

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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TABLE OF CONTENTS

| | |
|---|----------|
| NOTICES OF PROPOSED RULES | 1 |
| AGRICULTURE AND FOOD | |
| Plant Industry | |
| R68-24. Industrial Hemp License for Growers..... | 2 |
| COMMERCE | |
| Occupational and Professional Licensing | |
| R156-37f. Controlled Substance Database Act Rule..... | 6 |
| EDUCATION | |
| Administration | |
| R277-318. Teacher Salary Supplement Program..... | 13 |
| R277-421. Out-of-State Tuition Reimbursement | 15 |
| R277-502. Educator Licensing and Data Retention | 18 |
| R277-746. Driver Education Programs for Utah Schools | 23 |
| R277-922. Digital Teaching and Learning Grant Program..... | 25 |
| ENVIRONMENTAL QUALITY | |
| Waste Management and Radiation Control, Waste Management | |
| R315-101. Cleanup Action and Risk-Based Closure Standards | 29 |
| HEALTH | |
| Disease Control and Prevention, Environmental Services | |
| R392-102. Food Truck Sanitation..... | 56 |
| R392-104. Feeding Disadvantaged Groups | 70 |
| R392-303. Public Geothermal Pools and Bathing Places | 73 |
| Health Care Financing, Coverage and Reimbursement Policy | |
| R414-320-16. Benefits..... | 87 |
| HUMAN SERVICES | |
| Administration | |
| R495-876. Provider Code of Conduct..... | 89 |
| Administration, Administrative Services, Licensing | |
| R501-1. General Provisions for Licensing | 95 |
| R501-8. Outdoor Youth Programs | 116 |
| R501-15. Therapeutic Schools | 127 |
| R501-19. Residential Treatment Programs | 136 |
| R501-22. Residential Support Programs | 141 |

| | |
|---|------------|
| Recovery Services | |
| R527-302. Income Withholding Fees | 151 |
| R527-378. Withholding of Social Security Benefits | 153 |
| R527-928. Lost Checks | 155 |
| INSURANCE | |
| Administration | |
| R590-79. Life Insurance Disclosure Rule | 157 |
| R590-83. Unfair Discrimination on the Basis of Sex or Marital Status | 161 |
| R590-140. Reference Filings of Rate Service Organization Prospective Loss Costs | 164 |
| R590-161. Disability Income Policy Disclosure | 167 |
| PUBLIC SAFETY | |
| Driver License | |
| R708-2. Commercial Driver Training Schools..... | 169 |
| Criminal Investigations and Technical Services, Criminal Identification | |
| R722-300. Concealed Firearm Permit and Instructor Rule..... | 184 |
| FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION | 191 |
| EDUCATION | |
| Administration | |
| R277-318. Teacher Salary Supplement Program | 191 |
| R277-421. Out-of-State Tuition Reimbursement | 192 |
| R277-438. Dual Enrollment..... | 192 |
| R277-746. Driver Education Programs for Utah Schools | 193 |
| R277-922. Digital Teaching and Learning Grant Program..... | 193 |
| HEALTH | |
| Disease Control and Prevention, Environmental Services | |
| R392-401. Roadway Rest Area Sanitation | 194 |
| SCHOOL AND INSTITUTIONAL TRUST LANDS | |
| Administration | |
| R850-8. Adjudicative Proceedings..... | 195 |
| TRANSPORTATION | |
| Program Development | |
| R926-5. State Park Access Highways Improvement Program | 195 |
| Preconstruction | |
| R930-2 Public Hearings | 196 |
| R930-3. Highway Noise Abatement..... | 197 |
| R930-5 Establishment and Regulation of At-Grade Railroad Crossings | 197 |
| R930-6 Access Management..... | 198 |

| | |
|---|------------|
| NOTICES OF FIVE-YEAR REVIEW EXTENSIONS | 199 |
| ENVIRONMENTAL QUALITY | |
| Air Quality | |
| R307-301: Utah and Weber Counties: Oxygenated Gasoline Program as a Contingency Measure | 199 |
| NOTICES OF FIVE-YEAR EXPIRATIONS | 201 |
| TRANSPORTATION | |
| Administration | |
| R907-3. Administrative Procedure | 201 |
| NOTICES OF RULE EFFECTIVE DATES | 203 |

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 October 02, 2021, 12:00 a.m., and October 15, 2021, 11:59 p.m. are included in this, the November 01, 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 December 01, 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 March 01, 2022, the agency may notify the Office of Administrative Rules that it wants to make the **PROPOSED RULE** effective. The agency sets the effective date. The date may be no fewer than seven calendar days after the close of the public comment period nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file a **CHANGE IN PROPOSED RULE** in response to comments received. If the Office of Administrative Rules does not receive a **NOTICE OF EFFECTIVE DATE** or a **CHANGE IN PROPOSED RULE**, the **PROPOSED RULE** lapses.

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

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

The Proposed Rules Begin on the Following Page

| NOTICE OF PROPOSED RULE | | |
|-------------------------------|--------|-----------------|
| TYPE OF RULE: Amendment | | |
| Utah Admin. Code Ref (R no.): | R68-24 | Filing ID 54002 |

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 | 801-982-2200 kwpehrson@utah.gov |
| Please address questions regarding information on this notice to the agency. | |

General Information

| |
|---|
| 2. Rule or section catchline: |
| R68-24. Industrial Hemp License for Growers |
| 3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?): |
| Changes are needed to add requirements regarding the treatment and remediation of non-compliant material to make this rule consistent with USDA industrial hemp requirements. |
| 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): |
| Additional language is added to Section R68-24-12 to add specific requirements for remediation and disposal of non-compliant industrial hemp material in the possession of industrial hemp licensees, consistent with USDA rules. |

Fiscal Information

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

| |
|--|
| A) State budget: |
| These changes will not create anticipated cost or savings to the state budget. The Department of Agriculture and Food (Department) will be able to continue to administer the industrial hemp program with existing resources. |
| B) Local governments: |
| These changes should not impact local governments because they do not participate in the industrial hemp program. |
| C) Small businesses ("small business" means a business employing 1-49 persons): |
| These changes should not create additional quantifiable costs or savings to small businesses. While businesses that choose to remediate will have to pay for a second test, the cost of the test (\$65) will be less than the potential benefit from being able to sell additional biomass. The Department cannot quantify the amount of biomass that might be remediated and sold or what price would be paid for it. |
| D) Non-small businesses ("non-small business" means a business employing 50 or more persons): |
| These changes should not create additional quantifiable costs or savings to non-small businesses. While businesses that choose to remediate will have to pay for a second test, the cost of the test (\$65) will be less than the potential benefit from being able to sell additional biomass. The Department cannot quantify the amount of biomass that might be remediated and sold or what price would be paid for it. |
| 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 will not be impacted by this change because they do not function as industrial hemp licensees or administer the industrial hemp program. |
| F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?): |
| Industrial hemp licensing fees will remain the same. If a licensee chooses to remediate, they will need to pay \$65 for a second test. The Department is not able to estimate how many licensees will have non-compliant material and will choose to remediate. |
| 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 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 Utah Department of Agriculture and Food, Craig W. Buttars, 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 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: 12/01/2021

10. This rule change MAY become effective on: 12/08/2021

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: | 10/06/2021 |
|--|--------------------------------|--------------|------------|

R68. Agriculture and Food, Plant Industry.

R68-24. Industrial Hemp License for Growers.

R68-24-1. 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 Program for the growing and cultivation of industrial hemp.

R68-24-2. 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) "Community Location" means a public or private elementary or secondary school, a church, a public library, a public playground, or a public park.

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

4) "Growing Area" means a contiguous area on which hemp is grown whether inside or outside.

5) "Handle" or "handling" means the action of cultivating or storing hemp plants or hemp plant parts prior to the delivery of the plants or plant parts for processing.

6) "Harvesting" means removing industrial hemp plants from final growing condition and physically or mechanically preparing plant material for storage or wholesale.

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

8) "Licensee" means a person authorized by the department to grow industrial hemp.

9) "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.

10) "THC" means total composite tetrahydrocannabinol, including delta -9- tetrahydrocannabinol and tetrahydrocannabinolic acid.

R68-24-3. Grower License Application Requirements.

- 1) The applicant shall be a minimum of 18 years old.
- 2) The applicant is not eligible to receive a license if they have been convicted of a felony or its equivalent within the last ten years.
- 3) An applicant seeking an industrial hemp cultivation license shall submit the following to the department:
 - a) a completed application form provided by the department;
 - b) the legal description of the growing area;
 - c) the global positioning coordinates for the center of the outdoor growing area;
 - d) maps of the growing area in acres or square feet, and the location of different varieties within the growing area;
 - e) a statement of the intended end use or disposal for parts of the hemp plant grown; and
 - f) a plan for the storage of seed or clone and harvested industrial hemp material as specified in Section R68-24-7.
- 4) An applicant shall submit a nationwide criminal history from the FBI completed within three 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 the required information.

R68-24-4. Growing Area.

- 1) A licensee shall not plant or grow industrial hemp on any site not listed on the grower license application and shall take immediate steps to prevent the inadvertent growth of industrial hemp outside of the authorized grow area.
- 2) A licensee shall not grow hemp in any structure used for residential purposes.
- 3) A licensee shall not handle or store leaf, viable seed, or floral material from hemp in a structure used for residential purposes.
- 4) A licensee shall not grow industrial hemp outdoors within 1,000 feet of a community location.
- 5) The licensee shall post signage at the plot location's entrance and where the plot is visible to a public roadway in a manner that would reasonably be expected to be seen by a person in the area.
- 6) The signage shall include the following information:
 - a) the statement, "Utah Department of Agriculture Industrial Hemp Program";
 - b) the name of the licensee;
 - c) the Utah Department of Agriculture and Food licensee number; and
 - d) the department's telephone number.

R68-24-5. Reporting Requirements.

- 1) Within ten days of planting the licensee shall submit a Planting Report, on a form provided by the department, that includes:
 - a) a list of industrial hemp varieties and other plants in the growing area ~~which~~ that were planted;
 - b) the actual acres planted or the seeding rate or number of clones planted in the growing area;
 - c) adjusted maps and global position coordinates for the area planted; and
 - d) the amount of seed that was not used.
- 2) 30 days prior to harvest the licensee shall submit a Harvest Report, on a form provided by the department, that includes:
 - a) any contracts entered into between the grower and an industrial hemp processor or a statement of the intended use of industrial hemp cultivated in the growing area;

- b) any intended storage areas for industrial hemp or industrial hemp material; and
 - c) the harvest dates and location of each variety cultivated in the growing areas;
 - i) the licensee shall immediately inform the department of any changes in the reported harvest date which exceeds five days.
- 3) 30 days after completion of harvest the licensee shall submit a Production Report, on a form provided by the department, which includes:
 - a) yield from the growing area;
 - b) THC testing reports, if any, conducted at the licensee's request;
 - c) water application rates;
 - d) report of any pest infestations or problems; and
 - e) a statement on the final disposition of the industrial hemp product in the growing area.
- 4) Failure to submit the required reports may result in the revocation of the grower license.

R68-24-6. Inspection and Sampling.

- 1) The growing area shall be subject to random sampling to verify the THC concentration does not exceed the acceptable hemp THC levels by department officials.
- 2) The department shall have complete and unrestricted access to industrial hemp plants and seeds whether growing or harvested, and to land, buildings, and other structures used for the cultivation or storage of industrial hemp.
- 3) Samples of each variety of industrial hemp shall be randomly sampled from the growing area by department officials.
- 4) The department shall conduct the laboratory testing on the sample to determine the THC concentration on a dry weight basis.
- 5) The sample taken by the department shall be the official sample.
- 6) The department shall test the growing area within 30 days prior to harvest.
- 7) The department shall notify the licensee of the test results from the official sample within a reasonable amount of time.
- 8) The test results from the department shall contain a measurement of uncertainty.
- 9) Any laboratory test that exceeds the acceptable hemp THC level may be considered a violation of the terms of the license and may result in license revocation and issuance of a citation.
- 10) Upon a test result with greater than the acceptable hemp THC level, the department shall notify the grower.
- 11) The department will coordinate with the appropriate law enforcement agency regarding any laboratory test result with 1% THC or greater, and revocation of the license for the remaining calendar year will be immediate.

R68-24-7. Storage of Industrial Hemp and Hemp Material.

- 1) A licensee may store hemp and hemp material provided:
 - a) the licensee notifies the department, in writing, of the location of the storage facility;
 - b) the licensee informs the department of the type and amount of product being stored in the storage facility;
 - c) the storage facility is outside of the public view;
 - d) the storage facility is secured with physical containment and reasonable security measures; and
 - e) the storage facility is not within 1,000 feet of a community location.
- 2) The storage area is subject to random inspection by department officials.

R68-24-8. Transportation of Industrial Hemp Materials.

1) A licensee shall not transport any industrial hemp materials, except to a storage facility, until the department has notified the licensee of the test results from the growing area.

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 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 a movement permit that is not completed in accordance with this rule.

R68-24-9. Restrictions on the Sale and Transfer of Industrial Hemp and Hemp Materials.

1) A licensee shall not sell or transfer living plants, viable plants, viable seeds, leaf material, or floral material to any person not licensed by the department or to any person outside the state who is not authorized by the laws of that state or the United States Department of Agriculture.

2) The licensee may sell or transfer stripped stalks, fiber, and nonviable seed to the general public provided the hemp material has an acceptable hemp level.

R68-24-10. Renewal.

1) A licensee shall resubmit documents required in Section R68-24-3, 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.

R68-24-11 Extension.

1) The department may extend the term of a license for up to 90 days, provided that:

a) the licensee requests an extension prior to the end of the original license term; and

b) the licensee reports to the department[~~;~~];

i) the amount of industrial hemp they possess at the end of the original license term; and

ii) the planned disposition of the remaining industrial hemp.

2) Under an extended license, the licensee shall not grow or process industrial hemp, but may store and sell industrial hemp harvested during the previous growing season.

3) The licensee shall submit a license extension fee as approved by the legislature in the fee schedule.

4) The licensee continues to be subject to inspection by the department.

R68-24-12. Remediation or Destruction of ~~[Industrial]~~Non-compliant ~~[Hemp]~~Material.

~~[1) The department shall be responsible for the destruction of any plant material which tests above the acceptable hemp THC level.~~

~~2) The licensee shall work with the department on an approved plan for the destruction of the plant material.~~

~~3) The department may destroy the plant material at cost to the licensee.]~~

1) Non-compliant material may be remediated by:

a) removing and destroying flower material, while retaining stalk, stems, leaf material, and seeds; or

b) shredding the entire plant to create a "biomass-blend."

2) Prior to remediation, a licensee shall have their remediation plan approved by the department.

3) Following remediation, non-compliant material shall be retested for compliance.

4) A licensee shall request remediation and provide the department with their remediation plan within five business days of receiving notification that material is not compliant.

5) A licensee shall remediate and retest non-compliant material within 30 days of receiving department approval of their remediation plan.

6) If a licensee chooses not to remediate or if a remediation attempt is not successful, the licensee shall dispose of any non-compliant material.

7) Disposal shall be conducted:

a) by a DEA-registered reverse distributor or law enforcement;

b) on site at the farm or hemp production facility by plowing under;

c) by mulching or composting the non-compliant material;

d) by disking the non-compliant material;

e) by shredding the non-compliant with a bush mower or chopper;

f) by burying the non-compliant material at least two feet deep; or

g) by burning the non-compliant material.

~~[4]7) The department shall~~may inspect the growing area to verify the destruction of ~~[plant]~~non-compliant material.

R68-24-13. Violations.

1) A licensee shall not grow industrial hemp that tests greater than the acceptable hemp THC level on a dry weight basis.

2) A licensee shall not possess, sell, transfer, or transport industrial hemp material that tests greater than the acceptable hemp THC level on a dry weight basis.

3) It is a violation of the grower license to grow or store industrial hemp or industrial hemp material on a site not approved by the department as part of the license.

4) A licensee shall not allow unsupervised public access to hemp plots.

5) A licensee shall not deny an official of the department access for sampling or inspection purposes.

6) A licensee shall not violate any portion of this rule or state law.

7) It is a violation of this rule to grow, cultivate, handle, or possess industrial hemp or viable industrial hemp materials without a license from the department.

9) It is a violation to grow industrial hemp material on a site not approved by the department as listed on the license.

10) It is a violation to grow industrial hemp outdoors within 1,000 feet of a community location.

KEY: industrial hemp cultivation

Date of Last Change: 2021~~[September 4, 2020]~~

Authorizing, and Implemented or Interpreted Law: 4-41-103(4)

| NOTICE OF PROPOSED RULE | | |
|-------------------------------|----------|-----------------|
| TYPE OF RULE: Amendment | | |
| Utah Admin. Code Ref (R no.): | R156-37f | Filing ID 54001 |

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: |
| Jeff Henrie | 801-530-6046 | jahenrie@utah.gov |

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

General Information

| |
|---|
| 2. Rule or section catchline: |
| R156-37f. Controlled Substance Database Act Rule |
| 3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?): |
| The Controlled Substance Database Act Rule is amended in accordance with changes made by H.B. 15 and S.B. 76 passed during the 2021 General Session. Additionally, numerous formatting and other changes are made throughout this rule in accordance with Executive Order No. 2021-12 to clarify and update 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): |
| In accordance with Executive Order No. 2021-12, nonsubstantive formatting changes are made throughout this rule for clarity and to conform this rule to the current edition of the Utah Rulewriting Manual, and multiple changes are made throughout this rule to clarify existing processes and facilitate compliance and enforcement. For example, it is clarified that a valid search warrant under Subsection 58-37f-301(2)(l) includes a DEA administrative subpoena, and that the practitioner email address to be provided to the Controlled Substance Database (CSD) for a designee who will obtain CSD information on behalf of the practitioner cannot be a shared or group account address. Additionally, the requirement of a "color" copy ID |

is removed. Finally, Subsection 58-37f-301(12) regarding access to database information by a pharmacy technician or pharmacy intern is deleted as obsolete, as their access is now granted more seamlessly similar to other Division of Occupational and Professional Licensing (DOPL) licensees. The following substantive amendments are also made: First, H.B. 15 (2021) amended the Utah Code to require a practitioner to check the CSD before issuing a "high risk prescription," defined as an opiate or benzodiazepine prescription that is written for longer than 30 consecutive days; therefore, the new Subsection R156-37f-102(6) is added to reference the new definition of "high risk prescription" in Subsection 58-37-6(11)(a). Second, S.B. 76 (2021) added new Subsection 58-37f-301(2)(v), to grant access to the CSD to the Utah Medicaid Fraud Control Unit of the attorney general's office. Accordingly, a new Subsection R156-38f-301(13) is added to provide the procedures for secure CSD access for an employee of the Utah Medicaid Fraud Control Unit.

A rule hearing will be conducted before the Division electronically only with Google Meet. Join with Google Meet: meet.google.com/meq-uoqm-ori. You can join by phone at: (US) + 1 413-591-2481. (PIN: 205915837).

Fiscal Information

| |
|---|
| 5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to: |
| A) State budget: |
| None of these amendments are expected to impact the state budget as the amendments are not expected to impact government practices or procedures beyond the mandates of H.B. 15 (2021) and S.B. 76 (2021). |
| B) Local governments: |
| The Division estimates that these amendments will have no measurable impact on local governments' revenues or expenditures as none of the amendments are expected to impact local governments' practices or procedures beyond the mandates of H.B. 15 (2021) and S.B. 76 (2021). |
| C) Small businesses ("small business" means a business employing 1-49 persons): |
| These proposed amendments are expected to have no measurable impact on small businesses' revenues or expenditures as they merely streamline and update this rule in accordance with Executive Order No. 2021-12 and conform this rule to the mandates of H.B. 15 (2021) and S.B. 76 (2021). |
| D) Non-small businesses ("non-small business" means a business employing 50 or more persons): |
| These proposed amendments are expected to have no measurable impact on non-small business revenues or expenditures as they merely streamline and update this rule in accordance with Executive Order No. 2021-12 and |

conform this rule to the mandates of H.B. 15 (2021) and S.B. 76 (2021).

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

These proposed amendments are expected to have no measurable impact on other persons as they merely streamline and update the rule in accordance with Executive Order No. 2021-12 and conform this rule to the mandates of H.B. 15 (2021) and S.B. 76 (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 expected for affected persons because these amendments only include changes for clarification of existing processes, which will only result in benefits for affected persons, and because the remaining amendments conform this rule to the mandates of 2021 H.B. 15 and S.B. 76.

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):

Small Businesses (less than 50 employees): The Division does not foresee any foreseeable impact on small businesses since these amendments are made to make the rule comport to H.B. 15 (2021) and S.B. 76 (2021). Thus, the fiscal impacts cannot be estimated due to the lack of data necessary for such a calculation. Further, the expressed measurable fiscal impact on small businesses' revenues are identified in the fiscal notes for H.B. 15 (2021) and S.B. 76 (2021).

Regulatory Impact to Non-Small Businesses (50 or more employees): This amended rule will have no expected fiscal impact for non-small businesses in Utah for the same rationale as described above for small businesses. These costs are either inestimable, for the reasons stated above, or there is no fiscal impact.

Margaret W. Busse, 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 Executive Director of the Department of Commerce, Margaret W. Busse, 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 58-1-106(1)(a) | Subsection 58-37f-301(1) | |
|---------------------------|--------------------------|--|

Public Notice Information

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

A) Comments will be accepted until: 12/01/2021

B) A public hearing (optional) will be held:

| On: | At: | At: |
|------------|----------|---|
| 11/10/2021 | 10:30 AM | A rule hearing will be conducted before the Division electronically only with Google Meet |

| | | |
|--|--|-------------------------------|
| | | (see details in Box 4 above). |
|--|--|-------------------------------|

| | |
|--|------------|
| 10. This rule change MAY become effective on: | 12/08/2021 |
| 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: | Mark B. Steinagel, Division Director | Date: | 10/05/2021 |
|--|---|--------------|------------|

R156. Commerce, Occupational and Professional Licensing.**R156-37f. Controlled Substance Database Act Rule.****R156-37f-101. Title.**

This rule shall be known as the "Controlled Substance Database Act Rule."[-]

R156-37f-102. Definitions.

In addition to the definitions in Sections 58-17b-102, 58-37-2 and 58-37f-102, as used in this ~~chapter~~ Rule R156-37f:

(1) "ASAP" means the American Society for Automation in Pharmacy system.

(2) "DEA" means Drug Enforcement Administration.

(3) "EDS" means "electronic data system" as defined in Subsection 58-37f-303(1)(c).

(4) "EHR" means electronic health record.

(5) "HIE" means health information exchange.

(6) "High risk prescription" means the same as defined in Subsection 58-37-6(11)(a).

(7) "NABP" means the National Association of Boards of Pharmacy.

(~~7~~) 8 "NCPDP" means National Council for Prescription Drug Programs.

(~~8~~) 9 "NDC" means National Drug Code.

(~~9~~) 10 "Null report" means the same as zero report.

(~~10~~) 11 "ORI" means Originating Agency Identifier Number.

(~~11~~) 12 (a) "Point of sale date,"[-] "POS date,"[-] or "Date Sold" mean[s] the date the prescription drug left the pharmacy, and do not include ~~(not)~~ the date the prescription drug was filled, if the dates differ[-].

(b) ASAP Version 4.2 uses the "DSP17" field to identify the point of sale date.

(~~12~~) 13 "Positive identification" means:

(a) one of the following photo identifications issued by a foreign or domestic government:

(i) driver's license;

(ii) non-driver identification card;

(iii) passport;

(iv) military identification; or

(v) concealed weapons permit; or

(b) if the individual does not have government-issued identification, alternative evidence of the individual's identity as ~~deemed~~ determined appropriate by the pharmacist, ~~as long as~~ if the

pharmacist documents in a prescription record a description of how the individual was positively identified.

(~~13~~) 14 "Research facility" means a facility in which research takes place that has policies and procedures describing ~~such~~ the research.

(~~14~~) 15 "Rx" means a prescription.

(~~15~~) 16 "Zero report" means a report containing the data fields required by Subsection R156-37f-203(5), indicating that no controlled substance required to be reported has been dispensed since the previous submission of data.

R156-37f-103. Authority - Purpose.

This rule is adopted by the Division under the authority of Subsection 58-1-106(1)(a) to enable the Division to administer Title 58, Chapter 37f, Controlled Substance Database Act.

R156-37f-104. Organization - Relationship to Rule R156-1.

The organization of this rule and its relationship to Rule R156-1, General Rule of the Division of Occupational and Professional Licensing, is as described in Section R156-1-107.

R156-37f-203. Submission, Collection, and Maintenance of Data.

(1) ~~In accordance with~~ Under Subsection 58-37f-203(1), each pharmacy or pharmacy group shall submit the data required in this section on a daily basis, either in real time or daily batch file reporting. The submitted data shall be from the point of sale date.

(a) If the data is submitted by a single pharmacy entity, the data shall be submitted in chronological order according to the date each prescription was sold.

(b) If the data is submitted by a pharmacy group, the data shall be sorted by individual pharmacy within the group, and the data of each individual pharmacy within the group shall be submitted in chronological order according to the date each prescription was sold.

(2) ~~In accordance with~~ Under Subsections 58-37f-203(2), (3), and (6), the data required by this section shall be submitted to the Database through one of the following methods:

(a) electronic data sent via a secured internet transfer method, including sFTP site transfer;

(b) secure web base service; or

(c) ~~any other~~ another electronic method approved by the Database administrator prior to submission.

(3) ~~In accordance with~~ Under Subsections 58-37f-203(2), (3), and (6), the format ~~used~~ for submission to the Database shall be Version 4.2 of the ~~American Society for Automation in Pharmacy~~ {ASAP} Format for Controlled Substances. The Division may approve alternative formats substantially similar to this standard.

(4) ~~In accordance with~~ Under Subsection 58-37f-203(6), the pharmacist-in-charge and the pharmacist identified in Subsections 58-37f-203(2) and (3) ~~shall~~ provide the following data fields to the Division:

(a) version of ASAP used to send transaction (ASAP 4.2 code ~~[=]~~ TH01);

(b) transaction control number (TH02);

(c) date transaction created (TH05);

(d) time transaction created (TH06);

(e) file type (production or test) (TH07);

(f) segment terminator character (TH09);

(g) information source identification number (IS01);

(h) information source entity name (IS02);

(i) reporting pharmacy's;

(j) National Provider Identifier (PHA01); and

(ii) identifier assigned by NCPDP~~[7]~~ or NABP (PHA02), or if none, then DEA registration number (PHA03);

(j) patient last name (PAT07);

(k) patient first name (PAT08);

(l) patient address (PAT12);

(m) patient city of residence (PAT14);

(n) patient zip code (PAT 16);

(o) patient date of birth (PAT18);

(p) dispensing status - new, revised, or void (DSP01);

(q) prescription number (DSP02);

(r) date prescription written by prescriber (DSP03);

(s) number of refills authorized by prescriber (DSP04);

(t) date prescription filled at dispensing pharmacy (DSP05);

(u) if current dispensed prescription is a refill, the number of the refill being dispensed (DSP06);

(v) product identification qualifier (DSP07);

(w) NDC 11-digit drug identification number (DSP08);

(x) quantity of drug dispensed in metric units (DSP09);

(y) days supply dispensed (DSP10);

(z) date drug left the pharmacy, ~~[i.e.]~~ meaning date sold (DSP17);

(aa) DEA registration number of prescribing practitioner (PRE02);

(bb) state that issued identification of individual picking up dispensed drug (AIR03);

(cc) type of identification used by individual picking up dispensed drug (AIR04);

(dd) identification number of individual picking up dispensed drug (AIR05);

(ee) last name of individual picking up dispensed drug (AIR07);

(ff) first name of individual picking up dispensed drug (AIR08);

(gg) dispensing pharmacist last name or initial (AIR09);

(hh) dispensing pharmacist first name (AIR10);

(ii) number of detail segments included for the pharmacy (TP01);

(jj) transaction control number (TT01); and

(kk) total number of segments included in the transaction (TT02).

(5) ~~[In accordance with]~~ Under Subsection 58-37f-203(6), if no controlled substance required to be reported has been dispensed since the previous submission of data, then the pharmacist-in-charge and the pharmacist shall submit a zero report to the Division, which shall include the following data fields:

(a) version of ASAP used to send transaction (TH01);

(b) transaction control number (TH02);

(c) date transaction created (TH05);

(d) time transaction created (TH06);

(e) file type (production or test) (TH07);

(f) segment terminator (TH09);

(g) information source identification number (IS01);

(h) information source entity name (IS02);

(i) date range (IS03);

(j) reporting pharmacy's:

(i) National Provider Identifier (PHA01); and

(ii) identifier assigned by NCPDP~~[7]~~ or NABP (PHA02), or if none, then DEA registration number (PHA03);

(k) patient last name = "Report" (PAT07);

(l) patient first name = "Zero" (PAT08);

(m) date prescription dispensed at dispensing pharmacy (DSP05);

(n) number of detail segments included for the pharmacy (TP01);

(o) transaction control number (TT01); and

(p) total number of segments included in the transaction (TT02).

(6) ~~[In accordance with]~~ Under Subsection 58-37f-203(2), a Class A, B, D, or E pharmacy or pharmacy group that has a controlled substance license but is not dispensing controlled substances and does not anticipate doing so in the immediate future may request a waiver or submit a certification~~[of such]~~, in a form preapproved by the Division, in lieu of daily zero reports:

(a) The pharmacy or pharmacy group shall renew its waiver or certification ~~[must be renewed]~~ at the end of each calendar year.

(b) If a pharmacy or pharmacy group ~~[that has submitted a]~~ with a current waiver or certification ~~[under this Subsection]~~ dispenses a controlled substance:

(i) the waiver or certification shall immediately and automatically terminate;

(ii) the Database reporting requirements of Subsections 58-37f-203(1) and R156-37f-203(1) shall apply to the pharmacy or pharmacy group immediately upon the dispensing of the controlled substance; and

(iii) the pharmacy or pharmacy group shall notify the Division in writing of the waiver or certification termination within 24 hours or the next business day of the dispensing of the controlled substance, whichever is later.

(7) The Database shall collect information regarding the prescription noncontrolled substance 1-(Aminomethyl)-cyclohexanecarboxylic acid (Gabapentin), in accordance with Subsection 58-37f-203(8).

(8) The Database shall collect information regarding "any substance which contains any quantity of a derivative of barbituric acid or any salt of any of them" (Butalbital), in accordance with Subsection 58-37-4(2)(c)(ii) which designates this as a Schedule III controlled substance.

R156-37f-301. Access to Database Information.

~~[In accordance with]~~ Under Subsections 58-37f-301(1)(a) and (b):

(1) The Division Director may designate ~~[those]~~ the Database staff individuals employed by the Division who may have access to the ~~[information in the]~~ Database ~~[(Database staff)]~~.

(2)(a) An applicant to become a Database registered user ~~[of the Database shall]~~ may apply for an online account and user name only under the specific subparagraph in Subsection 58-37f-301(2) under which ~~[he or she]~~ the applicant qualifies.

(b) A registered user ~~[shall]~~ may not permit another person to have knowledge of or use the registered user's assigned password or personal identification number (PIN).

(3)(a) A request for information from the Database may be made:

(i) directly to the Database by electronic submission, if the requester is registered to use the Database; or

(ii) by written request to the Database staff in accordance with ~~[the requirements of]~~ this section, if the requester is not registered to use the Database.

(b) A written request may be submitted by facsimile, email, regular mail, or in person except as otherwise provided ~~[herein]~~ in this section.

NOTICES OF PROPOSED RULES

(c) The Division shall require a requester to verify the requester's identity.

(4) The following Database information may be disseminated to a verified requester who is permitted to obtain the information:

(a) dispensing~~[/]~~ and reporting pharmacy ID number~~[/]~~ and name;

(b) subject's birth date;

(c) date prescription was sold;

(d) prescription (Rx) number;

(e) metric quantity;

(f) days supply;

(g) NDC code~~[/]~~ and drug name;

(h) prescriber ID~~[/]~~ and name;

(i) subject's last name;

(j) subject's first name; and

(k) subject's street address;

(5)(a) Under Subsection 58-37f-301(2)(l), f~~[F]~~ederal, state, and local law enforcement authorities and state and local prosecutors requesting information from the Database pursuant to a valid search warrant or DEA administrative subpoena, may submit the search warrant or subpoena to the Database as follows: ~~under Subsection 58-37f-301(2)(m) shall provide a valid search warrant authorized by the courts, which may be provided using one of the following methods:~~

(i) in person;

(ii) by email to csd@utah.gov;

(iii) by facsimile; or

(iv) by U.S. Mail.

(b) ~~[A]~~The search warrant or DEA administrative subpoena may include the following information to assist in the search:

(i) for an individual for whom a controlled substance or noncontrolled substance has been prescribed or dispensed, the subject's name and birth date;

(ii) for a prescriber who is the subject of the investigation, the prescriber's full name; and

(iii) the date range to be searched.

(c) The Database information provided as a result of the search warrant or DEA administrative subpoena shall be in accordance with Subsection (4) unless otherwise specified in the search warrant or subpoena.

(6) ~~[In accordance with Under Subsections 58-37f-301(2)(~~m~~) and (7),~~ a probation or parole officer employed by the Department of Corrections or a political subdivision may have access to the ~~[d]~~Database without a search warrant, for supervision of a specific probationer or parolee under the officer's direct supervision, if the following conditions have been met:

(a) a security agreement signed by the officer is submitted to the Division for access, which contains:

(i) the agency's:

(A) name;

(B) complete address, including city and zip code; and

(C) ORI number;

(ii) a copy of the officer's driver's license;

(iii) the officer's:

(A) full name;

(B) contact phone number; and

(C) agency email address; and

(b) the online database account includes the officer's:

(i) full name;

(ii) agency email address;

(iii) complete home address, including city and zip code;

(iv) work title;

(v) contact phone number;

(vi) complete work address including city and zip code;

(vii) work phone number; and

(viii) driver's license number.

(7) ~~[In accordance with Under Subsections 58-37f-301(2)(~~e~~)p and (~~f~~)q]:~~

(a) An individual may:

(i) obtain the individual's own information and records contained within the Database; and

(ii) unless the individual's record is subject to a pending or current investigation authorized under Subsection 58-37f-301(2)(~~f~~)q, receive an accounting of persons or entities that have requested or received Database information about the individual, to include:

(A) the role of the person that accessed the information;

(B) the date range of the information that was accessed, if available;

(C) the name of the person or entity that requested the information; and

(D) the name of the practitioner on behalf of whom the request was made, if applicable.

(b) The individual may request the information by submitting an original signed and notarized request as furnished by the Division that includes:

(i) the individual's:

(A) full name, including ~~[all]~~ aliases;

(B) complete home address;

(C) telephone number; and

(D) date of birth;

(ii) a clearly legible~~[color]~~ copy of government-issued picture identification confirming the individual's identity; and

(iii) requested date range for the information.

(c) A third party may request information from the Database on behalf of an individual as provided in Subsection (7)(a), by submitting:

(i) an original signed and notarized request as furnished by the Division;

(ii) a clearly legible~~[color]~~ copy of government-issued picture identification confirming the requester's identity; and

(iii) an original, or certified copy, of properly executed legal documentation acceptable to the Database staff that the requester:

(A) is the individual's current agent under a power of attorney that:

(I) authorizes the agent to make health care decisions for the individual;

(II) allows the agent to have access to the patient's protected health information (PHI) under HIPAA; or

(III) otherwise grants the agent specific authority to obtain Database information on behalf of the individual;

(B) is the parent or court-appointed legal guardian of a minor individual;

(C) is the court-appointed legal guardian of an incapacitated adult individual; or

(D) has an original, signed, and notarized form for release of records from the individual in a format acceptable to the Database staff, that identifies the purpose of the release with respect to the Database.

(8) Under Subsection 58-37f-301(2)(i), an~~[An]~~ employee of a licensed practitioner who is authorized to prescribe controlled

substances may obtain Database information ~~[to the extent permissible under Subsection 58-37f-301(2)(i)]~~ if prior to making the request:

(a) the licensed practitioner has provided to the Division a written designation furnished by the Division that includes:

(i) the practitioner's:

(A) DEA number; and

(B) email address account registered with the Database, that is not a shared or group account; and

(ii) the designated employee's:

(A) full name;

(B) complete home address;

(C) e[-]mail address;

(D) date of birth;

(E) driver license number or state identification card number; and

(F) professional license number, if any; and

(iii) ~~[manual]~~ signatures from both the practitioner and designated employee[-];

(b) the designated employee has registered for an account for access to the Database and provided a unique user identification;

(c) the designated employee has passed a ~~[Database background]~~ check of available criminal court and Database records; and

(d) the Database has issued the designated employee a user ~~[personal identification number-]~~(PIN) and activated the employee's Database account.

(9) ~~[An]~~ Under Subsection 58-37f-301(2)(j), an employee of ~~[a]~~ the same business that employs a licensed practitioner who is authorized to prescribe controlled substances may obtain Database information ~~[to the extent permissible under Subsection 58-37f-301(2)(i)]~~ if prior to making the request:

(a) the licensed practitioner and employing business have provided to the Division a written designation that includes:

(i) the practitioner's:

(A) DEA number; and

(B) email address account registered with the Database, that is not a shared or group account;

(ii) the name of the employing business; and

(iii) the designated employee's:

(A) full name;

(B) complete home address;

(C) e[-]mail address;

(D) date of birth;

(E) driver license number or state identification card number; and

(F) professional license number, if any;

(b) the designated employee has registered for an account for access to the Database and provided a unique user identification and password;

(c) the designated employee has passed a ~~[Database background]~~ check of available criminal court and Database records; and

(d) the Database has issued the designated employee a user ~~[personal identification number-]~~(PIN) and activated the employee's Database account.

(10) ~~[An]~~ Under Subsection 58-37f-301(4)(a), an individual who is employed in the emergency department of a hospital ~~[that employs a licensed practitioner who is authorized to prescribe controlled substances]~~ may obtain Database information ~~[to the extent permissible under Subsection 58-37f-301(4)(a)]~~ if prior to making the request:

(a) the practitioner and the hospital operating the emergency department have provided to the Division a written designation that includes:

(i) the practitioner's:

(A) DEA number; and

(B) email address account registered with the Database, that is not a shared or group account;

(ii) the name of the hospital; and

(iii) the designated employee's:

(A) full name;

(B) complete home address;

(C) e[-]mail address;

(D) date of birth;

(E) driver license number or state identification card number; and

(F) professional license number, if any;

(b) the designated employee has registered for an account for access to the Database and provided a unique user identification and password;

(c) the designated employee has passed a ~~[Database background]~~ check of available criminal court and Database records; and

(d) the Database has issued the designated employee a user ~~[personal identification number-]~~(PIN) and activated the employee's Database account.

(11) ~~[In accordance with]~~ Under Subsection 58-37f-301(5), an individual's requests to the Division regarding ~~[third party]~~ third party notice when a controlled substance or noncontrolled substance prescription is dispensed to that individual, shall be made as follows:

(a) To request that the Division begin providing notice to a third party, or to request that the Division discontinue providing notice to a third party, the individual shall submit an original signed and notarized request form as furnished by the Division, that includes:

(i) the individual's:

(A) full name, including ~~[all]~~ aliases;

(B) birth date;

(C) complete home address including city and zip code;

(D) email address; and

(E) contact phone number;

(ii) a clearly legible ~~[color]~~ copy of government-issued picture identification confirming the individual's identity; and

(iii) the designated third party's:

(A) full name;

(B) complete home address, including city and zip code;

(C) email address; and

(D) contact phone number.

(b) After receiving a request to discontinue ~~[third party]~~ third party notice, the Division shall:

(i) provide notice to the requesting individual that the discontinuation notice was received; and

(ii) provide notice to the designated third party that the notification has been rescinded.

(c) An individual may have up to three active designated third parties.

(12) ~~[A licensed pharmacy technician or pharmacy intern employed by a pharmacy may obtain Database information to the extent permissible under Subsection 58-37f-301(2)(i) if, prior to making the request:~~

~~(a) the pharmacist in charge (PIC) has provided to the Division a written designation authorizing access to the pharmacy~~

NOTICES OF PROPOSED RULES

~~technician or pharmacy intern on behalf of a licensed pharmacist employed by the pharmacy;~~

~~(b) the written designation includes the pharmacy technician's or pharmacy intern's:~~

- ~~(i) full name;~~
- ~~(ii) professional license number assigned by the Division;~~
- ~~(iii) email address;~~
- ~~(iv) contact phone number;~~
- ~~(v) pharmacy name and location;~~
- ~~(vi) pharmacy DEA number;~~
- ~~(vii) pharmacy phone number;~~

~~(c) the written designation includes the pharmacist in-charge's (PIC's):~~

- ~~(i) full name;~~
- ~~(ii) professional license number assigned by the Division;~~
- ~~(iii) email address;~~
- ~~(iv) contact phone number;~~
- ~~(d) the written designation includes the assigned pharmacist's:~~

- ~~(i) full name;~~
- ~~(ii) professional license number assigned by the Division;~~
- ~~(iii) email address;~~
- ~~(iv) contact phone number; and~~

~~(e) the written designation includes the following signatures:~~

- ~~(i) pharmacy technician or pharmacy intern;~~
- ~~(ii) pharmacist in charge (PIC); and~~
- ~~(iii) assigned pharmacist if different than the PIC.~~

~~(13) The]Under Subsections 58-37f-301(2)(e)(i) and (2)(f), the Utah Department of Health may access Database information for purposes of scientific study regarding public health. To access information, the scientific investigator shall:~~

~~(a) demonstrate to the satisfaction of the Division that the research is part of an approved project of the Utah Department of Health;~~

~~(b) provide a description of the research to be conducted, including:~~

- ~~(i) a research protocol for the project; and~~
- ~~(ii) a description of the data needed from the Database to conduct that research;~~

~~(c) provide assurances and a plan that demonstrates all Database information will be maintained securely, with access being strictly restricted to the requesting scientific investigator;~~

~~(d) provide for electronic data to be stored on a secure database computer system with access being strictly restricted to the requesting scientific investigator; and~~

~~(e) pay all relevant expenses for data transfer and manipulation.~~

~~([14]13) Under Subsection 58-37f-301(2)(v), an employee of the Utah Medicaid Fraud Control Unit (MFCU) of the Attorney General's Office may have access to the Database if the following conditions have been met:~~

~~(a) a security agreement signed by the employee is submitted to the Division for access, which contains:~~

- ~~(i) the MFCU's:~~
 - ~~(A) complete address, including city and zip code; and~~
 - ~~(B) ORI number;~~
- ~~(ii) a copy of the employee's driver's license;~~
- ~~(iii) the employee's:~~
 - ~~(A) full name;~~
 - ~~(B) contact phone number; and~~
 - ~~(C) MFCU email address; and~~

~~(b) the online database account includes the employee's:~~

- ~~(i) full name;~~
- ~~(ii) MFCU email address;~~
- ~~(iii) complete home address, including city and zip code;~~
- ~~(iv) work title;~~
- ~~(v) contact phone number;~~
- ~~(vi) complete work address including city and zip code;~~
- ~~(vii) work phone number; and~~
- ~~(viii) driver's license number.~~

~~(14) Database information that may be disseminated under Section 58-37f-301 may be disseminated by the Database staff either:~~

- ~~(a) verbally;~~
- ~~(b) by facsimile;~~
- ~~(c) by email;~~
- ~~(d) by U.S. mail; or~~

~~(e) by electronic access, where adequate technology is in place to ensure that a record will not be compromised, intercepted, or misdirected.~~

~~(15)(a) A designating practitioner or other person that employs a designee authorized to obtain Database information, shall submit to the Division a notice of disassociation of designee as soon as practicable after that designee ceases employment or is otherwise no longer designated.~~

~~(b) The notice of disassociation of designee shall be on a form provided by the Division, and include:~~

- ~~(i) the designee's full name;~~
- ~~(ii) the designee's email address;~~
- ~~(iii) the designating practitioner's:~~
 - ~~(A) name;~~
 - ~~(B) DEA number;~~
 - ~~(C) DOPL license number;~~
 - ~~(D) email address;~~
- ~~(iv) the establishment's:~~
 - ~~(A) name;~~
 - ~~(B) phone number, and fax number if any; and~~
 - ~~(C) address;~~
 - ~~(v) the reason for disassociation; and~~
 - ~~(vi) the signature of the designating practitioner or person authorized to sign on their behalf.~~

R156-37f-303. Access to Opioid Prescription Information Via an Electronic Data System.

~~[In accordance with Subsection 58-37f-301(1) and Section 58-37f-303:]~~

~~(1) [Pursuant to]Under Subsection 58-37f-303(4)(a)(i), to access opioid prescription information in the [d]Database, an electronic data system [must]shall:~~

~~(a) interface with the [d]Database through the Division-approved Prescription Monitoring Program (PMP) Hub system; and~~

~~(b) comply with [all]the restrictions on [d]Database access and use of [d]Database information[as established by the] in Title 58, Chapter 37f, [Utah-]Controlled Substance[s] Database Act and [the Controlled Substance Database Act Rule]this Rule R156-37f.~~

~~(2) Pursuant to Subsection 58-37f-303(4)(a)(ii), to access opioid prescription information in the [d]Database via an electronic data system (EDS), an EDS user [must]shall:~~

~~(a) register to use the [d]Database by creating an approved account established by the Division pursuant to a memorandum of understanding with the Division;~~

~~(b) use the unique user name and password associated with the account created for the EDS user to access [d]Database information through the original internet access system;~~

(c) comply with ~~all the~~ restrictions on ~~[d] Database access and uses of Database information [established by the]~~ in Title 58, Chapter 37f, ~~[Utah] Controlled Substance Database Act and [the Controlled Substance Database Act Rule; and] this Rule R156-37f.~~

~~(d) use opioid prescription information in the database only for the purposes and uses designated in Section 58-37f-201, and as more particularly described in the Utah Controlled Substances Database Act and the Controlled Substances Database Act Rule.]~~

(3)(a) The Division may immediately suspend, without notice or opportunity to be heard, an electronic data system's or an EDS user's access to the ~~[d] Database~~, if the Division determines by audit or other means that ~~[such] the~~ access may lead to a violation of Section 58-37f-601 or may otherwise compromise the integrity, privacy, or security of the ~~[d] Database's~~ opioid prescription information.

(b) This remedy shall be in addition to the criminal and civil penalties imposed by Section 58-37f-601 for unlawful release or use of ~~[d] Database~~ information, and the Division's obligation under Subsections 58-37f-303(5) and (6) to immediately suspend or revoke ~~[d] Database~~ access and pursue appropriate corrective or disciplinary action against a non-compliant electronic data system or EDS user.

KEY: controlled substance database, licensing

Date of Last Change: ~~December 9, 2019~~ 2021

Notice of Continuation: December 21, 2017

Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-37f-301(1)

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

| | | |
|--------------------------------------|-----------------|----------------------------------|
| Utah Admin. Code Ref (R no.): | R277-318 | Filing ID 54024 |
|--------------------------------------|-----------------|----------------------------------|

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: |
| R277-318. Teacher Salary Supplement Program |

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

The rule is being amended to clarify how renewals for the Teacher Salary Supplement Program (TSSP) will be processed due to S.B. 154 from the 2021 General Session which mandates that educators should not have to file for the supplement annually.

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 clarify how renewals for the TSSP will be processed. New language was added to Section R277-318-3 updating the application and eligibility requirements.

Fiscal Information

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

A) State budget:

This rule change may reduce administrative burdens for state government. The amendments simplify the teacher renewal process for TSSP.

B) Local governments:

This rule change may reduce administrative burdens for local governments. The amendments simplify the teacher renewal process for TSSP.

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 to this rule affect the Utah State Board of Education (USBE), local education agencies (LEAs), and teachers.

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

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

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation,

NOTICES OF PROPOSED RULES

association, governmental entity, or public or private organization of any character other than an **agency**):

This rule change may reduce administrative burdens for persons other than small businesses, businesses, or local government entities. The amendments simplify the teacher renewal process for TSSP.

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

This rule change may reduce compliance costs for affected persons. The amendments simplify the teacher renewal process for TSSP.

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, 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 53F-2-504 | 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: 12/01/2021

10. This rule change MAY become effective on: 12/08/2021

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: | 10/14/2021 |
|--|---|--------------|------------|

R277. Education, Administration.

R277-318. Teacher Salary Supplement Program.

R277-318-1. Authority and Purpose.

(1) This rule is authorized by:

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

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

(c) Section 53F-2-504, which directs the Board to make rules regarding the administration of the Teacher Salary Supplement Program.

(2) The purpose of this rule is to establish application and appeal procedures for administration of the Teacher Salary Supplement Program.

R277-318-2. Definitions.

(1) "Eligible teacher" means the same as that term is defined in Subsection 53F-2-504(1)(a).

(2) "Substantially equivalent" means commonly recognized by a Utah university for a degree in a specific subject.

(3) "Teacher Salary Supplement Program" or "TSSP" means the salary supplement program authorized by the Legislature in Section 53F-2-504.

R277-318-3. Program Administration.

(1) The Superintendent shall allocate funds for salary supplements to eligible teachers in accordance with Subsection 53F-2-504(3).

(2) The Superintendent shall maintain an online application system for the TSSP and make it available to educators no later than October 1 of each school year.

(3) ~~[In order to]~~ To receive an award under this program, an applicant for the TSSP shall apply to the Superintendent by the following deadlines for each school year in which the applicant is an eligible teacher:

(a) for trimester payments to the educator, prior to November 15;

(b) for semester payments to the educator, prior to January 31; and

(c) for an annual payment to the educator, prior to April 30.

~~[(4)(a) Beginning in the 2021-22 school year, an applicant shall submit an application in the first year the applicant is an eligible teacher.~~

~~[(b) The Superintendent shall use an applicant's application for all subsequent years that the applicant remains eligible.]~~

~~[(4)(a) Beginning in the 2020-21 school year, an applicant shall submit an application to receive funds as an eligible teacher.~~

~~[(b) Once an applicant has established eligibility in accordance with Subsection (4)(a), the applicant shall maintain eligibility in all subsequent years in which the applicant has an eligible Utah teaching assignment, without the need for the applicant to reapply, even if an applicant later has a lapse in eligibility.~~

(5)(a) If an applicant is denied funds under this rule, the applicant may submit a written appeal to the Superintendent prior to June 1 of each school year.

(b) An appeal under Subsection (5)(a) is limited to the following issues:

(i) whether the applicant has a degree or degree major with course requirements that are substantially equivalent to the course requirements for a degree listed in Section 53F-2-504;

(ii) whether the applicant has met the qualifying teaching background requirements described in Section 53F-2-504;

(iii) whether the Superintendent's initial denial was inconsistent with Section 53F-2-504 or this Rule R277-318; or

(iv) whether the Superintendent's initial denial was based on inaccurate or incomplete information.

(c) The Superintendent may designate a panel of at least two Board staff members to review an appeal made under Subsection (4)(a) and to make a recommendation to the Superintendent.

(i) A panel designated in accordance with Subsection (5)(c) shall make a recommendation in accordance with ~~[the provisions of]~~ Section 53F-2-504 or this Rule R277-318.

(ii) The panel shall make a recommendation on an appeal within 30 days of receipt of the written appeal.

(6) The Superintendent shall issue a ruling on an appeal within 15 days of receipt of the panel's recommendation.

(7) The decision of the Superintendent on an appeal is the final Board administrative action.

