982-2204	ambermbrown@utah.gov
Cody James	801-982-2376	codyjames@utah.gov
Kelly Pehrson	801-982-2202	kwpehrson@utah.gov

General Information

2. Rule or section catchline:
R68-25-2. Definitions
3. Effective Date:
06/28/2021
4. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
This change is needed to limit the amount of Delta-8-THC or other psychoactive cannabinoids that can be present in industrial hemp products to ensure that the total concentration of any THC analog present in an industrial hemp product does not exceed 0.3%. The Department of Agriculture and Food (Department) has become more aware recently of the risks of new THC analogs that are being increasingly produced and the potential psychoactivity and risk to consumers if these are sold under the industrial hemp program.
5. Summary of the new rule or change (What does this filing do?):

This change amends the definition of "THC" in Section R68-25-2 to include THC analogs as defined by the Utah Controlled Substances Act in Subsection 58-37-4(2)(a)(ii)(AA).

6. A) The agency finds that regular rulemaking would:

- cause an imminent peril to the public health, safety, or welfare;**
- cause an imminent budget reduction because of budget restraints or federal requirements; or**
- place the agency in violation of federal or state law.**

B) Specific reasons and justifications for this finding:

This rule change is needed to ensure that the total concentration of Delta-9-THC in any industrial hemp product, considered along with the concentration of any THC analog in the product, does not exceed 0.3%. The Department is concerned that if products that contain a high concentration of Delta-8-THC or other potentially psychoactive THC analogs are allowed to be sold in Utah this could pose significant health and safety risks to minors and others that may purchase industrial hemp products. Additionally, the clarification provided with this change will help industrial hemp processors more fully understand the types of products that may be sold in the . This change is consistent with the definition of tetrahydrocannabinol under the medical cannabis program as listed in Subsection 4-41a-101(41). Additionally, the Department has authority to make this change based on our general rulemaking authority in the hemp program under Subsection 4-41-403(1)(c) that allows the Department to make rules to determine standards for registration of cannabinoid products, including rules related to "any other issue the department deems necessary."

Fiscal Information

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

A) State budget:

The Department does not estimate that this change would lead to any costs or savings to the state budget because the Department has not yet registered products that contain any THC analog other than Delta-9-THC. This change should not lead to additional registration fees or Department costs.

B) Local governments:

The Department does not estimate that this change would lead to any costs to local governments because they do not produce or regulate industrial hemp products.

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

This change should not impact small businesses because they have not yet registered industrial hemp products with THC analogs other than Delta-9 THC in the state of Utah.

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

This change should not impact other persons because they do not produce or regulate industrial hemp products.

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

Compliance costs for affected persons should not change because the fees charged by the Department will not be impacted by this change.

F) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):

This rule change should not have a fiscal impact on businesses. Craig W. Buttars, Commissioner

Citation Information

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

Subsection		
4-41-103(4)		

Agency Authorization Information

Agency head or designee, and title:	Craig W. Buttars, Commissioner	Date:	06/28/2021
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R68. Agriculture and Food, Plant Industry. R68-25. Industrial Hemp Research Pilot Program for Processors.

R68-25-2. Definitions.

- 1) "CBD" means cannabidiol.
- 2) "Department" means the Utah Department of Agriculture and Food.
- 3) "Industrial Hemp" means any part of a cannabis plant, whether growing or not, with a concentration of less than 0.3% tetrahydrocannabinol by weight
- 4) "Handle" or "Handling" means possessing, transporting, or storing industrial hemp for any period of time.
- 5) "Processing" means any or all parts of harvesting, extraction, refining, altering, manufacturing, or making industrial hemp into a finished industrial hemp product ready for market.
- 6) "Processor" means a person licensed by the department to engage in processing industrial hemp extracting and manufacturing industrial hemp and hemp products.
- 7) "Manufacturing" means storing, preparing, packaging, or labeling of industrial hemp or hemp products.
- 8) "THC" means total composite tetrahydrocannabinol, including delta -9- tetrahydrocannabinol, ~~and~~

tetrahydrocannabinolic acid, and any THC analogs as defined in Subsection 58-37-4(2)(a)(iii)(AA).

9) "Third-party laboratory" means a laboratory which has no direct interest in a grower or processor of industrial hemp or industrial hemp products that is capable of performing mandated testing utilizing validated methods.