(8) If the appropriation for TSSP is insufficient to cover ~~[all]~~ eligible teachers entitled to awards, the Superintendent may reduce all awards by the same ratio and proportion.

KEY: Teacher Salary Supplement Program, salary

Date of Last Change: 2021[August 12, 2020]

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-401; 53F-2-504

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code Ref (R no.): R277-421

Filing ID
54025

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: |
| R277-421. Out-of-State Tuition Reimbursement |
| 3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?): |
| The purpose of the rule amendments are to reduce the burden on the Utah State Board of Education (USBE) to review out-of-state tuition agreements. |
| 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 authorize the Superintendent to review out-of-state tuition agreements instead of the USBE.

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 significant fiscal impact on state government revenues or expenditures. The amendment removes the USBE's requirement to review out-of-state tuition agreements. Given the limited number of agreements and the relatively minimal amount of funds involved, the impact of this change should not be significant.

B) Local governments:

This rule change is not expected to have fiscal impact on local governments' revenues or expenditures. The amendments to this rule affect only USBE.

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 to this rule affect only USBE.

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 to rule affect only USBE.

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 affect only USBE.

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, 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 53G-6-305 | 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: | 12/01/2021 |
|--|------------|

| | |
|--|------------|
| 10. This rule change MAY become effective on: | 12/08/2021 |
|--|------------|

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: | 10/14/2021 |
|--|---|--------------|------------|

R277. Education, Administration.

R277-421. Out-of-State Tuition Reimbursement.

R277-421-1. Authority and Purpose.

- (1) This rule is authorized by:
 - (a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;
 - (b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and
 - (c) Section 53G-6-305, which outlines when a school district may pay out-of-state tuition for a resident student to attend a school district out[-]of[-]state.
- (2) The purpose of this rule is to establish procedures for:
 - (a) obtaining Board approval for reimbursement of out-of-state tuition expenses;
 - (b) calculating reimbursement costs; and
 - (c) recording out[-]of[-]state students in district records.

R277-421-2. Definitions.

- (1) "ADM" means average daily membership.
- (2) "Minimum school program" or "MSP" means the same as that term is defined in Section 53F-2-102.

(3) "NESS" means the Necessarily Existent Small Schools Fund.

(4) "Utah eTranscript and Records Exchange" or "UTREx" means a system that allows individual detailed student records to be exchanged electronically between public education districts and the Superintendent, and allows electronic transcripts to be sent to any post-secondary institution, private or public, in-state or out-of-state, that participates in the e-transcript service.

(5) "WPU" means the weighted pupil unit.

R277-421-3. ~~Board~~ Review of Out-of-State Tuition Agreements.

(1) A district shall submit to the Superintendent an agreement to pay tuition to an out-of-state district in accordance with Subsection 53G-6-305(1) by June 30.

(2) A district requesting reimbursement for excess tuition costs under Subsection 53G-6-305(3) shall submit a request to the Superintendent by June 30 including:

(a) an estimate of ADM for out[-]of[-]state students for the upcoming school year; and

(b) an estimate of tuition payment amounts for the upcoming school year.

(3)(a) The ~~Board~~ Superintendent shall review a request submitted under Subsection (2) no later than August 30.

(b) The ~~Board~~ Superintendent may deny a request submitted under Subsection (2) if there are insufficient funds to cover the reimbursement.

R277-421-4. Calculation of Out-of-State Tuition Reimbursement.

(1) The Superintendent shall calculate out-of-state reimbursement to a district by subtracting state funds that are calculated based on the WPU generated by an out-of-state resident student's ADM from the total tuition payment per student:

- (a) Kindergarten WPU;
- (b) Grade 1-12 WPU;
- (c) Professional Staff Costs;
- (d) NESS;
- (e) District Administrative Costs;
- (f[+]) Class-Size Reduction;
- (g) Flexible Allocation;
- (h) Gifted and Talented program;
- (i) K-3 Reading Improvement program;
- (j) Voted and Board Local Levy Guarantee programs; and
- (k) Applicable Special Education programs.

(2) A district shall not include out-of-state tuition payments in any other MSP formula.

(3) The Superintendent may include in a calculation under Subsection (1) mileage costs reimbursed by a district to parents for transporting students to the nearest bus stop in accordance with Section R277-600-7.

(4) The Superintendent shall reserve the estimated funds identified by a district under Subsection R277-421-3(2)(a) from the new year NESS appropriation, and pay Board-authorized reimbursement payments from reserved funds.

R277-421-5. Recording Student Membership for Out-of-State Students.

(1) A district shall record student membership for students receiving out-of-state tuition reimbursement in accordance with District enrollment and membership policies.

NOTICES OF PROPOSED RULES

(2) A district shall report students in UTREx for whom they are paying out-of-state tuition using codes identified by the Superintendent.

(3) A district shall report ADM for students attending school out-of-state pursuant to a tuition agreement under Section 53G-6-305 in the same manner as the district calculates ADM for students attending the district's schools.

KEY: out-of-state, tuition, reimbursements

Date of Last Change: 2021~~October 11, 2016~~

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-401(4); 53G-6-305

NOTICE OF PROPOSED RULE

TYPE OF RULE: Repeal

| | | |
|--------------------------------------|-----------------|----------------------------------|
| Utah Admin. Code Ref (R no.): | R277-502 | Filing ID 54026 |
|--------------------------------------|-----------------|----------------------------------|

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: |
| R277-502. Educator Licensing and Data Retention |
| 3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?): |
| This rule is no longer necessary given changes to the state educator licensing process and therefore, this rule is being repealed. |
| 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 is being repealed in its entirety. |

Fiscal Information

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

A) State budget:

This rule repeal is not expected to have fiscal impact on state government revenues or expenditures. This rule is being repealed because new rules have made this rule obsolete.

B) Local governments:

This rule repeal is not expected to have fiscal impact on local governments' revenues or expenditures. This rule is being repealed because new rules have made this rule obsolete.

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 rule is being repealed because new rules have made this rule obsolete.

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 repeal is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses and it does not require any expenditures of, or generate revenue for non-small businesses.

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

This rule change is not expected to have fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities. This rule is being repealed because new rules have made this rule obsolete.

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 rule is being repealed because new rules have made this rule obsolete.

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, 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-6-201 | 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: 12/01/2021

10. This rule change MAY become effective on: 12/08/2021

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: | 10/14/2021 |
|--|---|--------------|------------|

R277. Education, Administration.~~**R277-502. Educator Licensing and Data Retention.**~~~~**R277-502-1. Authority and Purpose.**~~

- ~~(1) This rule is authorized by:~~
- ~~(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;~~
- ~~(b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and~~
- ~~(c) Section 53E-6-201, which gives the Board power to issue licenses.~~
- ~~(2) This rule specifies the types of license levels and license areas of concentration available and procedures for obtaining a license, required for employment as a licensed educator in the public schools of Utah.~~
- ~~(3) This rule also provides a process and criteria for educators whose licenses have lapsed to return to the teaching profession.~~

~~**R277-502-2. Definitions.**~~

- ~~(1) "Accredited school" means a public or private school that:~~
- ~~(a) meets standards essential for the operation of a quality school program; and~~
- ~~(b) has received formal approval through a regional accrediting association.~~
- ~~(2) "Comprehensive Administration of Credentials for Teachers in Utah Schools" or "CACTUS" means the electronic file maintained on all licensed Utah educators including information such as:~~
- ~~(a) personal directory information;~~

NOTICES OF PROPOSED RULES

~~(b) educational background;~~
~~(c) endorsements;~~
~~(d) employment history; and~~
~~(e) a record of disciplinary action taken against the educator.~~
~~(3) "LEA" includes, for purposes of this rule, the Utah Schools for the Deaf and the Blind.~~
~~(4) "Letter of Authorization" means a designation given to an individual employed by an LEA for one year authorizing the individual to teach in a public school, such as:~~
~~(a) an out-of-state candidate; or~~
~~(b) an individual pursuing an alternative license, who has not completed the requirements for a Level 1, 2, or 3 license; or~~
~~(c) an individual who has not completed necessary endorsement requirements.~~
~~(5)(a) "License areas of concentration" means designations to licenses obtained by completing a Board approved educator preparation program or an alternative preparation program in a specific area of educational studies to include the following:~~
~~(i) Early Childhood (K-3);~~
~~(ii) Elementary (K-6);~~
~~(iii) Elementary (1-8);~~
~~(iv) Middle (5-9), only for licenses issued before 1988;~~
~~(v) Secondary (6-12);~~
~~(vi) Administrative/Supervisory (K-12);~~
~~(vii) Career and Technical Education;~~
~~(viii) School Counselor;~~
~~(ix) School Psychologist;~~
~~(x) School Social Worker;~~
~~(xi) Special Education (K-12);~~
~~(xii) Deaf Education~~
~~(xiii) Preschool Special Education (Birth-Age 5);~~
~~(xiv) Communication Disorders;~~
~~(xv) Speech Language Pathologist; and~~
~~(xvi) Speech Language Technician.~~
~~(b) License areas of concentration may also bear endorsements relating to subjects or specific assignments.~~
~~(6)(a) "License endorsement" or "endorsement" means a specialty field or area earned through completing required course work established by the Superintendent or through demonstrated competency approved by the Superintendent.~~
~~(b) An endorsement shall be listed on a professional educator license indicating the specific qualifications of the holder.~~
~~(7) "Licensing Jurisdiction" means the designated educator licensing authority in any foreign country or state of the United States of America and the Department of Defense Education Activity (DoDEA).~~
~~(8) "Professional learning plan" means a plan developed by an educator in collaboration with the educator's supervisor, consistent with R277-500, which details appropriate professional learning activities for the purpose of renewing the educator's license.~~
~~(9) "Renewal" means reissuing or extending the length of a license consistent with R277-500.~~
~~(10) "State Approved Endorsement Program" or "SAEP" means a plan developed between the Superintendent and a licensed educator to direct the completion of endorsement requirements by the educator consistent with Section R277-520-11.~~

R277-502-3. Program Approval and Requirements.

~~(1) The Superintendent shall accept educator license recommendations from educator preparation programs that have applied for Board approval and have met the requirements described in this Rule R277-502 and the Standards for Program Approval established in:~~
~~(a) Rule R277-504;~~

~~(b) Rule R277-505; or~~
~~(c) Rule R277-506.~~
~~(2) The Superintendent may establish deadlines and uniform forms and procedures for all aspects of program approval.~~
~~(3) To be approved for license recommendation an educator preparation program shall:~~
~~(a) have a physical location in Utah where students attend classes or if the program provides only online instruction:~~
~~(i) have the program's primary headquarters located in Utah; and~~
~~(ii) be licensed to do business in Utah through the Utah Department of Commerce;~~
~~(b) include requirements designed to ensure that the educator meets the Utah Effective Educator Standards established in R277-530;~~
~~(c) include requirements, if the program offers content endorsement preparation, that are, at minimum, equivalent to the competency requirements for the endorsement as established by the Superintendent;~~
~~(d) establish entry requirements, approved by the Superintendent, that are designed to ensure that only high quality individuals enter the licensure program, which include measures of:~~
~~(i) previous academic success;~~
~~(ii) disposition for employment in an educational setting; and~~
~~(iii) basic skills in reading, writing, and mathematics; and~~
~~(e) include a student teaching or intern experience that meets the requirements detailed in Rules R277-504, R277-505, and R277-506.~~
~~(4) The Superintendent shall work with Board approved educator preparation programs, LEAs, and other stakeholders to establish standards for pedagogical performance assessments that will be required under Rule R277-301 no later than January 1, 2019.~~
~~(5) The Superintendent shall lead the approval review for any Board approved educator preparation program seeking to maintain or receive program approval.~~
~~(6) The Superintendent shall be responsible for:~~
~~(a) observing and monitoring the approval review process;~~
~~(b) reviewing subject specific programs to determine if the program meets state standards for licensure in specific areas;~~
~~(c) reviewing program procedures to ensure that Board requirements for licensure are followed; and~~
~~(d) reviewing licensure candidate files to determine if the program followed Board requirements for licensure.~~
~~(7) After completion of the approval review site visit, a Board approved educator preparation program, working with the Superintendent, shall prepare and submit a program approval request for consideration by the Board that includes:~~
~~(a) a program summary;~~
~~(b) approval review findings;~~
~~(c) program areas of distinction;~~
~~(d) program enrollment; and~~
~~(e) program goals and direction.~~
~~(8) If the program approval request is approved by the Board, the program shall be considered Board approved until the next scheduled approval review visit.~~
~~(9)(a) Notwithstanding Subsection 8, the Superintendent may place a program on probation for:~~
~~(i) failure to meet program requirements detailed in applicable Board rules; and~~
~~(ii) submission of inadequate or incomplete information in a report required under this R277-502.~~
~~(b) The Board may revoke its approval of a probationary program that fails to meet probationary requirements with at least one year's notice.~~

~~(10) If a new educator preparation program seeks Board approval or a previously Board approved educator preparation program seeks approval for additional license area preparation and endorsements, the program shall submit an application to the Superintendent including:~~

~~(a) information detailing the exact license areas of concentration and endorsements that the program intends to award;~~

~~(b) detailed requirement information, including required course lists, course descriptions, and course syllabi for all courses that will be required as part of a program;~~

~~(c) detailed information showing how the program will ensure that the educator satisfies all standards in the Utah Effective Educator Standards established in Rule R277-530 and Professional Educator Standards established in Rule R277-217;~~

~~(d) information about program timelines and anticipated enrollment.~~

~~(11) The Board shall approve or deny applications for new educator preparation programs.~~

~~(12)(a) The Superintendent shall review and approve or deny applications from previously Board approved educator preparation programs desiring Board approval for additional license areas and endorsements.~~

~~(b) The Superintendent may grant preliminary approval pending Utah State Board of Regents approval of a new program if the program is within a public institution.~~

~~(13) An educator preparation program seeking Board approval may apply to the Board for probationary approval for a maximum of three years contingent on the completion of the approval process.~~

~~(14) A Board approved educator preparation program shall submit an annual report to the Superintendent by July 1 of each year, which shall include the following:~~

~~(a) student enrollment counts designated by anticipated license area of concentration and endorsement and disaggregated by gender and ethnicity;~~

~~(b) information explaining any significant changes to program requirements or content;~~

~~(c) the program's response to areas of concern or areas of focus identified by the Superintendent; and~~

~~(d) information regarding any program determined areas of concern or areas of focus and the program's planned response.~~

~~(15) The Superintendent shall provide reporting criteria to Board approved educator preparation programs regarding the annual report and designated areas of concern or focus by January 31 annually.~~

~~(16) An individual that completes a Board approved educator preparation program may be recommended for licensure within five years of program completion if the individual meets current licensing requirements.~~

~~(17)(a) If five years have passed since an individual completed a Board approved preparation program, the individual may be recommended for licensure following review by the individual program.~~

~~(b) The preparation program officials shall determine whether any content or pedagogy requirement previously met meets current program standards and if additional requirements are necessary to recommend licensure.~~

~~(c) The individual shall complete all requirements established by program officials before receiving a license recommendation from the program.~~

R277-502-4. License Levels, Procedures, and Periods of Validity.

~~(1)(a) The Superintendent shall recommend an individual to the Board for a Level 1 license if the individual:~~

~~(i) is recommended by a Board approved educator preparation program or approved alternative preparation program; or~~

~~(ii) possesses a valid professional educator license from another state.~~

~~(b) An LEA and Board approved educator preparation program shall cooperate in preparing candidates for a Level 1 license and may use joint resources to assist candidates in preparation for licensing.~~

~~(c) A Board approved educator preparation program may only issue a recommendation if the individual has satisfactorily completed the programs of study required for the preparation of educators and has met licensing standards in the license areas of concentration for which the individual is recommended.~~

~~(2) A Level 1 license is valid for three years unless suspended or revoked for cause by the Board.~~

~~(3) A license applicant who has received or completed license preparation activities or coursework inconsistent with this rule may present compelling information and documentation for review and approval by the Superintendent to satisfy the licensing requirements.~~

~~(4) If an educator has taught for three years in a K-12 public education system in Utah, the Superintendent may only recommend renewal of a Level 1 license if:~~

~~(a) the employing LEA has requested a one year extension consistent with Section R277-522-4; or~~

~~(b) the individual has continuous experience as a speech language pathologist in a clinical setting.~~

~~(5) The Superintendent shall recommend a Level 1 licensee to the Board for a Level 2 license upon:~~

~~(a) satisfaction of all Board requirements for the Level 2 license; and~~

~~(b) the recommendation of the employing LEA.~~

~~(6) An LEA shall make a recommendation under Subsection (5)(b), prior to the expiration of the educator's Level 1 license and following:~~

~~(a) the completion of three years of successful, professional growth and educator experience;~~

~~(b) satisfaction of all requirements of Rule R277-522; and~~

~~(c) any additional requirements imposed by the employing LEA.~~

~~(7) A Level 2 license shall be valid for five years unless suspended or revoked for cause by the Board.~~

~~(8) A Level 2 license may be renewed for successive five year periods consistent with Rule R277-500.~~

~~(9) The Superintendent shall recommend a Level 2 licensee to the Board for a Level 3 license who:~~

~~(a) has current National Board Certification;~~

~~(b) has 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~~

~~(c) holds a Speech Language Pathology area of concentration and has a current American Speech Language Hearing Association certification.~~

~~(10) A Level 3 license is valid for seven years unless suspended or revoked for cause by the Board.~~

~~(11) A Level 3 license may be renewed for successive seven year periods consistent with Rule R277-500.~~

~~(12) The Superintendent may establish deadlines and uniform forms and procedures for all aspects of licensing.~~

~~(13)(a) All licenses expire on June 30 of the year of expiration and may be renewed any time after January of the same year.~~

~~(b) Responsibility for license renewal rests solely with the licensee.~~

~~R277-502-5. Professional Educator License Areas of Concentration, and Endorsements and Under-Qualified Employees.~~

~~(1) Unless excepted under rules of the Board, to be employed in a public school in a capacity covered by a license area of concentration set forth in Subsection R277-502-2(6)(a), a person shall hold a valid license issued by the Board in the respective license area of concentration.~~

~~(2) An educator who is licensed and holds the appropriate license area of concentration but who is working out of the educator's endorsement area, shall:~~

~~(a) submit an SAEP to complete the requirements of an endorsement to the Superintendent; or~~

~~(b) request, along with the educator's employing LEA, a letter of authorization from the Board if the educator has not completed requirements for an area of concentration or endorsement.~~

~~(3)(a) A letter of authorization issued under Subsection (2)(b) is valid for one year.~~

~~(b) An educator may receive no more than three Letters of Authorization throughout the educator's employment in Utah schools.~~

~~(c) The Superintendent may recommend an exception to the limitation in Subsection (3)(b) on a case by case basis following specific approval of the request by the educator's employing LEA governing board.~~

~~(d) A letters of authorization approved prior to the 2000-2001 school year shall not be counted towards the limit in Subsection (3)(b).~~

~~(e) If an educator's letter of authorization expires before the individual is approved for licensing, the educator falls into under-qualified status.~~

~~(4)(a) A licensed educator may receive an endorsement to indicate qualification in a subject or content area.~~

~~(b) An endorsement described in Subsection (4)(a) is not valid for employment purposes without a current license and license area of concentration.~~

~~(5)(a) The Superintendent shall designate a list of content area endorsements, which qualify as a STEM education endorsement, in accordance with Subsection 53E-6-903(2)(a).~~

~~(b) An LEA may consider a STEM endorsement as part of the LEA's salary schedule in accordance with Subsection 53E-6-903(3)(b).~~

~~(c) The Superintendent shall determine the courses and experiences necessary for a STEM endorsement.~~

~~(d) The Superintendent shall determine which content area endorsements qualify as STEM endorsements.~~

~~(6) The Superintendent shall develop a process to provide incentives for an educator to take courses leading to a STEM education endorsement in accordance with Subsection 53E-6-903(2)(b), which shall include:~~

~~(a) an application; and~~

~~(b) an appeals process for an educator whose application is denied.~~

~~(7) The Superintendent may not award an incentive to an educator for a course that does not carry higher education credit.~~

~~R277-502-6. Returning Educator Relicensure.~~

~~(1) A previously licensed educator with an expired license may renew an expired license upon satisfaction of the following:~~

~~(a) Completion of a criminal background check including review of any criminal offenses and clearance in accordance with Rule R277-214;~~

~~(b) Employment by an LEA;~~

~~(c) Completion of a one year professional learning plan developed jointly by the educator's school principal or charter school director and the returning educator consistent with R277-500 that also considers the following:~~

~~(i) previous successful public school teaching experience;~~

~~(ii) formal educational preparation;~~

~~(iii) period of time between last public teaching experience and the present;~~

~~(iv) school goals for student achievement within the employing school and the educator's role in accomplishing those goals;~~

~~(v) returning educator's professional abilities, as determined by a formal discussion and observation process completed within the first 30 days of employment; and~~

~~(vi) completion of additional necessary professional development for the educator.~~

~~(d) Filing of the professional learning plan within 30 days of hire;~~

~~(e) Successful completion of required Board approved exams for licensure;~~

~~(f) Satisfactory experience as determined by the LEA with a trained mentor; and~~

~~(g) Submission to the Superintendent of the completed and signed Return to Original License Level Application, available on the Board website prior to June 30 of the school year in which the educator seeks to return.~~

~~(2) A returning educator is eligible for renewal of an educator license following completion of a professional learning plan notwithstanding the license renewal point requirements of Section R277-500-3.~~

~~(3)(a) A returning educator who previously held a Level 2 or Level 3 license under this rule shall receive a Level 1 license during the first year of employment following renewal of an expired license.~~

~~(b) Upon completion of the requirements listed in Subsection (1) and a satisfactory LEA evaluation, the employing LEA may recommend the educator's return to Level 2 or Level 3 licensure.~~

~~(4) A returning educator who taught less than three consecutive years in a public or accredited private school shall complete the requirements of Rule R277-522 before being recommended by an LEA to move from a Level 1 to Level 2 license.~~

~~R277-502-7. Professional Educator Licenses Issued by Licensing Jurisdictions Outside of Utah.~~

~~(1) The Superintendent shall review applications for a Utah educator license for individuals holding educator licenses issued by licensing jurisdictions outside of Utah to determine if the applicant has met the requirements for a Utah license under this rule and Rule R277-503.~~

~~(2) The Superintendent shall accept scores from an applicant that meet the Utah standard for passing on assessments from licensing jurisdictions outside of Utah that utilize the same assessment as Utah as meeting the assessment requirements of Rule R277-503.~~

~~(3) The Superintendent shall accept scores from an applicant on reasonably equivalent content knowledge or pedagogical assessments utilized by licensing jurisdictions outside of Utah that meet the passing standard of that jurisdiction as meeting the requirements of Rules R277-503 and R277-522.~~

~~(4) The Superintendent shall accept demonstrations of content knowledge and pedagogical competencies for specific license areas or endorsements from an applicant that are utilized by licensing jurisdictions outside of Utah and reasonably equivalent to Utah competencies.~~

~~(5) Individuals with 4 or more years of successful experience in a public or accredited private school under a standard license issued by a licensing jurisdiction outside of Utah shall be considered to have met both the content knowledge and pedagogical assessment requirements for a Utah license under this rule, Rule R277-503, and Rule R277-522.~~

KEY: professional competency, educator licensing

Date of Last Change: February 7, 2020

Notice of Continuation: July 19, 2017

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-6-201; 53E-3-401]

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

| | | |
|--------------------------------------|-----------------|----------------------------------|
| Utah Admin. Code Ref (R no.): | R277-746 | Filing ID 54027 |
|--------------------------------------|-----------------|----------------------------------|

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: |
| R277-746. Driver Education Programs for Utah Schools |
| 3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?): |
| This rule is being amended because H.B. 18, Driver Education Amendments, from the 2021 General Session created the need for updates to the Drivers Education Manual, which is incorporated by reference in 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): |
| The amendments remove certain education reporting requirements and requires the State Board to establish a policy or procedures to evaluate the impact a report |

required in a proposed rule may have on reporting requirements for local education agencies.

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 updated Drivers Education Manual was required due to H.B. 18 (2021).

B) Local governments:

This rule change is not expected to have independent fiscal impact on local governments' revenues or expenditures. The updated Drivers Education Manual was required due to H.B. 18 (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 updated Drivers Education Manual was required due to H.B. 18 (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 Systems (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 updated Drivers Education Manual was required due to H.B. 18 (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 updated Drivers Education Manual was required due to H.B. 18 (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, 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 53G-10-502(4) | Subsection 53E-3-401(4) |
|-------------------------|-----------------------------|----------------------------|

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) | Driver Education for Utah High Schools Organization, Administration and Standards |
| Publisher | Utah State Board of Education |
| Date Issued | September 2021 |
| Issue, or version | 1 |

Public Notice Information

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

| | |
|--|------------|
| A) Comments will be accepted until: | 12/01/2021 |
|--|------------|

| | |
|--|------------|
| 10. This rule change MAY become effective on: | 12/08/2021 |
|--|------------|

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: | 10/14/2021 |
|--|---|--------------|------------|

R277. Education, Administration.

R277-746. Driver Education Programs for Utah Schools.

R277-746-1. Authority and Purpose.

(1) This rule is authorized by:

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

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

(c) Subsection 53G-10-502(4), which directs the Board to prescribe rules for driver education classes in the public schools.

(2) The purpose of this rule is to incorporate by reference the Board's Driver Education manual, which specifies standards and procedures for local school districts conducting automobile driver education.

R277-746-2. Incorporation by Reference of Driver Education Manual.

(1) This rule incorporates by reference Driver Education for Utah High Schools - Organization, Administration and Standards, Revised [February 2018] September 2021, which outlines statutory requirements and Board procedures for administering an automobile driver education program.

(2) A copy of the manual is located at:

(a)

<https://www.schools.utah.gov/curr/drivedred?mid=5559&tid=3>; and

(b) the offices of the Utah State Board of Education.

KEY: driver education

Date of Last Change: 2021 ~~May 8, 2018~~

Notice of Continuation: April 2, 2018

Authorizing, and Implemented or Interpreted Law: 53G-10-502(4); 53E-3-401(4)

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

| | | |
|--------------------------------------|-----------------|----------------------------------|
| Utah Admin. Code Ref (R no.): | R277-922 | Filing ID 54028 |
|--------------------------------------|-----------------|----------------------------------|

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: |
| R277-922. Digital Teaching and Learning Grant Program |

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

This rule is being amended to update the membership of the Digital Teaching and Learning Advisory Committee.

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 update Digital Teaching and Learning Advisory Committee duties and update requirements for school plans and reporting.

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 make this rule consistent with H.B. 42 passed in the 2021 General Session.

B) Local governments:

This rule change is not expected to have independent fiscal impacts on local government revenues or expenditures. The amendments make the rule consistent with H.B. 42 (2021).

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

This rule change is not expected to have independent fiscal impacts on small business revenues or expenditures. The amendments make the rule consistent with H.B. 42 (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 make this rule consistent with H.B. 42 (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 make this rule consistent with H.B. 42 (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, 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 53F-2-510 | 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: 12/01/2021

10. This rule change MAY become effective on: 12/08/2021

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: | 10/14/2021 |
|--|--|--------------|------------|

R277. Education, Administration.

R277-922. Digital Teaching and Learning Grant Program.

R277-922-1. Authority and Purpose.

(1) This rule is authorized by:

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

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

(c) Section 53F-2-510, Digital Teaching and Learning Grant Program, which requires the Board to:

(i) establish a qualifying grant program; and

- (ii) adopt rules related to administration of the Digital Teaching and Learning Grant Program.
- (2) The purpose of this rule is to:
 - (a) establish an application and grant review committee and process;
 - (b) give direction to LEAs participating in the Digital Teaching and Learning Program.

R277-922-2. Definitions.

- (1) "Advisory committee" means the Digital Teaching and Learning Advisory Committee:
 - (a) established by the Board as required in Section 53F-2-510; and
 - (b) required to perform the duties described in R277-922-5.
- (2) "LEA plan" has the same meaning as that term is defined in Section 53F-2-510.
- (3) "Master plan" means Utah's Master Plan: Essential Elements for Technology-Powered Learning incorporated by reference in R277-922-3.
- (4) "Program" has the same meaning as that term is defined in Section 53F-2-510.
- (5) "Participating LEA" means an LEA that:
 - (a) has an LEA plan approved by the Board; and
 - (b) receives a grant under the program.

R277-922-3. Incorporation of Utah's Master Plan by Reference.

- (1) This rule incorporates by reference Utah's Master Plan: Essential Elements for Technology-Powered Learning, October 9, 2015, which establishes:
 - (a) the application process for an LEA to receive a grant under the program; and
 - (b) a more detailed description of the requirements of an LEA plan.
- (2) A copy of the Master Plan is located at:
 - (a) ~~[https://www.uen.org/digital-learning/downloads/Utah_Essential_Elements_Technology_Powered_Learning.pdf#a=https://www.schools.utah.gov/curr/digital?mid=4332&tid=4]~~ and
 - (b) the Utah State Board of Education, 250 East 500 South, Salt Lake City, Utah 84111.

R277-922-4. LEA Planning Grants.

- (1) An LEA may apply for a planning grant in lieu of preparing an LEA plan and receiving a Digital Teaching and Learning Grant as described in this rule.
- (2) A planning grant awarded under Subsection (1) shall be in the amount of \$5,000.
- (3) ~~[In order to]~~ To qualify for a planning grant, an LEA shall:
 - (a) send an LEA representative to a pre-grant submission training conducted by the Superintendent; and
 - (b) complete the readiness assessment required in Section 53F-2-510.
- (4)(a) If an LEA receives a planning grant, the LEA shall submit an LEA plan as set forth in Section R277-922-8 for the subsequent school year.
- (b) An LEA that fails to submit an LEA plan in the subsequent year shall reimburse funds awarded under Subsection (2) to the program.

R277-922-5. Digital Teaching and Learning Advisory Committee Duties.

- (1) The advisory committee shall include the following individuals who will serve as non-voting chairs:
 - (a) the Deputy Superintendent of Instructional Services or designee; and
 - (b) the Director of the Utah Education and Telehealth Network or designee.
- (2) In addition to the chairs described in Subsection (1), the Board shall appoint ~~[five]~~six members to the advisory committee as follows:
 - (a) the Digital Teaching and Learning Coordinator;
 - (b) one member who represents a school district with expertise in digital teaching and learning;
 - (c) one member who represents a charter school with expertise in digital teaching and learning;~~[-and]~~
 - (d) two members that have earned a national certification in education technology, that may include a certification from the Certified Education Technology Leader from the Consortium for School Networking (CoSN)~~[-]; and~~
 - (e) one member who represents the Utah School Superintendents Association.
- (3) The advisory committee shall:
 - (a) oversee review of an LEA plan to determine whether the LEA plan meets the criteria described in Section R277-922-8;
 - (b) make a recommendation to the Superintendent and the Board on whether the Board should approve or deny an LEA plan;
 - (c) make recommendations to an LEA on how the LEA may improve the LEA's plan; and
 - (d) perform other duties as directed by:
 - (i) the Board; or
 - (ii) the Superintendent.
- (4) The advisory committee may select additional LEA plan reviewers to assist the advisory committee with the work described in Subsection (3).
- (5) The advisory committee, or the Superintendent on behalf of the advisory committee, shall present the advisory committee's recommendations on whether to approve or deny each LEA plan to the Board for the Board's approval.

R277-922-6. Board Approval or Denial of LEA Plans.

- (1) The Board will either approve or deny each LEA plan submitted by the advisory committee.
- (2) If the Board denies an LEA's plan, the LEA may amend and re-submit the LEA's plan to the advisory committee until the Board approves the LEA plan.

R277-922-7. Pre-LEA Plan Submission Requirements.

- (1) Before an LEA submits an LEA plan to the advisory committee for approval by the Board, an LEA shall:
 - (a) have an LEA representative participate in a pre-grant submission training conducted by the Superintendent;
 - (b) require the following individuals to participate in a leadership and change management training conducted by the Superintendent:
 - (i) a representative group of school leadership from schools participating in the program;
 - (ii) (A) the school district superintendent;~~[-or]~~

NOTICES OF PROPOSED RULES

_____ (B) charter school executive director; or
_____ (C) the school district superintendent's or charter school executive director's designee;

(iii) the LEA's technology director; and

(iv) the LEA's curriculum director; and

(c) complete the readiness assessment required in Section 53F-2-510.

(2) A member of an LEA's local school board or charter school governing board and other staff identified by the LEA may participate in:

(a) a pre-grant submission training conducted by the Superintendent as described in Subsection (1)(a); or

(b) a leadership and change management training conducted by the Superintendent as described in Subsection[s] (1)(b).

R277-922-8. LEA Plan Requirements.

(1) An LEA shall develop a five[-]year LEA plan in cooperation with educators, paraeducators, and parents,

(2) An LEA plan shall include:

(a) an LEA's results on the readiness assessment required in Section 53F-2-510;

(b) a statement of purpose that describes the[-learning] outcomes, and metrics of success an LEA will accomplish by implementing the program, including the following outcomes:

(i) a 5% increase in an LEA's growth or proficiency on the statewide accountability metrics by the end of the fifth year of the LEA's implementation of the program; or

(ii) a [school level] learning outcome:

(A) selected by the LEA;

(B) included in the LEA's plan; and

(C) approved by the advisory committee;

(c) long-term, intermediate, and direct outcomes as defined in the Master Plan and identified in an LEA's five[-]year plan;

(d) an implementation process structured to yield an LEA's [school level] learning outcomes;

(e) a plan for infrastructure needs and refreshment cycle;

(f) a description of necessary high quality digital primary instructional materials, as defined in Section R277-469-2, in relation to the outcomes provided for in Subsection R277-922-8(b)(i) including:

(i) providing special education students with appropriate software;

(ii) the recommended usage requirements of the software provider; and

(iii) the best practices recommended by the software or hardware provider;

(g) a detailed plan for student engagement in personalized learning;

(h) technical support standards for implementation and maintenance of the program that removes technical support burdens from the classroom teacher;

(i) proposed security policies, including security audits, student data privacy as referenced in R277-487, and remediation of identified lapses;

(j) a disclosure by an LEA of the LEA's current technology expenditures;

(k) the LEA's overall financial plan, including use of additional LEA non-grant funds, to be utilized to adequately fund the LEA plan;

(l) a description of how an LEA will provide high quality professional learning for educators, administrators, and support staff participating in the program, including ongoing periodic coaching;

(m) a plan for digital citizenship curricula and implementation; and

(n) a plan for how an LEA will monitor student and teacher usage of the program technology.

(2) An LEA's approved LEA plan is valid for five years, and may be required to be reapproved by the advisory committee and the Board after five years of implementation.

(3) An LEA is not required to implement the program in kindergarten through grade 4.

R277-922-9. Distribution of Grant Money to Participating LEAs.

(1) If an LEA's plan is approved by the Board, the Superintendent shall distribute grant money to the participating LEA as described in this section.

(2)(a) The amount available to distribute to participating charter schools is an amount equal to the product of:

(i) October 1 headcount in the prior year at charter schools statewide, divided by October 1 headcount in the prior year in public schools statewide; and

(ii) the total amount available for distribution under the program.

(b) The Superintendent shall distribute to participating charter schools the amount available for distribution to participating charter schools in proportion to each participating charter school's enrollment as a percentage of the total enrollment in participating charter schools in the prior year.

(c) A new LEA or new charter school satellite campus shall be funded based on the new LEA or new charter school satellite campus's projected October 1 headcount.

(3) The Superintendent shall distribute grant money to the Utah Schools for the Deaf and the Blind in an amount equal to the product of:

(a) October 1 headcount in the prior year at the Utah Schools for the Deaf and the Blind, divided by October 1 headcount in the prior year in public schools statewide; and

(b) the total amount available for distribution under this section.

(4) Of the funds available for distribution under the program after the allocation of funds for the Utah Schools for the Deaf and the Blind and participating charter schools, the Superintendent shall distribute grant money to participating LEAs that are school districts as follows:

(a) the Superintendent shall distribute 10%[-percent] of the total funding available for participating LEAs that are school districts to the participating LEAs as a base amount on an equal basis; and

(b) the Superintendent shall distribute the remaining 90% of the funds to the participating LEAs on a per-student basis, based on the October 1 headcount in the prior year.

(5)(a) If an LEA's plan is not approved during year one of the program, the advisory committee and the Digital Teaching and Learning Coordinator shall provide additional supports to help the LEA become a qualifying LEA.

(b) The Superintendent shall redistribute the funds an LEA would have been eligible to receive, in accordance with the distribution formulas described in this section, to other qualifying LEAs if the LEA's plan is not approved:

(i) after additional support described in Subsection (5)(a) is given; and

(ii) by no later than December 31 of the school year for which the grant is being awarded.

(6) A non-qualifying LEA may reapply for grant money in subsequent years based on the LEA's plan being approved by the Board.

R277-922-10. Prohibited Uses of Grant Money.

A participating LEA may not use grant money:

- (1) to fund nontechnology programs;
- (2) to purchase mobile telephones;
- (3) to fund voice or data plans for mobile telephones; or
- (4) to pay indirect costs charged by the LEA.

R277-922-11. Participating LEA Reporting Requirements.

Beginning with the school year after a participating LEA's first year implementation of an LEA plan, a participating LEA shall annually review and report how the participating LEA made progress toward implementation.[:

- ~~(1) review how the participating LEA:~~
 - ~~(a) redirected funds through the participating LEA's implementation of the LEA plan; and~~
 - ~~(b) made progress toward implementation; and~~
- ~~(2) on or before October 1, report the potential savings identified in Subsection (1) to the Superintendent.]~~

R277-922-12. Evaluation of LEA Program Implementation.

(1) An evaluation conducted by the independent evaluator described in Section 53F-2-510 shall include a review of:

- (a) a participating LEA's implementation of the program in accordance with the participating LEA's LEA plan;
- (b) a participating LEA's progress toward meeting the [school level] learning outcomes in the participating LEA's LEA plan.

(2) After an evaluation described in Subsection (1), if the Superintendent determines that a participating LEA is not meeting the requirements of the participating LEA's LEA plan the Superintendent:

- (a) shall:
 - (i) provide assistance to the participating LEA; and
 - (ii) recommend changes to the LEA's LEA plan; or
- (b) after at least two findings of failure to meet the requirements of the participating LEA's LEA plan, may recommend that the Board terminate the participating LEA's grant money.

KEY: digital teaching and learning, grant programs

Date of Last Change: 2021[January 9, 2019]

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-401(4); 53F-2-510

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

| | | |
|--------------------------------------|-----------------|------------------|
| Utah Admin. Code Ref (R no.): | R315-101 | Filing ID |
| | | 54022 |

Agency Information

| | |
|-----------------------------|--|
| 1. Department: | Environmental Quality |
| Agency: | Waste Management and Radiation Control, Waste Management |
| Building: | MASOB |
| Street address: | 195 N 1950 W |
| City, state and zip: | Salt Lake City, UT 84116 |
| Mailing address: | PO Box 144880 |
| City, state and zip: | Salt Lake City, UT 84114-4880 |

Contact person(s):

| | | |
|--------------|---------------|----------------|
| Name: | Phone: | Email: |
| Tom Ball | 801-536-0251 | tball@utah.gov |

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

General Information**2. Rule or section catchline:**

R315-101. Cleanup Action and Risk-Based Closure Standards

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

Rule R315-101 is being amended to include the most up-to-date methods and procedures being used by industry to conduct cleanups of contaminated sites and risk assessments based on EPA guidance.

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 current rule contains limited information and is not clear in its requirements resulting in confusion and inconsistent interpretations. The revised rule provides consistency in interpretations and requirements needed to conduct risk assessments.

The rule is being amended to provide several available approaches for conducting risk assessments allowing regulated entities to choose the approach that best fits their situation.

Contaminated groundwater is not adequately addressed in the current rule. This rule is being amended to adequately address groundwater at all contaminated sites.

The amended rule spells out a hierarchy of toxicological sources that are scientifically defensible for use in risk assessment evaluation.

The amended rule provides more details, requirements and information resources that are needed to conduct an acceptable ecological risk assessment.

The amended rule defines what the Department of Environmental Quality (DEQ) considers to be an acceptable risk range and the target risk considered to be the point of departure. The amended rule also provides clear risk management options available depending on the level of risk. The interpretation of the term No Further Action (NFA) is well defined with regards to the level of risk at a site and the land use exposure scenario. The requirements for drafting a site management plan (SMP), as well as termination are clearly provided.

There is a section in the amended rule that contains a list of guidance documents and other resources that are incorporated by reference into this rule and a section that provides clear definitions of terms used in this rule.

Fiscal Information

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

A) State budget:

It is not anticipated that there will be any cost or savings to the state budget due to this rule amendment. There will be no change to the procedures and manpower used by the state to review risk assessments and cleanup plans that are based on the amended rule. Any state agency that may be or may need to perform cleanups or risk assessments would be required to do so under the existing rule. This amendment does not add any requirements to this rule that would increase costs, nor does it remove any requirements that would decrease costs.

B) Local governments:

It is not anticipated that there will be any cost or savings to local governments due to this rule amendment. Any local government that may be or may need to perform cleanups or risk assessments would be required to do so under the existing rule. This amendment does not add any requirements to this rule that would increase costs, nor does it remove any requirements that would decrease costs.

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

It is not anticipated that there will be any cost or savings to small businesses due to this rule amendment. Any small business that may be or may need to perform cleanups or risk assessments would be required to do so under the existing rule. This amendment does not add any requirements to this rule that would increase costs, nor does it remove any requirements that would decrease costs.

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

It is not anticipated that there will be any cost or savings to non-small businesses due to this rule amendment. Any non-small business that may be or may need to perform cleanups or risk assessments would be required to do so under the existing rule. This amendment does not add any requirements to this rule that would increase costs, nor does it remove any requirements that would decrease costs.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation,

association, governmental entity, or public or private organization of any character other than an **agency**):

It is not anticipated that there will be any cost or savings to persons other than small businesses, non-small businesses, state, or local government entities due to this rule amendment. Any persons other than small businesses, non-small businesses, state, or local government entities that may be or may need to perform cleanups or risk assessments would be required to do so under the existing rule. This amendment does not add any requirements to this rule that would increase costs, nor does it remove any requirements that would decrease costs.

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

Because this is an amendment to an existing rule and the changes to this rule do not significantly change how cleanups and risk assessments are conducted under this rule it is not anticipated that the compliance costs for affected persons will change due to the rule amendments.

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):

It is not anticipated that this rule amendment will have any additional fiscal impact on any businesses that are currently complying with this rule beyond the current costs of compliance. The changes that are being made include the most up-to-date methods and procedures being used by industry to conduct cleanups of contaminated sites and risk assessments. Kimberly D. Shelley, 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 Executive Director of the Department of Environmental Quality, Kimberly D. Shelley, 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 19-6-105 | Section 19-6-106 | |
|------------------|------------------|--|

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) | Groundwater Statistics and Monitoring Compliance |
| Publisher | Interstate Technology Regulatory Council (ITRC) |
| Date Issued | December 2013 |

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) | ECO-Risk Database |
| Publisher | Los Alamos National Laboratory (LANL) |
| Date Issued | 2011 |

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

| | Third Incorporation |
|---|--|
| Official Title of Materials Incorporated (from title page) | Toxicological Benchmarks for Wildlife: 1996 Revision |
| Publisher | Oakridge National Laboratory (ORNL) |
| Date Issued | 1996 |
| Issue, or version | 1996 |

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

| | Fourth Incorporation |
|---|---|
| Official Title of Materials Incorporated (from title page) | A Guide to the ORNL Ecotoxicological Screening Benchmarks: Background, Development, and Application |
| Publisher | Oakridge National Laboratory (ORNL) |
| Date Issued | May 1998 |
| Issue, or version | Revision 1 |

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

| | Fifth Incorporation |
|---|--|
| Official Title of Materials Incorporated (from title page) | Guidelines for the Health Risk Assessment of Chemical Mixtures |
| Publisher | United States Environmental Protection Agency (US EPA) |
| Date Issued | 1986 |

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

| | Sixth Incorporation |
|---|---|
| Official Title of Materials Incorporated (from title page) | Risk Assessment Guidance for Super Fund Volume 1: Human Health Evaluation Manual (Part A) |
| Publisher | United States Environmental Protection Agency (US EPA) |
| Date Issued | 1989 |
| Issue, or version | Interim Final |

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

| | Seventh Incorporation |
|---|--|
| Official Title of Materials Incorporated (from title page) | Risk Assessment Guidance for Super Fund Volume 1: Human Health Evaluation Manual Supplemental Guidance Standard Default Exposure Factors |
| Publisher | United States Environmental Protection Agency (US EPA) |
| Date Issued | March 25, 1991 |
| Issue, or version | Interim Final |

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

| | Eighth Incorporation |
|---|---|
| Official Title of Materials Incorporated (from title page) | Risk Assessment Guidance for Super Fund Volume 1: Human Health Evaluation Manual (Part B Development of Risk-based Preliminary Remediation Goals) |
| Publisher | United States Environmental Protection Agency (US EPA) |
| Date Issued | December 1991 |
| Issue, or version | Interim Final |

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

| | Ninth Incorporation |
|---|--|
| Official Title of Materials Incorporated (from title page) | Wildlife Exposure Factors Handbook, Volume I of II |
| Publisher | United States Environmental Protection Agency (US EPA) |
| Date Issued | December 1993 |

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

| | Tenth Incorporation |
|---|---|
| Official Title of Materials Incorporated (from title page) | Supplemental Guidance to RAGS: Calculating the Concentration Term |
| Publisher | United States Environmental Protection Agency (US EPA) |
| Date Issued | May 1992 |

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

| | Eleventh Incorporation |
|---|--|
| Official Title of Materials Incorporated (from title page) | Framework for Ecological Risk Assessment |
| Publisher | United States Environmental Protection Agency (US EPA) |
| Date Issued | February 1992 |

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

| | Twelfth Incorporation |
|---|---|
| Official Title of Materials Incorporated (from title page) | Wildlife Exposure Factors Handbook, Appendix: Literature Review Database, Volume II of II |
| Publisher | United States Environmental Protection Agency (US EPA) |
| Date Issued | December 1993 |

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

| | Thirteenth Incorporation |
|---|--|
| Official Title of Materials Incorporated (from title page) | Soil Screening Guidance Technical Background Document |
| Publisher | United States Environmental Protection Agency (US EPA) |
| Date Issued | May 1996 |

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

| | Fourteenth Incorporation |
|---|---|
| Official Title of Materials Incorporated (from title page) | Ecological Risk Assessment Guidance for Superfund: Process for Designing and Conducting Ecological Risk Assessments |
| Publisher | United States Environmental Protection Agency (US EPA) |
| Date Issued | June 1997 |
| Issue, or version | Interim Final |

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

| | Fifteenth Incorporation |
|--|--------------------------------|
|--|--------------------------------|

| | |
|---|--|
| Official Title of Materials Incorporated (from title page) | Guidelines for Ecological Risk Assessment |
| Publisher | United States Environmental Protection Agency (US EPA) |
| Date Issued | April 1998 |

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

| | |
|---|---|
| | Sixteenth Incorporation |
| Official Title of Materials Incorporated (from title page) | Supplementary Guidance for Conducting Health Risk Assessment of Chemical Mixtures |
| Publisher | United States Environmental Protection Agency (US EPA) |
| Date Issued | August 2000 |

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

| | |
|---|--|
| | Seventeenth Incorporation |
| Official Title of Materials Incorporated (from title page) | Risk Assessment Guidance for Superfund Volume 1: Human Health Evaluation Manual (Part D, Standardized Planning, Reporting, and Review of Superfund Risk Assessments) |
| Publisher | United States Environmental Protection Agency (US EPA) |
| Date Issued | 2001 |
| Issue, or version | Final |

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

| | |
|---|--|
| | Eighteenth Incorporation |
| Official Title of Materials Incorporated (from title page) | EPA Requirements for Quality Management Plans |
| Publisher | United States Environmental Protection Agency (US EPA) |
| Date Issued | 2001 |

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

| | |
|---|---|
| | Nineteenth Incorporation |
| Official Title of Materials Incorporated | Risk Assessment Guidance for Superfund: Volume III - Part A, Process for Conducting Probabilistic |

| | |
|--------------------------|--|
| (from title page) | Risk Assessment |
| Publisher | United States Environmental Protection Agency (US EPA) |
| Date Issued | December 2001 |

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

| | |
|---|--|
| | Twentieth Incorporation |
| Official Title of Materials Incorporated (from title page) | Supplemental Guidance for Developing Soil Screening Levels for Superfund Sites |
| Publisher | United States Environmental Protection Agency (US EPA) |
| Date Issued | 2002 |

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

| | |
|---|--|
| | Twenty-first Incorporation |
| Official Title of Materials Incorporated (from title page) | Guidance for Quality Assurance Project Plans |
| Publisher | United States Environmental Protection Agency (US EPA) |
| Date Issued | December 2002 |

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

| | |
|---|--|
| | Twenty-second Incorporation |
| Official Title of Materials Incorporated (from title page) | Calculating Upper Confidence Limits for Exposure Point Concentrations at Hazardous Waste Sites |
| Publisher | United States Environmental Protection Agency (US EPA) |
| Date Issued | December 2002 |
| Issue, or version | December 2002(a) |

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

| | |
|---|--|
| | Twenty-third Incorporation |
| Official Title of Materials Incorporated (from title page) | Guidance for Developing Ecological Soil Screening Levels |
| Publisher | United States Environmental Protection Agency (US EPA) |
| Date Issued | November 2003 |

NOTICES OF PROPOSED RULES

| | |
|--------------------------|---------------|
| Issue, or version | February 2005 |
|--------------------------|---------------|

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

| | |
|---|---|
| | Twenty-fourth Incorporation |
| Official Title of Materials Incorporated (from title page) | Human Health Toxicity Values in Superfund Risk Assessment |
| Publisher | United States Environmental Protection Agency (US EPA) |
| Date Issued | December 2003 |

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

| | |
|---|---|
| | Twenty-fifth Incorporation |
| Official Title of Materials Incorporated (from title page) | User's Guide for Evaluating Subsurface Vapor Intrusion into Buildings |
| Publisher | United States Environmental Protection Agency (US EPA) |
| Date Issued | February 2004 |
| Issue, or version | February 22, 2004 |

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

| | |
|---|---|
| | Twenty-sixth Incorporation |
| Official Title of Materials Incorporated (from title page) | Risk Assessment Guidance for Superfund Volume 1: Human Health Evaluation Model (Part E, Supplemental Guidance for Dermal Risk Assessment) |
| Publisher | United States Environmental Protection Agency (US EPA) |
| Date Issued | July 2004 |
| Issue, or version | Final |

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

| | |
|---|--|
| | Twenty-seventh Incorporation |
| Official Title of Materials Incorporated (from title page) | Guidelines for Carcinogen Risk Assessment |
| Publisher | United States Environmental Protection Agency (US EPA) |
| Date Issued | March 2005 |

| | |
|--------------------------|---------------|
| Issue, or version | March 2005(b) |
|--------------------------|---------------|

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

| | |
|---|--|
| | Twenty-eighth Incorporation |
| Official Title of Materials Incorporated (from title page) | Supplemental Guidance for Assessing Susceptibility from Early-Life Exposure to Carcinogens |
| Publisher | United States Environmental Protection Agency (US EPA) |
| Date Issued | March 2005 |
| Issue, or version | March 2005(c) |

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

| | |
|---|---|
| | Twenty-ninth Incorporation |
| Official Title of Materials Incorporated (from title page) | Guidance on Systematic Planning Using the Data Quality Objectives Process |
| Publisher | United States Environmental Protection Agency (US EPA) |
| Date Issued | February 2006 |

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

| | |
|---|--|
| | Thirtieth Incorporation |
| Official Title of Materials Incorporated (from title page) | Risk Assessment Guidance for Superfund Volume 1: Human Health Evaluation Manual (Part F, Supplemental Guidance for Inhalation Risk Assessment) |
| Publisher | United States Environmental Protection Agency (US EPA) |
| Date Issued | January 2009 |
| Issue, or version | Final |

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

| | |
|---|--|
| | Thirty-first Incorporation |
| Official Title of Materials Incorporated (from title page) | Statistical Analysis of Groundwater Monitoring Data at RCRA Facilities, Unified Guidance |
| Publisher | United States Environmental Protection Agency (US EPA) |
| Date Issued | March 2009 |

| | |
|--------------------------|-------|
| Issue, or version | Final |
|--------------------------|-------|

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

| | |
|---|---|
| | Thirty-second Incorporation |
| Official Title of Materials Incorporated (from title page) | Risk Assessment Guidance for Super Fund Volume 1: Human Health Evaluation Manual (Part C, Risk Evaluation of Remedial Alternatives) |
| Publisher | United States Environmental Protection Agency (US EPA) |
| Date Issued | December 1991 |
| Issue, or version | Interim |

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

| | |
|---|--|
| | Thirty-third Incorporation |
| Official Title of Materials Incorporated (from title page) | Exposure Factors Handbook: 2011 Edition |
| Publisher | United States Environmental Protection Agency (US EPA) |
| Date Issued | September 2011 |
| Issue, or version | 2011 |

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

| | |
|---|--|
| | Thirty-fourth Incorporation |
| Official Title of Materials Incorporated (from title page) | Superfund Vapor Intrusion FAQs |
| Publisher | United States Environmental Protection Agency (US EPA) |
| Date Issued | February 2012 |

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

| | |
|---|--|
| | Thirty-fifth Incorporation |
| Official Title of Materials Incorporated (from title page) | ProUCL Version 5.1 Technical Guide Statistical Software for Environmental Applications for Data Sets with and without Nondetect Observations |
| Publisher | United States Environmental Protection Agency (US EPA) |
| Date Issued | October 2015 |

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

| | |
|---|--|
| | Thirty-sixth Incorporation |
| Official Title of Materials Incorporated (from title page) | Human Health Evaluation Manual, Supplemental Guidance: Update of Standard Default Exposure Factors |
| Publisher | United States Environmental Protection Agency (US EPA) |
| Date Issued | February 2014 |

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

| | |
|---|--|
| | Thirty-seventh Incorporation |
| Official Title of Materials Incorporated (from title page) | Vapor Intrusion Screening Level (VISL) Calculator User's Guide |
| Publisher | United States Environmental Protection Agency (US EPA) |
| Date Issued | May 2014 |

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

| | |
|---|--|
| | Thirty-eighth Incorporation |
| Official Title of Materials Incorporated (from title page) | OSWER Technical Guide for Assessing and Mitigating the Vapor Intrusion Pathway from Subsurface Vapor Sources to Indoor Air |
| Publisher | United States Environmental Protection Agency (US EPA) |
| Date Issued | June 2015 |

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

| | |
|---|--|
| | Thirty-ninth Incorporation |
| Official Title of Materials Incorporated (from title page) | Technical Guide for Addressing Petroleum Vapor Intrusion at Leaking Underground Storage Tank Sites |
| Publisher | United States Environmental Protection Agency (US EPA) |
| Date Issued | June 2015 |

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

| | |
|---|---|
| | Fortieth Incorporation |
| Official Title of Materials Incorporated | Update of Ecological Soil Screening Level (Eco-SSL) Guidance and Contaminant Specific Documents |

| | |
|--------------------|--|
| (from title page) | |
| Publisher | United States Environmental Protection Agency (US EPA) |
| Date Issued | March 2005 |

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

| | |
|---|--|
| | Forty-first Incorporation |
| Official Title of Materials Incorporated (from title page) | Guidelines for Mutagenicity Risk Assessment |
| Publisher | United States Environmental Protection Agency (US EPA) |
| Date Issued | September 1986 |

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

| | |
|---|--|
| | Forty-second Incorporation |
| Official Title of Materials Incorporated (from title page) | Establishing Background Levels |
| Publisher | United States Environmental Protection Agency (US EPA) |
| Date Issued | September 1995 |

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: | 12/01/2021 |
|--|------------|

| | |
|--|------------|
| 10. This rule change MAY become effective on: | 12/13/2021 |
|--|------------|

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: | Douglas J. Hansen, Division Director | Date: | 10/14/2021 |
|--|--------------------------------------|--------------|------------|

R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.

R315-101. Cleanup Action and Risk-Based Closure Standards.

R315-101-1. Purpose, Applicability.

(a) Purpose. Rule R315-101 establishes information requirements to support risk-based cleanup and closure standards at sites for which remediation or removal of hazardous constituents to background levels ~~[will not be achieved]~~ is not the remediation objective. The procedures in ~~[this rule]~~ Rule R315-101 also provide for continued management of sites for which ~~[minimal]~~ risk-based clean closure standards ~~[cannot be]~~ are not met.

(b) Applicability.

(1) Rule R315-101 [is applicable] applies to any responsible party, or other interested party on a voluntary basis such as a prospective purchaser, a lending institution or land developer, involved in management of a site contaminated with hazardous waste, [—or] hazardous constituents, or other contaminants as determined by the director. [This F] Rule R315-101 does not apply to a site that has been or [will] shall be cleaned to background levels of constituents.

(2) In the event of a release of hazardous waste or material ~~[which] that~~, when released, becomes hazardous waste, ~~[these] the~~ requirements of Rule R315-101 apply if the responsible party fails to clean up ~~[all]~~ the released material and any residue or contaminated soil, water or other material resulting from the release as required by Section R315-263-31. The requirements of Section R315-263-31 shall be considered met if:

(i) ~~[If]~~ the level of risk, cumulative, present at the site is ~~[below] less than or equal to~~ 1×10^{-6} for carcinogens and ~~[a] the [H] hazard [H] index [of] is~~ less than or equal to one for non-carcinogens based on ~~[the] a~~ risk assessment conducted ~~[in accordance with]~~ assuming the land use exposure scenario defined in Subsection R315-101-5[2(b)](g)(1):

(ii) ~~[and]~~ the ~~[D] director~~ determines that ecological effects are insignificant based on the approved assessment conducted in accordance with Subsection R315-101-5[3(a)(8)](j); and

(iii) ~~[, the requirements of R315-9-3 shall be considered met]~~ the director determines that current and potential future impacts to groundwater are insignificant in accordance with Subsection R315-101-6(f)(3).

(3) ~~[The owner or operator of a hazardous waste management facility or a facility subject to interim status requirements shall meet the requirements of 40 CFR 265.110 through 120, incorporated by reference in Rule R315-265, and Sections R315-264-110 through 120 prior to implementation of any activities described in R315-101. The requirements of Subsections R315-270-1(e)(5) and (6) shall be met for a hazardous waste management unit if the level of risk present at the site is below 1×10^{-6} for carcinogens and a Hazard Index of less than or equal to one for non-carcinogens based on the risk assessment conducted in accordance with R315-101-5.2(b)(1) and the Director determines that ecological effects are insignificant based on the approved assessment conducted in accordance with R315-101-5.3(a)(8). If these risk exposure criteria are met, a request for a risk-based closure may be submitted to the Director for review.] The responsible party of a hazardous waste management site shall meet the requirements of Sections R315-265-110 through R315-265-120 or Sections R315-264-110 through R315-264-120, as applicable, prior to implementation of any activities described in Rule R315-101.~~

(4) ~~[If the risk present at the site is greater than the exposure limit as defined in R315-101-1(b)(2) or (3) or the Director determines that ecological effects may be significant, then a risk-based closure will~~

not be granted and appropriate management will be required and may include corrective action, post closure care, monitoring, deed restrictions, and security of the site. For determinations of appropriate corrective action or management activities at a site, the following criteria shall be considered in order of importance:

_____ (a) The impact or potential impact of the contamination on the human health;

_____ (b) The impact or potential impact of the contamination on the environment;

_____ (c) The technologies available for use in clean up; and

_____ (d) Economic considerations and cost effectiveness of clean up options. The requirements of Subsections R315-270-1(c)(5) and R315-270-1(c)(6) shall be considered met for a hazardous waste management unit or solid waste management unit if:

_____ (i) the level of risk, cumulative, present at the site is less than or equal to 1×10^{-6} for carcinogens and a hazard index of less than or equal to one for non-carcinogens based on the risk assessment conducted assuming the land use exposure scenario defined in Subsection R315-101-5(g)(1);

_____ (ii) the director determines that ecological effects are insignificant based on the approved assessment conducted in accordance with Subsection R315-101-5(j); and

_____ (iii) the director determines that current and potential future impacts to groundwater are insignificant in accordance with Subsection R315-101-6(f)(3).

_____ (5) If these risk criteria are met, a request for a risk-based clean closure as defined in Subsection R315-101-6(j) or R315-101-6(f) may be submitted to the director for review and approval.

_____ (6) If the level of risk, cumulative, present at the site is greater than the limits defined in Subsection R315-101-1(b)(2) or R315-101-1(b)(4) or the director determines that ecological effects may be significant in accordance with Subsection R315-101-5(j), or current and potential future impact to groundwater is significant in accordance with Subsection R315-101-6(f)(3), then a risk-based clean closure shall not be granted and appropriate site management as defined in Subsection R315-101-12(a)(3) and as determined in Subsection R315-101-6(c) shall be required.

_____ (c) For determination of appropriate corrective action at a site, the following criteria shall be considered in order of importance:

_____ (1) the impact or potential impact of the contamination on human health;

_____ (2) the impact or potential impact of the contamination on the environment;

_____ (3) the technologies available for use in cleanup; and

_____ (4) economic considerations and cost-effectiveness of cleanup options.

_____ (d) The responsible party shall follow applicable Utah and federal risk assessment guidance and other guidance documents and methods approved by the director, as set forth in Rule R315-101.

R315-101-2. Stabilization of Releases.

_____ (a) The responsible party ~~[must]~~shall immediately take appropriate action as determined by the director to stabilize the site either through source removal or source control. ~~[After the responsible party has attempted to complete the requirements of Sections R315-263-30 through 33 and the Director determines that additional work is needed to stabilize the site, the Director will notify the responsible party that additional work is necessary and provide the responsible party with objectives to be addressed in developing a work plan to further stabilize the site. The work plan shall be submitted to the Director for review and approval within fifteen days of receiving notification that additional work will be necessary to complete the emergency actions required by~~

Sections R315-263-30 through 33. Work plans shall be of a scope commensurate with the work to be performed and site specific characteristics. This work plan shall include a description of the interim measure and how it will meet the criteria of source removal or source control. The implementation of the work plan shall be according to the schedule contained within the approved plan. All interim measures shall be at the expense of the party responsible for the site. If the party responsible for the site fails to take the measures required for stabilizing the site, the Director may request the Executive Director of the Department to take abatement and cost recovery actions as provided in Section 19-6-301, et seq., Utah Hazardous Substances Mitigation Act. If the director determines that the remedial action taken is insufficient to meet the requirements of Section R315-263-30, the responsible party shall submit a work plan pursuant to Subsection R315-101-2(b) to the director for approval within 15 days of receiving that written determination.

_____ (b) The work plan shall:

_____ (1) define the scope of work to be performed;

_____ (2) include a description of the interim measures and other corrective actions to be taken; and

_____ (3) include a description of how the plan shall meet the criteria of source removal or source control.

_____ (c) The responsible party shall implement the work plan in accordance with the schedule contained in the approved plan. The responsible party shall implement interim measures or other corrective actions as approved. If the responsible party fails to take the measures required for stabilizing the site, the director may request the executive director of the Department of Environmental Quality to take abatement and cost recovery actions as provided in Sections 19-6-301 through 19-6-326 of the Utah Hazardous Substances Mitigation Act.

R315-101-3. Principle of Non-degradation.

_____ (a) When closing or managing a contaminated site, the responsible party shall to the extent practicable in accordance with Subsection R315-101-1(c) not allow levels of contamination in groundwater, regardless of quality, sediment, surface water, soils, and air to increase beyond the existing levels of contamination at a site at the time the responsible party has defined the nature and extent of contamination pursuant to Section R315-101-4. ~~[when site management commences.]~~

_____ (b) The responsible party ~~[will]~~shall demonstrate compliance with ~~[this policy]~~Subsection R315-101-3(a) by submitting appropriate ~~[monitoring data]~~sampling or other data as may be required by the ~~[D]~~director.

_____ (c) If at any time the level of contamination increases to a significant level as determined by the director on a case-by-case basis, the responsible party shall take immediate ~~[corrective]~~action, as determined by the director, such as source removal or source control, to prevent further degradation of any medium. A work plan addressing interim action and other corrective action to mitigate the situation shall be submitted to the director for review and approval.

R315-101-4. Site Characterization, Data Collection and Documentation.

_____ The following information shall be collected to characterize the site, and define site boundaries and Area(s) of Contamination:

_____ (a) A legal description of the site;

_____ (b) Historical land use and ownership of the site;

_____ (c) Topographical map(s) of sufficient detail, scale, and accuracy to depict and locate all past and current physical structures including all building(s) and waste activities at the site;

~~(d) Information and maps of sufficient detail, scale, and accuracy to describe regional, local, and site geology, surface water, and hydrogeological conditions;~~

~~(e) An inventory of all current and past wastestreams managed at the site, including process descriptions and suspected contamination source information;~~

~~(f) Background levels of suspected hazardous constituents based on the inventory as determined in R315-101-4(e) in media of concern, e.g. sediments, soil, groundwater, surface water, and air which are representative of the site; and~~

~~(g) Location and boundaries of all Area(s) of Contamination, including concentrations, types and extent of hazardous constituents. Media to be sampled may include sediments, soil, groundwater, surface water, and air, as applicable.]~~

(a) To define the nature and extent of potential contamination, based on the known or suspected history of past or current operations at the facility, in any environmental media, and prior to the collection of data that shall be used in the risk assessment, the responsible party shall develop and submit a site characterization work plan to the director for review and approval. The site characterization work plan shall include the following:

(1) sampling and analysis plan specifying methods and procedures to be used for data collection and analysis as outlined in Section R315-261-1090, Appendix I, and in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" EPA Publication SW-846, available at the EPA Hazardous Waste Test Methods/SW-846 website;

(i) Samples shall be analyzed by a Utah certified laboratory using procedures and methods in accordance with "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" EPA Publication SW-846, available at the EPA Hazardous Waste Test Methods/SW-846 website.

(ii) Documentation for laboratory work shall include the data accompanied by quality assurance and quality control measures taken in accordance with current environmental laboratory standards for a level II data package, or other QA/QC data level as determined by the director on a site-specific basis.

(2) representative proposed media sample locations with depths, sample analytes and justification that the proposed sampling is sufficient to define the nature and extent of contamination;

(3) conceptual site model for a site-specific characterization, identifying and showing potential primary source areas, media of concern, contaminant release mechanism, receptors of interest, exposure pathways and possible contaminant migration pathways. Media may include sediments, soil, biota, food chain, groundwater, surface water, and air as applicable based on current site conditions;

(4) data quality objective process steps related to the implementation of the sampling and analysis plan in accordance with "Guidance on Systematic Planning Using the Data Quality Objectives Process," EPA QA/G-4, EPA/240/B-06/001, as incorporated by reference in Section R315-101-11;

(5) quality assurance project plan for field procedures, chain-of-custody and laboratory analytical methods to be used for the sampled media; and

(6) field quality assurance and quality control procedures to characterize and dispose of any investigation derived waste in an appropriate manner, including a plan for decontamination procedures, field instrument calibration procedures, any standard operating procedures and other relevant documentation.

(b) Background levels. Based on the site characterization sampling results, the responsible party may determine or propose background levels of suspected hazardous constituents as defined in

Subsection R315-101-12(a)(7). The constituent list may be based on the inventory as determined in Subsection R315-101-4(c)(5) in media of concern, including: sediments, soil, groundwater, surface water, and air that are representative of the site.

(c) Additional information. The following additional information shall be collected to characterize the site, and to define site boundaries and areas of contamination:

(1) a description of the site, including legal boundaries;

(2) historical land use and ownership of the site, including existing aerial photos of the site through time if requested by the director;

(3) topographical and other relevant maps of sufficient detail, scale, and accuracy to depict and locate each past and current physical structure including any buildings and waste activities at the site;

(4) information and maps of sufficient detail, scale, and accuracy to describe regional, local, and site geology, surface water, groundwater and groundwater quality, drainage features and other hydrogeological conditions;

(5) an inventory of each current and past waste stream managed at the site, hazardous waste management units, areas of concern and solid waste management units at the site, including process descriptions, amounts and types of waste generated and disposed and suspected contamination source information;

(6) location and boundaries of areas of concern including any hazardous waste management units and solid waste management units;

(7) any past sampling results, and an inventory of any releases, discharges and spills; and

(8) available information such as reports and data on any previous corrective actions.

(d) Petroleum wastes and total petroleum hydrocarbon.

At sites where petroleum wastes may be present, the media samples shall be analyzed for volatile organic compounds, semi-volatile organic compounds including Poly Aromatic Hydrocarbons (PAHs), and total metals.

(e) The director may also require the impacted media to be analyzed for other constituents that may include Polychlorinated Biphenyls (PCBs), dioxins and furans, Per-and Polyfluoroalkyl Substances (PFAS), and any other contaminant of interest as determined on a case-by-case basis based on the history of the site and activities.

(f) Relevant information gathered in Subsections R315-101-4(a) through R315-101-4(e) shall be submitted in a site characterization report to the director for review and approval. In addition, the site characterization report shall include:

(1) site location, legal description and objectives of the site investigation;

(2) methodology and field activities completed including the handling of any investigation derived wastes;

(3) maps of sufficient detail and accuracy to depict waste management units, areas of contamination, nature and extent of contamination, topography, geology, groundwater quality, and potentiometric surface;

(4) site and regional geological, hydrogeological and hydrological descriptions;

(5) a detailed discussion of any areas of contamination found during the site characterization field work;

(6) listing and concentrations of any historic and current hazardous constituents identified in Section R315-101-4;

(7) background levels of hazardous constituents including details of statistical methods used to analyze the data gathered if applicable;

(8) Subsections R315-101-4(f)(6) and R315-101-4(f)(7) shall be known as contaminants of interest;

(9) descriptions of historic and current releases of hazardous constituents and expected extent of migration from the areas of contamination;

(10) deviations from the approved site characterization work plan and the sampling and analysis plan;

(11) discussion of the evaluated potential exposure pathways including groundwater, surface water, sediments, surface and subsurface soils and air;

(12) a summary outlining the completion of data quality objectives, completed analytical request forms for each analysis performed reported on dry-weight basis, actual sampling locations and depths with justification for variations to the approved sampling and analysis, any statistical analysis performed if completed, and quality assurance and quality control results and analytical data validation report in accordance with current environmental laboratory standards for a level II data package, or other QA/QC data level as determined by the director on a site-specific basis;

(13) revised conceptual site model identified in Subsection R315-101-4(a)(3) based on the information presented in the final site characterization report; and

(14) conclusions and recommendations for additional site work and applicable supporting documentation including figures, tables and appendices.

R315-101-5. Human Health and Ecological Risk Evaluation Criteria;] and Risk Assessment.

[REDACTED] 5.1 REQUIRED STUDY]

(a) When conducting the risk assessment, the responsible party ~~[will use all applicable site characterization data and shall consider the following parameters.]~~ shall use the conceptual site model as defined in Subsection R315-101-12(a)(13) and as described in Subsection R315-101-4(a)(3) or R315-101-4(a)(13) as applicable, and shall use applicable site characterization data. For the areas of contamination as defined in Subsection R315-101-12(a)(5), the following shall be included when conducting the risk assessment:

(1) ~~[I]d~~identification, concentration, and distribution of ~~[all]~~any suspected hazardous constituents identified in Section R315-101-4~~(e)]~~ and defined as contaminants of interest in Subsection R315-101-4(f)(8);

~~[REDACTED] (2) All area(s) of contamination at the site;]~~

~~[3)](2) [F]ate of contaminants of interest and any pathways of contaminant] and transport of contaminants of interest;[and]~~

~~[(4) Potentially exposed populations;](3) any potential exposure routes;~~

~~[(4) human receptors; and]~~

~~[(5) ecological receptors.]~~

[5.2](b) [CHARACTERIZATION AND EVALUATION OF RISK]Characterization and Evaluation of Human Health Risk.

~~[(a)](1) The responsible party shall conduct a risk assessment [which includes the following:] for human health following the methodologies described in the "US EPA Risk Assessment Guidance for Superfund Sites," Parts A to F, as incorporated by reference in Section R315-101-11.~~

(2) The concentration term for each medium for each contaminant of interest identified in Section R315-101-4 and Subsection R315-101-4(f)(8) shall be evaluated using the US EPA ProUCL program, calculating upper confidence limits.

(3) The fate, pathways, and transport of contaminants of interest identified in Section R315-101-4 and defined in Subsection R315-101-4(f)(8) shall be evaluated using the conceptual site model developed pursuant to Subsection R315-101-4(a)(3) or R315-101-4(a)(13) as applicable and approved by the director.

~~[REDACTED] (1) The concentration term "C" for each medium for each hazardous constituent identified in R315-101-5.1(a)(1);~~

~~[(2) Evaluation of the fate of contaminants and of all pathways of contaminant transport identified in R315-101-5.1(a)(3);~~

~~[(3) Exposure assessment identifying the RME for all exposure pathways, intakes, and identified constituents;~~

~~[(4) Current toxicity information for carcinogenic and noncarcinogenic effects;~~

~~[(5) Risk characterization identifying carcinogenic risk, individual and multiple substances, and noncarcinogenic hazardous index, individual and multiple substances;~~

~~[(6) An ecological evaluation which provides for terrestrial and aquatic processes; and]~~

~~[(7) Current toxicity information for all the constituents and biological processes relevant to the ecological evaluation.~~

(b) The risk assessment shall be conducted using one or both of the standard exposure scenarios listed below, as needed to determine site management options:

(1) Residential. This exposure scenario includes ingestion of water (must include surface water and ground water regardless of water quality), ingestion of soil and dust, ingestion of contaminated and potentially contaminated food, inhalation of contaminants, dermal contact with chemicals in soil, and dermal contact with chemicals in water for a human being ages zero through 70 years old using the equations and default variable values found in the Risk Assessment Guidance for Superfund, Volume 1: Human Health Evaluation Manual Supplemental Guidance, "Standard Default Exposure Factors", Interim Final, OSWER Directive 9285.6-03, March 25, 1991 or most recent edition;

(2) Actual land use conditions or potential land use conditions based upon applicable zoning and future land use planning considerations, if potential land use conditions offer a more protective exposure scenario than actual land use conditions. This exposure scenario involves an assessment based on actual site conditions using standard default variable values. The potential land use exposure scenario should include a conceptual model including current site conditions, expected future conditions based upon site specific physical and chemical information, and the assumption that contaminated media will not have undergone any remedial engineering.

5.3 DATA PRESENTATION

(a) A risk assessment report shall be submitted to the Director and must include at a minimum the following:

(1) An executive summary;

(2) An overview of the site and the areas of contamination;

(3) A site characterization report which includes:

(i) Maps of sufficient detail and accuracy to depict areas of contamination, topography, geology, and groundwater contours or potentiometric surface;

(ii) Site and regional geological and hydrological descriptions;

(iii) A detailed discussion of areas of contamination;

(iv) Background levels of hazardous constituents including details of statistical methods used to determine background; and

(v) Descriptions of releases of hazardous constituents and expected extent of migration from the area of contamination.

(4) Identification and concentration of hazardous constituents identified in R315-101-5.1(a)(1). A sampling and analysis plan shall be prepared and utilized for the collection of all data. This plan shall be developed using procedures and methods outlined in Section R315-261-1090 and the most current version of "SW 846, Test Methods for Evaluating Solid Waste." It shall contain a summary outlining data quality objectives, completed analytical request forms for all analysis

NOTICES OF PROPOSED RULES

performed, dry weight equivalents, sampling location identification and justification, standard operating procedures used for data collection, all statistical analysis performed, quality assurance and quality control plans (QA/QC plan) and QA/QC results, instrument calibration results, and analytical methods including constituent detection limits;

(5) Exposure assessment identifying exposure levels for all exposure pathways identified in R315-101-5.2(a)(3). If fate and transport models are used, the users manual, model theory, computer software for the model, installation verification data set for the model and parametric analysis of the input parameters must be provided upon request of the Director;

(6) Identification of toxicity information gathered for all identified hazardous constituents for carcinogenic, slope factors and weight of evidence classification, noncarcinogenic effects, chronic reference doses (RfDs) and critical effects associated with RfDs from, in order of preference, the Integrated Risk Information System (IRIS), Health Effects Assessment Summary Tables (HEAST), Agency for Toxic Substances and Disease Registry (ATSDR) toxicological profiles, Environmental Criteria and Assessment Office (ECAO), or other scientifically accepted listings. The source and date of the toxicological information must be identified and be acceptable to the Director;

(7) The risk characterization identifying carcinogenic risk, individual and multiple substances, noncarcinogenic hazardous index, individual and multiple substances, chronic hazard quotient, subchronic hazard quotient, uncertainties, and a tabulation of all risk characterization data presented in a format approved by the Director; and

(8) Unless justification is provided to the Director, and a waiver of this requirement is granted by the Director in writing, an ecological assessment of the site which contains at least the following:

(i) An inventory of the current biological community;

(ii) Estimates of ecological effects based on a subset of ecological endpoints;

(iii) The magnitude and variation of toxic effects; and

(iv) Identification of extent of effects, specifically from the presence of hazardous waste.

(b) If the risk assessment report does not contain all required information of sufficient quality and detail, the Director will notify the responsible party in writing of the deficiencies and require resubmittal of the report in a designated time frame.

(c) If the risk assessment report contains all required information of sufficient quality and detail, the Director will approve the risk assessment report in writing.]

(c) The exposure scenarios identified in the exposure model shall be estimated using reasonable maximum exposure parameters and shall be based on both current and potential future anticipated land use and receptors defined in Subsections R315-101-5(g)(1) and R315-101-5(g)(2).

(d) The exposure model shall include a determination as to whether or not each of the following pathways is complete under both current and anticipated future conditions. Risks shall be quantified for those receptors where exposure pathways have a reasonable potential for being complete unless it may be demonstrated that the risk is less significant when compared to other quantified receptor risks.

(1) Pathways for surficial soils, defined as zero to a maximum of six inches below ground surface or as determined on a case-by-case basis including:

(i) leaching to groundwater and potential use of groundwater;

(ii) leaching to groundwater and subsequent migration to a surface water body; and

(iii) ingestion of soil, dermal contact with soil, inhalation of vapors and particulates emitted by surficial soils.

(2) Pathways for subsurface soils, defined as greater than six inches below ground surface to the water table and as determined on a case-by-case basis including:

(i) leaching or vapor migration to groundwater and potential use of groundwater;

(ii) leaching or vapor migration to groundwater and subsequent migration to a surface water body;

(iii) volatilization and upward migration of vapors from subsurface soil and potential indoor inhalation of these emissions; and

(iv) ingestion of soil, dermal contact, inhalation of vapors and particulates.

(3) Soil pathways applicable to construction worker as defined from the surface down to depth of construction of 12 feet or the top of the water table, or as determined on a case-by-case basis including:

(i) ingestion;

(ii) dermal contact with soil;

(iii) inhalation of vapor emissions; and

(iv) inhalation of particulates from soil.

(4) Groundwater pathways applicable to construction worker including:

(i) ingestion;

(ii) dermal contact with groundwater; and

(iii) inhalation of vapor emissions.

(5) Pathways for groundwater in general including:

(i) volatilization and upward migration of vapors from groundwater and potential indoor inhalation of vapor emissions;

(ii) volatilization and upward migration of vapors from groundwater and potential outdoor inhalation of vapor emissions;

(iii) potable use of groundwater, including ingestion of groundwater, dermal contact with groundwater during showering or bathing, and inhalation of vapors from domestic use of groundwater if pathway is complete; and

(iv) migration to surface water body and potential impacts to surface water and potential exposures to surface water.

(6) Other pathways that may need to be considered on a site-specific basis may include the following:

(i) contact with soils and ingestion of soils, sediments, inhalation of vapors and particulates, surface water and groundwater for any other anticipated human contacts such as recreational and trespasser activities;

(ii) ingestion of produce grown in impacted soils;

(iii) use of groundwater for irrigation purposes;

(iv) use of groundwater for industrial purposes;

(v) ingestion of livestock fish or other aquatic organisms that, as a result of media contamination, have bioaccumulated constituents of potential concern through the food chain; and

(vi) swimming.

(e) Human health risk assessment approach. The risk assessment may be performed for impacted media by choosing either a Tier 1, or a Tier 2 risk assessment process, or both. Tier 1 shall be a screening risk assessment and Tier 2 shall be a refined risk assessment that may include site-specific exposure assumptions and allowance for alternative approaches, such as a Monte Carlo exposure risk analysis, probabilistic risk assessment. The risk assessment shall be conducted considering current and potential future land use in accordance with the residential land use exposure scenario as defined in Subsection R315-101-5(g)(1) or the non-residential land use exposure scenario as defined in Subsection R315-101-5(g)(2), or both. The responsible party shall develop a risk assessment work plan for review and approval by the director before commencement of evaluation.

(f) Tier 1 screening risk assessment.

(1) The Tier 1 evaluation shall use one or more of the following screening levels:

(i) US EPA Regional Screening Levels available at the EPA Risk Assessment, Regional Screening Levels (RSLs) website;

(ii) site-specific background 95% upper tolerance limit levels developed in accordance with "Establishing Background Levels," US EPA, as incorporated by reference in Section R315-101-11. Director approval is required for the development of background level determination;

(iii) vapor intrusion screening levels calculated using US EPA Vapor Intrusion Screening Level Calculator, as incorporated by reference in Section R315-101-11, available at the EPA Vapor Intrusion Screening Levels Calculator website;

(iv) petroleum vapor intrusion screening guidelines developed in accordance with "Technical Guide for Addressing Petroleum Vapor Intrusion at Leaking Underground Storage Tank Sites," US EPA, as incorporated by reference in Section R315-101-11;

(v) the robust confidence limits established for the site in accordance with "Statistical Analysis of Groundwater Monitoring Data at RCRA Facilities, Unified Guidance," US EPA, as incorporated by reference in Section R315-101-11; or

(vi) in instances where a regional screening level is not available, a responsible party, with the approval of the director, may develop and calculate a site-specific screening value.

(2) The RSLs, robust confidence limits, site-specific background levels, calculated site-specific screening values, and vapor intrusion screening levels shall be known collectively as screening values.

(3) The documents referenced in Subsections R315-101-5(f)(1)(i) through R315-101-5(f)(1)(vi) and other director approved sources shall be used as sources for obtaining screening values.

(4) Chemical specific screening and Tier 1 screening risk assessment for residential land use.

(i) For inorganic contaminants of interest, the following steps shall be followed for screening.

(A) The maximum detected concentration of each contaminant of interest shall be compared to the site-specific background level 95% upper tolerance limit or the established robust confidence limit. If the maximum detected concentration is less than the background 95% upper tolerance limit or the robust confidence limit, then the inorganic contaminants of interest shall not be considered as a constituent of potential concern.

(B) For those inorganic contaminants of interest whose maximum concentrations are greater than the background level site-specific 95% upper tolerance limits or the robust confidence limits, a test of means hypothesis shall be used to determine if inorganic contaminants of interest are present at elevated levels over background levels.

(C) If the results of the test of means hypothesis indicate the detected inorganic contaminant of interest is elevated over background level, it will be selected as a constituent of potential concern or it will be dropped from further evaluation.

(D) If a test of means hypothesis cannot be performed due to sample size or there is no established site-specific background level, the inorganic contaminants of interest shall be selected as a constituent of potential concern.

(E)(I) For further evaluation, the maximum detected concentration of inorganic contaminants of interest shall be selected as the exposure point concentration.

(II) For organic contaminants of interest, the maximum detected concentrations shall be the exposure point concentration. If it is determined that the exposure point concentration of any contaminants

of interest is greater than the screening value, the contaminants of interest shall be selected as constituents of potential concern. Otherwise, it will not be selected as a contaminants of potential concern needing further evaluation.

(III) For inorganic and organic contaminants of interest, if the maximum detected concentration results in a cancer risk greater than 1×10^{-6} or a hazard quotient greater than one, a 95% upper confidence limit on the mean may be calculated using the USEPA ProUCL program. The lesser of the maximum concentration and the 95% upper confidence limit concentration shall be selected as the exposure point concentration.

(IV) If the minimum required sample size for calculating the 95% upper confidence limit cannot be met, the maximum detected concentration shall be the exposure point concentration.

(V) For additivity responses, if no constituents of potential concern are selected in accordance with Subsections R315-101-5(f)(4)(i)(C), R315-101-5(f)(4)(i)(D) and R315-101-5(f)(4)(E)(II), an additional screening step shall be performed to determine if cumulative effects screening risks posed by detected contaminants of interest at the site meet the acceptable target risk goal of 1×10^{-6} for carcinogenic risk and a hazard index of one for non-carcinogenic risk.

(VI) If the cumulative effects screening cancer risk is less than or equal to 1×10^{-6} and hazard index is less than or equal to one, then the cumulative effects screening risks posed by detected contaminants of interest at the site meet the residential land use and the site meets the criteria for no further action or unrestricted land use as identified in Subsection R315-101-6(f) or R315-101-6(h) or R315-101-6(i) or R315-101-6(j) as applicable.

(VII) If the cumulative effects screening cancer risk is greater than 1×10^{-6} or the hazard index is greater than one, then the cumulative effects screening risks posed by any detected contaminants of interest at the site do not meet the residential land use standards and further evaluation is required.

(5) Residential land use with selected constituents of potential concern.

(i) For carcinogenic constituents of potential concern, the residential land use cumulative effects screening cancer risk estimate is calculated as the sum of the ratios of exposure point concentrations and screening values for the combined residential land use exposure pathways identified under the conceptual site model developed pursuant to Subsection R315-101-4(a)(3) or R315-101-4(a)(13) as applicable for soil and groundwater media. The sum is then multiplied by 1×10^{-6} .

(ii) For non-carcinogenic constituents of potential concern, the hazard index is calculated as the sum of the ratios of exposure point concentrations and screening values for the combined residential land use exposure pathways identified under the conceptual site model pursuant to Subsection R315-101-4(a)(3) or R315-101-4(a)(13) as applicable for soil and groundwater media.

(iii) Risks to residents from ingestion of livestock grazing on a contaminated site shall be determined and added to the cumulative effects risk equation if it is determined to be a plausible and complete exposure pathway.

(iv) Vapor intrusion pathway if complete, shall be evaluated and added to the cumulative effects screening risk equation.

(v) Any other relevant exposure pathway consistent with the residential exposure pathway shall be evaluated and added to the cumulative risk.

(vi) The Tier 1 risk assessment evaluation may not be appropriate under circumstances when every complete exposure pathway is not covered by the screening values. The Tier 2 refined risk assessment approach may be more appropriate for evaluation.

(vii) If it is determined that the residential land use cumulative effects screening cancer risk posed by constituents of

potential concern is less than or equal to the target cancer risk of 1×10^{-6} and the hazard index is less than or equal to one for each combined residential land use exposure pathways, and it is determined that there are no current and potential future impacts to groundwater as determined by "Supplemental Guidance For Developing Soil Screening Levels," US EPA, as incorporated by reference in Section R315-101-11, Subsections R315-101-5(f)(8) and R315-101-6(s) and ecological impacts are insignificant in accordance with Subsection R315-101-5(j), then the site meets the criteria for no further action or unrestricted land use as identified in Subsection R315-101-6(f), or R315-101-6(h), or R315-101-6(i) or R315-101-6(j) as applicable.

(viii) If it is determined that the residential land use cumulative effects screening cancer risk posed by constituents of potential concern is greater than the target risk of 1×10^{-6} or the hazard index is greater than one for each combined residential land use exposure pathways, then further evaluation of the site may be conducted using either the Tier 2 refined risk assessment evaluation approach for a residential land use exposure scenario as defined in Subsection R315-101-5(g)(1) or the non-residential land use exposure scenario as defined in Subsection R315-101-5(g)(2) as applicable, or the responsible party may choose to conduct corrective action as identified in Subsections R315-101-6(m) and R315-101-6(n) to mitigate risks at the site to residential acceptable levels.

(ix) In the Tier 2 refined risk assessment, constituents of potential concern that significantly contribute to a pathway in a land use exposure scenario for a receptor that exceeds a cumulative cancer risk of 1×10^{-4} or a non-carcinogenic hazard index greater than one shall be known as contaminants of concern.

(x) An ecological evaluation shall also be completed as part of the screening residential land use risk evaluation as described in Subsection R315-101-5(j).

(xi) A groundwater impact evaluation shall also be completed as part of the screening residential land use risk evaluation as identified in Subsection R315-101-5(f)(8).

(6) Chemical specific screening and Tier 1 screening risk assessment for industrial or commercial land use or both.

(i) For inorganic contaminants of interest, the following steps shall be followed.

(A) The maximum detected concentration of each contaminants of interest shall be compared to the site-specific background levels 95% upper tolerance limit or the established robust confidence limits. If the maximum detected concentration is less than the background 95% upper tolerance limit or the robust confidence limit, then the inorganic contaminant of interest will not be considered as a constituent of potential concern.

(B) For those inorganic contaminants of interest whose maximum concentrations is greater than the background level site-specific 95% upper tolerance limits or the robust confidence limit, a test of means hypothesis shall be used to determine if inorganic contaminants of interest are present at elevated levels over background levels.

(C) If the results of the test of means hypothesis indicate the detected inorganic contaminants of interest are elevated over background level, it will be selected as a constituent of potential concern or it will be dropped from further evaluation.

(D) If a test of means hypothesis cannot be performed due to sample size or there is no established site-specific background level, the inorganic contaminants of interest shall be selected as a constituent of potential concern.

(E)(I) For further evaluation, the maximum detected concentration of inorganic contaminants of interest shall be selected as the exposure point concentration.

(II) For organic contaminants of interest, the maximum detected concentration shall be the exposure point concentration. If it is determined that the exposure point concentration of any contaminant of interest is greater than the screening value, the contaminant of interest shall be selected as constituents of potential concern. Otherwise, it will not be selected as a constituent of potential concern needing further evaluation.

(III) For inorganic and organic contaminants of interest, if the maximum detected concentration results in a cancer risk greater than 1×10^{-6} or a hazard quotient greater than one, a 95% upper confidence limit on the mean may be calculated using the USEPA ProUCL program. The lesser of the maximum concentration and the 95% upper confidence limit concentration shall be selected as the exposure point concentration.

(IV) If the minimum required sample size for calculating the 95% upper confidence limit cannot be met, the maximum detected concentration shall be the exposure point concentration.

(V) For additivity responses, if no constituents of potential concern are selected in accordance with Subsections R315-101-5(f)(6)(i)(C), R315-101-5(f)(6)(i)(D) and R315-101-5(f)(6)(E)(II), an additional screening step shall be performed to determine if cumulative effects screening risks posed by detected contaminants of interest at the site meet the acceptable target risk goal of 1×10^{-6} for carcinogenic risk and a hazard index of one for non-carcinogenic risk.

(VI) If the cumulative effects screening risk is less than or equal to a cancer risk of 1×10^{-6} and hazard index is less than or equal to one, then the cumulative effects screening risks posed by detected contaminants of interest at the site meets the industrial or commercial land use or both and the site meets the criteria for restricted land use as identified in the Subsection R315-101-6(k).

(VII) If the cumulative effects screening risk is greater than cancer industrial risk of 1×10^{-6} or hazard index is greater than one, then the cumulative effects screening risks posed by the detected contaminants of interest at the site do not meet the industrial or commercial land use or both and further evaluation is required.

(7) Industrial or commercial land use or both with selected constituents of potential concern.

(i) For carcinogenic contaminants of interest, the industrial or commercial land use or both, cumulative effects screening risk estimate is calculated as the sum of the ratios of exposure point concentrations and screening values for the industrial or commercial land use or both exposure pathways combined for soil, groundwater and other media, as applicable. The sum is then multiplied by 1×10^{-6} .

(ii) For non-carcinogenic cumulative effects screening risk, the hazard index is calculated as the sum of the ratios of exposure point concentrations and screening values for the industrial or commercial land use or both exposure pathways combined for soil, groundwater and other applicable media.

(iii) Exposure scenarios not covered in the screening values shall be evaluated separately and added to the cumulative effects risks. Evaluations may include the vapor intrusion pathway if determined to be complete using the vapor intrusion screening levels.

(iv) Other receptors relevant to the industrial or commercial land use or both scenario, such as construction worker, trespasser, recreational user, shall be evaluated.

(v) The Tier 1 risk assessment evaluation approach may not be appropriate under circumstances when the complete exposure pathways or receptors are not covered by the screening values. A Tier 2 refined risk assessment approach may be more appropriate for evaluation.

(vi) If it is determined that the industrial or commercial land use or both cumulative effects screening risk posed by constituents of potential concern is greater than the target cancer risk of 1×10^{-6} or the

hazard index is greater than one for the industrial or commercial land use or both exposure pathways combined, then a site management plan or corrective action shall be required as identified in Subsections R315-101-6(k), R315-101-6(m) and R315-101-6(n) as applicable.

(vii) If it is determined that the industrial or commercial land use or both cumulative effects screening cancer risk posed by constituents of potential concern is less than or equal to the target cancer risk of 1×10^{-6} and the hazard index is less than or equal to one for the industrial or commercial land use or both exposure pathways combined, then the site qualifies for a restricted land use as identified in Subsection R315-101-6(k).

(viii) If it is determined that the industrial or commercial land use or both cumulative effects screening cancer risk posed by constituents of potential concern is greater than the target cancer risk of 1×10^{-6} or the hazard index is greater than one for the combined industrial or commercial land use or both exposure pathways, then further evaluation of the site may be conducted using the Tier 2 refined risk assessment evaluation approach using the non-residential land use exposure scenario as defined in Subsection R315-101-5(g)(2), or the responsible party may choose to conduct corrective action as identified in Subsections R315-101-6(m) and R315-101-6(n) to mitigate risks at the site to non-residential and acceptable levels.

(ix) In the Tier 2 refined risk assessment, constituents of potential concern that significantly contribute to a pathway in a land use exposure scenario for a receptor that exceeds a cumulative cancer risk of 1×10^{-4} or a non-carcinogenic hazard index greater than one shall be known as contaminants of concern.

(x) An ecological evaluation, as identified in Subsection R315-101-5(j), shall also be completed as part of the screening industrial or commercial land use or both risk evaluation.

(xi) A groundwater impact evaluation, as identified in Subsection R315-101-5(f)(8), shall also be completed as part of the screening industrial or commercial land use or both risk evaluation.

(8) For evaluation of potential future impacts to groundwater one or more of the following steps shall be used:

(i) Step 1. Compare the maximum detected constituents of potential concern in soil to the US EPA RSLs, groundwater protection soil screening level based on a dilution attenuation factor of 20, unless it may be demonstrated that background levels for the contaminants of concern at the site exceed the applicable soil screening levels. If the maximum detected concentrations exceed the US EPA Soil Screening Levels for groundwater protection, the potential exists for future impacts to groundwater. The groundwater protection soil screening level value shall be based on the maximum contaminant level. If the maximum contaminant level value is not available, the responsible party shall use the risk-based groundwater protection soil screening level value for evaluation. If the potential for future groundwater contamination exists, the responsible party may choose to take appropriate actions approved by the director to remove or decrease the level of contamination that may pose a future threat to groundwater; or

(ii) Step 2. Compare the calculated 95% upper confidence limit value of soil constituents of potential concern to the value obtained by multiplying the derived site-specific dilution attenuation factor by the groundwater protection soil screening level value. If sufficient data are not available to calculate a 95% upper confidence limit, the maximum constituent of potential concern concentration value shall be used for evaluation or the director may approve an alternate value. The development of the site-specific dilution attenuation factor shall follow "Supplemental Guidance For Developing Soil Screening Levels," US EPA, as incorporated by reference in Section R315-101-11. If the 95% upper confidence limit concentration exceeds the calculated groundwater protection soil screening level, the potential exists for

future impacts to groundwater. The groundwater protection soil screening level value shall be based on the maximum contaminant level. If the maximum contaminant level value is not available, the responsible party shall use the risk-based groundwater protection soil screening level value for evaluation. If the potential for future groundwater contamination exists, the responsible party may choose to submit a work plan for approval by the director describing actions that will be taken to protect groundwater from future impacts due to soil contamination. In addition, the work plan shall include a proposal for collection of sufficient monitoring data to evaluate both current and future groundwater conditions; or

(iii) Step 3. The responsible party shall propose an alternate method for evaluating potential future impacts to groundwater due to soil contamination to the director for approval. If it is determined that the potential for future groundwater contamination exists, the responsible party shall submit a work plan for approval by the director describing actions that will be taken to protect groundwater from future impacts due to soil contamination. In addition, the work plan shall include a proposal for collection of sufficient monitoring data to evaluate both current and future groundwater conditions.

(g) A Tier 2 refined risk assessment shall be conducted using one or both of the following standard land use exposure assumption scenarios listed in Subsections R315-101-5(g)(1) and R315-101-5(g)(2):

(1) Residential Land Use.

(i) child receptor; and

(ii) adult receptor

(2) Non-residential Land Use.

(i) commercial or industrial or both; and

(ii) construction or trespassing or recreation as applicable.

(3)(i) The Tier 2 risk assessment shall assume no institutional or engineering controls in place, such as security, signage, pavements, personal protective equipment, fences or remediation.

(ii) The risk assessment shall use US EPA standard default exposure parameters, variables and equations based on reasonable maximum exposure in the evaluation, unless scientific evidence suggests otherwise. If a US EPA standard default exposure parameter or variable is not available, the responsible party shall use the "Exposure Factors Handbook," US EPA, as incorporated by reference in Section R315-101-11, for default values, or other sources as approved by the director.

(iii) A refined risk assessment may be conducted using site-specific exposure parameters and a Monte Carlo simulation in a probabilistic risk analysis with the approval of the director.

(4) Evaluations shall be conducted in accordance with US EPA approved standards and methodologies and may include the following guidance:

(i) "Guidelines for the Health Risk Assessment of Chemical Mixtures", Risk Assessment Forum, EPA/630/R-98/002, as incorporated by reference in Section R315-101-11;

(ii) "Risk Assessment Guidance for Superfund Volume 1: Human Health Evaluation Manual (Parts A-F)," Office of Emergency and Remedial Response EPA/504/1-89/002, Interim Final, as incorporated by reference in Section R315-101-11;

(iii) "Human Health Evaluation Manual, Supplemental Guidance: Update of Standard Default Exposure Factors," US EPA OSWER Directive 9200.1-20, as incorporated by reference in Section R315-101-11;

(iv) "Supplementary Guidance for Conducting Health Risk Assessment of Chemical Mixtures," US EPA, as incorporated by reference in Section R315-101-11;

(v) "Soil Screening Guidance Technical Background Document," US EPA and "Supplemental Guidance for Developing Soil Screening Levels for Superfund Sites," US EPA, as incorporated by reference in Section R315-101-11;

(vi) "Guidelines for Carcinogen Risk Assessment," EPA/630/P-03/001F, as incorporated by reference in Section R315-101-11;

(vii) "Supplemental Guidance for Assessing Susceptibility from Early-Life Exposure to Carcinogens," EPA/630/R-03/00F, as incorporated by reference in Section R315-101-11;

(viii) "OSWER Technical Guidance for Assessing and Mitigating the Vapor Intrusion Pathway From Subsurface Vapor Sources to Indoor Air," US EPA OSWER 9200.2-154, as incorporated by reference in Section R315-101-11;

(ix) "Technical Guide For Addressing Petroleum Vapor Intrusion At Leaking Underground Storage Tank Sites," US EPA, as incorporated by reference in Section R315-101-11; and

(x) "Risk Assessment Guidance for Superfund, Part A, Volume III, Process for Conducting Probabilistic Risk Assessment," EPA 540-OR-02-002 OSWER 9285.7-45 PB 2002 963302, as incorporated by reference in Section R315-101-11.

(5) In performing the Tier 2 risk assessment, the responsible party shall use current toxicity information for carcinogenic and non-carcinogenic effects in accordance with Subsections R315-101-5(i) and R315-101-5(j)(7).

(6) Risk characterization shall identify carcinogenic risks and non-carcinogenic risks for the constituents of potential concern.

(7) The age dependent adjustment factors shall be applied to carcinogens with a mutagenic mode of action.

(8) Risk characterization shall be based on cumulative risk effects and assumption of additivity in the absence of adequate evidence of toxicological interactions as follows.

(i) For non-carcinogenic toxicants acting by similar modes of action or affecting common organs, dose addition shall be followed.

(ii) For carcinogenic risks or toxicants acting independently, response addition shall be followed.

(9) Carcinogenic cumulative risk shall be calculated as the sum of the probabilities of each chemical across the exposure pathways for cumulative risks less than 0.01. For cumulative risks greater than 0.01, the One-Hit Model, as specified in "Risk Assessment Guidance for Super Fund Volume 1: Human Health Evaluation Manual," Part A, US EPA, Office of Emergency and Remedial Response EPA/504/1-89/002, Interim Final, as incorporated by reference in Section R315-101-11, shall be used.

(10) Non-carcinogenic hazard indices shall be calculated as the sum of the non-carcinogenic effects for each chemical across the exposure pathways. However, if the hazard index is greater than one, the hazard quotients should be summed separately by target organ or mode of action.

(11) If total petroleum hydrocarbon risk assessment is evaluated, it shall be conducted in accordance with Subsections R315-101-5(f), R315-101-5(f)(8), R315-101-5(g), R315-101-5(i), "Supplementary Guidance for Conducting Health Risk Assessment of Chemical Mixtures," EPA/630/R-00/002, as incorporated by reference in Section R315-101-11, and the US DOE Risk Assessment Information System website, and in accordance with other procedures approved by the director.

(i) The cumulative risk of the total petroleum hydrocarbon mixture shall assume additivity, dose addition or response addition, unless there is data suggesting toxicological interaction.

(ii) The risk assessment shall be based on the conceptual site model identified in Subsection R315-101-4(a)(3) or R315-101-4(f)(13) as applicable.

(12) Current and future anticipated land use scenarios evaluation.

(i) The evaluation shall be based on current and reasonably anticipated future uses of the property. Sources of information on land uses may include:

(A) current zoning and comprehensive plan maps and applicable regulations provided by the local jurisdiction for the properties within the locality of the site;

(B) inquiries made and responses as to whether there are regional trends that are relevant to land uses and activities in the locality of the site;

(C) inquiries made of any environmental protection zones or regulations; and

(D)(I) the property owner's planned use of land.

(II) An inactive or vacant, fenced or non-fenced, property with no proposed land use in an area zoned for industrial or commercial land use or both shall be assumed to be reasonably used for industrial or commercial use or both in the future.