KEY: cannabidiol, hemp products, hemp extraction, hemp oil
Date of Enactment or Last Substantive Amendment: June 28, 2021
Authorizing, and Implemented or Interpreted Law: 4-41-103(4)

NOTICE OF EMERGENCY (120-DAY) RULE		
Utah Admin. Code Ref (R no.):	R68-26-2	Filing ID: 53640

Agency Information

1. Department:	Agriculture and Food	
Agency:	Plant Industry	
Street address:	350 N Redwood Road	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 146500	
City, state and zip:	Salt Lake City, UT 84114-6500	
Contact person(s):		
Name:	Phone:	Email:
Amber Brown	801-982-2204	ambermbrown@utah.gov
Cody James	801-982-2376	codyjames@utah.gov
Kelly Pehrson	801-982-2202	kwpehrson@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R68-26-2. Definitions
3. Effective Date:
06/28/2021
4. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
This change is needed to limit the amount of Delta-8-THC or other psychoactive cannabinoids that can be present in industrial hemp products to ensure that the total concentration of any THC analog present in an industrial hemp product does not exceed 0.3%. The Department of

Agriculture and Food (Department) has become more aware recently of the risks of new THC analogs that are being increasingly produced and the potential psychoactivity and risk to consumers if these are sold under the industrial hemp program.

5. Summary of the new rule or change (What does this filing do?):

This change amends the definition of "THC" in Section R68-26-2 to include THC analogs as defined by the Utah Controlled Substances Act in Subsection 58-37-4(2)(a)(ii)(AA).

6. A) The agency finds that regular rulemaking would:

- cause an imminent peril to the public health, safety, or welfare;
- cause an imminent budget reduction because of budget restraints or federal requirements; or
- place the agency in violation of federal or state law.

B) Specific reasons and justifications for this finding:

There are several industrial hemp products that the Department has not been able to register because the current statute and rules do not sufficiently address the presence of THC analogs in industrial hemp products. This rule change is needed to ensure that the total concentration of Delta-9-THC in any industrial hemp product, considered along with the concentration of any THC analog in the product, does not exceed 0.3%. The Department is concerned that if products that contain a high concentration of Delta-8-THC or other potentially psychoactive THC analogs are allowed to be sold in Utah this could pose significant health and safety risks to minors and others that may purchase industrial hemp products. Additionally, the clarification provided with this change will help industrial hemp processors more fully understand the types of products that may be sold in the . This change is consistent with the definition of tetrahydrocannabinol under the medical cannabis program as listed in Subsection 4-41a-101(41). Additionally, the Department has authority to make this change based on our general rulemaking authority in the hemp program under Subsection 4-41-403(1)(c) that allows the Department to make rules to determine standards for registration of cannabinoid products, including rules related to "any other issue the Department deems necessary."

Fiscal Information

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

A) State budget:

The Department does not estimate that this change would lead to any costs or savings to the state budget because the Department has not yet registered products that contain any THC analog other than Delta-9-THC. This change should not lead to additional registration fees or Department costs.

B) Local governments:
The Department does not estimate that this change would lead to any costs to local governments because they do not produce or regulate industrial hemp products.
C) Small businesses ("small business" means a business employing 1-49 persons):
This change should not impact small businesses because they have not yet registered industrial hemp products with THC analogs other than Delta-9 THC in the state of Utah.
D) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency):
This change should not impact other persons because they do not produce or regulate industrial hemp products.
E) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):
Compliance costs for affected persons should not change because the fees charged by the Department will not be impacted by this change.
F) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):
This rule change should not have a fiscal impact on businesses. Craig W. Buttars, Commissioner

Citation Information

8. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:		
Subsection 4-41-103(4)	Subsection 4-41-403(1)	

Agency Authorization Information

Agency head or designee, and title:	Craig W. Buttars, Commissioner	Date:	06/28/2021
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R68. Agriculture and Food, Plant Industry.

R68-26. Industrial Hemp Product Registration and Labeling.

R68-26-2. Definitions.