(III) An inactive or vacant, fenced or non-fenced, property in an area zoned for residential land use shall be assumed to be reasonably used for residential land use in the future.

(IV) For the protection of human health and the environment, if future anticipated land use conditions offer a more protective exposure scenario than the current land use scenario, the more protective future anticipated land use shall be evaluated.

(V) A summary of the results and conclusions along with supporting documentation as to what the current and reasonably anticipated future land uses are for parcels within the locality of the site shall be submitted with the Tier 2 refined risk assessment for approval.

(h) Data and results presentation.

(1) A risk assessment report shall be submitted to the director for review and approval. It shall include, at a minimum, the following:

(i) an executive summary;

(ii) an overview of the site;

(iii) a detailed discussion of areas of contamination;

(iv) an exposure assessment identifying exposure levels for the exposure pathways identified in Subsections R315-101-5(c) and R315-101-5(j)(3)(i);

(v) if fate and transport models are used, the user's manual, model theory, computer software for the model, installation verification data set for the model and input files for the model runs shall be provided upon request by the director;

(vi) the output results of the model runs;

(vii) source of the equations;

(viii) background levels of identified hazardous constituents including any statistical methods used in evaluation of background data;

(ix) identification and concentration of the contaminants of interest identified in Subsection R315-101-4(f)(8);

(x) a list of constituents of potential concern, contaminants of concern, and contaminants with mutagenic mode of action for human health and constituents of potential ecological concern;

(xi) the toxicity information of identified constituents of potential concern, specifically listing mutagenic constituents of potential concern, including slope factors, inhalation unit risks, weight-of-evidence classification, non-carcinogenic chronic reference doses, age dependent adjustment factors, chronic reference concentrations and critical effects associated with reference doses and reference concentrations, toxicity reference values and any other ecological benchmarks used in the risk assessment;

(xii) a list of identified ecological receptors;
 (xiii) a list of identified ecological habitats;
 (xiv) risk characterization calculations including data used;
 and

(xv) the risk characterization identifying carcinogenic risk and non-carcinogenic risk for the constituents of potential concern, ecological hazard indices, uncertainties analysis, and a tabulation of the risk characterization data presented in a format approved by the director.

(2) If the risk assessment report does not contain the required information of sufficient quality and detail, the director will notify the responsible party in writing of deficiencies and shall require resubmittal of the report in a designated time frame.

(3) If the risk assessment report contains the required information of sufficient quality and detail, the director will approve, the risk assessment report in writing.

(i) Identification of sources of toxicity information.

(1) Sources of toxicity information gathered for identified hazardous constituents, weight-of-evidence classification and critical effects associated with reference doses and reference concentrations shall be in order of preference based on the US EPA hierarchy of human health toxicity values tiered system, "Human Health Toxicity Values in Superfund Risk Assessment," EPA OSWER Directive 9285.7-53, as incorporated by reference in Section R315-101-11, as follows.

(i) The Tier 1 source is the US EPA Integrated Risk Information System.

(ii) The Tier 2 source is the US EPA Provisional Peer Reviewed Toxicity Values.

(iii) The Tier 3 source may include additional US EPA and non-US EPA sources of toxicity information with priority given to sources that have been peer reviewed including the following:

(A) California Environmental Protection Agency toxicity values;

(B) Agency for Toxic Substances and Disease Registry Minimal Risk Levels;

(C) US EPA additional sources identified for Tier 3 toxicity values; or

(D) US EPA Health Effects Assessment Summary toxicity data.

(2) US EPA RSLs; and

(3) US DOE Risk Assessment Information System website.

(j) Ecological risk assessment.

(1) Prior to conducting the risk assessment, the responsible party shall submit a work plan for approval.

(2) An ecological risk assessment for the site shall include terrestrial and aquatic processes as appropriate using current toxicity information for the constituents and biological processes relevant to the ecological evaluation. This shall include plants, soil invertebrates, benthic invertebrates, wildlife species and other ecological receptors as approved by the director.

(3) A waiver of this requirement may be granted by the director if the responsible party demonstrates that ecological receptors will not be affected by any contamination using any of the following criteria:

(i) conditions at the site may be used to eliminate the need for ecological risk assessment;

(ii) the affected property is not a viable habitat and the site cannot be used by potential ecological receptors as a habitat;

(iii) complete or potentially complete exposure pathways do not exist due to prevailing conditions or property setting; or

(iv) detected chemicals at the site are below the ecological screening bench mark levels.

(4) An ecological risk assessment for a site shall be conducted to include the following information:

(i) a problem formulation, identification of constituents of potential ecological concern, identification of habitats, media sampled, potential ecological effects, relevant ecological receptors, relevant exposure pathways, initial definition of assessment and measurement endpoints, with respect to current and reasonably anticipated future land and water uses as described in a conceptual site model;

(ii) the data quality objectives for the ecological risk assessment shall be based on the conceptual site model, with emphasis on analytical detection limits appropriate for ecological receptors;

(iii) an exposure analysis to include identification and selection of constituents of potential ecological concern, identification and selection of target ecological receptors, an exposure pathway model relating target receptors, exposure routes and measurement endpoints for both current and reasonably anticipated future land and water use scenarios;

(iv) an ecological response analysis including a summary of current information regarding the toxicological effects, ecological effects, bioconcentration potential, bioaccumulation potential, biomagnification potential, persistence of the identified constituents of potential ecological concern and ecological benchmark values;

(v) a risk characterization presenting the quantitative ecological risks potentially associated with the site, a discussion of any available site-specific ecological studies, a detailed discussion of risks associated with the bioconcentration potential, bioaccumulation potential, biomagnification potential, and persistence of each contaminant, and consideration of any other available, published and peer reviewed scientific information on other sources of adverse ecological conditions as appropriate;

(vi) an evaluation of the potential for significant adverse effects on the health or viability of individual ecological receptors or local populations, including a weight-of-evidence analysis or population viability analysis. These evaluations may include field studies, laboratory investigations, appropriate population models, or any combination of these or other methods of evaluation as approved by the director; and

(vii) a quantitative and qualitative uncertainty analysis as appropriate for each element of the risk assessment.

(5) Ecological risk assessment estimates shall be conducted:

(i) at the individual level for species present in the locality of the site if the species is listed as threatened or endangered, or is a state sensitive species; and

(ii) at the population level for any other species of plants or animals in the locality of the site.

(6) Cumulative hazard from multiple hazardous substances shall be assessed by summing the hazards posed separately by individual hazardous substances in the locality of the site, unless it is demonstrated that the summation assumption is not appropriate.

(7) Ecological risk assessment shall be conducted in accordance with the following:

(i) "Framework for Ecological Risk Assessment," EPA/630/R-92/001, as incorporated by reference in Section R315-101-11;

(ii) "Ecological Risk Assessment Guidance for Superfund: Process for Designing and Conducting Ecological Risk Assessments Interim Final," EPA 540-R-97-006, OSWER 9285.7-25, PB97-963211, as incorporated by reference in Section R315-101-11;

(iii) "Guidelines for Ecological Risk Assessment," US EPA, as incorporated by reference in Section R315-101-11;

(iv) US EPA "Guidance for Developing Ecological Screening Levels," US EPA, as incorporated by reference in Section R315-101-11; and

(v) any other sources as approved by the director.

(8) Appropriate sources of exposure factor information and toxicological parameters may include the following:

(i) "Wildlife Exposure Factors Handbook," US EPA, as incorporated by reference in Section R315-101-11;

(ii) "Toxicological Benchmarks for Wildlife," Oak Ridge National Laboratory (ORNL), as incorporated by reference in Section R315-101-11;

(iii) Los Alamos National Laboratory (LANL) ECO Risk Database;

(iv) US EPA Ecological Soil Screening Levels;

(v) "Guidance for Developing Ecological Soil Screening Levels," US EPA, as incorporated by reference in Section R315-101-11; and

(vi) any other sources as approved by the director.

(9) In the absence of available and acceptable toxicity information, the director may require the development of site-specific toxicity information.

(10) An ecological risk assessment shall be conducted using a tiered evaluation approach as described in Subsections R315-101-5(j)(10)(i) through R315-101-5(j)(10)(x).

(i) A Tier 1 ecological screening risk assessment shall use conservative assumptions and shall include:

(A) a conceptual site model;

(B) an evaluation of fate and transport mechanisms;

(C) an identification of constituents of potential ecological concern;

(D) a characterization of the ecological setting; and

(E) a selection of toxicity endpoints and receptors of ecological significance.

(ii) Tier 1 ecological screening risk assessment - exposure pathways:

(A) each ecological receptor shall be considered to be exposed to constituents of potential ecological concern in soil in the zero to ten feet below ground surface interval. In addition, burrowing animals and deep rooted plants may be considered to be exposed to constituents of potential ecological concern in soils deeper than ten feet; and

(B) exposure pathways may include ingestion, inhalation, direct contact for burrowing receptors, exposure through uptake of biota exposed to constituents of potential ecological concern, and plant uptake of constituents of potential ecological concern.

(iii) The exposure assessment for the Tier 1 ecological screening risk assessment shall be conducted by assuming:

(A) the maximum detected concentrations as the exposure point concentration for calculating exposure doses;

(B) the area use factor is equal to one indicating that the home range of the receptor is the entire contaminated area;

(C) that the bioavailability of contaminants is equal to 100%;

(D) the maximum reported ingestion rate from literature;

(E) the dietary composition consists of direct ingestion of 100% of the constituents of potential ecological concern levels in soil;

(F) each calculation is performed on a dry-weight basis; and

(G) minimum receptor body weight.

(iv) The toxicity assessment for the Tier 1 ecological screening risk assessment shall be conducted by assuming:

(A) for wildlife, the dose-based toxicity reference values which are receptor, media, and chemical specific, shall be the applicable protective standards available in peer reviewed literature sources;

(B) the toxicity reference values selected shall be those based on no observed adverse effects levels for evaluation;

(C) the responsible party may use a literature search to determine availability of data for derivation of a toxicity reference value if detected constituents of potential ecological concern have no published toxicity reference values, and shall provide the following:

(I) the responsible party shall provide supporting data to the director for approval of the newly derived toxicity reference value; and

(II) if the responsible party is unable to derive a toxicity reference value based on literature, the detected constituents of potential ecological concern shall be addressed qualitatively in the uncertainty analysis of the ecological risk assessment report;

(D) for plants and other invertebrate receptors, such as soil organisms, benthic organisms and aquatic organisms, concentration-based effects benchmarks shall be used. Concentration levels identified in peer reviewed literature sources shall be used as measurement endpoints for evaluation of chemical effects on receptors;

(E) the effects concentration levels shall be the no observed effects concentrations; and

(F) the responsible party may use a literature search to determine availability of data for derivation of effects concentration levels if detected constituents of potential ecological concern have no published effects concentration levels.

(I) The responsible party shall provide supporting data to the director for approval of the newly derived effects concentration levels; and

(II) If the responsible party is unable to derive effects concentration levels based on literature, the detected constituents of potential ecological concern shall be addressed qualitatively in the uncertainty analysis of the ecological risk assessment report.

(v) The risk characterization for Tier 1 ecological screening risk assessment shall include:

(A) for plants and other invertebrate receptors, a screening hazard quotient, shall be calculated as the maximum detected exposure concentration of constituents of potential ecological concern divided by the no observed effects concentration;

(B) for wildlife, a screening hazard quotient shall be calculated as the estimated exposure dose or contaminant intake divided by the no observed adverse effects level based toxicity reference value; and

(C) tier 1 screening results.

(I) If the calculated screening hazard quotient is less than or equal to one, no further evaluation is required.

(II) If the calculated screening hazard quotient is greater than one, then there may be the potential for adverse ecological risk from the detected constituents of potential ecological concern at the site. The responsible party shall either conduct corrective action or conduct further evaluation in a Tier 2 refined ecological risk assessment.

(vi) A Tier 2 refined ecological risk assessment shall:

(A) use constituents of potential ecological concern with screening hazard quotients greater than one for a refined problem formulation; and

(B) use site-specific exposure assumptions in Subsections R315-101-5(j)(10)(ii) and R315-101-5(j)(10)(iii) for the refined evaluation.

(vii) The exposure assessment in the Tier 2 refined ecological risk assessment shall include exposure doses calculated utilizing site-specific exposure assumptions as follows:

(A) exposure point concentration:

(I) calculate exposure point concentration as the 95% upper confidence limit if sufficient data are available in accordance with US EPA ProUCL software; and

(II) if sufficient data are not available to calculate the 95% upper confidence limit an alternate value, as approved by the director, shall be used as the exposure point concentration;

(B) estimate the site-specific area use factor for each representative receptor by dividing the receptor's average home range by the area of contamination or area of the solid waste management units. This estimate shall have a value between zero and one;

(C) the bioavailability of constituents of potential ecological concern shall be assumed to be 100%;

(D) the ingestion rate for each representative receptor shall be assumed to be the average reported ingestion rate in reported literature or estimated from average body weight using allometric equations;

(E) the dietary composition shall be based on receptor-specific percentages of plant, animal, and soil matter. The non-dietary ingestion of soil shall be assumed to be in addition to the dietary intake rate to add up to 100%, soil and dietary items;

(F) the concentrations of constituents of potential ecological concern in receptor dietary elements, plant and animal matter, shall be predicted by using bio-uptake and bioaccumulation models;

(G) each calculation shall be performed on a dry-weight basis;

(H) if a bioaccumulation model is not available, 100% uptake factor shall be assumed;

(I) each equation and variables used to estimate constituents of potential ecological concern in plants shall be listed;

(J) the methodologies for determination of bioaccumulation factors for the constituents of potential ecological concern shall be documented; and

(K) exposure doses for wildlife receptors shall be assessed using bio-uptake and bioaccumulation modeling to predict the concentration of constituents of potential ecological concern in animal matter that may be ingested by wildlife receptors.

(viii) The toxicity assessment for a Tier 2 refined ecological risk assessment shall be based on:

(A) the lowest observed adverse effects levels for wildlife receptors and lowest observed effects concentrations for plants and invertebrate receptors; and

(B) the toxicity reference values shall be based on the lowest observed adverse effects levels for each wildlife receptor and shall be based on lowest observed effects concentrations for any other receptors including invertebrates, with the exception of endangered, threatened and sensitive species for which a no observed adverse effects level applies.

(ix) The risk characterization of the Tier 2 refined ecological risk assessment.

(A) For wildlife vertebrate receptors, a hazard quotient shall be calculated as the ratio of the estimated receptor-specific contaminant intake or dose to the lowest observed adverse effects level based toxicity reference value.

(B) For plants and other invertebrate receptors, a qualitative discussion of the potential for adverse effects shall be provided in the assessment. The assessment shall be based on plant hazard quotients as well as site observations that were made during a habitat survey.

(C) Hazard quotients shall be summed for the constituents of potential ecological concern with similar receptor-specific modes of toxicity.

(D) Tier 2 assessment results.

(I) If the hazard index is less than or equal to one, adverse ecological effects are not expected and no further action is needed.

(II) If the hazard index is greater than one, there is potential for adverse ecological effects to occur at the site and the responsible

party shall either conduct corrective action or conduct further evaluation in a Tier 3 refined ecological risk assessment as outlined in Subsection R315-101-5(j)(x).

(x) A Tier 3 refined ecological risk assessment shall be conducted based on:

(A) a site-specific ecological evaluation;

(B) uptake factors, bioaccumulation factors, and plant uptake factors determined from the analysis of animal and plant tissue collected at the site;

(C) the evaluation of unique exposure pathways and effects of exposure to various life stages or other assessment endpoints as determined by the director;

(D) the evaluation of habitat suitability including habitat quality; and

(E) the calculation of refined hazard indices for the constituents of potential ecological concern shall take into account information from Subsections R315-101-5(j)(9)(x)(A) through R315-101-5(j)(9)(x)(D).

(xi) Tier 3 refined ecological risk assessment results and possible outcomes.

(A) If the Tier 3 refined evaluation results in a hazard index greater than one, the responsible party, shall, in conjunction with the results of a Tier 2 refined evaluation, use several lines of evidence and a weight-of-evidence approaches to facilitate a final determination regarding the need for corrective action.

(B) Site remediation shall be required when unacceptable or potential significant adverse ecological effects are documented by the risk assessment results.

(C) The director has the discretion to require corrective action at the site based on data and ecological significance as reported.

(11) Results presentation.

An ecological risk assessment report shall be prepared and submitted to the director in accordance with the requirements in Subsection R315-101-5(h).

R315-101-6. Risk Management: Site Management Plan and Closure Equivalency.

(a) A site management plan, which is supported by the findings in the approved risk assessment reports and containing appropriate site management activities, shall be submitted to the [D]director within 60 days of approval of the [risk assessment] reports. [This]The site management [plan may be submitted along with the risk assessment report and must]shall include a schedule for implementation.

(b) [The Director shall review and approve or disapprove of the conclusions of the proposed site management plan. If the Director finds that the site management plan is not adequate for protection of human health and the environment, the responsible party shall then submit a revised site management plan addressing the comments of the Director within an appropriate time frame as specified by the Director. The Director shall review and approve or reject the revised site management plan. Upon draft approval of the site management plan, the Director shall follow the requirements of R315-101-7 prior to issuance of final approval. The approved site management plan shall be implemented according to the approved schedule. If the Director rejects this revised site management plan, the revised plan will be considered deficient for the reasons specified by the Director in a statement of disapproval.]The site management plan shall:

(1) encompass any activities, controls and conditions necessary to manage the risk to human health and the environment so that acceptable risk levels are not exceeded under current or reasonably anticipated future land use conditions;

(2) ensure that the assumptions made in the estimation of risk and applicable target risk levels are being met; and

(3) ensure that adverse ecological effects are controlled and managed so that documented hazard indices are less than or equal to one.

(c)[(1) The site management plan may contain a no further action option only if the level of risk present at the site is below 1×10^{-6} for carcinogens and a Hazard Index of "less than or equal to one" for non-carcinogens based on the approved assessment conducted in accordance with R315-101-5.2(b)(1) and the Director determines that ecological effects are insignificant based on the approved assessment conducted in accordance with R315-101-5.3(a)(8);

(2) The requirements of Subsections R315-270-1(c)(5) and (6) shall be deemed met for a hazardous waste management unit if the level of risk present at the site is below 1×10^{-6} for carcinogens and a Hazard Index of "less than or equal to one" for non-carcinogens based on the risk assessment conducted in accordance with R315-101-5.2(b)(1) and the Director determines that ecological effects are insignificant based on the approved assessment conducted in accordance with R315-101-5.3(a)(8). If this risk exposure criterion is met, a request for a risk-based closure may be submitted; or

(3) If the risk present at the site is greater than or equal to 1×10^{-6} for carcinogens or a Hazard Index of "greater than one" for non-carcinogens based upon the exposure assessment conducted in accordance with R315-101-5.2(b)(1), or the Director determines that ecological effects may be significant based on the approved assessment conducted in accordance with R315-101-5.3(a)(8), a risk-based closure will not be granted. The responsible party shall then submit a site management plan fulfilling the requirements of R315-101-6(d) or (e) as applicable.] Appropriate site management activities shall be measures and controls taken to manage and reduce risks greater than 1×10^{-6} but less than 1×10^{-4} under both current and reasonably anticipated future land use conditions, through land use controls, such as institutional controls and engineering controls, groundwater monitoring, post-closure care, or corrective action as determined by the director on a case-by-case basis in accordance with Subsections R315-101-12(a)(4) and R315-101-1(c).

(d) [If the level of risk present at the site is less than 1×10^{-4} for carcinogens and a hazard index is "less than or equal to one" for the risk assessment conducted in accordance with R315-101-5.2(b)(2) but greater than or equal to 1×10^{-6} for carcinogens or a hazard index is greater than one for a risk assessment conducted in accordance with R315-101-5.2(b)(1) or the Director determines that ecological effects may be significant based on the approved assessment conducted in accordance with R315-101-5.3(a)(8), the site management plan may contain, but is not required to contain, procedures for corrective action. The site management plan shall contain appropriate management activities e.g., monitoring, deed notations, site security, or post closure care, as determined on a case by case basis in accordance with criteria identified in R315-101-1(b)(4).] The site management plan shall be reviewed and approved by the director prior to implementation of the plan. Prior to approval, the site management plan shall be subject to the public notice requirements of Section R315-101-9.

(e)[The site management plan must contain procedures for corrective action if the level of risk present at the site is greater than or equal to 1×10^{-4} for carcinogens or a Hazard Index of "greater than one" for non-carcinogens based on the approved assessment conducted in accordance with R315-101-5.2(b)(2) or the Director concludes that corrective action is required to mitigate ecological effects based on the approved assessment conducted in accordance with R315-101-5.3(a)(8). For determination of appropriate corrective action the criteria identified in R315-101-1(b)(4) shall be considered.](1) If the director

finds that the site management plan is not adequate for protection of human health and the environment, the responsible party shall resubmit a revised site management plan addressing the comments of the director within an appropriate time frame as specified by the director. The director shall review and approve or reject the revised site management plan. The responsible party shall resubmit the site management plan addressing the deficiencies in a time frame specified by the director.

(2) The site management plan shall be implemented in accordance with the approved schedule.

(f) [If hazardous constituents are present only in groundwater at the site, and if the hazardous constituents are listed in Table 1 of Section R315-264-94, the Maximum Concentration Levels listed in Table 1 can be presented in lieu of health risk estimates for those constituents. The RME for Table 1 constituents must be determined in accordance with approved site characterization methods listed in R315-101-4.] A determination of no further action shall be approved only if:

(1) the level of risk present at the site is equal to or less than 1×10^{-6} as the point of departure for carcinogens and the hazard index is less than or equal to one for non-carcinogens based on the approved risk assessment conducted assuming the land use exposure scenario defined in Subsection R315-101-5(g)(1);

(2) the director determines that ecological effects at the site are insignificant based on the approved assessment conducted in accordance with Subsection R315-101-5(j); and

(3) current impacts to groundwater are insignificant in accordance with Subsection R315-101-6(s) and residual contamination present at the site poses no future threat to groundwater in accordance with Subsection R315-101-5(f)(8) and "Soil Screening Guidance Technical Background Document," US EPA, as incorporated by reference in Section R315-101-11, or groundwater contaminant concentrations have been shown to be below a corrective action level using a statistical corrective action test in accordance with "Statistical Analysis of Groundwater Monitoring Data at RCRA Facilities," US EPA Unified Guidance, as incorporated by reference in Section R315-101-11 or the "Groundwater Statistics and Monitoring Compliance Guidance Document," Interstate Technology Regulatory Council (ITRC) as incorporated by reference in Section R315-101-11, as applicable.

(g) Upon completion of the requirements in Subsection R315-101-6(f), corrective action shall be considered complete without controls and the land is acceptable for unrestricted use.

(h) The requirements of Subsections R315-270-1(c)(5) and R315-270-1(c)(6) shall be deemed met for a hazardous waste management unit or a solid waste management unit or an area of contamination, the site, if:

(1) the level of risk, cumulative, present at the site is less than or equal to 1×10^{-6} for carcinogens and the hazard index is less than or equal to one for non-carcinogens based on the risk assessment conducted assuming the land use exposure scenario defined in Subsection R315-101-5(g)(1);

(2) the director determines that ecological effects are insignificant based on the approved assessment conducted in accordance with Subsection R315-101-5(j); and

(3) current and potential future impacts to groundwater are insignificant in accordance with Subsection R315-101-6(f)(3).

(i) If the requirements of Subsection R315-101-6(f) or R315-101-6(h) are met, a request for a risk-based clean closure may be submitted.

(j) The residential land use exposure scenario defined in Subsection R315-101-5(g)(1) shall be evaluated to determine if a site qualifies for a no further action or a risk-based clean closure. Qualification for no further action or risk-based clean closure shall meet the following criteria:

(1) the human health cumulative risk level is less than or equal to 1×10^{-6} for carcinogens and hazard index is less than or equal to one for non-carcinogens under a residential land use exposure scenario using reasonable maximum exposure parameters for evaluation;

(2) there are no current or potential future impacts to groundwater in accordance with Subsection R315-101-6(f)(3); and

(3) constituents of potential concern do not pose significant risks to ecological receptors in accordance with Subsection R315-101-5(j).

(k) A site qualifies for either restricted land use, corrective action complete with controls or a site management plan, or all three if:

(1) the level of risk, cumulative, present at the site is between 1×10^{-4} and 1×10^{-6} for carcinogens and the hazard index is less than or equal to one for non-carcinogens for the risk assessment conducted assuming the land use exposure scenario defined in Subsection R315-101-5(g)(1) or R315-101-5(g)(2); or

(2) the director determines that ecological risks may be significant, but does not require further corrective action based on the approved assessment conducted in accordance with Subsection R315-101-5(j); or

(3) current or potential future impacts to groundwater exist in accordance with Subsection R315-101-6(f)(3), but do not require further corrective action. The site management plan shall contain appropriate site management activities as defined in Subsection R315-101-12(a)(3) and as determined in Subsection R315-101-6(c), and as approved by the director.

(l) A site qualifies for unrestricted land use, corrective action complete without controls, risk-based clean closure, no further action, and no site management if the level of risk present at the site is less than or equal to 1×10^{-6} for carcinogens and the hazard index is less than or equal to one for non-carcinogens for the risk assessment conducted assuming the land use exposure scenario defined in Subsection R315-101-5(g)(1). The site shall also meet the requirements of Subsection R315-101-6(f), R315-101-6(h) or R315-101-6(j).

(m) Corrective action is required at a site if:

(1) the level of risk present at the site is greater than 1×10^{-4} for carcinogens and a hazard index greater than one for non-carcinogens for the risk assessment conducted assuming the land use exposure scenario defined in Subsection R315-101-5(g)(1) or R315-101-5(g)(2);

(2) the director determines that ecological effects are significant based on the approved assessment conducted in accordance with Subsection R315-101-5(j); or

(3)(i) groundwater contamination is exceeded in accordance with Subsection R315-101-6(s) or groundwater contaminant concentrations have been shown to be above a corrective action level using a statistical corrective action test in accordance with "Statistical Analysis of Groundwater Monitoring Data at RCRA Facilities" US EPA Unified Guidance, as incorporated by reference in Section R315-101-11, or the "Groundwater Statistics and Monitoring Compliance Guidance Document," ITRC, as incorporated by reference in Section R315-101-11; or

(ii) contamination present at the site poses a potential threat to groundwater in accordance with Subsection R315-101-5(f)(8) and "Supplemental Guidance for Developing Soil Screening Levels for Superfund Sites," US EPA, as incorporated by reference in Section R315-101-11, and "Soil Screening Guidance Technical Background Document," US EPA, as incorporated by reference in Section R315-101-11.

(n) The responsible party shall submit a corrective action plan for review and approval prior to implementation of the corrective action activities at the site. Determination of appropriate corrective action

measures shall be made in accordance with criteria identified in Subsection R315-101-1(c).

(o) Upon completion of any corrective action, the responsible party may request from the director, a corrective action completeness determination.

(p) The site management plan shall include a land use control plan that specifies allowable and prohibited use of the site.

(q) Land use controls shall guarantee that pathways of exposure to contaminants of concern remain incomplete for as long as there are hazardous waste or hazardous waste constituents remaining that could pose an unacceptable risk to human health and the environment.

(r) Land use controls shall be reliable, enforceable, and consistent with the risk posed by the contaminants of concern as documented in the approved risk assessment report. Land use controls may include engineering controls such as capping, paving, fencing, signage, site security; and institutional controls such as post-closure care and land use restrictions as determined on a case-by-case basis and approved by the director.

(s) For groundwater impacts due to contaminants of interest at a site, the maximum contaminant level shall be used as trigger for assessing appropriate corrective action levels. In the absence of a maximum contaminant level, the tap water risk-based concentration that assumes standard default residential land use exposure assumptions and a cancer risk of 1×10^{-6} and a hazard index of one shall be the standard. For detected volatile organic compounds in groundwater, the vapor intrusion screening levels shall also be considered in assessing corrective action levels. Any corrective action levels proposed shall be protective of the complete exposure pathways or potentially complete exposure pathways.

(t) In instances where groundwater contamination has migrated off-site, and the director determines that the contaminant concentration poses a potential risk exceeding the acceptable risk level for residential land use exposure scenario defined in Subsection R315-101-5(g)(1), the responsible party shall:

(1) Submit a proposed written notice of contamination to the director for approval prior to its distribution to the off-site property owners.

(i) The written notice shall at a minimum, include the following:

(A) names of the contaminants detected above applicable screening levels;

(B) the corresponding screening levels;

(C) the respective detected contaminant concentrations; and

(D) adverse effects on human health and the environment.

(2) Notify the off-site property owners, in writing, within 30 days of director approval of written notice.

(3) Provide the director with a certified mail return receipt, or any other form of delivery that provides confirmation of receipt.

(4) With the property owner's consent, and the approval of the director, conduct corrective action to reduce concentrations of constituents of concern on the property to or below residential land use exposure scenario defined in Subsection R315-101-5(g)(1) or R315-101-6(s) as applicable, if it is determined by the director that the action is necessary for protection of human health and the environment, or that groundwater use is designated as a drinking water source or is potentially a drinking water source; or

(5) If groundwater contamination has migrated off-site but Subsection R315-101-6(t)(1) through R315-101-6(t)(4) is not applicable, the responsible party shall inform the off-site property owner in writing of the contamination as required by Subsection R315-101-6(t)(1), and with the property owner's consent, and approval by the

director, conduct corrective action to reduce concentrations of contaminants of concern on the off-site property to non-residential land use exposure levels consistent with the requirements of Subsection R315-101-5(g)(2) and the designated groundwater use, and develop a site management plan and record an environmental covenant on the property with the approval of the director and consent of property owner.

(u) If the responsible party is unable to gain access to further characterize the off-site property, or to assess and manage risks, or to conduct corrective action on the off-site property, the responsible party shall:

(1) document each attempt to gain access to the off-site property, and obtain concurrence from the director that the attempts made were reasonable and that no further attempts need to be made;

(2) meet the applicable target risk levels or some approved groundwater protection standards at the boundary of the site; and

(3) with an approved site management plan by the director, take the necessary actions to prevent further migration of contaminants of concern beyond the site boundary.

(v) For impacts to off-site groundwater, surface water bodies and sediments, and other media, the corrective action levels shall be protective of each receptor, human and ecological, for each current and potential future exposure pathways.

(w) The site management plan in Subsections R315-101-6(t)(5) and R315-101-6(u)(3) addressing off-site and site groundwater contamination respectively, shall include the activities and conditions necessary to address current and potential future impacts to groundwater. The proposed controls and measures shall be consistent with Section R315-101-3 and prevent further ground water degradation at the site or off-site property so that risks are controlled, reduced or maintained at levels within the acceptable risk range as defined in Subsection R315-101-12(a)(2).

(x) Once the site management plan as specified in Subsection R315-101-6(k) or R315-101-6(t)(5) or R315-101-6(u)(3) has been approved by the director, the contamination level shall not be allowed to exceed the level of risk specified in the plan. The responsible party has the burden to demonstrate that future levels of contamination at either the site or off-site property or both are either below or within the risk levels specified in the site management plan.

(y) If the responsible party cannot demonstrate that the level of contamination at either the site or off-site property or both is either below or within the risk levels specified in the site management plan, then further corrective action may be required as determined by the director to bring the risk levels to within the acceptable risk range as specified in the site management plan. A revised site management plan may be required by the director.

(z) In instances where contaminated groundwater has been determined by the director as having no complete exposure pathways and there is no migration of the contaminated plume off-site, or when the director has approved a claim of technical impracticability for corrective action, then, instead of meeting specific cleanup levels, the acceptable management goals and remedy, shall be the following:

(1) source control of releases of contaminants that may pose a threat to human health and the environment;

(2) protection of human health and the environment from any potential exposure pathways to contaminated groundwater;

(3) long-term plume containment system for protection of human health and the environment, perpetual care obligation;

(4) periodic groundwater monitoring, unless terminated by the director after an evaluation of the site-specific conditions and risk characteristics, to demonstrate that contaminant levels are not increasing and the groundwater plume is stationary; and,

(5) periodic re-evaluation of the technical impracticability decision as part of routine performance monitoring to ensure long-term protection of human health and the environment.

R315-101-7. Contents of a Site Management Plan, Land Use Controls, Environmental Covenants, Restrictions, Controls and Conditions.

(a) The content of the site management plan. The site management plan to be approved by the director shall contain at a minimum:

(1) a legal description of the site including a legal plat map;

(2) a summary of the media investigations conducted at the site including the characterization, delineation and listing of identified constituents of potential concern and contaminants of concern;

(3) a summary of the completed human health risk assessment and ecological risk assessment performed in accordance with Section R315-101-5;

(4) an implementation schedule of the site management plan within the site;

(5) a description of the groundwater conditions under the site and within the impacted aquifer, as defined in a site characterization report and including activity and use limitations such as potable, culinary, domestic, process, irrigation or any other use;

(6) a complete list of the persons or entities that have rights of reasonable access to the site at any time after the effective date of the site management plan for activities such as monitoring and compliance with the site management plan, along with any other terms and conditions of the site management plan;

(i) the site management plan shall also indicate that persons with legal interest in land and those subject to the site management plan are required to allow compliance with the site management plan;

(7) provisions that the director, and the director's authorized officers, employees, or representatives may at any reasonable time and upon presentation of appropriate credentials, have access to the site to monitor, sample or determine compliance with the site management plan or environmental covenant;

(8) a list of the contact names and information for site management plan inquiries; and

(9) a general description of any site-specific groundwater monitoring including:

(i) a general overview of the proposal;

(ii) a summary of site groundwater conditions; and

(iii) the current and potential uses of groundwater and the contaminants of concern.

(b) Activities related to monitoring potential contamination of the groundwater at the site shall be conducted under an approved groundwater monitoring plan. The responsible party shall submit a draft plan to the director and shall not proceed with any portion of the plan until the director has given written approval.

(1) Based on the results of the groundwater monitoring, the potential need for additional site management activities shall be evaluated and implemented, if necessary, to protect human health and the environment. Groundwater monitoring shall be the responsibility of the property owner and its assignees.

(c) If an existing groundwater monitoring well is lost, abandoned, destroyed, or needs to be relocated for development purpose, the owner shall replace the wells in an area that provides the groundwater data required by the site management plan. Any proposal to replace groundwater monitoring wells requires review and approval by the director. If drinking water wells are proposed, the responsible party shall provide prior notice to the director after obtaining either any necessary permits approval or both for the installation of the proposed

drinking water wells by the appropriate state, local or other regulatory agencies.

(d) Site management plan modification and termination. The site management plan shall be subject to review and may be terminated or modified as follows.

(1) If groundwater sampling data within the site or off-site property indicates that approved groundwater corrective action levels found in Subsections R315-101-6(n), R315-101-6(s), R315-101-6(t) have been met for the site or off-site, the responsible party may request modification or termination of the groundwater monitoring program, as follows:

(i) groundwater data shall be evaluated using a statistical corrective action test in accordance with the "Statistical Analysis of Groundwater Monitoring Data at RCRA Facilities, Unified Guidance," US EPA, March 2009, or the "Groundwater Statistics and Monitoring Compliance Guidance Document," ITRC, as incorporated by reference in Section R315-101-11;

(ii) groundwater monitoring may be terminated within the site or off-site property only if the groundwater protection standards found in Subsection R315-101-6(n), R315-101-6(s), or R315-101-6(t) have been met, including a demonstration that future levels of contamination will not exceed the approved groundwater corrective action levels; and

(iii) land use controls, either engineering or institutional or both, shall be relied upon to ensure protection of human health and the environment if the approved corrective action levels are in excess of the drinking water standards, maximum contaminant levels.

(2) If soil sampling data, including soil vapor, within the site or off-site indicate corrective action levels as found in Subsection R315-101-6(n) have been met for the soil portion of the site, the owner may request a modification or termination of the section of the site management plan addressing soil management at the site and off-site.

(3) If the owner or responsible party satisfies Subsections R315-101-7(d)(1) and R315-101-7(d)(2) and, in addition, meets the requirements defined in Subsection R315-101-6(f) or R315-101-6(g) or R315-101-6(h) or R315-101-6(j) or R315-101-6(l), as applicable, the owner may request a corrective action complete without controls determination or a no further action determination.

(4) If Subsection R315-101-7(d)(3) is satisfied a request for termination of the site management plan and the environmental covenant may be submitted to the director for approval.

(5) The director may require public comment on any modifications or termination of the approved site management plan and environmental covenant.

(6) The director may require a re-evaluation of the approved risk assessment, the site management plan and the environmental covenant upon receipt of new information or data that brings into question the protectiveness of the existing site management plan.

(e) Land use controls.

(1) The site management plan shall identify land use limitations for the site, such as residential, industrial, commercial, recreational, agricultural or any other comparable use with a similar level of human occupancy and exposure. The site management plan shall also identify the management and engineering controls to be placed upon the site. Any subsequent plans for development of the site shall demonstrate to the director that the level of risk present for the proposed use shall not exceed the applicable risk levels specified in the site management plan.

(2) The site management plan shall contain as many land use controls, institutional and engineering, as is deemed necessary to protect human health and the environment. Controls may include maintaining

pavement, capping, soil excavation restrictions, and groundwater use limitations. Each control shall be approved by the director.

(3) The proposed land use controls shall be developed and included in the site management plan.

(4) Land use controls shall be used at any site where cumulative carcinogenic risk exceeds a level of 1×10^{-6} but less than 1×10^{-4} after cleanup or as indicated by the approved risk assessment report.

(5) Land use controls shall ensure that pathways of exposure to contaminants of concern remain incomplete for as long as there are contaminants of concern remaining that could pose an unacceptable risk to human health or the environment.

(6) Land use controls shall be enforceable pursuant to Section 57-25-111 and consistent with the risks posed by the contaminants of concern reported in the approved risk assessment report. The responsible party, or a subsequent land owner who assumes the responsibility of maintaining land use controls, shall be responsible for reimbursing the agency for any costs associated with periodic administrative oversight to ensure that land use controls are maintained and are in compliance with the site management plan. Costs shall not exceed the authorized statutory rate for technical oversight by the agency at the time of service.

(f) An environmental covenant. An environmental covenant pursuant to Sections 57-25-101 through 57-25-114 shall be required for each site unless it has been documented that any contaminants of interest at the site are at or below background levels or the following requirements have been met:

(1) the level of risk is less than or equal to 1×10^{-6} for carcinogens and the hazard index is less than or equal to one for non-carcinogens pursuant to the risk assessment conducted assuming the land use exposure scenario defined in Subsection R315-101-5(g)(1);

(2) the ecological effects have been determined to be insignificant; and

(3) there are no current or potential future impacts to groundwater.

(g) The content of the environmental covenant. The environmental covenant shall contain at a minimum:

(1) a brief narrative description of the contamination and remedy;

(2) a list of the constituents of potential concern and contaminants of concern;

(3) a list of the exposure pathways;

(4) the limits of exposure;

(5) the locations and extent of the contamination;

(6) a brief narrative description of land use limitations for the site;

(7) any groundwater use limitations;

(8) any ground surface use limitations; and

(9) any worker safety limitations.

(h) The environmental covenant shall indicate that persons with legal interest in land and those subject to the site management plan are required to maintain compliance with the site management plan.

(i) The environmental covenant shall include provisions that the director, and the director's authorized officers, employees, or representatives may at any reasonable time and upon presentation of appropriate credentials, have access to the site to monitor, sample or determine compliance with the site management plan or the environmental covenant.

(j) The terms and conditions of the land use controls established on the property shall be consistent with the environmental covenant recorded on the site.

(k) Within 30 days of the director signing the environmental covenant, the owner shall record the approved environmental covenant with the county recorder's office, and within 30 days of recording shall submit a copy of the recorded document to the director.

(l) Restrictions, controls and conditions. Restrictions, controls and conditions specified in the environmental covenant and the site management plan shall be enforceable by the director under Section 57-25-111 and Rule R315-101.

R315-101-8. Owner Responsibilities.

(a) The owner or responsible party shall ensure compliance with the environmental covenant and the land use restrictions such as groundwater use restrictions, soil removal restrictions, hazard notifications, implementation of the groundwater monitoring program and any other restrictions or conditions cited in the site management plan. Documentation of compliance with the site management plan requirements shall be submitted to the director upon request.

(b) The owner or responsible party shall notify present and future workers at the site of the residual risk at the site and the existence of the site management plan. This includes site workers present for a typical work week and construction workers that may be temporary. If the site management plan specifies controls to prevent workers from exposure, the owner or responsible party shall provide those controls.

(c) Within 48 hours of becoming aware of a deviation from the site management plan the owner or responsible party shall notify the director of the deviation. The owner or responsible party shall submit to the director a written report within 30 days detailing the nature of the deviation and an evaluation of whether the situation and existing site management practices compromise the level of protection afforded by the original site management plan requirements and whether an alternate site management plan is needed to provide a comparable level of protection. Any proposed modification to the site management plan requirements shall require director approval.

(d) The environmental covenant shall run with the land and shall be binding on the current and all subsequent owners. The site management plan requirements shall be imposed and enforced on the current owner through an environmental covenant. Additionally, after the environmental covenant is recorded in the appropriate county recorder's office, each deed, title or other instrument conveying an interest in the property executed by the owner or the owner's successors in title to the property shall include a notice stating that the property is subject to the site management plan and environmental covenant, and shall reference the recorded location of the site management plan and environmental covenant and the restrictions applicable to the property in the site management plan.

R315-101-7[9]. Public Participation.

(a) The [D]director may provide for public participation in [aH]each phase[s] of the cleanup action process, as defined in Sections R315-101-4 through R315-101-6. [As directed by the Director and based on the circumstances and level of public interest at the site, pertinent work plans shall describe how information will be made available to the public through, for example, fact sheets or information repositories and, where appropriate, contain proposed time frames for public input through, for example, public meetings, hearings, or comment periods.]

(b) Prior to approving the site management plan, [F]the [D]director shall [also] provide public notice[; a] for public comment periods[;] and public hearings[(s)] for the site management plan in accordance with Sections R315-124-10 through R315-124-12 and R315-124-17.

R315-101-8[10]. [Cleanup/Management Action]Administrative Oversight.

(a) [Upon approval of the site management plan by the Director, all remedial activities at the site shall proceed according to the schedule established in the approved site management plan using the method(s) described therein]The director or the director's representatives shall have access to the site as described in Section R315-260-5 and at any time when activity pursuant to Rule R315-101 is taking place. The director or the director's representatives may collect environmental samples or document any visit to the site by photographic, or videographic or some other reasonable means.

(b) [Cleanup/Management Report. The Cleanup/Management Report shall detail remediation, treatment, and monitoring activities undertaken at the site by the responsible party as required by the approved site management plan. If the Cleanup/Management Report provides analytical data as evidence that levels of contamination at the site meet the requirements established in the site management plan for a risk-based closure or no further action as defined in R315-101-6(e)(2), the responsible party shall submit a certification of completion as outlined in R315-101-8(e), or request risk-based closure as outlined in Subsection R315-270-1(c)(6), whichever is applicable]The director shall send an invoice to the responsible party for review of plans submitted, contractor costs, laboratory costs and time spent on correspondence, telephone calls, meetings, field work, and any associated activities to meet the requirements of Rule R315-101.

(c) [Certification of Completion. Within 60 days of the completion of all activities documented in the Cleanup/Management Report, a Certification of Completion of Cleanup/Management Action shall be submitted to the Director by registered mail. The certification of completion shall state the site has been managed in accordance with the specifications in the approved Site Management Plan and shall be signed by the responsible party and by an independent Utah registered professional engineer]The owner shall pay any invoices it receives from the director in a timely manner.

(d) [Oversight.

(1) The Director or his representatives shall have access to the site as described in Section R315-260-5 and at all times when activity pursuant to R315-101 is taking place. The Director or his representatives may take samples or make records of any visit to the site by photographic, electronic, videotape or any other reasonable means.

(2) The Director shall bill the responsible party for review of plans submitted to meet the requirements of this Rule.

(3) The responsible party shall notify the Director at least seven days prior to any sampling event or remediation activity.]The responsible party shall notify the director at least seven days prior to any field work such as a sampling event or remediation activity.

(e) Any engineering documents submitted to the director shall be signed by the responsible party and by a Utah registered professional engineer.

(f) Any groundwater information submitted to the director shall be signed by the responsible party and by a Utah registered professional geologist.

(g) Any other information submitted to the director shall be signed by the responsible party.

R315-101-11. Documents Incorporated by Reference.

(a) For purposes of Rule R315-101 regarding cleanup action and Risk-Based Closure Standards, the following documents are adopted and incorporated by reference.

(1) Interstate Technology Regulatory Council (ITRC), December 2013, "Groundwater Statistics and Monitoring Compliance" Guidance Document.

(2) Los Alamos National Laboratory (LANL), 2011, "ECO-Risk Database."

(3) Oakridge National Laboratory (ORNL), 1996, "Toxicological Benchmarks for Wildlife: 1996 Revision." ES/ER/TM-86/R3.

(4) Oakridge National Laboratory (ORNL), May 1998, "A Guide to the ORNL Ecotoxicological Screening Benchmarks: Background, Development, and Application," ORNL/TM-13615.

(5) United States Environmental Protection Agency (US EPA), 1986, "Guidelines for the Health Risk Assessment of Chemical Mixtures", Risk Assessment Forum, EPA/630/R-98/002.

(6) United States Environmental Protection Agency (US EPA), 1989, "Risk Assessment Guidance for Super Fund Volume 1: Human Health Evaluation Manual (Part A)", Office of Emergency and Remedial Response EPA/504/1-89/002, Interim Final.

(7) United States Environmental Protection Agency (US EPA), March 25, 1991, "Risk Assessment Guidance for Super Fund Volume 1: Human Health Evaluation Manual Supplemental Guidance Standard Default Exposure Factors." Interim Final. OSWER Directive 9285.6-03.

(8) United States Environmental Protection Agency (US EPA), December 1991, "Risk Assessment Guidance for Super Fund Volume 1: Human Health Evaluation Manual (Part B, Development of Risk-based Preliminary Remediation Goals)," Office of Emergency and Remedial Response EPA/504/1-89/003, Interim Final.

(9) United States Environmental Protection Agency (US EPA), December 1993, "Wildlife Exposure Factors Handbook, Volume I of II," EPA/600/R-93/187.

(10) United States Environmental Protection Agency (US EPA), May 1992, "Supplemental Guidance to RAGS: Calculating the Concentration Term," Office of Solid Waste and Emergency Response, Washington, D.C. OSWER Directive 9285.7-081.

(11) United States Environmental Protection Agency (US EPA), February 1992, "Framework for Ecological Risk Assessment," EPA/630/R-92/001.

(12) United States Environmental Protection Agency (US EPA), December 1993, "Wildlife Exposure Factors Handbook, Appendix: Literature Review Database, Volume II of II" EPA/600/R-93/187.

(13) United States Environmental Protection Agency (US EPA), May 1996, "Soil Screening Guidance Technical Background Document," EPA/540/R95/128.

(14) United States Environmental Protection Agency (US EPA), June 1997, "Ecological Risk Assessment Guidance for Superfund: Process for Designing and Conducting Ecological Risk Assessments," Interim Final, EPA 540-R.97-006, OSWER 9285.7-25, PB97-963211.

(15) United States Environmental Protection Agency (US EPA), April 1998, "Guidelines for Ecological Risk Assessment."

(16) United States Environmental Protection Agency (US EPA), August 2000, "Supplementary Guidance for Conducting Health Risk Assessment of Chemical Mixtures," EPA/630/R-00/002, August Risk Assessment Forum Technical Panel.

(17) United States Environmental Protection Agency (US EPA), December 2001, "Risk Assessment Guidance for Superfund: Volume 1 Human Health Evaluation Manual (Part D, Standardized Planning, Reporting, and Review of Superfund Risk Assessments)," Final, OSWER 9285.7-47.

(18) United States Environmental Protection Agency (US EPA), March 2001, "EPA Requirements for Quality Management Plans," EPA QA/R-2, EPA/240/B-01/002.

(19) United States Environmental Protection Agency (US EPA), December 2001, "Risk Assessment Guidance for Superfund: Volume III - Part A, Process for Conducting Probabilistic Risk Assessment," EPA 540-OR-02-002 OSWER 9285.7-45 PB 2002 963302.

(20) United States Environmental Protection Agency (US EPA), December 2002, "Supplemental Guidance for Developing Soil Screening Levels for Superfund Sites," OSWER 9355.4-24.

(21) United States Environmental Protection Agency (US EPA), December 2002, "Guidance for Quality Assurance Project Plans," EPA QA/G-5, EPA/240/R-02/009, OSWER 2002.

(22) United States Environmental Protection Agency (US EPA), December 2002(a), "Calculating Upper Confidence Limits for Exposure Point Concentrations at Hazardous Waste Sites."

(23) United States Environmental Protection Agency (US EPA), February 2005, "Guidance for Developing Ecological Soil Screening Levels," Office of Solid Waste and Emergency Response OSWER Directive 9285.7-55.

(24) United States Environmental Protection Agency (US EPA), December 2003, "Human Health Toxicity Values in Superfund Risk Assessment," Office of Solid Waste and Emergency Response, OSWER Directive 9285.7-53.

(25) United States Environmental Protection Agency (US EPA), February 2004, "User's Guide for Evaluating Subsurface Vapor Intrusion into Buildings."

(26) United States Environmental Protection Agency (US EPA), July 2004, "Risk Assessment Guidance for Superfund Volume 1: Human Health Evaluation Manual (Part E, Supplemental Guidance for Dermal Risk Assessment)," EPA/540/R/99/005, Final.

(27) United States Environmental Protection Agency (US EPA), March 2005(b), "Guidelines for Carcinogen Risk Assessment," EPA/630/P-03/001F.

(28) United States Environmental Protection Agency (US EPA), March 2005(c), "Supplemental Guidance for Assessing Susceptibility from Early-Life Exposure to Carcinogens," EPA/630/R-03/003F.

(29) United States Environmental Protection Agency (US EPA), February 2006, "Guidance on Systematic Planning Using the Data Quality Objectives Process," EPA/240/B-06/001.

(30) United States Environmental Protection Agency (US EPA), January 2009, "Risk Assessment Guidance for Superfund Volume 1: Human Health Evaluation Manual (Part F, Supplemental Guidance for Inhalation Risk Assessment)," EPA/540/R/070/002, OSWER 9285.7-82.

(31) United States Environmental Protection Agency (US EPA), March 2009, "Statistical Analysis of Groundwater Monitoring Data at RCRA Facilities, Unified Guidance," Final, EPA 530/R-09-007.

(32) United States Environmental Protection Agency (US EPA), December 1991, "Risk Assessment Guidance for Super Fund Volume 1: Human Health Evaluation Manual (Part C, Risk Evaluation of Remedial Alternatives)," Office of Emergency and Remedial Response EPA/540/R-92/004, Interim.

(33) United States Environmental Protection Agency (US EPA), September 2011, "Exposure Factors Handbook: 2011 Edition," Office of Research and Development, EPA/600/R-090/052F.

(34) United States Environmental Protection Agency (US EPA), February 2012, "Superfund Vapor Intrusion FAQs."

(35) United States Environmental Protection Agency (US EPA), October 2015, "ProUCL Version 5.1 Technical Guide Statistical Software for Environmental Applications for Data Sets with and without Nondetect Observations", EPA/600/R-07/041.

(36) United States Environmental Protection Agency (US EPA), February 2014, "Human Health Evaluation Manual, Supplemental Guidance: Update of Standard Default Exposure Factors," OSWER Directive 9200.1-20.

(37) United States Environmental Protection Agency (US EPA), May 2014, "Vapor Intrusion Screening Level (VISL) Calculator User's Guide."

(38) United States Environmental Protection Agency (US EPA), June 2015, "OSWER Technical Guide for Assessing and Mitigating the Vapor Intrusion Pathway from Subsurface Vapor Sources to Indoor Air," OSWER 9200.2-154.

(39) United States Environmental Protection Agency (US EPA), June 2015, "Technical Guide for Addressing Petroleum Vapor Intrusion at Leaking Underground Storage Tank Sites."

(40) United States Environmental Protection Agency (US EPA), March 2005, "Update of Ecological Soil Screening Level (Eco-SSL) Guidance and Contaminant Specific Documents".

(41) United States Environmental Protection Agency (US EPA), September 1986, "Guidelines for Mutagenicity Risk Assessment", EPA/630/R-98/003.

(42) United States Environmental Protection Agency (US EPA), September 1995, "Establishing Background Levels", OSWER Directive 9285.7-19FS, EPA/540/F-94/030.

R315-101-12. Definitions.

(a) Terms used in Rule R315-101 regarding cleanup action and Risk-Based Closure Standards are defined as follows:

(1) "95% Upper Confidence Limit or 95% UCL" means an estimate of the arithmetic average concentration for a contaminant and it provides reasonable confidence that the true site average will not be underestimated.

(2) "95% Upper Tolerance Limit or 95% UTL" means a value not to be exceeded of possible background concentration values and so provides a reasonable upper limit on what is likely to be observed in the background with 95% confidence.

(3) "Acceptable Risk Range" means cancer risk greater than 1×10^{-6} but less than or equal to 1×10^{-4} or a hazard index less than or equal to one with justifiable, reasonable and practicable measures in place to reduce and control risk within the range.

(4) "Action Level" means the existence of a contaminant concentration in the environment that is high enough to warrant an action or trigger a response action under the National Oil and Hazardous Substances Contingency Plan.

(5) "Adverse Effect" means any effect that causes harm to the normal functioning of plants or animals due to exposure to a chemical contaminant.

(6) "Appropriate Site Management Activities" means measures that are reasonable and practical that will be taken to control and reduce risks greater than 1×10^{-6} and less than 1×10^{-4} for carcinogen and hazard index equal to or less than one for non-carcinogens under both current and reasonably anticipated future land use conditions, for example, institutional controls, engineering controls, groundwater monitoring, post-closure care, or corrective action and ensuring that assumptions made in the estimation of cancer risk and non-cancer hazard in the risk assessment report are not violated.

(7) "Area of Contamination" means a hazardous waste management unit or a solid waste management unit or an area where a release has occurred.

(8) "Assessment Endpoints" means an explicit expression of environmental value that is to be protected. It is the part of the ecosystem that should be protected at a superfund site and it is generally

some characteristic of a species of plant or animal, for example, reproduction, growth, that may be described numerically.

(9) "Background" means substances or locations that are not influenced by releases from a site and are naturally occurring in the environment in forms that have not been influenced by human activity or are natural and human-made substances present in the environment as a result of anthropogenic activities and not related to the site.

(10) "The boundary" means the furthest extent where contamination from a defined source has migrated in any medium at the time the release is first identified.

(11) "Cancer Risk" means the probability that an individual with contract cancer after life time exposure to a carcinogen.

(12) "Cleanup" means the range of corrective action activities that occur in the context of addressing environmental contamination at RCRA sites to lower contaminant concentration or decrease chemical toxicity. Activities may include waste removal, contaminated media removal or source reduction, such as excavation or pumping, in-place treatment of waste or contaminated media, such as bioremediation, containment of waste or contaminated media, such as barrier walls, low permeability covers, liners or capping, or various combination of these approaches. Waste cover up is not capping unless it meets some defined performance standards.

(13) "Concentration Term - 95% Upper Confidence Limit" means the intake variable and it is an estimate of the arithmetic average concentration for a contaminant based on a set of site sampling results. Because of the uncertainty associated with estimating the true average concentration at a site, the 95% Upper Confidence Limit of the arithmetic mean is used to represent this variable and provides reasonable confidence that the true site average will not be underestimated.

(14) "Complete Exposure Pathway" means how a contaminant may be traced or expected to travel from a source to a plant or animal that may be affected by that chemical and shall meet the following:

(a) the presence of a source and transport;

(b) exposure point or contact, receptor; and

(c) exposure route. Otherwise exposure is incomplete.

(15) "Conceptual Site Model" means a written, illustrative, or both, representation of a site that documents the physical, chemical and biological processes that control the transport, migration, actual or potential, or both impacts of contamination in soil, air, ground water, surface water, sediments, to human or ecological receptors, or both, exposure pathways, at a site or at a reasonably anticipated site under both current and potential future land use scenarios.

(16) "Contaminate" means to render a medium polluted through the introduction of hazardous waste or hazardous constituents as identified in Section R315-261-1092, which incorporates by reference 40 CFR 261, Appendix VIII.

(17) "Contaminants of Concern" means Constituents of Potential Concern that significantly contribute to a pathway in a land use scenario for a receptor that either exceeds a cumulative cancer risk of 1×10^{-4} or exceed a non-cancer hazard index of one.

(18) "Contaminants of Interest" means chemicals detected at the site during the site characterization process that may pose threat to human health or the environment.

(19) "Constituents of Potential Concern" means constituents detected in a medium that are selected to be addressed in the risk assessment process because contact with humans may result in adverse effects.

(20) "Constituents of Potential Ecological Concern" means any constituent that is shown to pose possible ecological risk at a site. It

is generally a constituent that may or may not be causing risk or adverse effects to plants and animals at a site.

(21) "Corrective Action" means the cleaning up of environmental problems caused by the mismanagement of wastes, or the cleanup process or program under RCRA and any activities related to the investigation, characterization, and cleanup of release of hazardous waste or hazardous constituents from solid waste management units or hazardous waste management units at a permitted or interim status treatment storage or disposal facilities or voluntary cleanup sites or brownfield sites.

(22) "Corrective Action Complete With Controls" means a condition of a solid waste management unit, a hazardous waste management unit, an area of contamination or a contaminated site where site characterization or risk assessment indicate corrective action is required and completed and the results of the risk assessment meet the closure standards and requirements specified in Subsection R315-101-6(k), or a condition of a solid waste management unit, a hazardous waste management unit, area of contamination or a contaminated site where site characterization or risk assessment indicate corrective action is not required but also meets the closure standards and requirements specified in Subsection R315-101-6(k).

(23) "Corrective Action Complete Without Controls" means a condition of a solid waste management unit, a hazardous waste management unit, area of contamination or a contaminated site where site characterization or risk assessment indicate corrective action is required and completed and the results of the risk assessment meet the closure standards and requirements equivalent to a no further action or meeting the requirements of Subsection R315-101-6(l) or R315-101-6(f) or R315-101-6(j) or a condition of a solid waste management unit, a hazardous waste management unit, area of contamination or a contaminated site when site characterization or risk assessment indicate corrective action is not required but also meets the closure standards and requirements equivalent to a no further action or meeting the requirements of Subsection R315-101-6(l) or R315-101-6(f) or R315-101-6(j).

(24) "Corrective Action Level" means the concentration of a contaminant in a medium after cleanup of a site that is protective of human health and the environment.

(25) "Data Quality Objectives" means qualitative and quantitative statements of the quality of data needed to support specific decisions or regulatory actions.

(26) "Dilution Attenuation Factor" means the ratio of the contaminant concentration in soil leachate to the concentration in groundwater at the receptor point.

(27) "Environment" means the surroundings or conditions in which a person, animal, or plant lives or operates.

(28) "Exposure" means contact of an organism with a chemical or physical agent and it is the amount of the agent available at the exchange boundaries of the organism.

(29) "Exposure Pathway" means the course a chemical or physical agent takes from a source to an exposed organism.

(30) "Exposure Point Concentration" means either a statistical derivation of measured data or modeled data that represents an estimate of the chemical concentration available from a particular medium or route of exposure. The exposure point concentration value is used to quantify potential cancer risks and non-cancer hazards.

(31) "Groundwater Cleanup Levels" means site-specific groundwater chemical concentration levels based on groundwater use designation and exposure pathway established to ensure the protection of human health and the environment when defining groundwater cleanup objectives.

(32) "Groundwater Use" means the current or reasonably expected maximum beneficial use of groundwater that warrants the most stringent cleanup levels, drinking or other uses.

(33) "Hazard Index" means the sum of hazard quotients.

(34) "Hazard Quotient" means the ratio of exposed dose to some reference dose or reference concentration.

(35) "Lowest Observed Adverse Effects Level or Lowest Observed Adverse Effects Concentration" means the lowest level of a chemical stressor evaluated in a toxicity test that shows harmful effects on a plant or animal. A Lowest Observed Adverse Effects Level is based on dose of a chemical ingested while Lowest Observed Adverse Effects Concentration refers to direct exposure to a chemical such as through the skin.

(36) "Maximum Contaminant Level" means the highest level of a contaminant that is allowed in drinking water and are set as close to the "Maximum Contaminant Level Goal" as feasible using the best available treatment technology and taking cost into consideration. Maximum Contaminant Levels are enforceable standards.

(37) "Maximum Contaminant Level Goal" means the level of a contaminant in drinking water below which there is no known or expected risk to health. Maximum Contaminant Level Goals allow for a margin of safety and are non-enforceable public health goals.

(38) "Measures of Effects" means quantitative measurements of effects expressed as statistical or numerical assessment endpoint summaries of the observations that make up the measurement.

(39) "Measurement End Point" means a measurable ecological characteristic that is related to the valued characteristic chosen as the assessment endpoint and it is a measure of biological effects such as death, reproduction, or growth, of a particular species.

(40) "Natural Resources" means land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other similar resources.

(41) "No Further Action" means the state of a solid waste management unit, a hazardous waste management unit, or a contaminated site at closure meeting the requirements in Subsection R315-101-6(f) or R315-101-6(j) and it is equivalent to corrective action complete without controls if the site was under corrective action activities. No further action is equivalent to unrestricted land use.

(42) "No Observed Adverse Effects Level or No Observed Adverse Effects Concentration" means the highest level of a chemical stressor in a toxicity test that did not cause harmful effect in a plant or animal. A No Observed Adverse Effects Level refers to a dose of chemical that is ingested, while a No Observed Adverse Effects Concentration refers to direct exposure to a chemical such as through the skin.

(43) "Point of Departure" means the target risk level that risk to an individual is considered insignificant.

(44) "Potentially Complete Exposure Pathway" means a pathway that, due to current site conditions is incomplete, but could become complete at a future time because of changing site practices. For example the ingestion pathway of groundwater from a residential well in a high total dissolved solids aquifer. This pathway could be complete if treatment technologies like reverse osmosis become economically feasible and are observed to be employed successfully in that aquifer.

(45) "Reasonable Maximum Exposure" means the highest exposure that is reasonably expected to occur at a site. Reasonable Maximum Exposure combines upper-bound and mid-range exposure factors so that the result represents an exposure scenario that is both protective and reasonable; not the worst possible case.

NOTICES OF PROPOSED RULES

(46) "Regional Screening Levels" means risk-based chemical concentrations derived from standardized equations combining exposure assumptions with EPA chemical specific toxicity values and target risk levels that are used for site screening and initial cleanup goals.

(47) "Release" means spill or discharge of hazardous waste, hazardous constituents, or material that becomes hazardous waste when released to the environment.

(48) "Responsible Party" means the owner or operator of a site, or any other person responsible for the release of hazardous waste or hazardous constituents.

(49) "Risk-Based Clean Closure" means closure of a site where hazardous waste was managed or any medium that has been contaminated by a release of hazardous waste or hazardous constituents, and where hazardous waste or hazardous constituents remain at the site in any medium at concentrations determined, in Rule R315-101, to cause minimal levels of risk to human health and the environment so as to require no further action or monitoring on the part of the responsible party nor any notice of hazardous waste management on the deed to the property.

(50) "Risk Based Concentration" means the concentration of a contaminant the values of which are derived from equations combining toxicity factors with standard exposure scenarios to calculate chemical concentrations corresponding to some fixed levels of risks in any media; such as water, air, fish tissue, sediment, and soil.

(51) "Robust Statistic" means a statistic that is resistant to errors in the results, produced by deviations from assumptions, such as, normality. This means that the limits are not susceptible to outliers, or distributional assumptions. For example, if the limits are centered on the median, instead of on the mean, or on a modified, "robust mean," and constructed with suitable weighting, or influence, function, they could be considered "robust."

(52) "Site" means the area of contamination and any other area that could be impacted by the released contaminants, or could influence the migration of those contaminants, regardless of whether the site is owned by the responsible party.

(53) "Site-Specific Screening Value" means contaminant screening values derived for media, such as soil, sediment, water, at a site based on relevant site assumptions and factors.

(54) "Source Control" means a range of actions, for example, removal, treatment in place and containment, designed to protect human health and the environment by eliminating or minimizing migration of or exposure to significant contamination.

(55) "Target Risk" means any acceptable specified risk level. The preferred Target Risk is 1×10^{-6} which is at the protective end of the acceptable risk range for screening of contaminants in risk assessment.

KEY: hazardous waste

Date of Last Change: 2021[April 25, 2013]

Notice of Continuation: January 14, 2021

Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-106

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

| | | |
|--------------------------------------|-----------------|------------------------|
| Utah Admin. Code Ref (R no.): | R392-102 | Filing ID 54030 |
|--------------------------------------|-----------------|------------------------|

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:

R392-102. Food Truck Sanitation

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

Executive Order No. 2021-12 requires state agencies to amend rules that are inconsistent with the current edition of the Office of Administrative Rules' Rulewriting Manual for Utah. As required, the amendments to Rule R392-102 provide technical and conforming changes in accordance with the Rulewriting Manual for Utah.

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 to Rule R392-102 provide numerous nonsubstantive technical and conforming changes throughout the rule to correct improper formatting.

The Department has made three changes to the rule which are substantive, and they are:
Subsection R392-102-3(4) was modified to clarify that it is the local health officer who is authorized to revoke or suspend a commissary permit, and not the Utah Department of Health.

Subsection R392-102-8(17)(a) was modified to include only sanitizing solutions that are chemical.

Subsection R392-102-10(5)(a) was modified to include the word, "or" as a coordinating conjunction.

Fiscal Information**5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:****A) State budget:**

No anticipated cost or savings because the substantive changes reflect current practices, and therefore, have no fiscal impact.

B) Local governments:

No anticipated cost or savings because the substantive changes reflect current practices, and therefore, have no fiscal impact.

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

No anticipated cost or savings because the substantive changes reflect current practices, and therefore, have no fiscal impact. For example, small businesses already use only chemical sanitizing solutions.

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

No anticipated cost or savings because the substantive changes reflect current practices, and therefore, have no fiscal impact. For example, non-small businesses already use only chemical sanitizing solutions.

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

No anticipated cost or savings because the substantive changes reflect current practices, and therefore, have no fiscal impact.

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

No anticipated cost or savings because the substantive changes reflect current practices, and therefore, have no 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 is no fiscal impact to businesses because the substantive changes reflect current industry practices. 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(9) | Subsection 26-1-30(23) |
| Section 26-7-1 | Section 26-15-2 | |

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: | 12/01/2021 |
|--|------------|

| | |
|--|------------|
| 10. This rule change MAY become effective on: | 12/08/2021 |
| 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: | 10/15/2021 |
|--|--|--------------|------------|

R392. Health, Disease Control and Prevention, Environmental Services.**R392-102. Food Truck Sanitation.****R392-102-1. Authority and Purpose.**

(1) This rule is authorized under Sections 26-1-5, 26-7-1, and 26-15-2, and Subsections 26-1-30(9) and 26-1-30(23), ~~26-7-1, and 26-15-2~~.

(2) This rule requires a food truck operator to adhere to uniform statewide standards for constructing, operating, and maintaining a food truck in a manner that safeguards public health - including risk factors contributing to injury, sickness, death, and disability - and ensures that food is safe, unadulterated, and honestly presented when offered to the consumer.

(3) This rule establishes uniform standards for the regulation of food trucks, including the permitting process, plan reviews, inspections, construction, sanitary operations, and equipment requirements, which provide for the prevention and control of health hazards associated with food trucks that are likely to affect public health.

R392-102-2. Definitions.

(1) "Catering operation", as defined in this rule, means a food truck that contracts with a client for food service to be provided to the client or the client's guests or customers at a private event on private property. A catering operation does not include services routinely provided at the same location, or meals that are purchased individually by guests or customers.

(2) "Commissary" means a food service establishment permitted by a local health department according to Rule R392-100 to which a food truck operator may return regularly to perform functions necessary for sanitary operations including:

- (a) food preparation and boarding onto the food truck;
- (b) hot and cold holding of ~~time/temperature controlled for safety (TCS)~~ foods;
- (c) storing and stocking of food, utensils, and equipment;
- (d) disposal of solid and liquid wastes;
- (e) equipment and utensil cleaning and sanitizing;
- (f) vehicle cleaning;
- (g) refilling of water ~~tank(s)~~ tanks with potable water; and
- (h) utilizing electrical power sources.

(3) "FDA Food Code" or "Food Code" means the ~~most recent~~ FDA Model Food Code as ~~adopted~~ incorporated by reference ~~with amendments~~ in Rule Section R392-100-4. When FDA Food Code is referenced in this rule, the term 'establishment' or 'food establishment' used in the FDA Food Code shall be synonymous with 'food truck' as defined in this rule.

(4) "Food cart" means:

(a) a cart that is not motorized; and

(b) that a vendor, standing outside of the frame of the cart, uses to prepare, sell, or serve food or beverages for immediate human consumption; or

(c) a motor vehicle that a vendor, standing outside of the frame of the vehicle, uses to sell or serve prepackaged food or beverages for human consumption.

(5) "Food processing plant" means a commercial operation inspected by a regulatory authority, such as the United States Department of Agriculture (USDA), U.S. Food and Drug Administration (FDA), or the Utah Department of Agriculture and Food ~~(UDAF)~~, that manufactures, packages, labels, or stores food for human consumption, and provides food for sale or distribution to other business entities such as food processing plants or food establishments. A food processing plant does not include a food establishment.

(6) "Food service establishment" means an operation that:

(a) stores, prepares, packages, serves, vends food directly to the consumer, or otherwise provides food for human consumption such as a restaurant; satellite or catered feeding location; and

(b) relinquishes possession of food to a consumer directly, or indirectly through a delivery service such as home delivery of grocery orders or restaurant takeout orders, or delivery service that is provided by common carriers.

(7)(a) "Food truck" means a fully encased food service establishment:

(i) on a motor vehicle or on a trailer that a motor vehicle pulls to transport; and

(ii) from which a food truck vendor, standing within the frame of the vehicle, prepares, cooks, sells, or serves food or beverages for immediate human consumption.

(b) "Food Truck" does not include a food cart, a shaved ice establishment, or an ice cream truck.

(8) "Food truck operator" or "operator" means a person who owns, manages, or controls, or who has the duty to manage or control, the operation of a food truck.

(9) "Food truck employee" means a person working with unpackaged food, food equipment or utensils, or food ~~contact~~ surfaces in a food truck.

(10) "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.

(11) "Ice cream truck" means a fully encased food service establishment:

(a) on a motor vehicle or on a trailer that a motor vehicle pulls to transport;

(b) from which a vendor, from within the frame of the vehicle, serves prepackaged ice cream products;

(c) that attracts patrons by traveling through a residential area and signaling the truck's presence in the area, including by playing music; and

(d) that may stop the vehicle to serve packaged ice cream products at the signal of a patron.

~~[(44)]~~(12) "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.

~~[(12)]~~(13) "Local health department" has the same meaning as provided in Subsection 26A-1-102(5).

~~[(13)]~~(14) "Local health officer" means the director of the jurisdictional local health department or a designated representative.

~~[(14)]~~(15) "Person in charge" means the individual present at a food truck who is responsible for its operation at the time of the inspection.

~~[(15)]~~ "Potentially hazardous food (PHF)" or "Time/temperature control for safety food (TCS)" has the same meaning as described in the FDA Food Code.]

~~[(16)]~~(16) "Plumbing Code" means International Plumbing Code as incorporated and amended in Title 15A, State Construction and Fire Codes Act.

~~[(16)]~~(17) "Primary permit" means a health permit issued by a local health department to operate a food truck within the jurisdiction of the local health department wherein the majority of the food truck's operations take place.

~~[(17)]~~(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.

~~[(18)]~~(19) "Shaved ice establishment" means a facility that would normally be classified as a food truck as defined in this rule that serves only shaved ice with flavored syrups and other toppings approved by the local health officer, and is operating from a fixed, single location without moving offsite throughout the entire operating season.

~~[(19)]~~(20) "Secondary permit" means a health permit issued by a local health department to operate a food truck within the jurisdiction of the local health department to a food truck operator who has a current primary permit from another local health department within the state.

~~[(20)]~~(21) "Time/temperature control for safety food (TCS)" has the same meaning as described in the FDA Food Code.

R392-102-3. Commissary Requirements.

(1) No food or equipment may be stored at a home residence, storage unit, garage, or other unapproved structure.

(2) A food truck operator shall use a commissary unless exempted by the local health officer issuing a primary permit as described in Section R392-102-~~[5]~~4.

(3) If a food truck commissary is required:

(a) ~~[(F)]~~the food truck operator shall use a commissary located within a local health jurisdiction approved by the local health department issuing the primary permit~~[-]~~;

(b) ~~[(F)]~~the food truck operator ~~[must]~~shall obtain a written, signed commissary agreement from the commissary operator, which shall be renewed annually, and any changes to the agreement shall be submitted to the local health department issuing the primary permit prior to the changes being implemented;

(c) ~~[(F)]~~the food truck operator shall return the food truck to the commissary at a regular frequency, as determined and approved by the local health department issuing the primary permit;

(d) ~~[(F)]~~the food truck operator ~~[must]~~shall park the food truck at a location approved by the local health department issuing the primary permit at the end of daily operations;

(e) ~~[(F)]~~the food truck operator shall document presence at the commissary on a log provided by the commissary operator according to the frequency determined and approved by the local health officer, and as follows~~[-]~~;

(i) ~~[(F)]~~the food truck operator shall record the date, time in, time out, and initials~~[-]~~; and

(ii) ~~[(F)]~~the operator shall retain commissary records for one year, and shall make the records available for inspection by a local health officer upon request~~[-]~~;

(f) ~~[(F)]~~the food truck operator ~~[must]~~shall have access to, and the ability to utilize:

(i) a 3-compartment sink and other approved warewashing equipment;

(ii) adequate hot and cold holding equipment as necessary for proper food storage;

(iii) a service sink with hot and cold water under pressure;

(iv) at least one handsink with pressurized hot and cold water that is conveniently located and used exclusively for hand washing;

(v) a conveniently located toilet room; and

(vi) approved methods and equipment to clean and sanitize food and non-food contact ~~[S]~~surfaces ~~[with in]~~within the food truck~~[-]~~;

(g) ~~[(F)]~~the food truck operator shall use a commissary ~~[which]~~that provides adequate space for the sanitary storage of food, equipment, utensils, linens, and single-service, or single-use articles;~~and]~~

(h) ~~[(F)]~~the food truck operator shall use a commissary ~~[which]~~that has an electrical outlet available for food truck use, if needed, when parked at the commissary;

(i) ~~[(A)]~~an electrical installation intended for food truck use at a commissary shall comply with applicable codes and ordinances including the state electrical code~~[-]~~; and

~~[(ii)]~~(i) ~~[N]~~not more than one food truck shall be served by one electrical outlet at a time.

(4) If a local health officer revokes or suspends a commissary's operating permit~~[is revoked or suspended]~~ as authorized in Subsection R392-102-4(16), ~~[at]~~any associated primary and secondary food truck permit~~[s]~~ shall be invalidated until a local health officer reinstates the operating permit ~~[is reinstated]~~ or the food truck operator obtains a new commissary agreement at an approved location, at which point the primary and secondary food truck permits shall be reinstated with the original expiration date.

R392-102-4. Food Truck Permit Requirements.

(1) A person shall not operate a food truck without a valid permit to operate issued by a local health department.

(2) A food truck operator shall only operate a food truck after:

(a) obtaining a temporary food establishment permit from a local health department when only operating at a fixed location for no more than 14 consecutive days; or

(b) obtaining an annual primary permit from the local health department wherein the majority of the food truck's operations will take place.

(3) ~~[In order to]~~To obtain a primary permit, a food truck operator shall:

(a) provide the following information to the local health department issuing the primary permit:

(i) name, title, contact information, and signature;

(ii) evidence of food safety manager certification as required in Subsection R392-102-4(19);

(iii) ownership status of the food truck ~~[(e.g.)]~~such as individual, partnership, or corporation~~[-, etc.]~~;

(iv) name of the food truck business or "dba";

NOTICES OF PROPOSED RULES

(v) food truck license plate number;

(vi) a complete list of menu items if there has been a menu change or if it was not previously submitted with plans as required in Section R392-102-5;

(vii) a means whereby the local health department can determine the food truck's vending location or route as well as days and hours of food truck operation;

(viii) a copy of the written commissary agreement as described in Subsection R392-102-3(3)(b), unless exempted by the local health officer; and

(ix) documentation of an approved servicing area if the commissary is not properly equipped to provide potable water or electricity to, or to receive wastewater from a food truck; and shall

(b) pay a primary permit fee;

(c) submit plans for review as described in Section R392-102-5;

(d) complete necessary changes resulting from the review of plans, as required; and

(e) complete a pre-operational inspection, as described in Subsection R392-102-16(8).

(4) An issued primary permit shall include the following information:

(a) name of the issuing local health department;

(b) name of the permitted food truck, as provided on the application;

(c) license plate of the associated food truck;

(d) expiration date;

(e) permit tier designation as described in Subsection R392-102-4(5)(b); and

(f) the written words, "Primary Permit".

(5)(a) Primary and secondary permit fees shall be uniform statewide and may only be in an amount that reimburses the local health department for the cost of administering the food truck sanitation program.

(b) The local health department shall use a two-tier risk based assessment to determine an appropriate primary permit fee as follows:

(i) ~~[A]~~a primary permit shall be designated as "tier-one" when the food truck operator's menu includes fewer than three ~~[potentially hazardous]~~TCS foods, and when raw animal products are not included as a menu ingredient~~[-]~~;

(ii) ~~[A]~~a primary permit shall be designated as "tier-two" when the food truck operator's menu includes three or more ~~[potentially hazardous]~~TCS foods, or when raw animal products are included as a menu ingredient~~[-]~~; and

(iii) ~~[F]~~the amount of a tier-one primary permit fee shall be reduced, as compared to a tier-two primary permit fee, to account for the lower regulatory burden.

(6) If an application for a primary permit is denied, the food truck 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 for a primary permit.

(7) A food truck operator shall obtain a secondary permit before operating a food truck in any local health department jurisdiction other than the jurisdiction of the local health department that issued the primary permit as described in Subsection R392-102-4(2)(b).

(8) ~~[In order to]~~To obtain a secondary permit, a food truck operator shall:

(a) provide the following information to the local health department issuing the secondary permit:

(i) a copy of the primary permit; and

(ii) a means whereby the local health department can determine the food truck's vending location or route as well as days and hours of food truck operation within the jurisdiction of the local health department issuing the secondary permit; and~~[-shall]~~

(b) pay a secondary permit fee~~[-]~~;

(9) An issued secondary permit shall contain the following information:

(a) name of the issuing local health department;

(b) name of the permitted food truck, as provided on the application;

(c) license plate of the associated food truck;

(d) expiration date, which shall be the same as the expiration date printed on the primary permit provided by the food truck operator as required in Subsection R392-102-4(8)(a)(i); and

(e) the written words, "Secondary Permit".

(10)(a) A secondary permit fee shall only be in an amount that reimburses the local health department for the cost of permitting and inspecting the food truck.

(b) A secondary permit fee shall be no more than one-half of a tier-one primary permit fee, and shall be the same regardless of expiration date of the primary permit.

(11) A local health department issuing a secondary permit may not:

(a) impose any additional permit conditions or qualifications on a food truck operator; or

(b) require a plan review or a pre-operational inspection before issuing or renewing the permit.

(12) When acting as a catering operation, a food truck operator may operate in a health department jurisdiction other than the jurisdiction of the health department that issued the primary permit without obtaining either a secondary food truck permit or a temporary food service permit, and without additional inspections from the local health department.

(13)(a) A food truck operator shall comply with permitting requirements as stated in Subsection R392-102-4(3) when renewing a primary permit, and Subsection R392-102-4(8) when renewing a secondary permit.

(b) If a food truck operator elects to renew a primary permit and any secondary permits, it shall be the duty of the operator to renew within ~~[thirty]~~30 calendar days before the expiration date of the current permit.

(14)(a) If a local health officer suspends a primary food truck permit, the local health officer shall notify other applicable local health departments regarding the enforcement actions taken. Any secondary permits issued by other local health departments shall be rendered invalid until the suspended primary permit is reinstated.

(b) If a local health officer suspends a secondary food truck permit, no other permits, whether primary or secondary, from other local health jurisdictions shall be affected.

(15) To reinstate a suspended permit, a food truck operator shall:

(a) complete a pre-operational inspection with the local health department that suspended the permit, as described in Subsection R392-102-16(8), which shows that the food truck is back in compliance with this rule; and

(b) pay an inspection fee.

(16) A food truck permit applied for or issued pursuant to this rule may be denied, suspended, or revoked by the local health officer for any of the following reasons:

(a) ~~[F]~~failure of the application or plans to show that the food truck will be operated or maintained in accordance with the requirements of this rule;

(b) ~~[S]~~submission of incorrect or false information in the application or plans;

(c) ~~[F]~~failure to operate or maintain the food truck in accordance with the application, plans, and specifications approved by the local health department;

(d) ~~[F]~~failure of the food truck operator to allow the local health officer to conduct inspections as necessary to determine compliance with this rule;

(e) ~~[F]~~failure of the food truck operator to make the food truck available for inspection or to obtain an inspection according to the frequency requirements detailed in Subsection R392-102~~[(46)]~~-16(9);

(f) ~~[O]~~operation of the food truck in a way that causes or creates an imminent health hazard;

(g) ~~[V]~~violation of any condition upon which the permit was issued; or

(h) ~~[F]~~failure to pay a permit fee or inspection fee.

(17) A food truck operator shall post ~~[all]~~any issued health permit~~[s]~~ in a conspicuous location.

(18) A food truck permit may not be transferred from one food truck operator to another, from one food truck to another, or from one type of operation to another if the change affects the tier designation as specified in Subsection R392-102-4(5)(b) and the local health department that issued the primary permit has not approved the change.

(19) At least one food truck employee shall:

(a) be certified in food safety management according to the requirements of Rule R392-101, unless exempted by a local health officer according to the criteria listed in Subsection R392-101-8(2) and Section 26-15a-105; and

(b) maintain proof of certification available for review by the local health officer upon request.

(20)(a) ~~[All]~~Each food truck employee~~[s]~~ shall be trained in food safety as required by Rule R392-103, and shall hold a valid food handler's permit issued by a local health department.

(b) The food truck operator shall maintain proof of food handler permit certification of employees and shall provide it to the local health officer upon request.

R392-102-5. Plan Review Requirements.

(1) A food truck operator shall submit to the local health department properly prepared plans and specifications for review and approval before:

(a) the construction of a food truck;

(b) the conversion of an existing vehicle or trailer to a food truck; or

(c) the remodeling of a food truck or a change of food truck type or change in foods served or food service operations ~~[which]~~that would necessitate a change in risk assessment as described in Subsection R392-102-4(5)(b).

(2) When applying for a primary permit for the first time, the operator of a newly constructed food truck, or food truck in pre-construction shall submit plans to the local health department, which include at least the following:

(a) a complete list of intended menu items;

(b) anticipated volume of food to be stored, prepared, and sold or served;

(c) equipment cut sheets;

(d) plumbing schedule;

(e) mechanical schedule;

(f) dimensional floor plan;

(g) finish schedule for floors, walls, and ceilings;

(h) an equipment layout; and

(i) any additional information required by the local health officer.

(3) When applying for a primary permit for the first time, the operator of a retrofitted or existing food truck shall submit plans to the local health department, which may include the following:

(a) dimensional floor plan;

(b) an equipment layout, including the location of hand wash and food preparation sinks; and

(c) any additional information required by the local health officer.

(4)(a) Except when the food truck has undergone renovation or a change in ownership since the time of permit issuance, an additional plan review is not required before renewing a primary permit.

(b) When the food truck has undergone renovation or a change in ownership since the time of permit issuance, the food truck operator shall comply with Subsection R392-102-5(3).

R392-102-6. Construction and Maintenance Requirements.

(1) Materials for indoor floor, wall, and ceiling surfaces of a food truck shall be:

(a) smooth, durable, and easily cleanable for areas where food is stored, prepared, held under temperature control, or served; and

(b) nonabsorbent for areas subject to moisture such as food preparation areas, walk-in refrigerators, warewashing areas, toilet rooms, servicing areas, and areas subject to flushing or spray cleaning methods.

(2) Nonfood-contact surfaces shall be free of unnecessary ledges, projections, and crevices, and be designed and constructed to allow easy cleaning and to facilitate maintenance.

(3) Exterior walls and roofs of a food truck shall be constructed of weather-resistant materials, and shall effectively protect the food truck interior from the entry of dust, debris, stormwater, insects, rodents, and other animals.

(4)(a) A food truck operator shall permanently display the business name on the exterior of the food truck in printed letters of at least four inches in height.

(b) The business name printed on the exterior of the food truck shall be the same as the business name or "dba" provided on the application required by Subsection R392-102-4(3)(a)(iv).

(5) Mats and duckboards shall be designed to be removable and easily cleanable.

(6) Physical facilities shall be maintained in good repair.

(7)(a) Physical facilities shall be cleaned as often as necessary to keep them clean.

(b) Except for cleaning that is necessary due to a spill or other accident, cleaning shall be done during periods when the least amount of food is exposed such as after closing.

(8) Equipment shall be maintained in a state of repair and condition that meets the requirements specified under Section R392-102-8.

(9) Except as specified in Subsection R392-102-6(10), a food truck operator shall protect outer openings of a food truck against the entry of insects and rodents by:

(a) tight-fitting windows; and

(b) closed, solid, tight-fitting doors.

NOTICES OF PROPOSED RULES

(10) If the windows or doors of a food truck are kept open for ventilation or food service, the openings shall be protected against the entry of insects and rodents by:

- (a) 16 mesh to ~~[4]one~~ inch screens; or
- (b) other effective means approved by the local health officer.

(11)(a) Light intensity within the interior of the food truck shall be:

- (i) at least 540 lux (50 foot candles) at any surface where a food truck employee works with food or utensils;
- (ii) at least 215 lux (20 foot candles):
 - (A) in a toilet room; and
 - (B) inside equipment such as reach-in and under-counter refrigerators; and
- (iii) at least 108 lux (10 foot candles) at a distance of 30 inches (75 cm) above the floor in walk-in refrigeration units and dry food storage areas.

(b) Light bulbs located in the food truck shall be shielded, coated, or otherwise shatter-resistant.

(12) Living quarters and shower or bathing facilities are prohibited on a food truck.

(13)(a) A food truck shall have at least one handwashing sink provided with hot and cold running water.

(b) A local health department issuing a primary permit may require the installation of one or more handwashing sinks as necessary for their convenient use by employees in the following areas:

- (i) food preparation, food dispensing, and warewashing areas; and
- (ii) in a toilet room.

(14)(a) A food truck shall have a 3-compartment sink installed with hot and cold water under pressure for manually washing, rinsing, and sanitizing equipment and utensils unless exempted by the local health department issuing a primary permit.

(b) Unless exempted, a 3-compartment sink shall meet the following requirements:

- (i) the food truck ~~[must]~~shall have sufficient onboard water storage capacity to fill all sink compartments without depleting water storage needed for food truck operations such as handwashing; and
- (ii) sink compartments shall be large enough to accommodate immersion of in-use utensils.

R392-102-7. Water and Wastewater Requirements.

(1) A food truck operator shall ensure that potable water is available to a food truck during all hours of operation through:

(a) an onboard potable water storage tank ~~[which]~~that shall hold a minimum of 30 gallons as measured down from the inlet; or

(b) piping, tubing, or hoses connected to an adjacent potable water source under pressure as approved by the local health officer.

~~—(i)]~~ The water supply type described in Subsection ~~[R392-102-7](1)(b)~~ is allowed only when the food truck is concurrently connected to a public sanitary sewer system in a manner approved by the local health officer.

(2)(a) The water source and system shall be of sufficient capacity to meet the peak water demands of the food truck.

(b) Hot water generation and distribution systems shall be sufficient to meet the peak hot water demands throughout the food truck.

(3) Materials that are used in the construction of a mobile water tank, food truck onboard water tank, and appurtenances shall be:

- (a) safe;
 - (b) durable, corrosion~~[-]~~resistant, and nonabsorbent;
 - (c) finished to have a smooth, easily cleanable surface; and
 - (d) designed and intended only for use with potable water.
- (4) An onboard water tank shall be:
- (a) enclosed from the filling inlet to the discharge outlet;
 - (b) sloped to an outlet that allows complete drainage of the

tank; and

(c) used for conveying potable water and for no other purpose.

(5) If an onboard water tank is designed with an access port for inspection and cleaning, the opening shall be in the top of the tank and be:

- (a) flanged upward at least ~~[13 mm (one-half inch)]~~; and
- (b) equipped with a port cover assembly that is:

(i) provided with a gasket and a device for securing the cover in place, and

(ii) flanged to overlap the opening and sloped to drain.

(6) A fitting with "V" type threads on an onboard water tank inlet or outlet shall be allowed only when a hose is permanently attached.

(7) If provided, an onboard water tank vent shall terminate in a downward direction and shall be covered with:

- (a) 16 mesh to 25.4 mm (16 mesh to ~~[4]one~~ inch) screen or equivalent when the vent is in a protected area; or
- (b) a protective filter when the vent is in an area that is not protected from windblown dirt and debris.

(8)(a) A water tank and its inlet and outlet shall be sloped to drain.

(b) A water tank inlet shall be positioned so that it is protected from contaminants such as waste discharge, road dust, oil, or grease.

(9)(a) A hose, pipe, or tube used for conveying potable water from a water tank shall be:

- (i) safe;
- (ii) durable, corrosion~~[-]~~resistant, and nonabsorbent;
- (iii) resistant to pitting, chipping, crazing, scratching, scoring, distortion, and decomposition;
- (iv) finished with a smooth interior surface;
- (v) clearly and durably identified as to its use if not permanently attached; and
- (vi) prohibited from use in any other service such as conveying wastewater or toxic chemicals.

(b) A ~~[a]~~ food truck operator shall only use a hose designed and intended to convey potable water when filling an onboard water tank as described in Subsection ~~[R392-102-7](1)~~.

(10) A food truck operator shall install and maintain a filter that does not pass oil or oil vapors in the air supply line between the compressor and potable water supply system when compressed air is used to pressurize the water tank system.

(11)(a) A cap and keeper chain, closed cabinet, closed storage tube, or other protective cover or device approved by the local health officer shall be provided for a water inlet, outlet, and hose.

(b) The protective cover or device shall be used whenever the water tank or hose inlet and outlet fitting is not in use.

(12) A food truck's onboard water tank inlet shall be:

(a) ~~[19.1 mm (three-fourths inch)]~~ in inner diameter or less; and

(b) provided with a hose connection of a size or type that will prevent its use for any other service.

(13) The food truck operator shall flush and sanitize any water tank, pump, and hoses before placing into service after initial

purchase, construction, repair, modification, and periods of nonuse of 30 days or more, and as often as necessary to maintain the equipment in clean and sanitary condition.

(14) A food truck operator shall operate a water tank, pump, and hoses so that backflow and other contamination of the water supply are prevented.

(15)(a) A wastewater holding tank in a food truck shall be:

(i) sized 15%~~[-percent]~~ larger in capacity than the water supply tank; and

(ii) sloped to a drain that is ~~[25 mm - (1 inch)]~~ in inner diameter or greater, equipped with a shut-off valve.

(b) Subsection ~~[R392-102-7]~~(15)(a)(i) does not apply to a potable water tank that is used only for beverage service on a food truck and is not connected to a wastewater holding tank.

(16) Wastewater shall be conveyed to the point of disposal through an approved sanitary sewage system or other system, including use of wastewater transport vehicles, waste retention tanks, pumps, pipes, hoses, and connections that are constructed, maintained, and operated according to:

(a) Plumbing Code;

(b) ~~[T]~~the Utah Department of Environmental Quality~~], Division of Water Quality]~~ under Title R317, Water Quality;

(c) ~~[L]~~local health department and municipal regulations; and

(d) the local sewer district having jurisdiction.

(17)(a) Wastewater and other liquid wastes shall be removed from a food truck at an approved commissary or a waste servicing area approved by the local health officer or by a wastewater transport vehicle in such a way that a public health hazard or nuisance is not created.

(b) A food truck operator shall thoroughly flush and drain a tank for liquid waste retention in a sanitary manner during the servicing operation.

(18) Wastewater or liquid waste conveyance lines that are not shielded to intercept drips shall be installed or located under food and food contact surfaces.

(19) The food truck operator shall store potable water pipes, hoses, and tubes separately from wastewater pipes, hoses, and tubes in a manner that prevents cross contamination.

R392-102-8. Equipment Requirements.

(1) Materials that are used in the construction of utensils and ~~[equipment]~~food contact surfaces of equipment may not allow the migration of deleterious substances or impart colors, odors, or tastes to food and under normal use conditions shall be:

(a) safe;

(b) durable, corrosion-resistant, and nonabsorbent;

(c) sufficient in weight and thickness to withstand repeated washing;

(d) finished to have a smooth, easily cleanable surface; and

(e) resistant to pitting, chipping, crazing, scratching, scoring, distortion, and decomposition.

(2)(a) Nonfood-contact surfaces of equipment that are exposed to splash, spillage, or other food soiling or that require frequent cleaning shall be constructed of a corrosion-resistant, nonabsorbent, and smooth material.

(b) Nonfood-contact surfaces shall be free of unnecessary ledges, projections, and crevices, and designed and constructed to allow easy cleaning and to facilitate maintenance.

(3) Copper and copper alloys such as brass may not be used in contact with a food that has a pH below 6 such as vinegar, fruit

juice, or wine or for a fitting or tubing installed between a backflow prevention device and a carbonator.

(4) Hot oil filtering equipment shall be readily accessible for filter replacement and cleaning of the filter and meet the requirements of Subsection R392-102-8(1).

(5) Galvanized metal may not be used for utensils and food contact surfaces of equipment that are used in contact with acidic food.

(6) Sponges may not be used in contact with cleaned and sanitized or in-use food-contact surfaces.

(7)(a) Except as specified in (b), (c), and (d) of this section, wood and wood wicker may not be used as a food-contact surface.

(b) Hard maple or an equivalently hard, close-grained wood may be used for:

(i) cutting boards; cutting blocks; bakers' tables; and utensils such as rolling pins, doughnut dowels, salad bowls, and chopsticks; and

(ii) wooden paddles used in confectionery operations for pressure scraping kettles when manually preparing confections at a temperature of 110 degrees C (230 degrees F) or above.

(c) ~~[w]~~Whole, uncut, raw fruits and vegetables, and nuts in the shell may be kept in the wood shipping containers in which they were received, until the fruits, vegetables, or nuts are used.

(d) If the nature of the food requires removal of rinds, peels, husks, or shells before consumption, the whole, uncut, raw food may be kept in:

(i) untreated wood containers; or

(ii) treated wood containers if the containers are treated with a preservative that meets the requirements specified in 21 CFR 178.3800 Preservatives for wood.

(8)~~[(a)]~~ Multiuse food contact surfaces shall be:

~~[(+)]~~(a) smooth;

~~[(+)]~~(b) free of breaks, open seams, cracks, chips, inclusions, pits, and similar imperfections;

~~[(+)]~~(c) free of sharp internal angles, corners, and crevices;

~~[(+)]~~(d) finished to have smooth welds and joints; and

~~[(+)]~~(e) accessible for cleaning and inspection.

(9)(a) Equipment that is fixed in place because it is not easily movable shall be installed so that it is:

(i) spaced to allow access for cleaning along the sides, behind, and above the equipment;

(ii) spaced from adjoining equipment, walls, and ceilings a distance of not more than one millimeter or one thirty-second inch; or

(iii) sealed to adjoining equipment or walls, if the equipment is exposed to spillage or seepage.

(b) ~~[e]~~Counter-mounted equipment that is not easily movable shall be installed to allow cleaning of the equipment and areas underneath and around the equipment by being:

(i) sealed; or

(ii) elevated on legs to provide not less than four inches of clearance.

(10) Floor-mounted equipment that is not easily movable shall be sealed to the floor or elevated on legs that provide at least a six inch (15 centimeter) clearance between the floor and the equipment.

(11) Exhaust ventilation hood systems in food preparation and warewashing areas including components such as hoods, fans, guards, and ducting shall be designed to prevent grease or condensation from draining or dripping onto food, equipment, utensils, linens, and single-service and single-use articles.

NOTICES OF PROPOSED RULES

(12) Filters or other grease extracting equipment shall be designed to be readily removable for cleaning and replacement if not designed to be cleaned in place.

(13)(a) Drainboards, utensil racks, or tables large enough to accommodate all soiled and cleaned items that may accumulate during hours of operation shall be provided for necessary utensil holding before cleaning and after sanitizing.

~~(b)~~ Sufficient space ~~[must]~~shall be provided for storage of soiled and cleaned items that may accumulate during hours of operation, such as on drainboards, utensil racks, or tables.

~~(c)~~ Soiled and clean items ~~[must]~~shall be stored separately and in a manner that protects clean items from contamination.

(14) A plumbing fixture such as a handwashing sink or toilet shall be easily cleanable.

(15)(a) Equipment for cooling and heating food, and holding cold and hot food, shall be:

~~(i)~~ sufficient in number and capacity~~[-]~~; and~~[-shall be-]~~

~~(ii)~~ capable of consistently maintaining food temperatures as specified under Section R392-102-12.

~~(b)~~ The food truck operator shall maintain an operational food temperature~~[-]~~ measuring device in each mechanically refrigerated unit.

~~(c)~~ In a mechanically refrigerated or hot food storage unit, the sensor or thermometer shall be located to measure the ambient temperature in the warmest part of a mechanically refrigerated unit and in the coolest part of a hot food storage unit.

(16) A food truck operator with a menu offering any ~~[potential hazardous]~~TCS foods shall equip the food truck with at least one readily accessible and properly calibrated food temperature measuring device~~[-]~~ that is easily readable and

~~(a)~~ Food temperature measuring devices may not have a sensor~~[s]~~ or stem~~[s]~~ constructed of glass unless the thermometer with a glass sensor or stem is encased in a shatterproof coating such as a candy thermometer.

~~(b)~~ Temperature measuring devices shall be easily readable.

(17)(a) When manual warewashing of utensils or food-contact equipment is done on a food truck, the food truck operator shall provide a test kit or other device that accurately measures the concentration in mg/L of chemical sanitizing solutions.

~~(b)~~ If hot water is used for sanitization in manual warewashing operations in a food truck, the sanitizing compartment of the sink shall be:

(i) ~~[P]~~designed with an integral heating device that is capable of maintaining water at a temperature not less than 171 degrees F; and

(ii) ~~[P]~~provided with a rack or basket to allow complete immersion of equipment and utensils into the hot water.

(18)(a) Receptacles and waste handling units for refuse and recyclables and for use with materials containing food residue shall be durable, cleanable, insect- and rodent-resistant, leakproof, and nonabsorbent.

(b) Receptacles and waste handling units for refuse and recyclables used with materials containing food residue and used outside the food truck shall be:

(i) designed and constructed to have tight-fitting lids, doors, or covers; and

(ii) maintained in good repair.

(c) Refuse and recyclables shall be stored in receptacles or waste handling units so that they are inaccessible to insects and rodents.

(d) Receptacles and waste handling units for refuse and recyclables shall be kept covered inside the food truck:

(i) if the receptacles and units contain food residue and are not in continuous use, or

(ii) after they are filled.

(19) Refuse and recyclables shall be removed from the food truck premises at a frequency that will minimize the development of objectionable odors and other conditions that attract or harbor insects and rodents.

(20) A food truck operator shall furnish or equip a food truck with adequate electrical power to ensure uninterrupted service.

R392-102-9. Requirements for Cleaning Equipment and Utensils.

(1) Equipment food-contact surfaces and utensils shall be clean to sight and touch.

(2) The food-contact surfaces of cooking equipment and pans shall be kept free of encrusted grease deposits and other soil accumulations.

(3) Nonfood-contact surfaces of equipment shall be kept free of an accumulation of dust, dirt, food residue, and other debris.

(4)(a) Equipment food-contact surfaces and utensils shall be 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)~~ ~~[B]~~between uses with raw fruits and vegetables and with TCS food;

~~(iv)~~ ~~[B]~~before using or storing a food temperature measuring device; and

~~(v)~~ ~~[A]~~at any time during the operation when contamination may have occurred.

~~(b)~~ Equipment food contact surfaces and utensils shall be cleaned throughout the day at least every four hours if used with TCS food.

~~(c)~~ Utensils and equipment contacting food that is not TCS shall be cleaned:

(i) ~~[A]~~at any time when contamination may have occurred;

(ii) ~~[A]~~at least every 24 hours;

(iii) ~~[B]~~before restocking consumer self-service equipment and utensils such as condiment dispensers and display containers; and

(iv) ~~[F]~~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:

(A) ~~[A]~~at a frequency specified by the manufacturer; or

(B) ~~[A]~~at a frequency necessary to preclude accumulation of soil or mold.

(5) Except for hot oil cooking and filtering equipment, ~~[F]~~the food-contact surfaces of cooking and baking equipment shall be cleaned at least every 24 hours.~~[-This section does not apply to hot oil cooking and filtering equipment.]~~

(6) The cavities and door seals of microwave ovens shall be cleaned at least every 24 hours by using the manufacturer's recommended cleaning procedure.

(7) Nonfood-contact surfaces of equipment shall be cleaned at a frequency necessary to preclude accumulation of soil residues.

(8) Equipment food-contact surfaces and utensils shall be effectively washed to remove or completely loosen soils by using the manual or mechanical means necessary such as the application of detergents containing wetting agents and emulsifiers; acid, alkaline, or abrasive cleaners; hot water; brushes; scouring pads; high-pressure sprays; or ultrasonic devices.

(9) The washing procedures selected shall be based on the type and purpose of the equipment or utensil, and on the type of soil to be removed.

(10) Washed utensils and equipment shall be rinsed, after cleaning and prior to sanitizing, so that abrasives are removed and cleaning chemicals are removed or diluted through the use of water or a detergent-sanitizer solution by using ~~one of the following procedures:~~

~~(a) Use of a~~ distinct, separate water rinse after washing and before sanitizing if using:

~~(i)(a)~~ ~~[A]~~ a 3-compartment sink, or

~~(ii)(b)~~ ~~[A]~~ alternative manual warewashing equipment equivalent to a 3-compartment sink as approved by the local health department issuing the primary permit.

(11) Equipment food-contact surfaces and utensils shall be sanitized before use after cleaning. Sanitizers and sanitizing operations shall meet the requirements in Section R392-102-10.

(12) After cleaning and sanitizing, equipment and utensils shall be air-dried or used after adequate draining.