- 1) "CBD" means cannabidiol.
- 2) "Certificate of Analysis" (COA) means a document produced by a testing laboratory listing the quantities of the various analytes for which testing was performed.
- 3) "Department" means the Utah Department of Agriculture and Food.
- 4) "Industrial Hemp" means any part of a cannabis plant, whether growing or not, with a concentration of less than 0.3% tetrahydrocannabinol by weight.
- 5) "Industrial hemp product" means products derived from, or made by processing industrial hemp plants or plant parts.
- 6) "Label" means the display of each written, printed, or graphic matter upon the immediate container or statement accompanying an industrial hemp product.
- 7) "Manufacturer" means a person who makes any industrial hemp products.
- 8) "Person" means an individual, partnership, association, firm, trust, limited liability company, or corporation or any employees of such.
- 9) "THC" means total composite tetrahydrocannabinol, including delta -9- tetrahydrocannabinol, ~~and~~ tetrahydrocannabinolic acid, and any THC analogs as defined in Subsection 58-37-4(2)(a)(iii)(AA).
- 10) "Third- party laboratory" means a laboratory with no direct interest in a grower or processor of industrial hemp or industrial hemp products that is capable of performing mandated testing utilizing validated methods.

KEY: CBD labeling, CBD products, hemp product registration
Date of Enactment or Last Substantive Amendment: June 28, 2021
Authorizing, and Implemented or Interpreted Law: 4-41-403(1); 4-41-402(2); 4-41-103(4)

End of the Notices of 120-Day (Emergency) Rules Section

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the agency is required to review the rule. This review is intended to help the agency determine, and to notify the public, that the administrative rule in force is still authorized by statute and necessary. Upon reviewing a rule, an agency may: repeal the rule by filing a **PROPOSED RULE**; continue the rule as it is by filing a **FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (REVIEW)**; or amend the rule by filing a **PROPOSED RULE** and by filing a **REVIEW**. By filing a **REVIEW**, the agency indicates that the rule is still necessary.

A **REVIEW** is not followed by the rule text. The rule text that is being continued may be found in the online edition of the *Utah Administrative Code* available at adminrules.utah.gov. The rule text may also be inspected at the agency or the Office of Administrative Rules. **REVIEWS** are effective upon filing.

REVIEWS are governed by Section 63G-3-305.

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R52-7	Filing ID: 53286

Agency Information

1. Department:	Agriculture and Food	
Agency:	Horse Racing Commission (Utah)	
Street address:	350 N Redwood Road	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 146500	
City, state and zip:	Salt Lake City, UT 84114-6500	
Contact person(s):		
Name:	Phone:	Email:
Amber Brown	801-982-2204	ambermbrown@utah.gov
Leann Hunting	801-982-2242	leannhunting@utah.gov
Kelly Pehrson	801-982-2202	kwpehrson@utah.gov

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

General Information

2. Rule catchline:
R52-7. Horse Racing

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 enacted under the authority of Section 4-38-104 which allows the Horse Racing Commission to make rules to resolve scheduling conflicts and settle disputes among horse racing licensees, supervise, and discipline horse racing licensees, and exclude or prohibit horses from participating in a horse race or meet.

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 because it provides specific guidelines governing horse racing in Utah that will protect horses, as well as the public that attend races. This includes detailed information concerning the powers of the Horse Racing Commission and other racing organizations, licensing and racing official requirements, guidelines governing the running of races, and prohibited practices, including medication standards. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Craig W. Buttars, Commissioner	Date:	07/01/2021
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R156-28	Filing ID: 53041

Agency Information

1. Department:	Commerce	
Agency:	Occupational and Professional Licensing	
Building:	Heber M. Wells Building	
Street address:	160 E 300 S	
City, state and zip:	Salt Lake City, UT 84111-2316	
Mailing address:	PO Box 146741	
City, state and zip:	Salt Lake City, UT 84114-6741	
Contact person(s):		
Name:	Phone:	Email:
Jana Johansen	801-530-6621	janajohansen@utah.gov

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

General Information

2. Rule catchline:
R156-28. Veterinary Practice Act Rule

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

Title 58, Chapter 28, provides for the licensure and regulation of veterinarians and veterinarian interns and state certification of veterinary technicians. Subsection 58-1-106(1)(a) provides that the Division of Occupational and Professional Licensing (Division) may adopt and enforce rules to administer Title 58. Subsection 58-1-202(1)(a) provides that the Veterinary Board's duties, functions, and responsibilities includes recommending to the director appropriate rules. This rule was enacted to clarify the provisions of Title 58, Chapter 28, with respect to veterinarians, veterinarian interns, and state certified veterinary technicians.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