(13) Linens that do not come in direct contact with food shall be laundered between operations if they become wet, sticky, or visibly soiled.

(14)(a) Cloths in-use for wiping food spills from tableware and carry-out containers that occur as food is being served shall be:

- (i) maintained dry; and
- (ii) used for no other purpose.

(b) Cloths in-use for wiping counters and other equipment surfaces shall be:

- (i) held between uses in a container of chemical sanitizer solution at a concentration specified under Subpart 4-501.114 of the FDA Food Code; and
- (ii) laundered daily.

(c) Cloths in-use for wiping surfaces in contact with raw animal foods shall be kept separate from cloths used for other purposes.

(d) Dry wiping cloths and the chemical sanitizing solutions specified in Subsection ~~[R392-102-9]~~ (14) in which wet wiping cloths are held between uses shall be free of food debris and visible soil.

(e) Containers of chemical sanitizing solutions specified in Subsection ~~[R392-102-9]~~ (14)(b)(i) in which wet wiping cloths are held between uses shall be stored off the floor and used in a manner that prevents contamination of food, equipment, utensils, linens, single-service, or single-use articles.

(f) Single-use disposable sanitizer wipes shall be used in accordance with EPA-approved manufacturer's label use instructions.

(15) Soiled linens shall be kept in clean, nonabsorbent receptacles or clean, washable laundry bags and stored and transported to prevent contamination of food, clean equipment, clean utensils, and single-service and single-use articles.

(16) Cleaned and sanitized equipment and utensils, laundered linens, and single-service and single-use articles shall be stored:

- (a) in a clean, dry location;
- (b) where they are not exposed to splash, dust, or other contamination; and
- (c) at least six inches ~~[(15 cm)]~~ above the floor.

(17) Clean and sanitized equipment and utensils shall be stored as specified under Subsection R392-102-8(13) and shall be stored:

- (a) in a self-draining position that allows air drying; and
- (b) covered or inverted.

(18) The wash, rinse, and sanitize solutions shall be maintained clean.

(19) Single-service and single-use articles may not be reused.

(20) Raw fruits and vegetables shall be thoroughly washed in 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.

R392-102-10. Requirements for Sanitizing Equipment and Utensils.

(1) Chemical sanitizers, including chemical sanitizing solutions generated ~~[on-site]~~ onsite, and other chemical antimicrobials applied to food-contact surfaces shall:

(a) ~~[M]~~ meet requirements specified in 40 CFR 180.940 and 40 CFR 180.2020; and

(b) ~~[B]~~ be used in accordance with the EPA-registered label use instructions.

(2) Chlorine sanitizer solutions shall have a minimum concentration and temperature of:

- (a) ~~[e]~~ 25 to 49 mg/L at 120 degrees F, ~~—~~ ~~(i)~~ with an associated contact time of 10 seconds;
- (b) ~~[e]~~ 50 to 99 mg/L at 100 degrees F, pH of 10 or less, or 75 degrees F, pH of 8 or less, ~~—~~ ~~(i)~~ with an associated contact time of 7 seconds; or
- (c) ~~[e]~~ 100 mg/L at 55 degrees F, ~~—~~ ~~(i)~~ with an associated contact time of 10 seconds.

(3) Iodine sanitizing solutions shall have a:

- (a) ~~[M]~~ minimum temperature of 68 degrees F;
- (b) pH of 5.0 or less or a pH no higher than the level for which the manufacturer specifies the solution is effective;
- (c) ~~[E]~~ concentration between 12.5 mg/L and 25 mg/L; and
- (d) ~~[E]~~ contact time of at least 30 seconds.

(4) Quaternary ammonium compound solutions shall:

- (a) ~~[H]~~ have a minimum temperature of 75 degrees F;
- (b) ~~[H]~~ have a concentration as indicated by the manufacturer's use directions included in the labeling;

(c) ~~[B]~~ be used only in water with 500 mg/L hardness or less or in water having a hardness no greater than specified by the EPA-registered label use instructions; and

(d) ~~[H]~~ have a contact time of at least 30 seconds.

(5) Hot water sanitization, without the use of chemicals, shall be accomplished by:

(a) ~~[M]~~ manual immersion for at least 30 seconds in water held at a minimum temperature of 171 degrees F or higher; or

(b) ~~[B]~~ being cycled through equipment which:

- (i) the temperature of the sanitizing rinse as it enters the manifold may not be more than 194 degrees F or less than 165 degrees F for stationary racks or 180 degrees F for all other machines; and

(ii) achieves a utensil surface temperature of 160 degrees F as measured by an irreversible registering temperature indicator.

R392-102-11. Food Safety Requirements.

(1)(a) Food shall be safe, unadulterated, and honestly presented.

NOTICES OF PROPOSED RULES

(b) Food shall be offered for human consumption in a way that does not mislead or misinform the consumer.

(c) Food or color additives, colored overwraps, or lights may not be used to misrepresent the true appearance, color, or quality of a food.

(2) Food shall be obtained from sources that comply with Rule R392-100.

(3) Food prepared in a private home or any structure or dwelling designed, constructed, or intended for human occupancy shall not be used in a food truck or offered from a food truck for human consumption.

(4) Food in a hermetically sealed container shall be obtained from a food processing plant that is regulated by the food regulatory agency that has jurisdiction over the plant.

(5) Food packages shall be in good condition and protect the integrity of the contents so that the food is not exposed to adulteration or potential contaminants.

(6) Eggs that have not been specifically treated to destroy all viable *Salmonellae* shall be labeled to include safe handling instructions as specified in 21 CFR 101.17(h).

(a) Eggs shall be received clean and sound and shall not exceed the restricted egg tolerances for U.S. Consumer Grade B as specified Rule R70-410, Grading and Inspection of Shell Eggs with Standard Grade and Weight Classes.

(b) Egg products shall be obtained pasteurized.

(c) Pasteurized eggs or egg products shall be 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.

(i) Raw, unpasteurized eggs may be used in recipes that will not be cooked if the food truck has obtained a variance from the primary permit issuer, which variance is based on a commissary HACCP plan; and

(ii) The local health officer may revoke or suspend a permit and variance if the commissary HACCP plan is not being followed.

(7) Fluid milk and milk products shall be obtained from sources that comply with grade A standards as specified in Rule R70-310.

(8)(a) Fish and molluscan shellfish that are received for sale or service shall be commercially and legally caught or harvested.

(a)(b) Molluscan shellfish that are recreationally caught may not be received for sale or service.

(b)(c) Molluscan shellfish, shucked shellfish and shellstock shall comply with Subparts 3-202.17, 3-202.18, 3-203.11, and 3-203.12 of the [2013-]FDA Food Code[as adopted in Rule R392-100].

(c)(d) When received by a food truck, shellstock shall be reasonably free of mud, dead shellfish, and shellfish with broken shells. [-]Dead shellfish or shellstock, or those with badly broken shells, shall be discarded.

(9) Mushroom species picked in the wild shall not be offered for sale or service by a food truck.

(10) If game animals are received for sale or service they shall meet the requirements of Subpart 3-201.17 of the [2013-]FDA Food Code[as adopted and amended in Rule R392-100].

(11) Ice for use as a food or a cooling medium shall be made from drinking water.

(12) Packaged food may not be stored in direct contact with ice or water if the food is subject to the entry of water because of the nature of its packaging, wrapping, or container or its positioning in the ice or water.

(13) Ice may not be used as food after use as a medium for cooling the exterior surfaces of food such as melons or fish, packaged foods such as canned beverages, or cooling coils and tubes of equipment.

(14)(a) Food shall only contact surfaces of equipment and utensils that are cleaned and sanitized as specified in Sections R392-102-9 and R392-102-10 or single-service and single-use articles.

(a)(b) Linens, such as cloth napkins, shall not be used in contact with food.

(15)(a) Except as specified in (b) and (c) of this subsection, food shall be protected from contamination by storing the food:

(i) in a clean, dry location;

(ii) where it is not exposed to splash, dust, or other contamination; and

(iii) at least six inches (15 cm) above the floor.

(b) Pressurized beverage containers and cased food in waterproof containers such as bottles or cans may be stored on a floor that is clean and not exposed to floor moisture.

(c) Food in packages and working containers may be stored less than six inches above the floor on case lot handling equipment, such as dollies, pallets, racks, and skids used to store and transport large quantities of packaged foods.

(16) Food ~~shall~~ may not be stored:

(a) in toilet rooms;

(b) under sewer lines;

(c) under open stairwell;

(d) under leaking water lines, including leaking automatic fire sprinkler heads, or under lines on which water has condensed; or

(e) under other sources of contamination.

(17) Food shall be protected from cross contamination by:

(a) separating raw animal foods during storage, preparation, holding, and display from:

(i) raw ready-to-eat food, and

(ii) cooked ready-to-eat food;

(b) ~~E~~except when combined as ingredients, separating types of raw animal foods from each other such as beef, fish, lamb, pork, and poultry during storage, preparation, holding, and display by:

(i) using separate equipment for each type; or

(ii) arranging each type of food in equipment so that cross contamination of one type with another is prevented; and

(iii) preparing each type of food at different times or in separate areas[-];

(c) ~~C~~cleaning hermetically sealed containers of food of visible soil before opening;

(d) ~~P~~protecting food containers that are received packaged together in a case or overwrap from cuts when the case or overwrap is opened;

(e) ~~S~~storing and segregating damaged, spoiled, or recalled food in designated areas within the food truck that are separated from food, equipment, utensils, linens, and single-service and single-use articles[-]; and

(f) ~~S~~separating fruits and vegetables before they are washed from ready-to-eat food.

(18) Food shall be protected from contamination that may result from a factor or source not specified in this section.

(19) 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 food truck, such as cooking oils, flour, herbs, potato flakes, salt, spices, and sugar shall be identified with the common name of the food.

(20) Food shall be protected from contamination that may result from the addition of:

- (a) unsafe or unapproved food or color additives; and
- (b) unsafe or unapproved levels of approved food and color additives.

(21) A ~~[n]~~ food truck operator shall not:

(a) ~~[A]~~ apply sulfating agents to fresh fruits and vegetables intended for raw consumption or to a food considered to be a good source of vitamin B1; or

(b) ~~[E]~~ except for grapes, serve or sell food specified under ~~[the previous s]~~ Subsection (21)(a) ~~[of this section]~~ that is treated with sulfating agents before receipt by the food truck.

(22)(a) A food truck operator shall not prepare food on a food truck using "specialized processing methods" as described in the ~~[currently adopted]~~ FDA Food Code ~~[incorporated by reference in Rule R392-100]~~. A food truck operator may not obtain a variance from a local health officer to use specialized processing methods on a food truck.

(b) A food truck operator shall remove ~~[time/temperature controlled for safety (TCS)]~~ food from reduced oxygen packaging before holding or storing the food in a temperature controlled environment on a food truck.

(23) Food shall be protected from contamination that may result from a factor or source not specified elsewhere in this rule.

R392-102-12. Food Temperature Requirements.

(1)(a) Refrigerated, ~~[potentially hazardous]~~ TCS food shall be at a temperature of 5 degrees C (41 degrees F) or below when received at the food truck from a commissary or other approved source.

(b) Raw eggs shall be received at the food truck from a commissary or other approved source in refrigerated equipment that maintains an ambient air temperature of 7 degrees C (45 degrees F) or less.

(c) ~~[Potentially hazardous]~~ TCS food that is cooked to a temperature and for a time specified under Subparts 3-401.11 to 3-401.13 of the FDA Food Code and received hot at the food truck from a commissary or other approved source shall be at a temperature of 57 degrees C (135 degrees F) or above.

(d) A food that is labeled frozen and shipped frozen by a food processing plant shall be received frozen at the food truck from a commissary or other approved source.

(e) Upon receipt at the food truck from a commissary or other approved source, ~~[potentially hazardous]~~ TCS food shall be free of evidence of previous temperature abuse.

(2) Any food requiring cooking, freezing, or reheating before service shall be cooked, frozen, or reheated as required in Part 3-4 of the FDA Food Code.

(3)(a) Stored frozen foods shall be maintained frozen.

(b) Commercially processed foods ~~[which]~~ that are labeled to be kept frozen ~~[must]~~ shall be kept frozen until cooked or served.

~~(a)~~ (c) Commercially processed foods labeled to be kept frozen may be thawed under refrigeration at 41 degrees F or below in accordance with Subsection ~~[R392-102-12]~~ (4) if:

(i) ~~[R]~~ records are kept or date marking used indicating when the food entered refrigeration; and

(ii) ~~[D]~~ discarded seven days after entering the refrigerator.

(4) Any food requiring thawing shall be thawed as required in Subpart 3-501.13 of the FDA Food Code.

(5) Any food requiring cooling shall be cooled in the commissary as required in Subparts 3-501.14 and 3-501.15 of the FDA Food Code. The food truck operator shall not cool cooked

~~[time/temperature control for safety (TCS)]~~ food on the food truck unless exempted by the local health officer issuing the primary permit.

(6) Except during preparation, cooking, or cooling, ~~[time/temperature control for safety food (TCS)]~~ foods shall be maintained:

(a) at 57 degrees C (135 degrees F) or above, or

(b) at 5 degrees C (41 degrees F) or less.

(7)(a) Ready-to-eat, TCS food prepared and held for more than 24 hours at a temperature of 5 degrees C (41 degrees F) or less in a food truck shall be clearly marked to indicate the date or day by which the food shall be consumed, sold, or discarded, which date shall be a maximum of ~~[7]~~ seven days from the date of preparation, with the day of preparation being counted as ~~[D]~~ day 1.

(b) Ready-to-eat, TCS food prepared and packaged by a food processing plant and ~~[is]~~ opened and held for more than 24 hours at a temperature of 5 degrees C (41 degrees F) or less in a food truck, shall be clearly marked at the time the original container is opened in a food truck 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 ~~[D]~~ day 1, and

~~—(i)—~~ ~~[F]~~ the day or date marked by the food truck may not exceed a manufacturer's use-by date if the manufacturer determined the use-by date based on food safety.

(8) A refrigerated, ready-to-eat ~~[time/temperature control for safety]~~ TCS food ingredient or a portion of a refrigerated, ready-to-eat, ~~[time/temperature control for safety]~~ TCS food that is subsequently combined with additional ingredients or portions of food shall retain the date marking of the earliest-prepared or first-prepared ingredient.

(9) A food specified in Subsection ~~[R392-102-12]~~ (7) shall be discarded if it:

(a) exceeds the temperature and time combination specified in Subsection ~~[R392-102-12]~~ (7), 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 Subsection ~~[R392-102-12]~~ (7).

R392-102-13. Poisonous or Toxic Materials.

(1) Containers of poisonous or toxic materials and personal care items shall 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 shall be clearly and individually identified with the common name of the material.

(3) Poisonous or toxic materials shall be stored so they cannot contaminate food, equipment, utensils, linens, and single-service and single-use articles by:

(a) separating the poisonous or toxic materials by 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 food truck, such as for the cleaning and sanitizing of equipment and utensils and the control of insects and rodents, shall be allowed in a food truck.

(5) Poisonous or toxic materials shall be:

(a) used according to:

NOTICES OF PROPOSED RULES

(i) Rule R392-100 and local health department regulations^[7];

(ii) manufacturer's use directions included in labeling, and, for a pesticide, manufacturer's label instructions that state that use is allowed in a food establishment^[7];

(iii) the conditions of certification for use of the pest control materials^[7]; and

(iv) additional conditions that may be established by the local health officer; and

(b) applied so that:

(i) a hazard to employees or other persons is not constituted^[7]; 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 is prevented^[7]. ~~This is achieved~~ by:

(A) removing the items^[7];

(B) covering the items with impermeable covers^[7]; or

(C) taking other appropriate preventive actions^[7]; and

(D) cleaning and sanitizing equipment and utensils after the application.

(6) The food truck shall be maintained free of insects, rodents, and other pests. The presence of insects, rodents, and other pests shall be controlled to eliminate their presence on the food truck by:

(a) routinely inspecting incoming shipments of food and supplies;

(b) routinely inspecting the food truck 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.

(7) Restricted use pesticides shall not be used in a food truck.

(8) A container previously used to store poisonous or toxic materials may not be used to store, transport, or dispense food.

(9) Rodent bait shall be contained in a covered, tamper-resistant bait station.

(10) Tracking powder may not be used inside of a food truck 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.

R392-102-14. Personal Cleanliness and Protection from Contamination.

(1) Food truck employees may not contact exposed, ready-to-eat food with their bare hands and shall use suitable utensils such as deli tissue, spatulas, tongs, single-use gloves, or dispensing equipment.

(2) Food truck employees shall minimize bare hand and arm contact with exposed food that is not in a ready-to-eat form.

(3) If used, single-use gloves shall be used for only one task such as working with ready-to-eat food or with raw animal food, used for no other purpose, and discarded when damaged or soiled, or when interruptions occur in the operation.

(4) Food truck employees shall 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) The food truck operator shall supply each handwashing sink with:

(a) a supply of hand cleaning liquid, powder, or bar soap; and

(b) individual, disposable towels and an associated waste receptacle;

(c) a continuous towel system that supplies the user with a clean towel;

(d) a heated air hand drying device; or

(e) a hand drying device that employs an air-knife system that delivers high velocity, pressurized air at ambient temperature.

(6) Near each handwashing sink in a conspicuous location, the food truck operator shall place a sign or poster that notifies food truck employees to wash their hands.

(7) Food truck employees shall clean their hands in a handwashing sink and may not clean their hands in a sink used for food preparation or warewashing.

(8)(a) A hand antiseptic used as a topical application, a hand antiseptic solution used as a hand dip, or a hand antiseptic soap shall:

~~(a)(i)~~ be applied only to hands that are cleaned as specified in Subsection ~~[R392-102-14]~~(4); and

~~(b)(ii)~~ comply with the requirements of Subpart 2-301.16 of the FDA Food Code.

~~(b)~~ Except as temporarily allowed by the local health officer, the use of a hand antiseptic shall not replace the requirement for hand washing in Subsection ~~[R392-102-14]~~(4).

(9) Food truck employees shall keep their fingernails trimmed, filed, and maintained so the edges and surfaces are cleanable and not rough.

(10) Unless wearing intact gloves in good repair, a food truck employee may not wear fingernail polish or artificial fingernails when working with exposed food.

(11) Except for a plain ring such as a wedding band, food truck employees may not wear jewelry including medical information jewelry on their arms and hands.

(12) Food truck employees shall wear clean outer clothing to prevent contamination of food, equipment, utensils, linens, and single-service and single-use articles.

(13) Food truck 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.

(14) Food truck employees shall 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 exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles.

(15) A food truck employee may not use a utensil more than once to taste food that is to be sold or served.

(16) Toilet rooms shall:

- (a) have a supply of toilet tissue available at each toilet;
- (b) be conveniently located and accessible to employees during all hours of operation;
- (c) be provided with a covered waste receptacle; and
- (d) be completely enclosed and provided with a tight-fitting door.

(17) Except during cleaning and maintenance operations, toilet room doors shall be kept closed.

R392-102-15. Supervision, Employee Health, and Contamination Events.

(1) The food truck operator shall be the person in charge or shall designate a person in charge and shall ensure that a person in charge is present at the food truck during all hours of operation.

(2) Based on the risks inherent to the food truck operation, during inspections and upon request the person in charge shall demonstrate to the local health officer knowledge of foodborne disease prevention and the requirements of this rule. The person in charge shall demonstrate this knowledge by:

- (a) ~~[C]~~complying with the requirements of this rule;
- (b) ~~[B]~~being certified in food safety management according to the requirements of Rule R392-101; or
- (c) ~~[R]~~responding correctly to the inspector's questions as they relate to the specific food truck operations.

(3) The person in charge shall ensure that:

- (a) ~~[F]~~food truck operations are not conducted in a private home or in a room used as living or sleeping quarters;
- (b) ~~[P]~~persons unnecessary to the food truck operation are not allowed in the food truck;
- (c) ~~[E]~~employees and other persons entering the food truck comply with this rule;
- (d) ~~[E]~~employees are effectively cleaning their hands;
- (e) ~~[E]~~employees are visibly observing foods as they are received to determine that they are from approved sources, delivered at the proper temperatures, protected from contamination, unadulterated, and accurately presented, and are placing foods into appropriate storage locations;

(f) ~~[E]~~employees are properly cooking TCS food;

(g) ~~[E]~~employees are using proper methods to rapidly cool TCS food;

(h) ~~[C]~~consumers who order raw or partially cooked TCS food of animal origin are informed that the food is not cooked sufficiently to ensure its safety;

(i) ~~[E]~~employees are properly sanitizing cleaned equipment and utensils;

(j) ~~[E]~~employees are preventing cross[-]contamination of ready-to-eat food with bare hands by properly using suitable utensils;

(k) ~~[E]~~employees are properly trained in food safety, including food allergy awareness;

(l) ~~[E]~~employees are informed in a verifiable manner of their responsibility to report, to the person in charge, information about their health and activities as they relate to diseases that are transmissible through food, as specified under Subsection ~~[R392-102-15]~~(4); and

(m) ~~[W]~~written procedures and plans, where required in this rule or by the local health officer, are maintained and implemented as required.

(4) The food truck operator, person in charge, 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 food truck.

(5) A food truck 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 food truck. 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.

R392-102-16. Inspections, Corrective Actions, and Prevention of Foodborne Disease.

(1) ~~[A]~~Each food truck[s] shall meet the requirements of this rule. Food trucks are exempt from the requirements of Rule R392-100, Food Service Sanitation, unless otherwise stated in this rule.

(2) Upon presenting proper identification and providing notice of the intent to conduct an inspection, the food truck operator shall allow the local health officer to determine if the food truck is in compliance with this rule by allowing access to the food truck, allowing inspection, and providing information and records specified in this rule during the food truck's hours of operation and other reasonable times.

(3) If a~~[n]~~ food truck operator denies access to the local health officer, the local health officer shall:

(a) ~~[I]~~inform the food truck operator that:

(i) ~~[T]~~the operator is required to allow access to the local health officer as specified under Subsection ~~[R392-102-16(1)]~~(2);~~;~~

(ii) ~~[A]~~access is a condition of the acceptance and retention of a permit to operate as specified under Section R392-102-4~~;~~; and

(iii) ~~[I]~~if access is denied, an order issued by an appropriate authority allowing access may be obtained;~~and~~

(b) ~~[M]~~make a final request for access~~;~~; and

(c) ~~[I]~~if access continues to be refused, the local health officer shall provide details of the denial of access on an inspection report form.

(4) The local health officer shall document on an inspection report form:

(a) ~~[A]~~administrative information about the food truck's legal identity, street and mailing addresses, permit tier designation as specified under Section R392-102-4, inspection date, and other information including the type of water supply, sewage disposal, status of the permit, and personnel certificates of food safety management and training; and

(b) ~~[S]~~specific factual observations of noncompliant conditions or other deviations from this rule that require correction by the food truck operator including:

(i) ~~[F]~~failure of the operator to demonstrate the knowledge of foodborne illness prevention, and

(ii) ~~[F]~~failure of employees and the operator to report a disease or medical condition; and

(c) ~~[T]~~time frame for correction of violations.

(5) At the conclusion of the inspection the local health officer shall:

~~(a)~~ provide a copy of the completed inspection report and the notice to correct violations to the food truck operator or to the person in charge~~;~~~~and~~;

~~(b)~~ request a signed acknowledgement of receipt~~;~~; and
~~(c)~~ ~~The local health officer shall~~ (c) inform a person who declines to sign an acknowledgement of receipt of inspection findings that:

NOTICES OF PROPOSED RULES

(i) [A]an acknowledgment of receipt is not an agreement with findings;

(ii) [R]refusal to sign an acknowledgement of receipt will not affect the food truck operator's obligation to correct the violations noted in the inspection report within the time frames listed; and

(iii) [A]a refusal to sign an acknowledgement of receipt is noted in the inspection report and conveyed to the historical record for the food truck[-]; and

[(iv) The local health officer shall](d) make a final request that the person in charge sign an acknowledgement of receipt of inspectional findings.

(6) The local health officer shall treat the inspection report as a public document and shall make it available for disclosure.

(7)(a) A[~~R~~] food truck operator shall immediately discontinue operations and notify the local health department if an imminent health hazard may exist because of an emergency such as a fire, flood, extended interruption of electrical or water service, sewage 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.

[(a)](b) If operations are discontinued as required by the local health officer or in response to an imminent health hazard as specified in Subsection [R392-102(16)](7)(a), the food truck operator shall obtain approval from the local health officer before resuming operations.

(8) A local health department issuing the primary permit, or reinstating a suspended primary or secondary permit, may conduct one or more pre-operational inspections to verify that the food truck is constructed and equipped in accordance with the approved plans and approved modifications of those plans, and is in compliance with this rule.

(9)(a) A local health officer may periodically conduct operational onsite inspections of a food truck to determine continued compliance with this rule.

(b) For each year that a primary permit is issued to a food truck operator, the local health department that issued the permit shall conduct a minimum of one inspection of a food truck with a primary permit, regardless of tier designation as described in Subsection R392-102-4(5)(b).

(c) Any local health department that issues a secondary permit to a food truck operator may conduct a minimum of one onsite inspection prior to permit expiration.

(d) The local health department shall periodically inspect throughout its permit period a food truck operating only with a temporary food establishment permit that prepares, sells, or serves unpackaged [time/temperature control for safety]TCS food and that has improvised rather than permanent facilities or equipment for accomplishing functions such as handwashing, food preparation and protection, food temperature control, warewashing, potable water supply, waste retention and disposal, and insect and rodent control.

(10) A local health officer may conduct follow-up inspections, as needed, to ensure the timely resolution of inspection findings.

(11) The local health officer shall make the food truck operator aware of inspectional findings both during, and at the conclusion of, the inspection as well as strategies for achieving compliance. Repeat violations may prompt further compliance and enforcement actions.

KEY: food trucks, mobile foods, sanitation, public health

Date of Last Change: 2021|May 18, 2018|

Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-1-30(9); 26-1-30(23); 26-7-1; 26-15-2

NOTICE OF PROPOSED RULE

TYPE OF RULE: Repeal and Reenact

Utah Admin. Code Ref (R no.): R392-104

Filing ID
54013

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:

R392-104. Feeding Disadvantaged Groups

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

Executive Order No. 2021-12 requires state agencies to amend rules that are inconsistent with the current edition of the Office of Administrative Rules' Rulewriting Manual for Utah. As required, the amendments to Rule R392-104 simplify the rule, remove outdated language and redundancies, and provide technical and conforming changes in accordance with the Rulewriting Manual for Utah.

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 to Rule R392-104 provide nonsubstantive technical and conforming changes throughout the rule and remove unnecessary and repetitive language.

Section R392-104-1 is a new section added to specify the statute under which this rule is authorized, and to explain the purpose of this rule.

Section R392-104-2 is a new section added to describe individuals and groups to whom this rule applies, and to specify exclusions to such.

In Section R392-104-3, added definitions for Certified food safety manager, Food Handler, and Food Handler Permit. Also, amended the definitions for Local Health Officer, Charitable Organization, and Event; and removed unnecessary definitions for Department, and Executive Director.

In Sections R392-104-4 through R392-104-6, the Department of Health (Department) has made nonsubstantive revisions including the rewording and restructuring of these sections to simplify the language and to clarify the intent to align more closely with the authorizing statute and the Rulewriting Manual for Utah.

Fiscal Information

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

A) State budget:

No anticipated cost or savings because no substantive changes have been made.

B) Local governments:

No anticipated cost or savings because no substantive changes have been made.

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

No anticipated cost or savings because no substantive changes have been made.

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

No anticipated cost or savings because no substantive changes have been made.

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

No anticipated cost or savings because no substantive changes have been made.

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

No anticipated cost or savings because no substantive changes have been made.

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 to businesses because this rule change does not include any substantive changes. 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 Utah 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:

| | | |
|---------------------------|-------------------|-----------------------|
| Subsection 26-1-30(23) | Section 26-15-5.1 | Section 26-15a-105 |
|---------------------------|-------------------|-----------------------|

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: | 12/01/2021 |
|--|------------|

| | |
|--|------------|
| 10. This rule change MAY become effective on: | 12/08/2021 |
|--|------------|

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: | 10/12/2021 |
|--|--|--------------|------------|

R392. Health, Disease Control and Prevention, Environmental Services.

R392-104. Feeding Disadvantaged Groups.

[R392-104-1. Scope.

(1) The scope of this rule is very narrow, only being directed at charitable organizations feeding disadvantaged groups as defined by this rule at an event free of any charge, admission fee or required or suggested donation.

(2) Charitable organizations which do not meet the requirements of R392-104, must meet the requirements of R392-100.

R392-104-2. Definitions.

(1) "Department" means the Utah Department of Health.

(2) "Executive Director" means the Executive Director of the Utah Department Of Health or designated representative.

(3) "Disadvantaged Group" means a homeless or temporarily displaced group.

(4) "Local Health Officer" means the director of the jurisdictional local health department as defined in 26A, Chapter 1, or designated representative.

(5) "Charitable Organization" means a group of any size who desire to feed disadvantaged groups under the requirements of this rule.

(6) "Event" for purposes of this rule means an organized activity where food is offered free of any charge, admission fee or required or suggested donation to a disadvantaged group.

R392-104-3. Permit and Certification Exemptions.

(1) Charitable organizations which feed disadvantaged groups as defined by this rule at an event free of any charge, admission fee or voluntary donation, are exempt from:

(a) the requirement of obtaining a food service operating permit from a local health department;

(b) the food safety manager requirements of R392-101; and

(c) the food handler requirements of R392-103.

(2) Charitable organizations that charge a fee or suggest a voluntary donation at the event are not exempt from R392-100, R392-101, and R392-103.

R392-104-4. Charitable Organization Requirements.

(1) A representative of a charitable organization shall notify the local health department of the intent to feed a disadvantaged group and shall provide a list of the date, location, and time of events and the charitable organization contact information. A charitable organization shall notify the local health department of any changes to the list before they occur.

(2) Charitable organizations shall contact a local health department and obtain information concerning food safety and safe food handler practices as required by this rule.

(3) Charitable organizations feeding a disadvantaged group shall provide instruction obtained from the local health department to those persons who will be functioning as food handlers at an event.

(4) Charitable organizations shall follow the food safety and safe food handler practices as provided in the information given by a local health department.

(5) Charitable organizations are subject to enforcement procedures outlined in UCA 26A-1-114.

R392-104-5 Local Health Department Requirements.

(1) Local health departments shall provide statewide uniform food safety and food handling information based on approved temporary event guidelines, Centers for Disease Control and Prevention five risk factors associated with food borne illness outbreaks, and food safety principles as found in R392-100. Local health departments shall provide the charitable organization this information initially and after any updates have been made to the guidelines.

(2) Local health departments shall maintain a register of charitable organization events at no cost to the charitable organization.]

R392-104-1. Authority and Purpose.

(1) This rule is authorized under Subsection 26-1-30(23) and Sections 26-15-5.1 and 26-15a-105.

(2) This rule requires adherence to uniform statewide standards for feeding a disadvantaged group at an event in a manner that safeguards public health.

R392-104-2. Applicability.

(1) This rule applies to a charitable organization feeding a disadvantaged group, as defined, at a free event.

(2) A charitable organization that does not meet the requirements of this rule shall meet the requirements of Rule R392-100.

R392-104-3. Definitions.

(1) "Certified food safety manager" has the same meaning as provided in Section 26-15a-102.

(2) "Charitable Organization" means an individual or group of individuals who voluntarily provide goods or services to a disadvantaged group according to the requirements of this rule.

(3) "Disadvantaged Group" means a group of individuals who are homeless or temporarily displaced.

(4) "Event" means an organized activity where food is offered to a disadvantaged group free of a charge, admission fee, or required or suggested donation.

(5) "Food Handler" means a person who works with unpackaged food, food equipment or utensils, or food-contact surfaces for a food establishment or food truck as defined in Rules R392-100 or R392-102 respectively.

(6) "Food Handler Permit" means a permit issued by a local health department to allow a person to work as a food handler.

(7) "Local Health Officer" means the director of the local health department as appointed under Section 26A-1-110, or the local health officer's designated representative.

R392-104-4. Permit and Certification Exemptions.

(1) A charitable organization feeding a disadvantaged group at an event is exempt from:

(a) obtaining a food service operating permit from a local health department prior to or during an event;

(b) the requirement in Rule R392-101 to have a certified food safety manager; and

(c) the requirement in Rule R392-103 to obtain and maintain a food handler permit.

(2) A charitable organization is not exempt from any provision established under Title R392, Health, Disease Control and Prevention, Environmental Services if that organization charges a fee or suggests a voluntary donation for the provision of any goods or services at an event.

R392-104-5. Charitable Organization Requirements.

(1) A representative of a charitable organization shall:

(a) notify the local health department of the intent to feed a disadvantaged group at an event;

(b) provide the date, location, and time of the event along with contact information for the charitable organization;

(c) notify the local health department of any changes to the information provided as required in Subsection R392-104-5(1)(b) before the event;

(d) contact the local health department and obtain information concerning food safety and safe food handler practices as required in Section R392-104-6; and

(e) provide instruction obtained from the local health department to any individual who will be functioning as a food handler at an event.

(2) A charitable organization shall follow the food safety and safe food handler practices as provided in the information obtained from a local health department.

(3) A charitable organization is subject to enforcement procedures outlined in Section 26A-1-114.

R392-104-6 Local Health Department Requirements.

(1) Upon request, a local health department shall provide a charitable organization with printed or digital food safety and food handling information based on:

(a) approved temporary event guidelines;

(b) the food safety principles detailed in Rule R392-100; and

(c) the following risk factors commonly associated with foodborne illness outbreaks:

(i) food from unsafe sources;

(ii) inadequate cooking;

(iii) improper hot holding and cold holding temperatures;

(iv) contaminated equipment; and

(v) poor personal hygiene.

(2) A local health department shall provide the charitable organization with information as provided in Subsection R392-104-6(1) after any updates have been made.

(3) A local health department shall maintain a register of charitable organization events at no cost to the charitable organization.

KEY: public health, food services, disadvantaged group

Date of Last Change: 2021[September 12, 2014]

Notice of Continuation: August 20, 2019

Authorizing, and Implemented or Interpreted Law: 26-1-30(2); 26-15-5.1; 26-15a-105[4]

NOTICE OF PROPOSED RULE

TYPE OF RULE: Repeal and Reenact

Utah Admin. Code R392-303

Filing ID: 54031

Ref (R no.):

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:

R392-303. Public Geothermal Pools and Bathing Places

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

Executive Order No. 2021-12 requires state agencies to amend rules that are inconsistent with the current edition of the Office of Administrative Rules' Rulewriting Manual for Utah. As required, the amendments to Rule R392-303 provide technical and conforming changes in accordance with the Rulewriting Manual for Utah.

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 to Rule R392-303 provide nonsubstantive technical and conforming changes throughout the rule and remove superfluous and repetitive language.

Section R392-303-1 is a new section added to specify the statute under which this rule is authorized, and to explain the purpose of the rule.

Section R392-303-2 is a new section added to describe individuals and groups to whom this rule applies, and to specify exclusions to such.

In Section R392-303-3, added definitions for Bather; Imminent health hazard; Local health department; Operator; and Plumbing Code. Also, amended definitions for Living unit; and Soaking tub; and removed unnecessary definitions for Executive director; and Semi-artificial bathing place.

In Sections R392-303-4 through R392-303-32, the Department of Health (Department) has made nonsubstantive revisions including the rewording and restructuring of these sections to simplify the language and to clarify the intent to align more closely with the authorizing statute and the Rulewriting Manual for Utah.

The Department also created new sections and moved existing provisions from other sections in this rule to improve readability and flow.

Fiscal Information

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

A) State budget:

No anticipated cost or savings because no substantive changes have been made.

B) Local government:

No anticipated cost or savings because no substantive changes have been made.

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

No anticipated cost or savings because no substantive changes have been made.

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

No anticipated cost or savings because no substantive changes have been made.

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

No anticipated cost or savings because no substantive changes have been made.

F) Compliance costs for affected persons:

No anticipated cost or savings because no substantive changes have been made.

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 to businesses because the rule change does not change any substantive requirements for businesses. 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 26-15-2 | Section 26-1-5 | Subsection 26-1-30(23) |
|-----------------|----------------|------------------------|

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: 12/01/2021

10. This rule change MAY become effective on: 12/08/2021

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: | 10/15/2021 |
|--|--|--------------|------------|

R392. Health, Disease Control and Prevention, Environmental Services.

R392-303. Public Geothermal Pools and Bathing Places.

R392-303-1. Authority and Purpose.

~~This rule is authorized under Section 26-15-2. It establishes minimum standards for the design, construction, operation and maintenance of public geothermal pools and public geothermal bathing places.~~

R392-303-2. Definitions.

~~The following definitions apply in this rule.~~

~~(1) "Bather load" means the number of persons allowed by the operator to use a geothermal pool or geothermal bathing place at any one time or specified period of time.~~

~~(2) "Department" means the Utah Department of Health.~~

~~(3) "Executive Director" means the Executive Director of the Utah Department of Health, or his designated representative.~~

~~(4) "Flow through" means water that is fed by a continuous supply into a pool or bathing place that causes an equal rate of flow to discharge from the pool or bathing place to waste.~~

~~(5) "Geothermal bathing place" means a natural bathing place or semi-artificial bathing place with an impoundment of geothermal water.~~

~~(6) "Geothermal pool" means a man-made basin, chamber, receptacle, tank, or tub which is filled with geothermal water or a mixture of geothermal and non-geothermal water that creates an artificial body of water.~~

~~(7) "Geothermal water" means ground water that is heated in the earth by the earth's interior.~~

~~(8) "Living unit" means one or more rooms or spaces that are, or can be, occupied by an individual, group of individuals, or a family, temporarily or permanently for residential or overnight lodging purposes. Living units include motel and hotel rooms, condominium units, travel trailers, recreational vehicles, mobile homes, single family homes, and individual units in a multiple unit housing complex.~~

~~(9) "Local Health Officer" means the health officer of the local health department having jurisdiction, or his designated representative.~~

~~(10) "Natural bathing place" means a lake, pond, river, stream, swimming hole, or hot springs which has not been modified by man.~~

~~(11) "Semi-artificial bathing place" means a natural bathing place that has been modified by man.~~

~~(12) "Soaking pool" means a geothermal pool or geothermal bathing place that is 4 feet, 122 centimeters, or less deep and is designed exclusively for sitting or reclining.~~

~~(13) "Soaking tub" means a geothermal pool or geothermal bathing place that has a depth of 2 feet, 61 centimeters, or less and a volume of 300 gallons, 1,136 liters, or less.~~

R392-303-3. General Requirements.

~~(1) This rule applies to geothermal pools and geothermal bathing places that:~~

~~(a) are partially or completely filled with geothermal water that has a source temperature of at least 70 degrees Fahrenheit, 21.1 degrees Celsius; and~~

~~(b) are offered to the public for bathing or recreation.~~

~~(2) This rule does not apply to an unsupervised geothermal bathing place that the owner explicitly or tacitly allows anyone at any time to use without a fee.~~

~~(3) This rule does not apply to a geothermal pool or geothermal bathing place that is used only by a single household or only by a single group of multiple living units of four or fewer households.~~

~~(4) Except as otherwise stated in this rule, geothermal pools and geothermal bathing places, are exempt from the requirements of R392-302.~~

~~(5) This rule does not require an owner or operator to modify any portion of an existing geothermal pool facility or existing geothermal bathing place. If an owner or operator modifies any system or part of a geothermal pool or geothermal bathing place, the modified system or part must meet the requirements of this rule. However, if the Executive Director or the Local Health Officer determines that any facility is dangerous, unsafe, unsanitary, or a nuisance or menace to life, health or property, the Executive Director or the Local Health Officer may order modification consistent with the requirements of this rule.~~

R392-303-4. Drinking Water Supply.

~~(1) The owner of a geothermal pool or geothermal bathing place shall assure that all plumbing fixtures including drinking~~

NOTICES OF PROPOSED RULES

fountains, lavatories and showers at the public geothermal pool or geothermal bathing place facility are connected to a drinking water system that meets the requirements for drinking water established by the Utah Department of Environmental Quality.

(2) The owner of a geothermal pool or geothermal bathing place shall protect the connected drinking water system against back flow of contamination or back flow of water from the geothermal water source.

R392-303-5. Geothermal Source Water Quality.

(1)(a) The owner of a geothermal pool or geothermal bathing place shall install a tap or sampling point that provides the operator with the ability to sample the geothermal source water before it enters the geothermal pool or geothermal bathing place impoundment.

(b) If it is impractical to directly sample the geothermal source water, the operator may sample water directly from the pool or impoundment. However, at least sixteen hours must have passed since any person has been in the pool and the sample shall be taken as close to the geothermal source water inlet as practical.

(2) The operator of a geothermal pool or geothermal bathing place shall collect samples of the geothermal source water and of any other water source used to fill the pool that is not approved for drinking water by Utah Division of Drinking Water. The operator shall submit the samples for analysis to a laboratory certified under R444-14. The operator shall have the analysis performed initially and every five years thereafter to determine the levels of constituents listed in Table 1. If a geothermal pool or geothermal bathing place is in existence prior to the adoption of this rule, the owner of the facility shall submit to the local health department the results of initial source water tests within six months after the adoption of the rule. The permit applicant of a newly permitted public geothermal pool or geothermal bathing place shall submit the results of the initial source water analyses to the local health department with his application for a permit. The operator shall submit five year samples to the local health department within six months prior to the end of the five year period.

(3) If the geothermal source water analysis required in R392-303-5(2) reports that any constituents fails any of the standards in Table 1, the owner shall do one of the following:

- (a) not use the source water;
- (b) implement an ongoing treatment process approved by the Department to provide source water that meets the requirements in Table 1; or
- (c) at a minimum, post a caution sign outlined in R392-303-22, to notify swimmers that the water does not meet the EPA recommended drinking water standard and they swim at their own risk. The caution sign shall include the name of the constituent that does not meet the EPA standard and that there may be a health risk associated with bathing in water that contains high levels of the constituent. Based on research funded by or guidelines issued by a competent authority, including the Centers for Disease Control and Prevention or the Environmental Protection Agency, the Local Health Officer may require the operator to post the maximum recommended bathing period or to post other recommended restrictions.

TABLE 1

Geothermal Source Water Constituents

| Constituent | Maximum | Minimum |
|-------------|--------------------------|---------|
| pH | 8.0 | 7.0 |
| Fluoride | 4.0 milligrams per liter | None |

| | | |
|---------------------------|----------------------------|------|
| Nitrate | 10 milligrams per liter | None |
| Nitrite | 1 milligrams per liter | None |
| Antimony | 0.006 milligrams per liter | None |
| Arsenic | 0.010 milligrams per liter | None |
| Barium | 2 milligrams per liter | None |
| Beryllium | 0.004 milligrams per liter | None |
| Cadmium | 0.005 milligrams per liter | None |
| Chromium | 0.1 milligrams per liter | None |
| Copper | 1.3 milligrams per liter | None |
| Cyanide (as free cyanide) | 0.2 milligrams per liter | None |
| Lead | 0.015 milligrams per liter | None |
| Mercury | 0.002 milligrams per liter | None |
| Selenium | 0.05 milligrams per liter | None |
| Thallium | 0.002 milligrams per liter | None |

R392-303-6. General Safety Requirements.

(1) Geothermal pools shall meet the requirements of R392-302-11, except a soaking tub shall neither be required to have a "NO DIVING" sign, a "NO HEAD FIRST ENTRY" sign, nor a no diving icon.

(2) Head first entry is not permitted at a geothermal bathing place except where the operator has demonstrated to the local health officer that the water depth and underwater obstructions at the entire geothermal bathing place pose no greater risk than at a diving-permitted section of a swimming pool as allowed in R392-302-11. Diving with a self contained underwater breathing apparatus (SCUBA) is allowed at geothermal bathing places. Where head first entry is not permitted, the operator shall place a sign that states "NO HEAD FIRST ENTRY" in accordance with R392-303-22, 23 and 24.

(3) Geothermal pools and geothermal bathing places shall meet R392-302-14 (fencing), R392-302-22 (safety requirements and lifesaving equipment), R392-302-23 (lighting, ventilation and electrical requirements), and R392-302-30 (supervision of bathers) with the following exceptions:

- (a) The local health officer may grant exceptions to the height requirements in R392-302-14 for fences or barriers in consideration of natural features for geothermal bathing places;
- (b) A geothermal bathing place under 5 feet, 1.52 meters, deep is exempt from R392-302-22 except for subsection (3);
- (c) A soaking tub is exempt from the underwater lighting requirements of R392-302-32 when used at night but shall have at least 5 horizontal foot candles of light per square foot, 929 square centimeters, over the surface of the tub from overhead luminaries;
- (d) Soaking pools and soaking tubs are exempt from the requirements of R392-302-30 (4) through (6), but the lifeguard may not allow any person to use a soaking pool or soaking tub unless there is another person in attendance capable of alerting the lifeguard if the lifeguard's help is needed and the lifeguard must always be on the premises and no more than a minute away if needed at any time; and
- (e) Geothermal bathing places used only for SCUBA diving or snorkeling are exempt from the requirements of R392-302-30 (4) through (6), but the lifeguard may not allow any person to SCUBA dive or snorkel in the bathing place unless there is another person in attendance capable of alerting the lifeguard if the lifeguard's help is needed, the lifeguard must always be on the premises and no more than a minute away if needed at any time, and the owner of geothermal bathing places shall require patrons to sign a form that informs the patron that constant lifeguard surveillance will not be provided and that the patron must be accompanied by another diver at all times.

R392-303-7. Bather Facilities.

Geothermal pools and geothermal bathing places shall meet the following sections of R392-302:

- (1) R392-302-24 Dressing Rooms

~~(2) R392-302-25 Toilets and Showers~~

~~(3) R392-302-26 Visitors and Spectator Areas~~

R392-303-8. Construction Materials.

~~(1) Geothermal pools shall meet the requirements of R392-302-6. However, a geothermal pool with a volume less than or equal to 3,000 gallons, 11,355 liters, and a maximum depth less than 4 feet, 1.22 meters, is exempt from the color requirement of R392-302-6(5).~~

~~(2) The owner or operator of a geothermal bathing place shall notify bathers of and protect them from safety hazards by methods such as altering surfaces or structures, barricading or roping off problem areas, and posting warning signs.~~

R392-303-9. Bather Load.

~~(1) Geothermal pools and geothermal bathing places shall meet the bather load requirements in R392-302-7.~~

~~(2) If a geothermal pool or geothermal bathing place is unable to meet bacteriological water quality by other means, the owner or operator shall reduce the allowed bather load in order to meet the requirements R392-303-19.~~

R392-303-10. Design Detail and Structural Stability.

~~(1) With the exception of the provisions listed in R392-302-8(3) and R392-302-8(5), geothermal pools shall meet the provisions of R392-302-8.~~

~~(2) The owner shall submit plans for a new geothermal pool or a geothermal bathing place or the renovation or the remodeling of a geothermal pool or a geothermal bathing place to the local health department for approval based upon compliance to this rule. Renovation or remodeling includes the replacement or modification of equipment that may affect the ability of a geothermal pool or a geothermal bathing place to meet the safety and water quality standards of this rule.~~

~~(3) Geothermal bathing places used only for SCUBA diving or snorkeling are exempt from requirements of R392-303-11 through 15 and the clarity requirement in R392-303-19 if each patron signs a document acknowledging that the patron has read the list of inherent physical and environmental dangers that the geothermal bathing place has not complied with in R392-303-11 through 15 and 19, and to which the patron is exposed upon entering or using the geothermal bathing place.~~

R392-303-11. Depths and Floor Slopes.

~~(1) Geothermal pools shall meet the requirements of R392-302-9.~~

~~(2) The owner of a geothermal bathing place shall protect bathers from uneven bottoms, sudden changes in depth, and other bottom anomalies by altering the pool bottom, posting signs about the dangers, providing barriers around hazards, or roping off areas.~~

R392-303-12. Walls.

~~(1) Geothermal pools shall meet the requirements of R392-302-10.~~

~~(2) The owner of a geothermal bathing place shall protect bathers from uneven walls, submerged projections, or submerged ledges by methods such as posting signs notifying patrons of the dangers, providing barriers around hazards, or roping off areas.~~

R392-303-13. Ladders, Recessed Steps, and Stairs.

~~(1) Geothermal pools shall meet the requirements of R392-302-12.~~

~~(2) The owner of a geothermal bathing place shall provide a means of entrance into and exit from the water that include handholds and steps where needed to provide for bather safety.~~

R392-303-14. Decks and Walkways.

~~(1) Geothermal pools shall meet the requirements of R392-302-13 except soaking pools and soaking tubs shall meet the decking requirements of a spa pool in R392-302-32 (2) (f), the pool curb of a soaking tub may be any width, and the rim of a soaking tub may be up to 24 inches, 61 centimeters, above the deck level.~~

~~(2) The owner of a geothermal bathing place shall provide safe walkways leading to the bathing place that are free of trip hazards and provide handholds where there are ramps or steps.~~

R392-303-15. Depth Markings and Safety Ropes.

~~(1) Geothermal pools shall meet the requirements of R392-302-15.~~

~~(2) The owner of a geothermal bathing place shall protect bathers from unexpected deep water by means such as posting depth signs, providing barriers around deep areas, or roping off areas.~~

R392-303-16. Circulation Systems.

~~(1) Geothermal pools that transport source, pool, or discharge water through pipes shall meet the requirements of R392-302-16 for piping, pipe labeling, velocity in pipes, adequate space in equipment areas, valves, and air induction systems. Geothermal pools shall meet the requirements of R392-302-16 for normal water level and vacuum cleaning systems; except a vacuum cleaning system is not required if an operator keeps the pool clean by draining the pool and cleaning it while it is empty.~~

~~(2) The owner or operator of a geothermal pool or geothermal bathing place shall maintain flow through 24 hours a day during the operating season, except for periods of maintenance. If the pool is drained and cleaned each day prior to use, flow through is only required during the period that the geothermal pool is in use.~~

~~(3) A geothermal pool or geothermal bathing place with a volume greater than 3,000 gallons, 11,355 liters, shall have a flow-through rate greater than or equal to one-fourth the pool volume every hour. A geothermal pool or geothermal bathing place with a volume less than or equal to 3,000 gallons, 11,355 liters, shall have a flow-through rate greater than or equal to the pool volume every 30 minutes.~~

~~(a) If the results of any three of the last five E. Coli or fecal coliform samples taken from the pool exceed 63 per 50 milliliters, the owner or operator shall either increase the rate of flow through, reduce bather load as provided in R392-303-9(2), or both increase the flow rate and reduce the bather load. The owner or operator shall adjust the bather load or the flow through rate to a level that consistently produces E. Coli or fecal coliform levels less than 63 per 50 milliliters. If any E. Coli or fecal coliform sample exceeds 63 per 50 milliliters, the owner shall keep the pool closed until sample results for the pool are less than 63 per 50 milliliters as required in R392-303-19(3).~~

~~(b) The Local Health Officer may approve a reduced flow rate if the owner or operator of the geothermal pool or geothermal bathing place can demonstrate that the required bacteriological level can be maintained at the reduced flow rate.~~

~~(c) If the operator of a geothermal bathing place is unable to control the flow through rate, the operator may meet the bacteriological water quality standards in section R392-303-19 by controlling bather load.~~

~~(d) If the operator of a geothermal pool maintains the disinfectant levels, chloramine levels, and pH levels within the values allowed in Table 6 of R392-302 and operates a recirculation system in the pool in compliance with the requirements of R392-302-16, the pool is exempt from the flow through rate requirements of R392-303-16(3) except the operator shall maintain a flow through with a maximum turnover time of 48 hours, and shall meet the bacteriologic requirements of R392-302-27(5)(d).~~

~~(4) A geothermal pool that has pumped flow shall meet the inlet requirements of R392-302-17. Geothermal bathing places and geothermal pools that have gravity flow inlets, shall either meet the requirements of R392-302-17 or the owner or operator of the pool shall demonstrate to the local health department that the inlet system provides uniform distribution of fresh water throughout the pool. A demonstration of uniform distribution includes computer simulation or a dye test witnessed by a representative of the local health department.~~

~~(5) A geothermal pool shall have a drain that allows complete emptying of the pool. Geothermal pool and geothermal bathing place submerged drain grates and covers shall meet the requirements of R392-302-18. Geothermal pool and geothermal bathing place submerged drains shall meet the anti-entrapment requirements of R392-302-18.~~

~~(6) A geothermal pool shall have overflow gutters or skimming devices that meet the applicable requirements of R392-302-19.~~

~~(7) Geothermal pools and geothermal bathing places shall have a method to determine accurate rate of flow in gallons per minute. If the rate of flow method is a rate of flow indicator manufactured by a third party, it shall be properly installed and located according to the manufacturer's recommendations. If a field-fabricated rate of flow indicator such as a calibrated weir or flume is used, it shall be designed and calibrated under the direction of a licensed professional engineer. The rate of flow indicator must be located in a place and positioned where it can be easily read by the operator as required in R392-303-21(2). The Local Health Officer may exempt a geothermal pool or geothermal bathing place from the requirement for a rate of flow indicator if the rate of flow is not adjustable or if there is no practical way to measure flow.~~

~~(8) Each geothermal pool and geothermal bathing place shall have a temperature measuring device. The operator shall measure the temperature of the pool at the warmest point. The device shall be accurate to within one degree Fahrenheit (0.6 degrees Celsius). The operator shall calibrate the thermometer in accordance with the manufacturer's specifications as necessary to ensure its accuracy.~~

R392-303-17. Filtration.

~~The owner of a flow through geothermal pool or geothermal bathing place is not required to filter the water in the pool or bathing place, except as may be necessary to meet safety and water quality requirements. Filters shall meet the requirements of R392-302-20.~~

R392-303-18. Disinfectant and Chemical Feeders.

~~Chemical feeders or disinfectant residuals are not required in geothermal pools or geothermal bathing places, except as may be necessary to meet water quality requirements. If the operator uses any chemical, the operator shall meet the requirements of R392-302-21 for that particular chemical.~~

R392-303-19. Pool Water Quality.

~~(1) The water in a geothermal pool or geothermal bathing place must have sufficient clarity at all times so that a black disc 6 inches, 15.24 centimeters, in diameter, is readily visible if placed on a white field at the deepest point of the pool (or at 12 feet, 3.66 meters, deep for pools over 12 feet, 3.66 meters, deep). The owner or operator shall close the pool or bathing place immediately if this requirement is not met. A soaking tub is exempt from the clarity requirements of this subsection.~~

~~(2) The local health department or pool sampler contracted by the local health department shall collect routine bacteriological samples of the pool water at least once per month and at least two weeks apart. The local health department or their contractor may collect additional samples for investigative purposes or as a follow-up of unsatisfactory samples. The Local Health Officer shall choose or approve the dates and times that the samples are collected based on when a representative level of bacteria would likely be found. The local health department or person sampling the pool shall submit the bacteriological samples to a laboratory approved by under R444-14 to perform E. coli or fecal coliform testing.~~

~~(a) The local health department or its contracted pool sampler, as required by local health department, shall have the laboratory analyze the sample for either E. coli or fecal coliform.~~

~~(b) If the pool sampler submits the sample as required by local health department, the sampler shall require the laboratory to report sample results within five working days to the local health department and operator.~~

~~(3) If the E. coli or fecal coliform levels are found to be greater than the maximum level of 63 per 50 milliliters, the owner or operator shall close the pool until sample results show the level is below 63. As an alternative to closing the pool until sample results show acceptable bacteriological levels, the operator may temporarily close the pool and commence feeding a disinfectant to the pool water, meeting the requirements of R392-303-18 and the disinfectant concentration and pH requirements of R392-302-27, and then reopen the pool at least 45 minutes after the required disinfectant level has been achieved. The feeding of disinfectant to the pool must continue until samples of pool water and the source water pass the bacteriological standards required for disinfected pools in R392-302-27(5)(d)(ii).~~

~~(4) If E. coli or fecal coliform levels are greater than one per 50 milliliters, the pool operator shall post the level found as required in R392-303-22.~~

~~(5) The owner or operator of a geothermal pool or geothermal bathing place should maintain the pool water temperature at a maximum of 104 degrees Fahrenheit, 40 degrees Celsius. A geothermal pool or geothermal bathing place that exceeds 104 degrees Fahrenheit, 40 degrees Celsius, at the minimum required turnover rate shall have, and employ when necessary, a method of temperature reduction in the pool or bathing place that maintains the minimum flow through rate required under R392-303-16(3). An approved method of temperature reduction may include methods such as the introduction of cool water from a source that has been analyzed and approved according to R392-303-5(2) or approved for drinking water by the Utah Division of Drinking Water, or such as the direct cooling of the geothermal source water by a heat exchanger, or the diversion of the geothermal source water to allow it to cool prior to entering the pool or impoundment. The temperature reduction method shall be capable of reducing the temperature of the pool within 2 hours of activation from the maximum anticipated~~

temperature to below 104 degrees Fahrenheit, 40 degrees Celsius. If the temperature of the source water or cooling rate of the pool is difficult to control, a temperature drift of up to four degrees Fahrenheit, 2.2 degrees Celsius, is allowed if the owner or operator has activated the temperature reduction measure. The owner or operator of a geothermal pool or geothermal bathing place shall not permit bathers to use the pool if the temperature is above 108 degrees Fahrenheit, 42.2 degrees Celsius, except the owner may allow a bather to use a soaking tub or similar fixture with a volume of 70 gallons or less and a water temperature less than or equal to 110 degrees Fahrenheit, 43.3 degrees Celsius.

R392-303-20. Cleaning Pools.

(1) The owner or operator of a geothermal pool shall remove any visible dirt on the bottom of the pool at least once every 24 hours or more frequently as needed to keep the pool free of dirt and debris.

(2) The owner or operator of a geothermal pool or geothermal bathing place shall clean the water surface of the pool as often as needed to keep the pool free of scum or floating matter.

(3) The owner or operator of a geothermal pool shall keep pool surfaces, decks, handrails, floors, walls, and ceilings of rooms enclosing pools, dressing rooms and equipment rooms clean, sanitary, and in good repair. The owner or operator of a geothermal bathing place shall keep handholds, handrails, entrance points, walkways, dressing rooms, and equipment rooms clean and in good repair.

R392-303-21. Supervision of Pools and Bathing Places.

(1) Geothermal pools and geothermal bathing places shall meet the requirements of R392-302-29(1).

(2) The operator of a geothermal pool or geothermal bathing place shall record the flow-through rate and pool temperature prior to opening the pool or bathing place each day. To verify bather load, the operator shall record the number of patrons at the geothermal bathing place or pool every four hours that the geothermal bathing place or pool is open for use or shall record the time of day that each user checks in. If a pool uses disinfection or filtration, the operator shall keep the disinfection and filtration records required in R392-302-29. The Local Health Officer may reduce the requirement for the frequency of record keeping if a decreased frequency is more reasonable considering the likelihood of a change in the values recorded. The owner or operator shall make the records required by this section available for inspection by representatives of the local health department and shall retain the records for at least three years.

R392-303-22. Caution Sign Content.

(1)(a) The operator of a geothermal pool or a geothermal bathing place in which the requirements of Table 6 in R392-302-27 are not met for disinfectant residual shall post a caution sign with the following bulleted points:

WATER IN THIS POOL CONTAINS NO DISINFECTANT
BATHING IN THIS POOL MAY INCREASE YOUR RISK OF INFECTIOUS DISEASE
PERSONS SUFFERING FROM A COMMUNICABLE DISEASE TRANSMISSIBLE BY WATER SHALL NOT ENTER THE WATER
KEEP POOL WATER OUT OF YOUR MOUTH AND NOSE.

(b) The operator shall post an additional sign or an addition to the sign required by this section that describes the results of the sample using a changeable element such as a "white board" or attachable digits. The sign shall state:

THE MOST RECENT BACTERIAL RESULT OF WATER FROM THIS POOL WAS (the changeable element shall be placed at this point with the most recent fecal coliform or E. coli count per 50 milliliters posted). FOR COMPARISON, A NON-GEOTHERMAL POOL CANNOT EXCEED 1

(c) If ozone or ultraviolet light is used to treat the water, the following statement may be added to the sign; the statement shall be verbatim and state the method of treatment:

TREATED WITH (UV LIGHT or OZONE or UV LIGHT AND OZONE if both are used) PROVIDES SHORT TERM DISINFECTION ONLY.

(2) If a geothermal pool or geothermal bathing place is operated at a temperature greater than or equal to 100 degrees Fahrenheit, 37.8 degrees Celsius, the operator shall post a separate caution sign that includes the following bulleted points:

POOL WATER MAY EXCEED 100 DEGREES F. (37.8 DEGREES C.)

CONSULT A PHYSICIAN IF YOU: ARE ELDERLY OR PREGNANT; HAVE HEART DISEASE, DIABETES, OR HIGH BLOOD PRESSURE; OR USE PRESCRIPTION MEDICATION

DO NOT USE POOL IF ALONE OR UNDER THE INFLUENCE OF ANY IMPAIRING SUBSTANCE

DO NOT USE POOL FOR MORE THAN 15 MINUTES AT A TIME

CHILDREN UNDER 5 ARE PROHIBITED; CHILDREN UNDER 14 MUST BE WITH A PERSON OVER 18 YEARS

(3) Except at a geothermal pool or a geothermal bathing place where head first entry is permitted, the operator shall post a warning sign that states, "NO HEAD-FIRST ENTRY" in accordance with R392-303-23 and 24.

(4) If the geothermal pool or bathing place source water fails any of the standards found in Table 1, the operator shall post a warning sign that states the following:

POOL WATER DOES NOT MEET EPA DRINKING WATER STANDARDS FOR (the failed constituent or constituents listed in Table 1).

(The analytical result of each failed constituent and the value of the Table 1 standard that has not been met.) For example: ARSENIC IN THE POOL IS 35 PARTS PER BILLION; EPA STANDARDS ALLOW ONLY 10.

THERE MAY BE HEALTH RISKS ASSOCIATED WITH BATHING IN THIS WATER.

USE AT YOUR OWN RISK

R392-303-23. Caution Sign Placement.

(1) The operator of a geothermal pool or geothermal bathing place shall post caution and warning signs that meet the requirements of this rule in conspicuous locations that are in the line of sight of a persons using the premises and readily visible so that all persons are alerted to potential hazards and informed before using the geothermal pool or geothermal bathing place.

(a) The operator shall place the caution sign required in subsection R392-303-22(1) at the reception or sales counter and no more than 10 feet from where a person checks in or pays for the use of the pool. The sign shall be visible to potential customers before they pay for entry or pass the reception or sales counter. If there are multiple geothermal pools or geothermal bathing places at the

facility, the operator shall display on the caution sign at the reception or sales counter the bacterial count of the geothermal pool or geothermal bathing place in the facility that had the highest level of *E. coli* or fecal coliform found in the most recent sampling event.

(b) The operator shall place any caution sign required in subsection R392-303-22(2) either:

(i) next to the sign required in subsection R392-303-22(1) if the pool or any pool may exceed 100 degrees Fahrenheit, 37.8 degrees Celsius; or

(ii) within 10 feet of the entrance or entrances to each pool that is operated at a temperature greater than or equal to 100 degrees Fahrenheit, 37.8 degrees Celsius.

(c) The operator shall place any warning sign required in subsection R392-303-22(3) either:

(i) next to the sign(s) required in subsection R392-303-22(1) if the pool or all pools do not permit head first entry; or

(ii) within 10 feet of the entrance or entrances to each pool that does not permit head first entry.

(d) The operator shall place any warning sign required in subsection R392-303-22(4) either:

(i) next to the sign(s) required in subsection R392-303-22(1); or

(ii) within 10 feet of the entrance or entrances to each pool.

(2) In lieu of meeting the signage requirements listed in R392-303-22 and 23(1), the operator may have the patron sign a document that contains the same language as required for the signs required in R392-303-22. The signature is to acknowledge that the patron has received the information. The document shall disclose the most recent bacteriologic analysis results. The operator shall make a copy of the document available to each patron upon request. The operator shall retain the disclosure documents for at least one year and make them available for inspection by public health officials.

R392-303-24. Caution Sign Format Requirements.

(1) The caution sign required by R392-303-22(1) and R392-303-22(2) shall meet the following requirements:

(a) The signs shall be at least 24 inches, 61 centimeters, by 18 inches, 46 centimeters, on a white background. If the sign is larger than 24 inches, 61 centimeters, by 18 inches, 46 centimeters, the sizes of the other elements of the sign shall be proportionally larger.

(b) All lettering shall be in a sans serif font proportional thickness to height so as to be easily readable. Acceptable fonts are arial bold, folio medium, franklin gothic, helvetica, helvetica bold, meta bold, news gothic bold, poster gothic, and universe. In addition, the letters shall be:

(i) black in color;

(ii) capital letters; and

(iii) adequately spaced and not crowded.

(c) There must be a panel at the top of the sign. The background of the panel shall be safety yellow in color and shall:

(i) be at least 3.3 centimeters, high and 44 centimeters wide, including a black line border that is 0.16 centimeters wide surrounding the safety yellow background;

(ii) have the word "CAUTION" in capital letters that are two centimeters high; and

(iii) have an internationally recognized safety alert symbol that is two centimeters high and placed immediately to the left of the word "CAUTION".

(d) The safety alert symbol shall be black with a yellow field.

(e) The word "CAUTION" and the symbol shall be vertically and horizontally centered within the yellow panel.

(f) The letters in the body of the sign shall be legible, at least one centimeter high, and clearly visible.

(g) The body of the sign required in subsection R392-303-22(1) shall list the bulleted statements required in that section.

(h) The body of the sign required in subsection R392-303-22(2) shall list the bulleted statements required in that section.

(2) The warning sign required by R392-303-22(3) and R392-303-22(4) shall meet the following requirements:

(a) The signs shall be at least 17 inches, 43 centimeters, by 11 inches, 28 centimeters, on a white background. If the sign is larger than 17 inches, 43 centimeters, by 11 inches, 28 centimeters, the sizes of the other elements of the sign shall be proportionally larger.

(b) All lettering shall be in a sans serif font proportional thickness to height so as to be easily readable. Acceptable fonts are arial, arial bold, folio medium, franklin gothic, helvetica, helvetica bold, meta bold, news gothic bold, poster gothic, and universe. In addition, the letters shall be:

(i) black in color;

(ii) capital letters; and

(iii) adequately spaced and not crowded.

(c) There must be a panel at the top of the sign. The background of the panel shall be safety orange in color and shall:

(i) be at least 3.3 centimeters, high and 41 centimeters wide, including a black line border that is 0.16 centimeters wide surrounding the safety orange background;

(ii) have the word "WARNING" in capital letters that are two centimeters high; and

(iii) have an internationally recognized safety alert symbol that is two centimeters high and placed immediately to the left of the word "WARNING".

(d) The safety alert symbol shall be black with a safety orange field.

(e) The word "WARNING" and the symbol shall be vertically and horizontally centered within the orange panel.

(f) The letters in the body of the sign shall be legible, at least one inch (2.54 centimeters) high, and clearly visible.

(g) The body of the sign required in subsection R392-303-22(3) shall display the text "NO HEAD FIRST ENTRY". The text on the body shall be centered vertically and horizontally in the space below the orange panel with "NO HEAD FIRST" on one line and "ENTRY" on the line below.

(h) The body of the sign required in subsection R392-303-22(4) shall list the bulleted statements required in that section.

R392-303-25. Enforcement and Penalties.

A person who violates a provision of this rule is subject to a civil penalty of up to \$10,000 for each offense as provided in Section 26-23-6.]

R392-303-1. Authority and Purpose.

(1) This rule is authorized under Sections 26-15-2, 26-1-5, and Subsection 26-1-30(23)(t).

(2) This rule establishes minimum standards for the design, construction, operation, and maintenance of public geothermal pools and public geothermal bathing places, as defined by this rule, and provides for the prevention and control of hazards associated with public geothermal pools and bathing places that are likely to adversely affect public health and wellness including risk factors contributing to injury, sickness, death, disability, and the spread of disease.

R392-303-2. Applicability.

(1) Unless exempted in Subsection R392-303-2(2), this rule applies to:

(a) any person who owns or operates a geothermal pool or geothermal bathing place that is made available for public use; or

(b) a geothermal pool or geothermal bathing place that:

(i) is partially or completely filled with geothermal water that has a source temperature of at least 70 degrees Fahrenheit; and

(ii) is offered to the public for bathing or recreation.

(2) This rule does not apply to:

(a) a natural bathing place;

(b) an unsupervised geothermal bathing place that the owner explicitly or tacitly allows anyone at any time to use without a fee;

(c) a geothermal pool or geothermal bathing place that is used only by a single household or only by a single group of multiple living units of four or fewer households; or

(d) a facility, institution, location, or place whose primary purpose or intent is already regulated by another rule promulgated under Title R392, Health, Disease Control and Prevention, Environmental Services.

R392-303-3. Definitions.

The following definitions apply in this rule:

(1) "Bather" means a person at a geothermal pool or geothermal bathing place who has contact with water either through spray or partial or total immersion. The term bather as defined, also includes staff members, and refers to those users who can be exposed to contaminated water as well as potentially contaminate the water.

(2) "Bather load" means the number of persons allowed by the operator to use a geothermal pool or geothermal bathing place at any one time or specified period of time.

(3) "Flow-through" means water that is fed by a continuous supply into a geothermal pool or bathing place that causes an equal rate of flow to discharge from the pool or bathing place to waste.

(4) "Geothermal bathing place" means a natural bathing place or semi-artificial bathing place with an impoundment of geothermal water.

(5) "Geothermal pool" means a man-made basin, chamber, receptacle, tank, or tub that is filled with geothermal water or a mixture of geothermal and non-geothermal water that creates an artificial body of water.

(6) "Geothermal water" means ground water that is heated in the earth by the earth's interior.

(7) "Imminent health hazard" means a significant threat or danger to health that is considered to exist when there is evidence sufficient to show that a product, practice, circumstance, or event creates a situation that can cause infection, disease transmission, pest infestation, or hazardous condition that requires immediate correction or cessation of operation to prevent injury, illness, or death.

(8)(a) "Living unit" means one or more rooms or spaces that are, or can be, occupied by an individual, group of individuals, or a family, temporarily or permanently for residential or overnight lodging purposes.

(b) A living unit may include:

(i) a room in a public lodging facility;

(ii) a condominium unit;

(iii) a recreational vehicle;

(iv) a manufactured home;

(v) a single family home; or

(vi) an individual unit in a multiple unit housing complex.

(9) "Local health department" has the same meaning as provided in Subsection 26A-1-102(5).

(10) "Local health officer" means the health officer of the local health department having jurisdiction, or a designated representative.

(11) "Natural bathing place" means a lake, pond, river, stream, swimming hole, or hot springs that has not been modified by man.

(12) "Operator" means a person who owns, manages, or controls a public geothermal pool or bathing place or a designated representative.

(13) "Plumbing Code" means International Plumbing Code as incorporated and amended in Title 15A, State Construction and Fire Codes Act.

(14) "Renovation or remodeling" means the replacement or modification of equipment that may affect the ability of a geothermal pool or a geothermal bathing place to meet the safety and water quality standards of this rule.

(15) "SCUBA diving" means a mode of underwater diving where the diver uses an apparatus that is completely independent of surface air supply to breathe underwater.

(16) "Soaking pool" means a geothermal pool or geothermal bathing place that is less than or equal to four feet deep, and is designed exclusively for sitting or reclining.

(17) "Soaking tub" means a geothermal pool or geothermal bathing place that has a depth of two feet or less and a volume of 300 gallons or less and is designed exclusively for sitting or reclining.

R392-303-4. General Requirements.

(1) Except as specified in Subsection (4), this rule does not require an owner or operator to modify any portion of an existing geothermal pool facility or existing geothermal bathing place.

(2) If an owner or operator modifies any system or part of a geothermal pool or geothermal bathing place, the modified system or part must meet the requirements of this rule.

(3) A facility that is newly established more than 90 days after the enactment date of this rule shall operate in full compliance with this rule.

(4) If the local health officer determines that any facility creates an imminent health hazard the local health officer may order modifications consistent with the requirements of this rule.

R392-303-5. Drinking Water Supply.

The operator shall ensure that:

(1) each plumbing fixture including drinking fountains, lavatories, and showers is designed, installed, and operated according to the requirements set forth by:

(a) Plumbing code;

(b) the Utah Department of Environmental Quality, Division of Drinking Water under Title R309; and

(c) local health department regulations.

(2) the drinking water system is protected against backflow contamination and backflow of water from the geothermal water source.

R392-303-6. Geothermal Source Water Quality.

(1) The operator shall:

(a) install a tap or sampling point to sample the geothermal source water before it enters the geothermal pool or geothermal bathing place impoundment;

(b) collect a sample of the geothermal source water and any other water source used to fill the pool that is not approved for drinking water by Utah Department of Environmental Quality, Division of Drinking Water; and

(c) collect a sample of water directly from the geothermal pool or geothermal bathing place according to the following conditions if it is impractical to directly sample the geothermal source water:

(i) at least 16 hours have passed since a bather has been in the geothermal pool or geothermal bathing place; and

(ii) the sample is taken as close to the geothermal source water inlet as practical;

(d) submit the samples for analysis to a laboratory certified under Rule R444-14, Certification of Environmental Laboratories;

(e) have laboratory analysis performed initially and each five-year time period thereafter to determine the levels of constituents listed in Table 1; and

(f) ensure the sample collection and analysis frequency is as follows:

(i) the initial source water analysis report is submitted to the local health department prior to obtaining a permit to operate; and

(ii) submit five-year samples to the local health department within six-months prior to the end of the five-year period.

(2) If the geothermal source water analysis report required in Subsection (1)(e) indicates that a contaminant or constituent fails any of the standards in Table 1, the operator shall either:

(a) discontinue use of the source water;

(b) implement an ongoing treatment process approved by the local health officer to provide source water that meets the requirements in Table 1; or

(c) post a caution sign with the requirements outlined in Subsection R392-303-29(1)(a) and Subsection R392-303-29(4).

(3) The local health officer may require the operator to post signs in addition to those described in Section R392-303-29 and Section R392-303-31 including:

(a) the maximum recommended bathing period; or

(b) other technically based recommended restrictions.

TABLE 1

Geothermal Source Water Contaminants and Constituents

| Contaminant | Maximum Contaminant Level | |
|------------------------------|---------------------------|---------|
| 1. Fluoride | 4.0 mg/L | |
| 2. Nitrate | 10 mg/L | |
| 3. Nitrite | 1 mg/L | |
| 4. Antimony | 0.006 mg/L | |
| 5. Arsenic | 0.010 mg/L | |
| 6. Barium | 2 mg/L | |
| 7. Beryllium | 0.004 mg/L | |
| 8. Cadmium | 0.005 mg/L | |
| 9. Chromium | 0.1 mg/L | |
| 10. Copper | 1.3 mg/L | |
| 11. Cyanide, as free cyanide | 0.2 mg/L | |
| 12. Lead | 0.015 mg/L | |
| 13. Mercury | 0.002 mg/L | |
| 14. Selenium | 0.05 mg/L | |
| 15. Thallium | 0.002 mg/L | |
| | | |
| Constituent | Maximum | Minimum |
| pH | 8.0 | 7.0 |

R392-303-7. General Safety Requirements.

(1) The operator shall ensure that a geothermal pool or geothermal bathing place meets Section R392-302-14, Fencing and Barriers.

(2) The local health officer may grant exceptions to the height requirements in Section R392-302-14 for fences or barriers in consideration of natural features for a geothermal pool or geothermal bathing place.

(3) The operator shall ensure that a geothermal pool or geothermal bathing place meets Section R392-302-22 Safety Requirements and Lifesaving Equipment.

(4) A geothermal bathing place under five feet deep is exempt from Section R392-302-22 except for Subsection R392-302-22(3).

(5) The operator shall ensure that a geothermal pool or bathing place meets Section R392-302-23 Lighting, Ventilation and Electrical Requirements.

(6) A soaking tub is exempt from the underwater lighting requirements of Section R392-302-23 when used at night but shall have at least five horizontal foot candles of light per square foot over the surface of the tub from overhead luminaries.

(7) The operator shall ensure that a geothermal pool or bathing place meets Section R392-302-30 Supervision of Bathers.

(8) Soaking pools and soaking tubs are exempt from the requirements of Subsections R392-302-30(4) through R392-302-30(6), but the lifeguard may not allow any person to use a soaking pool or soaking tub unless there is another bather in attendance capable of alerting the lifeguard if the lifeguard's help is needed and the lifeguard must always be on the premises and no more than a minute away if needed at any time.

R392-303-8. SCUBA diving.

(1) A geothermal pool or geothermal bathing place used only for SCUBA diving or snorkeling is exempt from the requirements of Subsections R392-302-30(4) through R392-302-30(6).

(2) A geothermal pool or geothermal bathing place used only for SCUBA diving or snorkeling is exempt from requirements of Sections R392-303-11 through R392-302-15, and Section R392-303-24 if each bather signs a document acknowledging that the bather has read the list of inherent physical and environmental dangers that the geothermal pool or geothermal bathing place has, which are not in compliance with Sections R392-303-11 through R392-303-15, and Section R392-303-19, and to which the bather may be exposed upon entering or using the geothermal pool or geothermal bathing place.

(3) The operator shall ensure that:

(a) a lifeguard is not more than a one-minute walk away from the area that is being used for SCUBA diving or snorkeling;

(b) a person that is SCUBA diving or snorkeling has another bather in attendance capable of alerting a lifeguard;

(c) bathers sign a form that explains:

(i) constant lifeguard surveillance will not be provided; and

(ii) the bather must be accompanied by another bather at all times; and

(d) a sign is placed where no head-first diving is allowed, that states "NO HEAD-FIRST ENTRY" in accordance with Sections R392-303-29, R392-303-30 and R392-303-31.

R392-303-9. Diving Areas.

(1) The operator shall ensure that:

(a) a geothermal pool or geothermal bathing place meets the requirements of Section R392-302-11 Diving Areas; and

(b) head-first entry is not permitted at a geothermal pool or geothermal bathing place except where the operator has demonstrated to the local health officer that the water depth and underwater obstructions at the entire geothermal pool or geothermal bathing place pose no greater risk than at a diving-permitted section of a swimming pool as allowed in Section R392-302-11.

R392-303-10. Bather Facilities.

The operator shall ensure that a geothermal pool or geothermal bathing place meets the following sections of Rule R392-302:

- (1) Section R392-302-24 Dressing Rooms;
- (2) Section R392-302-25 Restroom and Shower Facilities;
- and
- (3) Section R392-302-26 Visitor and Spectator Areas.

R392-303-11. Construction Materials.

(1) The operator shall ensure that a geothermal pool or geothermal bathing place meets the requirements of Section R392-302-6.

(2) A geothermal pool or geothermal bathing place is exempt from Subsection R392-302-6(5) if the volume is less than or equal to 3,000 gallons and the maximum depth is less than or equal to four feet.

R392-303-12. Bather Load.

(1) The operator shall ensure that: a geothermal pool or geothermal bathing place meets the bather load requirements in Section R392-302-7.

(2) The bather load may be reduced to meet the requirements in Section R392-303-19, if a geothermal pool or geothermal bathing place is unable to meet bacteriological water quality by other means.

R392-303-13. Plan Approval and Structural Stability.

(1) With the exception of Subsection R392-302-8(3) and Subsection R392-302-8(5), the operator shall ensure that a geothermal pool or geothermal bathing place meet Section R392-302-8.

(2) The operator shall submit plans to the local health department for approval of any new geothermal pool or geothermal bathing place or the renovation or remodeling of a geothermal pool or a geothermal bathing place.

R392-303-14. Depths and Geothermal Pool Floor Slopes.

The operator shall ensure that:

- (1) a geothermal pool or geothermal bathing place meets the requirements of Section R392-302-9; and
- (2) bathers are aware of and safeguarded from hazards such as uneven geothermal pool floor areas, sudden changes in depth, and other pool floor anomalies by:
 - (a) altering the geothermal pool floor;
 - (b) posting signs about the hazards;
 - (c) providing barrier around hazards; or
 - (d) roping off hazardous areas.

R392-303-15. Walls.

The operator shall ensure that:

- (1) a geothermal pool or geothermal bathing place meets the requirements of Section R392-302-10; and

(2) bathers are aware of and guarded against hazards such as uneven walls, submerged projections, or submerged ledges by:

- (a) posting signs notifying patrons of the hazards;
- (b) providing barriers around hazards; or
- (c) roping off hazardous areas.

R392-303-16. Ladders, Recessed Steps, and Stairs.

The operator shall ensure that:

- (1) a geothermal pool or geothermal bathing place meets the requirements of Section R392-302-12; and
- (2) there is a means of entrance into and exit from the water including handholds and steps where needed to provide for bather safety.

R392-303-17. Decks and Walkways.

(1) The operator shall ensure that:

- (a) except a soaking pool or soaking tub, a geothermal pool or geothermal bathing place meets the requirements of Section R392-302-13;
- (b) a walkway leading to a geothermal pool or geothermal bathing place is provided that is:
 - (i) free of trip hazards; and
 - (ii) provides handholds where there are ramps or steps; and
- (c) a soaking pool or soaking tub meets the decking requirements of a spa pool in Subsection R392-302-31(7).
- (2) The pool curb of a soaking tub may be any width, and the rim of a soaking tub may be up to 24 inches, above the deck level.

R392-303-18. Depth Markings and Safety Ropes.

The operator shall ensure that:

- (1) a geothermal pool or geothermal bathing place meets the requirements of Section R392-302-15;
- (2) bathers are guarded from unexpected deep water by:
 - (a) posting geothermal pool depth signs;
 - (b) providing barriers around deep water areas; or
 - (c) roping off deep water areas.

R392-303-19. Circulation Systems.

(1) The operator shall ensure that:

- (a) a geothermal pool or geothermal bathing place that transports source, pool, or discharge water through pipes meets the requirements of Section R392-302-16 for piping, pipe labeling, velocity in pipes, adequate space in equipment areas, valves, and air induction systems;
- (b) a geothermal pool or geothermal bathing place meets the requirements of Section R392-302-16 for normal water level and vacuum cleaning systems except a vacuum cleaning system is not required if an operator keeps the pool clean by draining the pool and cleaning it while it is empty; and
- (c) a geothermal pool or geothermal bathing place maintains flow-through 24 hours a day during the operating season, except for periods of maintenance.
- (2) If the geothermal pool or geothermal bathing place is drained and cleaned each day prior to use, flow-through is only required during the period that the geothermal pool or geothermal bathing place is in use.
- (3) The operator shall ensure that:
 - (a) a geothermal pool or geothermal bathing place with a volume greater than 3,000 gallons has a flow-through rate greater than or equal to 1/4 the pool volume every hour;

(b) a geothermal pool or geothermal bathing place with a volume less than or equal to 3,000 gallons has a flow-through rate greater than or equal to the complete pool volume every 30 minutes;

(c) a geothermal pool or geothermal bathing place has a method to determine accurate rate of flow in gallons per minute;

(i) if the rate of flow method is a rate of flow indicator manufactured by a third party, it is properly installed and located according to the manufacturer's recommendations; or

(ii) if a field-fabricated rate of flow indicator such as a calibrated weir or flume is used, it is designed and calibrated under the direction of a licensed professional engineer; and

(d) the rate of flow indicator is located and positioned in a place where it can be easily read by the operator as required in Subsection R392-302-16(6).

(4) If the operator of a geothermal pool or geothermal bathing place maintains the disinfectant levels, chloramine levels, and pH levels within the values allowed in Table 6 of Rule R392-302 and operates a recirculation system in the pool in compliance with the requirements of Section R392-302-16, the pool is exempt from the flow-through rate requirements of Subsection R392-303-19(1).

(5) The local health officer may:

(a) approve a reduced flow rate if the operator can demonstrate that the required bacteriological level can be maintained at the reduced flow rate; or

(b) exempt a geothermal pool or geothermal bathing place from the requirement for a rate of flow indicator if the rate of flow is not adjustable or if there is no practical way to measure flow.

(6) If the operator of a geothermal bathing place is unable to control the flow-through rate, the operator may meet the bacteriologic water quality standards in Section R392-303-26 by controlling bather load.

(7) Except the operator shall maintain a flow-through with a maximum turnover time of 48 hours, and shall meet the bacteriologic requirements of Subsection R392-302-27(6)(d).

R392-303-20. Inlets.

(1) The operator shall ensure that a geothermal pool or geothermal bathing place that has pumped flow meets the inlet requirements of Section R392-302-17.

(2)(a) If a geothermal pool or geothermal bathing place that has gravity flow inlets cannot meet the requirements of Section R392-302-17, the operator shall demonstrate to a local health officer that the inlet system provides uniform distribution of fresh water throughout the geothermal pool or geothermal bathing place.

(b) The operator may demonstrate uniform distribution by either:

(i) computer simulation; or

(ii) a dye test witnessed by a local health officer.

R392-303-21. Drains and Skimming Devices.

The operator shall ensure that:

(1) a geothermal pool or geothermal bathing place has a drain that allows complete emptying of the pool;

(2) a geothermal pool or geothermal bathing place with a submerged drain grate or cover meets the requirements of Section R392-302-18;

(3) a geothermal pool or geothermal bathing place with a submerged drain meets the anti-entrapment requirements of Section R392-302-18; and

(4) a geothermal pool or geothermal bathing place has overflow gutters or skimming devices that meet the applicable requirements of Section R392-302-19.

R392-303-22. Filtration.

(1) The operator of a flow-through geothermal pool or geothermal bathing place is not required to mechanically filter the water in the geothermal pool or geothermal bathing place, except as may be necessary to meet the safety and water quality requirements of this rule.

(2) If mechanical filtration is used, the operator shall ensure that filters meet the requirements of Section R392-302-20.

R392-303-23. Disinfectant and Chemical Feeders.

(1) Chemical feeders or disinfectant residuals are not required in a geothermal pool or geothermal bathing place, except as may be necessary to meet water quality requirements of this rule.

(2) If the operator uses any chemical to treat the geothermal pool or geothermal bathing place water, the operator shall ensure that the chemical feeder meets the requirements of Section R392-302-21 for that particular chemical.

R392-303-24. Pool Water Clarity.

(1) The operator shall ensure that:

(a) the water in a geothermal pool or geothermal bathing place has sufficient clarity any time it is open to a bather so that a black disc six inches in diameter is readily visible if placed on a white field at the deepest point of the pool, or at 12 feet deep for a pool deeper than 12 feet; and

(b) the geothermal pool or geothermal bathing place is closed immediately if Subsection (1)(a) is not met.

(2) A soaking tub is exempt from Subsection (1).

R392-303-25. Pool Water Temperature.

(1) The operator shall ensure that:

(a) a geothermal pool or geothermal bathing place has a temperature measuring device that is:

(i) accurate to within one degree Fahrenheit; and

(ii) calibrated in accordance with the manufacturer's specifications as necessary to ensure its accuracy;

(b) the geothermal pool water temperature is measured at the warmest point;

(c) the geothermal pool water temperature is maintained at a maximum of 104 degrees Fahrenheit; and

(d) a geothermal pool or geothermal bathing place that exceeds 104 degrees Fahrenheit at the minimum required turnover rate has, and employs when necessary, one or more of the following approved methods of temperature reduction in the pool or bathing place that maintains the minimum flow-through rate required under Subsection R392-303-19(1):

(i) introduction of cool water from a source that has been analyzed and approved according to Section R392-303-6, or approved for drinking water by the Utah Division of Drinking Water;

(ii) direct cooling of the geothermal source water by a heat exchanger; or

(iii) the diversion of the geothermal source water to allow it to cool prior to entering the pool or impoundment; and

(e) the temperature reduction method is capable of reducing the temperature of the pool within two hours of activation from the maximum anticipated temperature to below 104 degrees Fahrenheit.

(2) If the temperature of the source water or cooling rate of the geothermal pool is difficult to control, a temperature drift of up to four degrees Fahrenheit is allowed if temperature reduction measures in Subsection (1)(d) have been activated; and the temperature is not above 108 degrees Fahrenheit.

(3) If a soaking tub or similar fixture with a volume of 70 gallons or less is used, the water temperature shall not exceed 110 degrees Fahrenheit.

R392-303-26. Geothermal Pool Water Bacteriological Quality.

(1) The local health officer shall:

(a) collect routine bacteriological samples of the pool water at least once per month and at least two weeks apart, and collect additional samples for investigative purposes or as a follow-up of unsatisfactory samples, if necessary;

(b) choose or approve the dates and times that the samples are collected based on when a representative level of bacteria would likely be found;

(c) submit the bacteriological samples to a laboratory approved by Rule R444-14 to perform E. coli or fecal coliform testing; and

(d) have the laboratory analyze the sample for either E. coli or fecal coliform and request that the laboratory report sample results within five working days to the local health department and the operator.

(2) The operator shall review the laboratory results and take corrective action if the following standards are not met:

(a) if the E. coli or fecal coliform levels are found to be greater than the maximum level of 63 CFU per 50 milliliters, the operator shall close the geothermal pool until sample results show the level is below 63 CFU;

(b) If the results of any three of the last five E. Coli or fecal coliform samples taken from the geothermal pool exceed 63 CFU per 50 milliliters, the operator shall:

(i) increase the rate of flow-through;

(ii) reduce bather load as provided in Subsection R392-303-9(2); or

(iii) both increase the flow rate and reduce the bather load.

(3) The operator shall make adjustments as specified in Subsection (2)(b) until the lab report specified in Subsection (1)(d) consistently shows E. Coli or fecal coliform results of less than 63 CFU per 50 milliliters in collected samples.

(4) As an alternative to closing the geothermal pool until sample results show acceptable bacteriological levels, the operator may temporarily close the pool and commence feeding a disinfectant to the pool water, meeting the requirements of Subsection R392-303-23(2) and the disinfectant concentration and pH requirements of Section R392-302-27, and then reopen the pool at least 45 minutes after the required disinfectant level has been achieved.

(5) The disinfectant feeding to the geothermal pool must continue until pool water samples and the source water samples pass the bacteriological standards required for disinfected pools in Subsection R392-302-27(6)(d).

(6) the operator shall post the reported level as required in Subsection R392-303-29(2).

R392-303-27. Cleaning Geothermal Pools.

The operator shall:

(1) remove any visible dirt on the bottom of the geothermal pool at least once every 24 hours or more frequently as needed to keep the pool free of dirt and debris;

(2) clean the water surface of the geothermal pool as often as needed to keep the pool free of scum or floating matter;

(3) keep geothermal pool surfaces, decks, handrails, floors, walls, and ceilings of rooms enclosing pools, dressing rooms and equipment rooms clean, sanitary, and in good repair; and

(4) keep handholds, handrails, entrance points, walkways, dressing rooms, and equipment rooms clean and in good repair.

R392-303-28. Supervision and Record Keeping.

(1) The operator shall ensure that:

(a) a geothermal pool or geothermal bathing place meets the supervision requirements of Subsection R392-302-29(1);

(b) a record of the flow-through rate and pool temperature is collected daily, prior to opening the pool or bathing place;

(c) the number of bathers at the geothermal pool or bathing place is recorded every four hours that the geothermal pool or bathing place is open for use, or the time of day is recorded that each bather checks in, to verify bather load; and

(d) If a geothermal pool or geothermal bathing place uses disinfection or filtration, the disinfection and filtration records required in Section R392-302-29 are:

(i) maintained;

(ii) available for inspection at the request of the local health officer; and

(iii) retained for at least three years.

(3) The local health officer may reduce the requirement for the frequency of record keeping if a decreased frequency is more reasonable considering the unlikelihood of a change in the values recorded.

R392-303-29. Caution and Warning Sign Content.

(1) If the requirements of Table 6 in Section R392-302-27 are not met for disinfectant residual, the operator shall post a caution sign with the following bulleted points:

(a) "water in this pool contains no disinfectant";

(b) "bathing in this pool may increase your risk of infectious disease";

(c) "persons suffering from a communicable disease transmissible by water shall not enter the water"; and

(d) "keep pool water out of your mouth and nose".

(2) If the lab report specified in Subsection R392-302-26(1)(d) indicates that E. coli or fecal coliform levels are greater than one CFU per 50 milliliters, the operator shall post an additional sign, or an addition to the sign required in Subsection (1) that describes the results of the sample using a changeable element such as a white board or attachable digits with the following bullet points:

(a) "the most recent bacteriological sample result of water from this geothermal pool was", at which point the operator includes the changeable element on the sign; and

(b) "for comparison, a non-geothermal pool cannot exceed 1 CFU per 50 milliliters".

(3) If ozone or ultraviolet light is used to treat the geothermal pool or geothermal bathing place water, the operator may add the following statement verbatim to the sign stating the method of treatment:

(a) "treated with:

(i) "UV light or ozone"; or

(ii) "UV light and ozone" if both are used; and

(b) "provides short-term disinfection only".

(4) If a geothermal pool or geothermal bathing place is operated at a temperature greater than or equal to 100 degrees Fahrenheit, the operator shall post a separate caution sign that includes the following bulleted points:

(a) "pool water may exceed 100 degrees F";

(b) "consult a physician if you:

(i) are elderly;

- (ii) are pregnant;
- (iii) have heart disease;
- (iv) have diabetes;
- (v) have high blood pressure; or
- (vi) use prescription medication";
- (c) "do not use pool if alone or under the influence of any impairing substance";
- (d) "do not use pool for more than 15 minutes at a time";
- (e) "children under five are prohibited"; and
- (f) "children under 14 must be with a person who is over 18".

(5) Except at a geothermal pool or a geothermal bathing place where head-first entry is permitted, the operator shall post a warning sign that states, "no head-first entry" in accordance with Sections R392-303-30 and R392-303-31.

(6) If the geothermal pool or bathing place source water fails any of the standards found in Table 1, the operator shall post a warning sign that states the following:

- (a) "pool water does not meet EPA drinking water standards for", the operator then lists any failed constituent listed in Table 1 along with the analytical result of each failed constituent and the value of the Table 1 standard that has not been met;
- (c) "there may be health risks associated with bathing in this water"; and
- (d) "use at your own risk".

R392-303-30. Sign Placement.

- (1) The operator shall:
 - (a) post a caution and warning sign that meets the requirements of this rule in conspicuous locations that are in the line of sight of:
 - (i) a bather using the premises and readily visible so that any bather is alerted to potential hazards and informed before using the geothermal pool or geothermal bathing place; and
 - (ii) potential bathers before they pay for entry or pass the reception or sales counter; and
 - (b) place the caution sign required in Subsection R392-303-29(1) at the reception or sales counter and no more than ten feet from where a bather checks in or pays for the use of the pool.
 - (2) If there are multiple geothermal pools or geothermal bathing places at the facility, the operator shall display on the caution sign at the reception or sales counter the bacterial count of the geothermal pool or geothermal bathing place in the facility that had the highest level of E. coli or fecal coliform found in the most recent sampling event.
 - (3) The operator shall place any caution sign required in Subsection R392-303-29(3) either:
 - (a) next to the sign required in Subsection R392-303-29(1) if any geothermal pool may exceed 100 degrees Fahrenheit; or
 - (b) within ten feet of each entrance to any geothermal pool that is operated at a temperature greater than or equal to 100 degrees Fahrenheit.
 - (4) The operator shall place any warning sign required in Subsection R392-303-29(4) either:
 - (a) next to the sign or signs required in Subsection R392-303-29(1) if the pool or any pools do not permit head-first entry; or
 - (b) within ten feet of the entrance or entrances to each pool that does not permit head-first entry.
 - (5) The operator shall place any warning sign required in Subsection R392-303-29(5) either:
 - (a) next to the sign required in Subsection R392-303-29(1);
- or

- (b) within ten feet of the entrance or entrances to each pool.
- (6) In lieu of meeting the signage requirements listed in Section R392-303-29 and Subsection R392-303 30(1), the operator may have a bather sign a disclosure document that contains the same language as required for the signs required in Section R392-303-29, and includes the most recent bacteriologic analysis results.
- (7) The operator shall:
 - (a) provide a copy of the document described in Subsection (6) to each bather upon request;
 - (b) retain a copy of each signed document for at least one year; and
 - (c) make the documents available for inspection by the local health officer.

R392-303-31. Caution and Warning Sign Format Requirements.

- (1) The operator shall ensure that the caution sign required by Subsections R392-303-29(1), R392-303-29(2), R392-303-29(3), and R392-303-29(4) meet the following requirements:
 - (a) the sign is at least 24 inches by 18 inches on a white background, and if the sign is larger than 24 inches by 18 inches, the sizes of the other elements of the sign shall be proportionally larger;
 - (b) lettering is in one of the following fonts with proportional thickness to height so as to be easily readable:
 - (i) san serif;
 - (ii) arial bold;
 - (iii) folio medium;
 - (iv) franklin gothic;
 - (v) helvetica;
 - (vi) helvetica bold;
 - (vii) meta bold;
 - (viii) news gothic bold;
 - (ix) poster gothic; or
 - (x) universe;
 - (c) the letters are:
 - (i) black in color;
 - (ii) capitalized; and
 - (iii) legible;
 - (d) the sign includes a panel at the top of the sign with a safety yellow background that:
 - (i) is at least 1-1/2 inches high, and 18 inches wide, including a black line border that is 1/16 of an inch wide surrounding the safety yellow background;
 - (ii) has the word "caution" in capital letters that is one inch high; and
 - (iii) has an internationally recognized safety alert symbol that is one inch high and placed immediately to the left of the word "caution";
 - (e) the safety alert symbol is black with a yellow background field;
 - (f) the word "caution" and the symbol are vertically and horizontally centered within the yellow panel;
 - (g) letters in the body of the sign are legible, at least 1/2 inch high, and clearly visible;
 - (h) the body of the sign required in Subsection R392-303-29(1) lists the bulleted statements required in that section; and
 - (i) the body of the sign required in Subsection R392-303-29(3) lists the bulleted statements required in that section.
- (2) The operator shall ensure that the warning sign required by Subsections R392-303-29(4) and R392-303-29(5) meet the following requirements:

(a) the sign is least 17 inches by 11 inches on a white background, and if the sign is larger than 17 inches by 11 inches, the sizes of the other elements of the sign are proportionally larger;

(b) lettering is in one of the following fonts with proportional thickness to height so as to be easily readable:

(i) san serif;

(ii) arial bold;

(iii) folio medium;

(iv) franklin gothic;

(v) helvetica;

(vi) helvetica bold;

(vii) meta bold;

(viii) news gothic bold;

(ix) poster gothic; or

(x) universe;

(c) the letters are:

(i) black in color;

(ii) capitalized; and

(iii) legible;

(e) the sign includes a panel at the top of the sign with a safety orange background that:

(i) is at least 1-1/2 inches high and 16 inches wide, including a black line border that is 1/16 of an inch wide surrounding the safety orange background;

(ii) has the word "warning" in capital letters that is one inch high; and

(iii) has an internationally recognized safety alert symbol that is one inch high and placed immediately to the left of the word "warning"

(f) the safety alert symbol is black with a safety orange field;

(g) the word "warning" and the symbol are vertically and horizontally centered within the orange panel;

(h) letters in the body of the sign are legible, at least 1/2 inch high, and clearly visible;

(i) the body of the sign required in Subsection R392-303-24(4) displays the text "no head-first entry" and the text on the body is centered vertically and horizontally in the space below the orange panel with "no head-first" on one line and "entry" on the line below; and

(j) the body of the sign required in Subsection R392-303-29(5) lists the bulleted statements required in that section.

R392-303-32. Enforcement and Penalties.

An operator who violates this rule may be subject to criminal and civil penalties as provided in Section 26-23-6.

KEY: geothermal pools, geothermal natural bathing places, hot springs, geothermal spas

Date of Last Change: 2021~~February 24, 2014~~

Notice of Continuation: February 5, 2019

Authorizing, and Implemented or Interpreted Law: 26-15-2

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code Ref (R no.): R414-320-16

Filing ID
54017

Agency Information

| | | |
|--|--|-----------------------|
| 1. Department: | Health | |
| Agency: | Health Care Financing, Coverage and Reimbursement Policy | |
| Building: | Cannon Health Building | |
| Street address: | 288 N 1460 W | |
| City, state and zip: | Salt Lake City, UT 84116 | |
| Mailing address: | PO Box 143102 | |
| City, state and zip: | Salt Lake City, UT 84114-3102 | |
| Contact person(s): | | |
| Name: | Phone: | Email: |
| Craig Devashrayee | 801-538-6641 | cdevashrayee@utah.gov |
| Please address questions regarding information on this notice to the agency. | | |

General Information

| |
|---|
| 2. Rule or section catchline: |
| R414-320-16. Benefits |
| 3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?): |
| The purpose of this change is to update the maximum adult reimbursement rate for each month, and to clarify provisions for children. |
| 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 amendment allots a new maximum reimbursement amount for adults up to \$300 each month and clarifies coverage and reimbursement for children. It also makes other clarifications and technical changes. |

Fiscal Information

| |
|--|
| 5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to: |
| A) State budget: |
| The Department of Health estimates an aggregate cost of \$120,000 to the state budget, with the increase in reimbursement to adult members of Utah's Premium Partnership for Health (UPP) Program. |
| B) Local governments: |
| There is no impact on local governments because they neither fund nor determine eligibility for the UPP Program. |

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

Small businesses may see an increase in revenue, but there is no data to estimate what that increase might be.

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

Non-small businesses may see an increase in revenue, but there is no data to estimate what that increase might be.

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**):

Adult members of the UPP program may see an increase in total out-of-pocket savings if the UPP program is able to pay more of their monthly health care premiums.

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 as this amendment can only result in out-of-pocket savings to adult members of the UPP program.

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 measurable impact on business by increasing the premium reimbursement amounts. Nate Checketts, 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 | \$120,000 | \$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 | \$120,000 | \$0 | \$0 |
| Total Fiscal Benefits | \$0 | \$0 | \$0 |
| Net Fiscal Benefits | \$0 | \$0 | \$0 |

B) Department head approval of regulatory impact analysis:

The Executive Director of the Department of Health, Nate 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 | Section 26-18-3 | |
|----------------|-----------------|--|

Public Notice Information

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

A) Comments will be accepted until: 12/01/2021

10. This rule change MAY become effective on: 12/08/2021

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: | Nate Checketts, Executive Director | Date: | 10/11/2021 |
|--|------------------------------------|--------------|------------|

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-320. Medicaid Health Insurance Flexibility and Accountability Demonstration Waiver.

R414-320-16. Benefits.

(1) The UPP program shall provide enrollees a monthly reimbursement payment for health coverage~~[each reimbursement to enrollees]~~.