Since this rule was last reviewed in November 2016, the rule has been amended three times (September 2018, March 2019, and October 2020). With respect to the proposed rule amendments filed by the Division in September 2018 (DAR File No. 43189), the Division received the following two written/mailed comments: an October 17, 2018, email from Justin Stark and an October 18, 2018, email from Lucky 7 Schnauzers. Both of the

comments submitted were in opposition to proposed amendments with respect to unlicensed assistive personnel working with and being supervised by a licensed veterinarian. Both of these comments were reviewed by the Division and the Veterinarian Board. As a result of an October 2018 public rule hearing and the written comments received, additional proposed amendments (CPR filing) were filed by the Division in February 2019 which addressed the concerns raised in the October 2018 comments.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule should be continued as it provides a mechanism to inform potential licensees of the requirements for licensure as allowed under statutory authority provided in Title 58, Chapter 28. This rule should also be continued as it provides information to ensure applicants for licensure are adequately trained and meet minimum licensure requirements, and provides licensees with information concerning unprofessional conduct, definitions, and ethical standards relating to the profession.

Agency Authorization Information

Agency head or designee, and title:	Mark B. Steinagel, Director	Date:	06/18/2021
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R156-70a	Filing ID: 50303

Agency Information

1. Department:	Commerce	
Agency:	Occupational and Professional Licensing	
Building:	Heber M. Wells Building	
Street address:	160 E 300 S	
City, state and zip:	Salt Lake City, UT 84111-2316	
Mailing address:	PO Box 146741	
City, state and zip:	Salt Lake City, UT 84114-6741	
Contact person(s):		
Name:	Phone:	Email:
Larry Marx	801-530-6254	lmarx@utah.gov

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

General Information

2. Rule catchline:	
R156-70a. Physician Assistant Practice Act Rule	
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:	
Title 58, Chapter 70a, provides for the licensure and regulation of physician assistants. Subsection 58-1-106(1)(a) provides that the Division of Occupational and Professional Licensing (Division) may adopt and enforce rules to administer Title 58. Subsection 58-1-202(1)(a) provides that the Physician Assistant Licensing Board's duties, functions, and responsibilities includes recommending to the director appropriate rules. This rule was enacted to clarify the provisions of Title 58, Chapter 70a, with respect to physician assistants.	
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:	
Since this rule was last reviewed in November 2016, the rule has been amended two times, once in December 2016 and once in June 2018. The Division has received no written comments with respect to this rule.	
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:	
This rule should be continued as it provides a mechanism to inform potential licensees of the requirements for licensure as allowed under statutory authority provided in Title 58, Chapter 70a. This rule should also be continued as it provides information to ensure applicants for licensure are adequately trained and meet minimum licensure requirements, and provides licensees with information concerning unprofessional conduct, definitions, and ethical standards relating to the profession.	

Agency Authorization Information

Agency head or designee, and title:	Mark B. Steinagel, Director	Date:	06/18/2021
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R156-86	Filing No. 50317

Agency Information

1. Department:	Commerce
Agency:	Occupational and Professional Licensing

Building:	Heber M. Wells Building	
Street address:	160 E 300 S	
City, state, zip:	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:
Steve Duncombe	801-530-6235	sduncombe@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:	
R156-86. State Certification of Commercial Interior Designers Act Rule	
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:	
Title 58, Chapter 86, provides for the state certification of commercial interior designers. Subsection 58-1-106(1)(a) provides that the Division of Occupational and Professional Licensing (Division) may adopt and enforce rules to administer Title 58, Chapter 86. Section 58-86-103 provides the Division may make rules under Title 58, Chapter 86. This rule was enacted to clarify the provisions of Title 58, Chapter 86, with respect to the state certification of commercial interior designers.	
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 rule was enacted in July 2016 and no amendments have been made to the rule since it was made effective on July 11, 2016. As a result, the Division has received no written comments with respect to this rule.	
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:	
This rule should be continued as it provides a mechanism to inform potential state certified commercial interior designers of the requirements as allowed under statutory authority provided in Title 58, Chapter 86. This rule should also be continued as it provides information to ensure applicants for state certification are adequately trained and meet minimum requirements and provides state certified commercial interior designers with information concerning unprofessional conduct, definitions, and ethical standards relating to the profession.	

Agency Authorization Information

Agency head or designee, and title:	Mark B. Steinagel, Director	Date:	01/28/2021
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R909-75	Filing ID: 52103
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Agency Information

1. Department:	Transportation	
Agency:	Motor Carrier	
Room no.:	Administrative Suite, 1st floor	
Building:	Calvin Rampton	
Street address:	4501 S 2700 W	
City, state, and zip:	Taylorsville, UT 84129	
Mailing address:	PO Box 148455	
City, state and zip:	Salt Lake City, UT 84114-8455	
Contact person(s):		
Name:	Phone:	Email:
Linda Hull	801-965-4253	lhull@utah.gov
Becky Lewis	801-965-4026	blewis@utah.gov
James Palmer	801-965-4197	jimpalmer@agutah.gov
Lori Edwards	801-965-4048	loriedwards@agutah.gov

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

General Information

2. Rule catchline:
R909-75. Safety Regulations for Motor Carriers Transporting Hazardous Materials and/or Hazardous Wastes
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 72-9-103 requires the Department of Transportation (Department) to make rules adopting by reference in whole or in part the Federal Motor Carrier Safety Regulations, including minimum security

requirements for motor carriers. This rule incorporates by reference specific parts of the Safety Regulations for Motor Carriers Transporting Hazardous Materials and/or Hazardous Wastes that are part of 49 CFR, Sub-Chapter C.

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 any written comments during and since the last five-year review of this rule from interested 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:

Section 72-9-103 requires the Department to have this rule, and this section of the Code is still effective law. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Carlos M. Braceras, PE, Executive Director	Date:	06/28/2021
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R926-15	Filing ID: 52143
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Agency Information

1. Department:	Transportation	
Agency:	Program Development	
Room no.:	Administrative Suite, 1st floor	
Building:	Calvin Rampton	
Street address:	4501 S 2700 W	
City, state and zip:	Taylorsville, UT 84129	
Mailing address:	PO Box 148455	
City, state and zip:	Salt Lake City, UT 84114-8455	
Contact person(s):		
Name:	Phone:	Email:
Linda Hull	801-965-4253	lhull@utah.gov
Becky Lewis	801-965-4026	blewis@utah.gov

James Palmer	801-965-4197	jimpalmer@agutah.gov
Lori Edwards	801-965-4048	loriedwards@agutah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R926-15. Designated Scenic Backways
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Subsections 72-4-303(4) through (6) require the Department of Transportation, in cooperation with the Utah State Scenic Byway Committee (Committee), make this rule and maintain it in accordance with 23 U.S.C. Sec. 131.
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 are no written comments received by the Committee since the last five-year 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 the event a new scenic backway is proposed, however, as written in the rule: "The network of scenic backways is already extensive and the committee intends to limit the number of backways in order to maintain the quality and integrity of the scenic backway system. For this reason, the likelihood of new designations is low, but proposals for new backway routes will be considered".
The Committee has not received any new scenic backway designation requests in the recent past; however, this rule is necessary in the event a request is received so the Committee knows how to proceed. This rule outlines the basic parameters of the program such as eligibility for federal money, road types 1 - 3, difference between a scenic backway and byway, jurisdiction and limitations of authority, etc. This rule also contains the official list of the approved scenic backways which information is used in the tourism/outdoor industry marketing, creating of maps, etc. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Carlos M. Braceras, PE, Executive Director	Date:	06/18/2021
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End of the Five-Year Notices of Review and Statements of Continuation Section

NOTICES OF RULE EFFECTIVE DATES

State law provides for agencies to make their administrative rules effective and enforceable after publication in the *Utah State Bulletin*. In the case of **PROPOSED RULES** or **CHANGES IN PROPOSED RULES** with a designated comment period, the law permits an agency to make a rule effective no fewer than seven calendar days after the close of the public comment period, nor more than 120 days after the publication date. In the case of **CHANGES IN PROPOSED RULES** with no designated comment period, the law permits an agency to make a rule effective on any date including or after the thirtieth day after the rule's publication date, but not more than 120 days after the publication date. If an agency fails to file a **NOTICE OF EFFECTIVE DATE** within 120 days from the publication of a **PROPOSED RULE** or a related **CHANGE IN PROPOSED RULE** the rule lapses.

Agencies have notified the Office of Administrative Rules that the rules listed below have been made effective.

NOTICES OF EFFECTIVE DATE are governed by Subsection 63G-3-301(12), Section 63G-3-303, and Sections R15-4-5a and R15-4-5b.

Agriculture and Food

Animal Industry

No. 53409 (Repeal) R58-24: Community Spay and Neuter Grants

Published: 05/01/2021

Effective: 06/28/2021

Regulatory Services

No. 53433 (Amendment) R70-910: Registration of Servicepersons for Commercial Weighing and Measuring Devices

Published: 05/15/2021

Effective: 06/28/2021

Communications Authority Board (Utah)

Administration

No. 53362 (Repeal and Reenact) R174-1: Utah Communications Authority, Administration

Published: 04/15/2021

Effective: 07/07/2021

Education

Administration

No. 53412 (Amendment) R277-108: Annual Assurance of Compliance by Local School Boards

Published: 05/01/2021

Effective: 06/24/2021

No. 53411 (Amendment) R277-301: Educator Licensing

Published: 05/01/2021

Effective: 06/24/2021

No. 53413 (Amendment) R277-325: Public Education Exit and Engagement Surveys

Published: 05/01/2021

Effective: 06/24/2021

No. 53367 (Amendment) R277-419: Pupil Accounting

Published: 04/01/2021

Effective: 06/15/2021

No. 53414 (Amendment) R277-614: Athletes and Students with Head Injuries

Published: 05/01/2021

Effective: 06/24/2021

No. 53417 (New Rule) R277-727: School Meals Program

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No. 53416 (Amendment) R277-733: Incorporation of Utah Adult Education Policies and Procedures Guide by Reference

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Government Operations

Administration

No. 53466 (New Rule) R13-4: In-State Work Location Rule

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Human Resource Management

No. 53447 (Amendment) R477-1: Definitions

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No. 53448 (Amendment) R477-2: Administration

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No. 53449 (Amendment) R477-3: Classification

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NOTICES OF RULE EFFECTIVE DATES

No. 53450 (Amendment) R477-4: Filling Positions
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No. 53451 (Amendment) R477-5: Employee Status and Probation
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No. 53452 (Amendment) R477-6: Compensation
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No. 53453 (Amendment) R477-7: Leave
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No. 53454 (Amendment) R477-8: Working Conditions
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No. 53455 (Amendment) R477-9: Employee Conduct
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No. 53456 (Amendment) R477-10: Employee Development
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No. 53457 (Amendment) R477-11: Discipline
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No. 53458 (Amendment) R477-12: Separations
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No. 53459 (Amendment) R477-13: Volunteer Programs
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No. 53460 (Amendment) R477-14: Substance Abuse and Drug-Free Workplace
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No. 53461 (Amendment) R477-15: Workplace Harassment Prevention
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No. 53462 (Amendment) R477-16: Abusive Conduct Prevention
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No. 53463 (Amendment) R477-101: Administrative Law Judge Conduct Committee
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Governor

Economic Development
No. 53542 (Amendment) R357-3: Economic Development Tax Increment Financing Rule
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No. 53468 (Amendment) R357-24: Utah Works Program
Published: 05/15/2021
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No. 53544 (New Rule) R357-39: Talent Development Grant Rule
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Health

Health Care Financing, Coverage and Reimbursement Policy
No. 53442 (Amendment) R414-401: Assessment
Published: 05/15/2021
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Family Health and Preparedness, Emergency Medical Services

No. 53466 (Amendment) R426-8: Emergency Medical Services Ground Ambulance Rates and Charges
Published: 05/15/2021
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Family Health and Preparedness, Primary Care and Rural Health

No. 53446 (Amendment) R434-40: Utah Health Care Workforce Financial Assistance Program Rules
Published: 05/15/2021
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Disease Control and Prevention, Laboratory Improvement

No. 53363 (Amendment) R444-14: Rule for the Certification of Environmental Laboratories
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Insurance

Administration

No. 53469 (Amendment) R590-200-5: Minimum Standards and General Provisions
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No. 53467 (Amendment) R590-254: Annual Financial Reporting Rule
Published: 05/15/2021
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Natural Resources

Wildlife Resources

No. 53474 (Amendment) R657-41: Conservation and Sportsman Permits
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No. 53475 (Amendment) R657-60: Aquatic Invasive
Species Interdiction
Published: 06/01/2021
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Public Service Commission

Administration
No. 53438 (Amendment) R746-8: Calculation and
Application of UUSF Surcharge
Published: 05/15/2021
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Workforce Services

Employment Development
No. 53464 (Amendment) R986-700: Child Care Assistance
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Housing and Community Development

No. 53437 (Amendment) R990-8: Permanent Community
Impact Fund Board Review and Approval of Applications for
Funding Assistance
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End of the Notices of Rule Effective Dates Section