(2) The reimbursement may not exceed the amount that the enrollee pays toward the cost of the employer-sponsored health plan, ~~[employer-sponsored plans selected through UHE, or COBRA continuation coverage]~~.

(3) The UPP program ~~shall~~~~[may]~~ reimburse ~~[an adult]~~ up to ~~[\$150-]~~~~\$300~~ monthly for each eligible adult~~[each month]~~.

(4) The UPP program ~~shall~~~~[may]~~ reimburse ~~[a child]~~ up to \$120 for each eligible child's~~[month for]~~ medical coverage.~~[The UPP program will pay the child an additional \$20 if the child elects to enroll in employer-sponsored dental coverage.]~~

(a) When the employer-sponsored insurance does not include dental benefits, a child ~~[may]~~~~shall~~ receive ~~[each reimbursement up to \$120 for the medical insurance cost and may receive]~~ dental-only benefits through CHIP in addition to the medical insurance reimbursement.

(b) When the employer also offers employer-sponsored dental coverage, the applicant may choose to enroll a child in the employer-sponsored dental coverage, in which case, the UPP program will ~~include~~~~[pay the child]~~ an additional \$20 for each eligible child enrolled.~~[The enrollee may also choose to only enroll the child in the employer-sponsored health insurance and UPP, and not enroll the child in the employer-sponsored dental coverage, in which case the child may receive dental-only benefits through CHIP.]~~

KEY: CHIP, Medicaid, PCN, UPP

Date of Last Change: 2021~~[September 16, 2020]~~

Notice of Continuation: January 25, 2021

Authorizing, and Implemented or Interpreted Law: 26-18-3; 26-1-5

NOTICE OF PROPOSED RULE

TYPE OF RULE: Repeal and Reenact

| | | |
|--------------------------------------|-----------------|----------------------------------|
| Utah Admin. Code Ref (R no.): | R495-876 | Filing ID 54006 |
|--------------------------------------|-----------------|----------------------------------|

Agency Information

| | | |
|-----------------------------|------------------------------------|-------------------|
| 1. Department: | Human Services | |
| Agency: | Administration | |
| Room no.: | DHS Administration Office | |
| Building: | Multi-Agency State Office Building | |
| Street address: | 195 N 1950 W | |
| City, state and zip: | Salt Lake City, UT 84116 | |
| Mailing address: | 195 N 1950 W | |
| City, state and zip: | Salt Lake City, UT 84116 | |
| Contact person(s): | | |
| Name: | Phone: | Email: |
| Janice Weinman | 385-321-5586 | jweinman@utah.gov |

| | | |
|--|--------------|----------------|
| Jonah Shaw | 385-310-2389 | jshaw@utah.gov |
| Please address questions regarding information on this notice to the agency. | | |

General Information**2. Rule or section catchline:**

R495-876. Provider Code of Conduct

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

The rule is being changed in compliance with S.B. 127 passed in the 2021 General Session, Executive Order No. 2021-12, and based on stakeholder input. During the review of this rule, the Department of Human Services also discovered a number of minor issues that needed to be amended.

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 substantive changes are being done to bring the rule into compliance with the new requirements imposed upon human services programs by S.B. 127 (2021). In order to comply with Executive Order No. 2021-12, many changes are also 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. This repeal and replace also aligns outdated rules with current industry standards based on stakeholder input.

Fiscal Information**5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:****A) State budget:**

There is no aggregate anticipated cost or savings to state budget because all legislative changes have been accounted for through a fiscal note to supplement office resources for enforcement of this rule change.

B) Local governments:

There is no aggregate anticipated cost or savings to local government because the proposed rule only supports local governments requirements but does not impose any additional requirements on them.

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

The cost or savings impact on small businesses is inestimable because licensed programs are allowed to demonstrate rule compliance through policy and procedure development. Any additional costs as a result of the new policies and procedures will be self-imposed.

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

The cost or savings impact on non-small businesses is inestimable because licensed programs are allowed to demonstrate rule compliance through policy and procedure development and there are a number of ways programs may choose to comply.

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

There is no impact on persons due to the enactment of these proposed rule changes, as the Office of Licensing can only regulate small or non-small businesses meeting the statutory definition for licensure.

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

There will be no affected persons other than small or non-small businesses meeting the statutory definition for licensure.

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 proposal will not result in a fiscal impact to businesses. Tracy Gruber, 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 Executive Director of Human Services, Tracy Gruber, 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 62A-1-111 | | |
|-------------------|--|--|

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: | 12/01/2021 |
|--|------------|

10. This rule change MAY become effective on:

12/08/2021

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: | Tracy Gruber, Executive Director | Date: | 10/04/2021 |
|--|----------------------------------|--------------|------------|

R495. Human Services, Administration.**R495-876. Provider Code of Conduct.****~~R495-876-1. Authority.~~**

~~The Department of Human Services promulgates this rule pursuant to the rulemaking authority granted in Section 62A-1-111.~~

R495-876-2. Statement of Purpose.

~~(1) The Department of Human Services ("DHS") adopts this Code of Conduct to:~~

~~(a) Protect its clients from abuse, neglect, maltreatment and exploitation; and~~

~~(b) Clarify the expectation of conduct for DHS Providers and their employees and volunteers who interact in any way with DHS clients, DHS staff and the public.~~

~~(2) The Provider shall distribute a copy of this Code of Conduct to each employee and volunteer, regardless of whether the employees or volunteers provide direct care to clients, indirect care, administrative services or support services. The Provider shall require each employee and volunteer to read the Code of Conduct and sign a copy of the attached "Certification of Understanding" before having any contact with DHS clients. The Provider shall file a copy of the signed Certificate of Understanding in each employee and volunteer's personnel file. The Provider shall also maintain a written policy that adequately addresses the appropriate treatment of clients and that prohibits the abuse, neglect, maltreatment or exploitation of clients. This policy shall also require the Provider's employees and volunteers to deal with DHS staff and the public with courtesy and professionalism.~~

~~(3) This Code of Conduct supplements various statutes, policies and rules that govern the delivery of services to DHS clients. The Providers and the DHS Divisions or Offices may not adopt or enforce policies that are less stringent than this Code of Conduct unless those policies have first been approved in writing by the Office of Licensing and the Executive Director of the Utah Department of Human Services. Nothing in this Code of Conduct shall be interpreted to mean that clients are not accountable for their own misbehavior or inappropriate behavior, or that Providers are restricted from imposing appropriate sanctions for such behavior.~~

~~R495-876-3. Abuse, Neglect, Exploitation, and Maltreatment Prohibited.~~

~~Providers shall not abuse, neglect, exploit or maltreat clients in any way, whether through acts or omissions or by encouraging others to act or by failing to deter others from acting.~~

~~R495-876-4. General Definitions.~~

~~(1) "Client" means anyone who receives services from DHS or from a Provider pursuant to an agreement with DHS or funding from DHS.~~

~~(2) "DHS" means the Utah Department of Human Services or any of its divisions, offices or agencies.~~

~~(3) "Domestic violence-related child abuse" means any domestic violence or a violent physical or verbal interaction between cohabitants in the physical presence of a child or having knowledge that a child is present and may see or hear an act of domestic violence.~~

~~(4) "Emotional maltreatment" means conduct that subjects the client to psychologically destructive behavior, and includes conduct such as making demeaning comments, threatening harm, terrorizing the client or engaging in a systematic process of alienating the client.~~

~~(5) "Provider" means any individual or business entity that contracts with DHS or with a DHS contractor to provide services to DHS clients. The term "Provider" also includes licensed or certified individuals who provide services to DHS clients under the supervision or direction of a Provider. Where this Code of Conduct states (as in Sections III-VII) that the "Provider" shall comply with certain requirements and not engage in various forms of abuse, neglect, exploitation or maltreatment, the term "Provider" also refers to the Provider's employees, volunteers and subcontractors, and others who act on the Provider's behalf or under the Provider's control or supervision.~~

~~(6) "Restraint" means the use of physical force or a mechanical device to restrict an individual's freedom of movement or an individual's normal access to his or her body. "Restraint" also includes the use of a drug that is not standard treatment for the individual and that is used to control the individual's behavior or to restrict the individual's freedom of movement.~~

~~(7) "Seclusion" means the involuntary confinement of the individual in a room or an area where the individual is physically prevented from leaving.~~

~~(8) "Written agency policy" means written policy established by the Provider. If a written agency policy contains provisions that are more lenient than the provisions of this Code of Conduct, those provisions must be approved in writing by the DHS Executive Director and the Office of Licensing.~~

~~R495-876-5. Definitions of Prohibited Abuse, Neglect, Exploitation, and Maltreatment.~~

~~(1) "Abuse" includes, but is not limited to:~~

~~(a) Harm or threatened harm, to the physical or emotional health and welfare of a client.~~

~~(b) Unlawful confinement.~~

~~(c) Deprivation of life-sustaining treatment.~~

~~(d) Physical injury, such as contusion of the skin, laceration, malnutrition, burn, fracture of any bone, subdural hematoma, injury to any internal organ, any injury causing bleeding, or any physical condition which imperils a client's health or welfare.~~

~~(e) Any type of unlawful hitting or corporal punishment.~~

~~(f) Domestic violence-related child abuse.~~

~~(g) Any Sexual abuse and sexual exploitation including but not be limited to:~~

~~(i) Engaging in sexual intercourse with any client.~~

~~(ii) Touching the anus or any part of the genitals or otherwise taking indecent liberties with a client, or causing an individual to take indecent liberties with a client, with the intent to arouse or gratify the sexual desire of any person.~~

~~(iii) Employing, using, persuading, inducing, enticing, or coercing a client to pose in the nude.~~

~~(iv) Engaging a client as an observer or participation in sexual acts.~~

~~(v) Employing, using, persuading, inducing, enticing or coercing a client to engage in any sexual or simulated sexual conduct for the purpose of photographing, filming, recording, or displaying in any way the sexual or simulated sexual conduct. This includes displaying, distributing, possessing for the purpose of distribution, or selling material depicting nudity, or engaging in sexual or simulated sexual conduct with a client.~~

~~(vi) Committing or attempting to commit acts of sodomy or molestation with a client.~~

~~(2) "Neglect" includes but is not limited to:~~

~~(a) Denial of sufficient nutrition.~~

~~(b) Denial of sufficient sleep.~~

~~(c) Denial of sufficient clothing, or bedding.~~

~~(d) Failure to provide adequate client supervision; including situations where the Provider's employee or volunteer is a sleep or ill on the job, or is impaired due to the use of alcohol or drugs.~~

~~(e) Failure to provide care and treatment as prescribed by the client's services, program or treatment plan, including the failure to arrange for medical or dental care or treatment as prescribed or as instructed by the client's physician or dentist, unless the client or the Provider obtains a second opinion from another physician or dentist,~~

indicating that the originally prescribed medical or dental care or treatment is unnecessary.

~~(f) Denial of sufficient shelter, where shelter is part of the services the Provider is responsible for providing to the client.~~

~~(g) Educational neglect (i.e. willful failure or refusal to make a good faith effort to ensure that a child in the Provider's care or custody receives an appropriate education).~~

~~(3) "Exploitation" will includes but is not limited to:~~

~~(a) Using a client's property without the client's consent or using a client's property in a way that is contrary to the client's best interests, such as expending a client's funds for the benefit of another.~~

~~(b) Making unjust or improper use of clients or their resources.~~

~~(c) Accepting gifts in exchange for preferential treatment of a client or in exchange for services that the Provider is already obliged to provide to the client.~~

~~(d) Using the labor of a client for personal gain.~~

~~(e) Using the labor of a client without paying the client a fair wage or without providing the client with just or equivalent non-monetary compensation, except where such use is consistent with standard therapeutic practices and is authorized by DHS policy or the Provider's contract with DHS.~~

~~(i) Examples:~~

~~(A) It is not "exploitation" for a foster parent to assign an extra chore to a foster child who has broken a household rule, because the extra chore is reasonable discipline and teaches the child to obey the household rules.~~

~~(B) It is not "exploitation" to require clients to help serve a meal at a senior center where they receive free meals and are encouraged to socialize with other clients. The meal is a non-monetary compensation, and the interaction with other clients may serve the clients' therapeutic needs.~~

~~(C) It is usually "exploitation" to require a client to provide extensive janitorial or household services without pay, unless the services are actually an integral part of the therapeutic program, such as in "clubhouse" type programs that have been approved by DHS.~~

~~(4) "Maltreatment" includes but is not limited to:~~

~~(a) Physical exercises, such as running laps or performing pushups, except where such exercises are consistent with an individual's service plan and written agency policy and with the individual's health and abilities.~~

~~(b) Any form of Restraint or Seclusion used by the Provider for reasons of convenience or to coerce, discipline or retaliate against a client. The Provider may use a Restraint or Seclusion only in emergency situations where such use is necessary to ensure the safety of the client or others and where less restrictive interventions would be ineffective, and only if the use is authorized by the client's service plan and administered by trained authorized personnel. Any use of Restraint or Seclusion must end immediately once the emergency safety situation is resolved. The Provider shall comply with all applicable laws about Restraints or Seclusions, including all federal and state statutes, regulations, rules and policies.~~

~~(c) Assignment of unduly physically strenuous or harsh work.~~

~~(d) Requiring or forcing the individual to take an uncomfortable position, such as squatting or bending, or requiring or forcing the individual to repeat physical movements as a means of punishment.~~

~~(e) Group punishments for misbehaviors of individuals.~~

~~(f) Emotional maltreatment, bullying, teasing, provoking or otherwise verbally or physically intimidating or agitating a client.~~

~~(g) Denial of any essential program service solely for disciplinary purposes.~~

~~(h) Denial of visiting or communication privileges with family or significant others solely for disciplinary purposes.~~

~~(i) Requiring the individual to remain silent for long periods of time for the purpose of punishment.~~

~~(j) Extensive withholding of emotional response or stimulation.~~

~~(k) Denying a current client from entering the client's residence, where such denial is for disciplinary or retaliatory purposes or for any purpose unrelated to the safety of clients or others.~~

~~R495-876-6. Provider's Compliance with Conduct Requirements Imposed by Law, Contract or Other Policies.~~

~~In addition to complying with this Code of Conduct, the Provider shall comply with all applicable laws (such as statutes, rules and court decisions) and all policies adopted by the DHS Office of Licensing, by the DHS Divisions or Offices whose clients the Provider serves, and by other state and federal agencies that regulate or oversee the Provider's programs. Where the Office of Licensing or another DHS entity has adopted a policy that is more specific or restrictive than this Code of Conduct, that policy shall control. If a statute, rule or policy defines abuse, neglect, exploitation or maltreatment as including conduct that is not expressly included in this Code of Conduct, such conduct shall also constitute a violation of this Code of Conduct. See, e.g., Title 62A, Chapter 3 of the Utah Code (definition of adult abuse) and Title 78A, Chapter 6 and Title 76, Chapter 5 of the Utah Code (definitions of child abuse).~~

~~R495-876-7. The Provider's Interactions with DHS Personnel and the Public.~~

~~In carrying out all DHS related business, the Provider shall conduct itself with professionalism and shall treat DHS personnel, the members of the Provider's staff and members of the public courteously and fairly. The Provider shall not engage in criminal conduct or in any fraud or other financial misconduct.~~

~~R495-876-8. Sanctions for Non-compliance.~~

~~If a Provider or its employee or volunteer fail to comply with this Code of Conduct, DHS may impose appropriate sanctions (such as corrective action, probation, suspension, disbarment from State contracts, and termination of the Provider's license or certification) and may avail itself of all legal and equitable remedies (such as money damages and termination of the Provider's contract). In imposing such sanctions and remedies, DHS shall comply with the Utah Administrative Procedures Act and applicable DHS rules. In appropriate circumstances, DHS shall also report the Provider's misconduct to law enforcement and to the Provider's clients and their families or legal representatives (e.g., a legal guardian). In all cases, DHS shall also report the Provider's misconduct to the licensing authorities, including the DHS Office of Licensing.~~

~~R495-876-9. Providers' Duty to Help DHS Protect Clients.~~

~~(1) Duty to Protect Clients' Health and Safety. If the Provider becomes aware that a client has been subjected to any abuse, neglect, exploitation or maltreatment, the Provider's first duty is to protect the client's health and safety.~~

~~(2) Duty to Report Problems and Cooperate with Investigations. Providers shall document and report any abuse, neglect, exploitation or maltreatment and exploitation as outlined in this Code of Conduct, and they shall cooperate fully in any~~

investigation conducted by DHS, law enforcement or other regulatory or monitoring agencies.

(a) Except as provided in subsection(b) below, Providers shall immediately report abuse, neglect, exploitation or maltreatment by contacting the local Regional Office of the appropriate DHS Division or Office. During weekends and on holidays, Providers shall make such reports to the on-call worker of that Regional Office.

(i) Providers shall report any abuse or neglect of disabled or elder adults to the Adult Protective Services intake office of the Division of Aging and Adult Services.

(ii) The Provider shall make all reports and documentation about abuse, neglect, exploitation, and maltreatment available to appropriate DHS personnel and law enforcement upon request.

(b) Providers shall document any client injury (explained or unexplained) that occurs on the Providers' premises or while the client is under the Provider's care and supervision, and the Provider shall report any such injury to supervisory personnel immediately. Providers shall cooperate fully in any investigation conducted by DHS, law enforcement or other regulatory or monitoring agencies. If the client's injury is extremely minimal, the Provider has 12 hours to report the injury. The term "extremely minimal" refers to injuries that obviously do not require medical attention (beyond washing a minor wound and applying a band aid, for example) and which cannot reasonably be expected to benefit from advice or consultation from the supervisory personnel or medical practitioners.

(i) Example: If a foster child falls off a swing and skins her knee slightly, the foster parent shall document the injury and report to the foster care worker within 12 hours.

(ii) Example: If a foster child falls off a swing and sprains or twists her ankle, the foster parent shall document the injury and report it immediately to supervisory personnel because the supervisor may want the child's ankle X-rayed or examined by a physician.

(3) Duty to Report Fatalities and Cooperate in Investigations and Fatality Reviews. If a DHS client dies while receiving services from the Provider, the Provider shall notify the supervising DHS Division or Office immediately and shall cooperate with any investigation into the client's death. In addition, some Providers are subject to the Department of Human Services' Fatality Review Policy. (See the "Eligibility" section of DHS Policy No. 05-02 for a description of the entities subject to the fatality review requirements. A copy of the policy is available at the DHS web site at: <http://www.hspolicy.utah.gov>) If the Provider is subject to the Fatality Review Policy, it shall comply with that policy (including all reporting requirements) and the Provider shall cooperate fully with any fatality reviews and investigations concerning a client death.

(4) Duty to Display DHS Poster. The Provider shall prominently display in each facility a DHS poster that notifies employees of their responsibilities to report violations of this Provider Code of Conduct, and that gives phone numbers for the Regional Office or Intake Office of the relevant DHS Division(s). Notwithstanding the foregoing, if the Provider provides its services in a private home and if the Provider has fewer than three employees or volunteers, the Provider shall maintain this information in a readily accessible place but it need not actually display the DHS poster. DHS shall annually provide the Provider with a copy of the current DHS poster or it shall make the poster available on the DHS web site: http://www.hspolicy.utah.gov/pdf/poster_provider_code_of_conduct.pdf.

R495-876-1. Authority and Purpose.

This rule is authorized by Section 62A-1-111. The department adopts this rule to:

(1) protect its clients from abuse, neglect, mistreatment, and exploitation; and

(2) clarify the expectation of conduct for department providers and their employees and volunteers who interact with department clients.

R495-876-2. General Definitions.

(1) "Abuse" includes abuse as defined in Sections 62A-3-301, 62A-4a-101, 78A-6-105, 80-1-102, and R512-80-2.

(2) "Client" means anyone who receives services from the department or a department contracted provider or as defined in Section 62A-2-101.

(3) "Critical incident" means the same as defined in Rule R501-1.

(4) "Department" means the Department of Human Services or any of its divisions, offices or agencies. Effective July 1, 2022, "department" will mean the Department of Health and Human Services.

(5) "Mistreatment" means emotional or physical mistreatment:

(a) as defined in Rule R501-1; and

(b) physical mistreatment includes:

(i) misuse of work, exercise restraint, or seclusion as a means of coercion, punishment, or retaliation against a client, or for the convenience of the licensee, or when inconsistent with the client's treatment or service plan, health or abilities;

(ii) compelling a client to remain in an uncomfortable position or repeating physical movements to coerce, punish, or retaliate against a client, or for the convenience of the licensee; and

(iii) physical punishment.

(6) "Exploitation" includes:

(a) using a client's property without the client's consent or using a client's property in a way that is contrary to the client's best interests, such as expending a client's funds for the benefit of another;

(b) making unjust or improper use of clients or their resources;

(c) accepting gifts in exchange for preferential treatment of a client or in exchange for services that the provider is already obliged to provide to the client;

(d) using the labor of a client for personal gain; and

(e) using the labor of a client without paying the client a fair wage or without providing the client with just or equivalent non-monetary compensation, except where such use is consistent with standard therapeutic practices and is authorized by department policy or the provider's contract with the department.

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

(8) "Harm" means physical or emotional pain, damage, or injury.

(9) "Neglect" means abandonment or the failure to provide necessary care, including nutrition, education, clothing, shelter, sleep, bedding, supervision, health care, hygiene, treatment, and protection from harm.

(10) "Penalty" means the department's denying, placing conditions on, suspending, or revoking a human services license due to non-compliance with statute or administrative rule. Penalty may include penalties outlined in Section 62A-2-112 or defined in Rule R501-1.

(11) "Provider" means any individual or business entity that contracts or subcontracts with the department to provide services to clients. The term "provider" includes licensed or certified individuals who provide services to clients under the supervision or direction of a provider. The term "provider" also refers to the provider's employees, volunteers, subcontractors, and others who act on the provider's behalf or under the provider's control or supervision. Provider also means "human services program" as defined in Section 62A-2-101.

(12) "Restraint" means physically restricting a person's freedom of movement, physical activity, or normal access to their body and includes chemical and mechanical restraint. An escort used to lead, guide, or direct a client is not a restraint.

(13) "Seclusion" means the same as defined in Section 62A-2-101 and Title R501.

(14) "Staff" means direct care employees, support employees, managers, directors, supervisors, administrators, agents, volunteers, owners, and contractors.

(15) "Written agency policy" means written policy established by the provider. If a written agency policy contains provisions that are more lenient than this rule, those provisions must be approved in writing by the executive director of the department and the Office of Licensing.

R495-876-3. Provider's Compliance with Conduct Requirements Imposed by Law, Contract or Other Policies.

In addition to complying with R495-876, Provider Code of Conduct, the provider shall comply with each applicable federal, state, and local law, and each policy required by the department or by other state and federal agencies that regulate or oversee the provider's programs. If a department, state or federal entity requires a policy that is more specific or restrictive than this rule, the more specific or restrictive policy shall supersede.

R495-876-4. Providers' Duty to Help Protect Clients.

(1) If any provider becomes aware that any client has been subjected to any abuse, neglect, exploitation or mistreatment, the provider's first duty is to protect the client's health and safety.

(2) Each provider shall report any abuse or neglect of a child to the Child Protective Services intake office of the Division of Child and Family Services.

(3) Each provider shall report any abuse or neglect of disabled or elder adults to the Adult Protective Services intake office of the Division of Aging and Adult Services.

(4) Each provider shall make each reports and documentation about abuse, neglect, exploitation, and mistreatment available to appropriate department personnel and law enforcement upon request.

(5) Each provider shall cooperate fully in any investigation conducted by the department, law enforcement or other regulatory or monitoring agencies.

(6) Each provider shall document and report each critical incident to the Office of Licensing and the client's case worker or support coordinator.

(7) If a client dies while receiving services from the provider, the provider shall notify the supervising department division or office immediately and shall cooperate with any investigation into the client's death.

R495-876-5. Provider Code of Conduct.

(1) Providers and provider staff:

(a) shall accurately represent services, policies and procedures to clients, guardians, prospective clients, and the public;

(b) shall create, maintain, and comply with a written policy that addresses the appropriate treatment of clients and ensures that clients rights are not violated;

(c) may not abuse, neglect, harm, exploit, mistreat, or act in a way that compromises the health and safety of clients through acts or omissions, by encouraging others to act, or by failing to deter others from acting;

(d) may not use or permit the use of corporal punishment and shall only utilize restraint as described in Rules R501-1; except that providers serving clients under the Division of Services for People with Disabilities shall also comply with the rules on restraint as described in Rule R539-4;

(e) shall maintain the health and safety of clients in each program service and activity;

(f) shall not commit fraud;

(g) shall provide the licensee's records related to any services or supplies billed to each insurer upon request by the insurer or the department;

(h) shall require that any provider or staff member who is aware of or suspects abuse, neglect, mistreatment, fraud, or exploitation shall ensure that a report is made to the applicable investigative agencies as outlined in Rule R501-1 and in compliance with mandatory reporting laws, including Sections 62A-4a-403 and 62A-3-305;

(i) may not use alcoholic beverages or controlled substances, without medical prescription, while on the job, or being under the influence while on the job;

(j) may not use aversive procedures prior to the review and approval of the provider human rights committee or the Human Rights Committee as defined in Section R539-3-4 for individuals with disabilities;

(k) shall provide services and supervision that is commensurate with the skills, abilities, behaviors, and needs of each client;

(l) shall ensure that a report is made to the Office of Licensing or to the applicable department agency for any violation, or suspected violation, of this rule; and

(m) shall prominently display in each facility a poster notifying employees of their responsibilities to report violations of R495-876, Provider Code of Conduct.

(2) Each staff will be given a copy of R495-876, Provider Code of Conduct prior to beginning employment. Each staff must sign off on reading, understanding and agreeing to follow R495-876, Provider Code of Conduct prior to working with clients.

R495-876-6. Client Rights.

(1) Clients have the right to:

(a) be treated with dignity;

(b) be free from potential harm or acts of violence;

(c) be free from discrimination;

(d) be free from abuse, neglect, mistreatment, exploitation, and fraud;

(e) privacy of current and closed records;

(f) communicate and visit with family, attorney, clergy, physician, counselor, or case manager, unless therapeutically contraindicated or court restricted; and

(g) be informed of agency policies and procedures that affect client or guardian's ability to make informed decisions regarding client care, to include:

- (i) program expectations, requirements, mandatory or voluntary aspects of the program;
- (ii) consequences for non-compliance;
- (iii) reasons for involuntary termination from the program and criteria for re-admission;
- (iv) program service fees and billing; and
- (v) safety and characteristics of the physical environment where services will be provided.
- (2) Clients shall be informed of each right listed in Section R495-876-6. Each provider shall maintain in the client file record a copy of the client's rights, signed by each client or client's guardian.
- (3) Each provider shall prominently display in each facility a poster that notifies clients of their rights.
- (4) Each provider staff shall be trained annually on this rule. Each provider shall ensure that each staff personnel file contains documentation of training completion which shall be individually signed and dated by the trainer and staff member.

R495-876-7. Sanctions for Non-compliance.

If a provider or its staff fails to comply with this rule, the department may impose an appropriate sanction such as probation, suspension, disbarment from state contracts, and termination of license or certification. The department may also, as applicable, report the provider's misconduct to licensing authorities, law enforcement, and the provider's clients or legal guardian.

KEY: social services, provider conduct*

Date of Last Change: 2021|August 26, 2008|

Notice of Continuation: May 28, 2021

Authorizing, and Implemented or Interpreted Law: 62A-1-110; 62A-1-111

NOTICE OF PROPOSED RULE

TYPE OF RULE: Repeal and Reenact

| | | |
|--------------------------------------|---------------|------------------------|
| Utah Admin. Code Ref (R no.): | R501-1 | Filing ID 54007 |
|--------------------------------------|---------------|------------------------|

Agency Information

| | | |
|--|--|-------------------|
| 1. Department: | Human Services | |
| Agency: | Administration, Administrative Services, Licensing | |
| Building: | Multi Agency State Office Building | |
| Street address: | 195 N 1950 W | |
| City, state and zip: | Salt Lake City, UT 84116 | |
| Contact person(s): | | |
| Name: | Phone: | Email: |
| Janice Weinman | 385-321-5586 | jweinman@utah.gov |
| Jonah Shaw | 385-310-2389 | jshaw@utah.gov |
| Please address questions regarding information on this notice to the agency. | | |

General Information**2. Rule or section catchline:**

R501-1. General Provisions for Licensing

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

The rule is being changed in compliance with S.B. 127 passed in the 2021 General Session, Executive Order No. 2021-12, and based on stakeholder input. The Office of Licensing (Office) is consolidating Rule R501-2 into Rule R501-1 to apply to all licensed programs. During the review of this rule, the Office also discovered a number of minor issues that needed to be amended.

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 substantive changes are being done to bring this rule into compliance with the new requirements imposed upon human services programs by S.B. 127 (2021). In order to comply with Executive Order No. 2021-12, many changes are also being done to fix style issues to bring this rule text more in line with current rulewriting standards and to make the language of this rule more clear. This repeal and reenact also aligns outdated rules with current industry standards based on stakeholder input.

Fiscal Information**5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:****A) State budget:**

There is no aggregate anticipated cost or savings to state budget because all legislative changes have been accounted for through a fiscal note to supplement office resources for enforcement of this rule change.

B) Local governments:

There is no aggregate anticipated cost or savings to local governments because the proposed rule only supports local government requirements but does not impose any additional requirements on them.

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

The cost or savings impact on small businesses is inestimable because licensed programs are allowed to demonstrate rule compliance through policy and procedure development. Any additional costs as a result of the new policies and procedures will be self-imposed.

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

The cost or savings impact on non-small businesses is inestimable because licensed programs are allowed to demonstrate rule compliance through policy and procedure development and there a number of ways programs may choose to comply.

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

There is no impact on persons due to the enactment of these proposed rule changes, as the Office can only regulate small or non-small businesses meeting the statutory definition for licensure.

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

There will be no affected persons other than small or non-small businesses meeting the statutory definition for licensure.

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 proposal will not result in a fiscal impact to businesses. Tracy Gruber, 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 Executive Director of Human Services, Tracy Gruber, 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 62A-2-101 | Section 62A-2-106 | Section 62A-2-123 |
| Section 62A-2-124 | Section 62A-2-125 | |

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: 12/01/2021

10. This rule change MAY become effective on: 12/08/2021

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: | Tracy Gruber, Executive Director | Date: | 10/04/2021 |
|--|----------------------------------|--------------|------------|

R501. Human Services, Administration, Administrative Services, Licensing.

R501-1. General Provisions for Licensing.

[R501-1-1. Authority and Purpose.

~~(1) This Rule is authorized by Utah Code Title 62A, Chapter 2.~~

~~(2) This Rule clarifies the standards for:~~

~~(a) approving or denying a human services program license application;~~

~~(b) renewing, extending, placing conditions on, restricting admissions, suspending, or revoking a license for a human services program;~~

~~(c) inspecting, monitoring, and investigating a prospective or current human services program; and~~

~~(d) approving or denying a variance to the Human Services Administrative Rules, Title R501, regarding the licensing of human services programs.~~

R501-1-2. Definitions.

~~As used in this Title 501:~~

~~(1) "Abuse" includes, but is not limited to:~~

~~(a) attempting to cause harm;~~

~~(b) threatening to cause harm;~~

~~(c) causing non-accidental harm;~~

~~(d) unreasonable or inappropriate use of a restraint, medication, confinement, seclusion or isolation that causes harm;~~

~~(e) sexual exploitation, as defined in 78A-6-105;~~

~~(f) sexual abuse, including sexual contact or conduct with a client, or as defined in 78A-6-105;~~

~~(g) a sexual offense, as described in Title 76 Chapter 5; or~~

~~(h) domestic violence or domestic violence related to child abuse.~~

~~(i) "Abuse" does not include the reasonable discipline of a child, or the use of reasonable and necessary force in self-defense or the defense of others, as such force is defined in 76-2-4.~~

~~(2) "Applicant" is defined in 62A-2-101.~~

~~(3) "Associated with the Licensee" is defined in 62A-2-101.~~

~~(4) "Category" means the type of human service license described in 62A-2-101.~~

~~(5) "Client" is defined in 62A-2-101.~~

~~(6) "Clinical" means services delivered by a Division of Occupational and Professional Licensing (DOPL) licensed mental health or medical professional in accordance with Utah Code Title 58, Chapters 60, 61, 67 and 68.~~

~~(7) "Compliant" means adherence to governing rule and statute or only minor violations that do not rise to the level of a corrective action plan or penalty.~~

~~(8) "Conflict of Interest" means a situation in which a person is in a position to derive personal benefit from actions or decisions made in their official capacity.~~

~~(9) "Critical Incident" means an occurrence that involves:~~

~~(a) abuse;~~

~~(b) neglect;~~

~~(c) exploitation;~~

~~(d) unexpected death;~~

~~(e) any client injury, including self harm, requiring medical attention beyond basic first aid;~~

~~(f) any client injury that is a result of staff or client assault, restraint or intervention;~~

~~(g) all criminal activity excluding minor infractions;~~

~~(h) medical emergency or protective service intervention;~~

~~(i) the unlawful or unauthorized presence or use of alcohol, substances, or harmful contraband items;~~

~~(j) the unauthorized presence or misuse of dangerous weapons;~~

~~(k) attempted suicide;~~

~~(l) any on duty or client involved staff sexual misconduct or any client unlawful sexual misconduct;~~

~~(m) client rights violations;~~

~~(i) per Office of Licensing code of conduct for all licensed providers; and~~

~~(ii) per DHS code of conduct for DHS contracted providers; and~~

~~(iii) per human rights committee approval for DSPD contracted providers;~~

~~(n) medication errors resulting in impact on client's well-being, medical status or functioning;~~

~~(o) the unauthorized departure of a client from the program;~~

~~(p) outbreak of a contagious illness or situation requiring notification of or consultation with the local health department;~~

~~(q) any event compromising the client environment, including roof collapse, fire, flood, weather events, natural disasters and infestations;~~

~~(r) any other incident that compromises client health and safety shall result in a critical incident report;~~

~~(i) specific contract language may also exist that requires additional criteria for DHS contracted providers.~~

~~(10) "Director" refers to the Office of Licensing director as defined in 62A-2-101, and is not a "Program Director" as defined in this Chapter.~~

~~(11) "Exploitation" includes, but is not limited to:~~

~~(a) the use of a client's property, labor, or resources without the client's consent or in a manner that is contrary to the client's best interests, or for the personal gain of someone other than the client; such as expending a client's funds for the benefit of another; or~~

~~(b) using the labor of a client without paying the client a fair wage or without providing the client with just or equivalent non-monetary compensation, where such use is consistent with therapeutic practices; or~~

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

~~(d) any offense described in 76-5-111(4) or 76-5b-201 and 202.~~

~~(12) "Foster Home" is defined in 62A-2-101 (18).~~

~~(13) "Fraud" means a false or deceptive statement, act, or omission that causes, or attempts to cause, property or financial damages, or for personal or licensee gain. Fraud includes the offenses identified as fraud in Utah Code Title 76 Chapter 6.~~

~~(14) "Harm" means physical or emotional pain, damage, or injury.~~

~~(15) "Human Services Program" is defined in 62A-2-101.~~

~~(16) "Initial License" means the license issued to operate a human services program during the licensee's first year of licensure. This license is considered provisional and allows for the licensee to demonstrate sustained compliance with licensing rules prior to renewal.~~

~~(17) "Inspection" means announced or unannounced visit of the licensed site in accordance with 62A-2-118.~~

~~(18) "Licensee" is defined in 62A-2-101 and includes the person or persons responsible for administration and decision making for the licensed site or program. The term licensee may be used to describe a person or entity that has caused any of the violations described in 62A-2-112 that are related to the human services program.~~

~~(19) "Local Government" is defined in 62A-2-101.~~

~~(20) "Medical Emergency" is an acute injury or illness posing an immediate risk to a person's life or long-term health.~~

~~(21) "Medication-Assisted Treatment" means the use of medications with counseling and behavioral therapies to treat substance use disorders or prevent opioid overdose.~~

NOTICES OF PROPOSED RULES

~~(22) "Mistreatment" means emotional or physical mistreatment:~~

~~(a) emotional mistreatment is verbal or non-verbal conduct that results in a client suffering significant mental anguish, emotional distress, fear, humiliation, or degradation; and may include demeaning, threatening, terrorizing, alienating, isolating, intimidating, or harassing a client; and~~

~~(b) physical mistreatment includes:~~

~~(i) misuse of work, exercise restraint, or seclusion as a means of coercion, punishment, or retaliation against a client, or for the convenience of the licensee, or when inconsistent with the client's treatment or service plan, health or abilities;~~

~~(ii) compelling a client to remain in an uncomfortable position or repeating physical movements to coerce, punish, or retaliate against a client, or for the convenience of the licensee;~~

~~(iii) physical punishment.~~

~~(23) "Neglect" means abandonment or the failure to provide necessary care, which may include nutrition, education, clothing, shelter, sleep, bedding, supervision, health care, hygiene, treatment, or protection from harm.~~

~~(24) "Office" means the Utah Department of Human Services Office of Licensing.~~

~~(25) "Owner/Ownership" means any licensee, person, or entity that:~~

~~(a) is defined as a "Member" in 62A-2-108; or~~

~~(b) is a person or persons listed on a foster home license;~~
or

~~(c) possesses the exclusive right to hold, use, benefit from, enjoy, convey, transfer, and otherwise dispose of a program; or~~

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

~~(e) may or may not own the real property or building where the facility operates; or~~

~~(f) a property owner is also an owner of the program if they operate or have engaged the services of others to operate the program.~~

~~(26) "Parent Program" means an applicant or licensee owning or directing multiple sites under the same general administrative organization.~~

~~(27) "Penalty" means the Office's denying, placing conditions on, suspending, or revoking a human services license due to noncompliance with statute or administrative rules, may include penalties outlined in 62A-2-112. A penalty does not include corrective action plans as used in this Rule.~~

~~(28) "Program" refers to a Human Services Program as defined herein.~~

~~(29) "Program Director" means a person or persons ultimately responsible for day-to-day operations of a program.~~

~~(30) "Person" means an individual, agency, association, partnership, corporation, business entity, or governmental entity.~~

~~(31) "Regular Business Hours" are the hours that the program is available to the public or providing services to clients.~~

~~(32) "Renewal License" means a continuing program license issued based upon ongoing compliance with administrative rules and statutes. It is issued annually or biennially in compliance with 62A-2-108(4).~~

~~(33) "Restraint" means the involuntary method of physically restricting a person's freedom of movement, physical activity, or normal access to their body. Restraint is only allowed to prevent harm to the client or in protection of others and is only to be completed by an individual with documented training in non-violent crisis intervention or de-escalation techniques.~~

~~(34) "Seclusion" means the involuntary confinement of the individual in a room or an area away from the client community, where the individual is physically prevented from leaving.~~

~~(35) "Site" means a human services program identified by a single geographic location and must be linked to the parent program, if one exists.~~

~~(36) "Significant Criminal Activity" is any staff or client involved criminal activity that occurs in or related to the program that poses an immediate and serious threat to health and safety.~~

~~(37) "Staff" means direct care employees, support employees, managers, program directors, supervisors, administrators, agents, volunteers, owners, and contractors.~~

~~(38) "Variance" means the Office authorized deviation from the administrative rule.~~

~~(39) "Violation" means an act or omission by the licensee, or any person associated with the licensee, contrary to any administrative regulation, or local, state, or federal law applicable to the program.~~

R501-1-3. Licensing Application Procedures.

~~(1) Initial and Renewal Application.~~

~~(a) An applicant shall not accept any fees, enter any agreements to provide client services, or provide any client services until they have received a license certificate issued by the Office.~~

~~(b) The Office shall issue a license for a human service program only after verifying compliance with applicable administrative rules and statutes.~~

~~(c) Applicants and licensees shall permit the Office to have immediate, unrestricted access to the site, all on and off-site program and client records, and all staff and clients.~~

~~(d) An applicant may withdraw their application for a license, in writing, at any time during the application process.~~

~~(e) An applicant seeking an initial or renewal license to operate a human services program shall submit:~~

~~(i) an application as provided by the Office; a renewal application that is not submitted at least thirty days prior to the expiration date of the current license may result in the license expiring;~~

~~(ii) the fee(s) required for each category of human service program license(s); except as excluded in R501-1-7-2;~~

~~(iii) a completed background screening application, fees and supporting documentation for each person associated with the human services program in accordance with 62A-2-120 and R501-14, except for those excluded in 62A-2-120(13);~~

~~(iv) the applicant's required policies and procedures;~~

~~(A) for renewal purposes the applicant may submit only the policies and procedures that have been modified;~~

~~(v) name and contact information for all owners and program directors, as defined in this Chapter; and~~

~~(vi) documentation verifying compliance with, or exemption from, local government zoning, health, fire, safety, and business license requirements.~~

~~(A) For residential treatment programs applying for initial licensure, a copy of its notice of intent to operate a residential treatment program, and proof of service, in accordance with 62A-2-108.2.~~

~~(2) Application Expiration.~~

~~(a) A program initial application, other than an initial foster home application, that remains incomplete shall expire one year from the date it was first submitted to the Office.~~

~~(b) A foster home initial application that lacks required documentation may expire 90 days from the date it was first submitted to the Office unless the Office determines the applicant to be making active progress toward licensing compliance.~~

~~(c) An expired initial application is void and requires a new initial application and applicable fees for each category of license.~~

~~(3) The Office may deny the initial application or place a penalty on a renewal license if:~~

~~(a) the program has failed to achieve or maintain compliance with administrative rules, laws, ordinances or statutes; or~~

~~(b) the Office determines that the program is not reasonably likely to provide services in accordance with governing rules or statutes;~~

~~(i) the Office may consider the history of rule violations by the owner, licensee, or persons associated with the program;~~

~~(ii) the Office determines that significant false or misleading information regarding the program has been provided to the Office, program clients, prospective clients, or the public; or~~

~~(c) program directors, owners or any individuals involved in providing billed services or directly preparing billing have been identified and listed on the Medicaid LEIE exclusion list; or~~

~~(d) the agency maintains association with any individual who has been a licensee that has had a license revoked by the Office within the five years prior to the date on the application.~~

~~(4) Previously denied applicants shall not reapply for at least three months from the date of denial.~~

R501-1-4. Licensing Determinations.

~~(1) The Office may place individualized parameters on a program license in order to promote the health, safety, and welfare of clients. Such parameters may include, but are not limited to:~~

~~(a) age restrictions;~~

~~(b) admission or placement restrictions; or~~

~~(c) other parameters specific to individual sites and programs.~~

~~(2) A license certificate shall state the name, site address, license category, maximum client capacity if applicable, any specific parameters, and effective dates of the license.~~

~~(a) Licensee shall post the license certificate in a conspicuous location at the licensed site.~~

~~(3) A site associated with a parent program shall not be issued an initial license while any other license associated with that parent program is under penalty, or has a pending appeal.~~

~~(4) Two Year Licenses.~~

~~(a) A program may apply for a two year license if:~~

~~(i) the program has been licensed consecutively and in compliance for two years prior to application; and~~

~~(ii) the Office has determined that the program's individual services and circumstances are likely to maintain compliance under a two year cycle; and~~

~~(iii) the program submits double the annual fees for their category/categories of license(s); and~~

~~(iv) the program submits a plan for maintaining continued compliance with background screenings as described in 62A-2-120.~~

~~(b) A two year license remains subject to the same annual monitoring as a one year license.~~

~~(5) License Expiration.~~

~~(a) A license that has expired is void and may not be renewed.~~

~~(b) A license expires at midnight on the last day of the same month the license was issued, one year following the date of issuance unless:~~

~~(i) the license has been revoked by the Office; or~~

~~(ii) the license has been extended by the Office; or~~

~~(iii) the license has been relinquished by the licensee; or~~

~~(iv) the license is on a renewal cycle to maintain the same expiration date annually unless otherwise requested by the provider~~

~~(iv) the license was issued as a two year license, which will expire at midnight on the last day of the same month the license was issued, two years following the date of issuance and in accordance with R501-4-2.~~

~~(c) A program with an expired license shall not accept any fees, enter any agreements to provide client services, or provide any client services.~~

~~(d) A program with an expired license shall submit an application and fees for an initial license and be granted an initial license prior to providing any services in accordance with this Rule.~~

~~(6) License Extensions.~~

~~(a) The Office may extend the current license of a human service program only when the renewal application and applicable fee have been submitted.~~

~~(b) A license that is compliant prior to expiration may be extended for a one time maximum of 90 days past the current license expiration date.~~

~~(c) A license that is not compliant prior to expiration may be extended in non-compliant status.~~

~~(i) A compliant renewal license will not be granted until resolution of identified compliance issues.~~

~~(d) The subsequent license following an extension shall be reduced in duration by the time of the extension.~~

~~(7) License Relinquishment.~~

~~(a) A licensee wishing to voluntarily relinquish its license shall submit a written notice to the Office.~~

~~(b) Voluntary relinquishment of a license shall not be accepted by the Office if a notice of agency action revoking the license has been initiated.~~

R501-1-5. Program Changes.

~~(1) Name Change.~~

~~(a) A licensee wishing to change only the name of the program or site does not need to submit an application or fee; they shall submit updated program documentation reflecting the new name to the Office at least ten days prior to the change.~~

~~(b) The Office may link the name of the former program to the new name on the licensing database, and on all license certificates and public websites, for two years following the change.~~

~~(2) Relocation.~~

~~(a) A human services program wishing to relocate to a new address may serve clients at the new site, only after:~~

~~(i) submission of renewal application and renewal fees at least 30 days prior to the move;~~

~~(ii) submission of local government business license and applicable inspections and clearances, including but not limited to:~~

~~(A) health;~~

~~(B) fire; and/or~~

~~(C) as required by the rules of a human service program category;~~

~~(iii) submission of insurance coverage at the new site;~~

~~(iv) inspection by the Office; and~~

~~(v) receipt of the updated license certificate for the new site.~~

~~(b) A foster home that intends to relocate to a new site may have their license transferred to the new site only after:~~

NOTICES OF PROPOSED RULES

~~(i) a request to relocate has been submitted to the Office at least 30 days prior to the move;~~

~~(ii) Office of Licensing inspection and approval of licensure at the new site which shall occur within two weeks, if a foster child is placed, and within 30 days if there are no current foster placements;~~

~~(A) if a foster child is placed, it is the responsibility of the licensed foster parent to ensure health and safety of the foster child during the transfer to the new site.~~

~~(c) Except for foster homes outlined in subsection (b), no clients may be present and no services may be provided at a relocation address until after the Office issues a new license in accordance with this Rule.~~

~~(d) Moving from a licensed site voids that site's license unless the provisions of this Chapter are followed for relocation.~~

~~(3) Capacity Change.~~

~~(a) A licensee seeking to increase the maximum client capacity of a program shall submit an application and renewal fee for a license renewal as required by the rules of the human service program category.~~

~~(4) Add New License Category.~~

~~(a) A program may request to add a new category of service to an existing licensed site by submitting application and fees for an initial license. All requirements for initial licensure must be verified.~~

~~(5) Add New Location.~~

~~(a) A program may add an additional site of service by submitting an application and fees for an initial license. All requirements for initial licensure must be verified.~~

~~(6) Owner/Ownership Changes.~~

~~(a) A program anticipating, or undergoing a change of ownership, or change in owner(s), shall submit in writing, prior to the change:~~

~~(i) any changes to the programming and services;~~

~~(ii) declaration regarding responsibility for records and records retention to include an agreement signed by both current and prospective owners and/or program directors, detailing how all program staff and client records will be retained and remain available to the Office for six years or in accordance with DHS contract requirements regardless of whether the program remains licensed;~~

~~(iii) names and contact information of any new directors or owners;~~

~~(iv) documentation of continuous insurance coverage; and~~

~~(v) an updated business license.~~

~~(b) The status of a license at the time of a change of ownership shall continue.~~

~~(7) For any substantial change in this Section, the Office may require new, initial application and fees for each license category.~~

~~(a) Substantial changes include:~~

~~(i) those resulting in direct client impact;~~

~~(ii) changes to programming;~~

~~(iii) changes in populations served;~~

~~(iv) severing ties with previous owner or staff affiliations;~~

~~or~~

~~(v) disrupting continuity of record retention, etc.~~

R501-1-6. License Fees.

~~(1) The Office shall collect licensing fees in accordance with 62A-2-106, and Utah Code Title 63J Chapter 1 Part 5.~~

~~(2) No licensing fee shall be required from a foster home, or a Division, or Office, of the Department of Human Services.~~

~~(3) The Office is not required to perform an on-site visit, or document review until the applicant pays the licensing fee.~~

~~(4) A license application fee will expire after 12 months if a program has been unable to meet the license requirements.~~

~~(5) A fee paid by a licensee shall not be transferred, prorated, reduced, waived, or refunded. Costs incurred by applicants in preparation for, or maintenance of licensure are the sole responsibility of the applicant.~~

~~(6) Separate initial license fees are required for each new category of human services program offered at each program site.~~

~~(7) Separate renewal license fees, and applicable capacity fees, are required for each license category that is renewed at each program site.~~

~~(a) Capacity fees are calculated according to the maximum licensed client capacity of the human service program, and not according to the number of clients actually served in the program.~~

~~(8) A human service program with more than one building, unit, or suite at one site, may choose to have its fees assessed and each category of license issued:~~

~~(a) so that each category of license will be issued to include all on-site buildings, units or suites as one; or~~

~~(b) so that separate licenses will be issued for each individual on-site building, unit or suite.~~

R501-1-7. Variances.

~~(1) A licensee shall not deviate from any administrative rule without first receiving written approval of a specific variance request signed by the Director of the Office, or the director's designee.~~

~~(2) The director of the Office, or the director's designee, may grant a variance if the director or the Director's designee determines a variance is not likely to compromise client health and safety, or provide opportunity for abuse, neglect, exploitation, harm, mistreatment, or fraud.~~

~~(3) A licensee seeking a variance must submit a written request to their licensing specialist, and specifically describe:~~

~~(a) the rule for which the variance is requested;~~

~~(b) the reason for the request;~~

~~(c) how the variance provides for the best interest of the client(s);~~

~~(d) what procedures will be implemented to ensure the health and safety of all clients; and~~

~~(e) the proposed variance start and expiration dates.~~

~~(4) The Office shall review the variance and notify the licensee of the approval, approval with modification, or denial of the variance, in writing, within 30 days.~~

~~(5) The licensee shall comply with the terms of a written variance, including any conditions or modifications contained within the approved written variance.~~

~~(6) A variance expires on the end date listed on the approval notice and terms of the variance are no longer permitted after that expiration date, unless a renewal of the variance is granted.~~

~~(7) A variance may be renewed by the office when the program is able to justify the request, and ensure ongoing health and safety of all clients.~~

R501-1-8. Monitoring.

~~(1) The Office shall conduct a minimum of one annual on-site inspection, but may conduct as many announced, or unannounced inspections as deemed necessary to monitor compliance, investigate alleged violations, monitor corrective action~~

plans or penalty compliance, or to gather information for license renewal.

~~(2) On site inspections shall take place during regular business hours, as defined in 62A-2-101.~~

~~(3) Applicants and licensees shall not restrict the Office's access to the site, clients, staff, and all program records.~~

~~(4) Licensees and staff shall not compromise the integrity of the Office's information gathering process by withholding or manipulating information, or influencing the specific responses of staff or clients.~~

~~(5) All on site inspections shall contribute toward the renewal or denial of the license application at the end of the license period.~~

~~(6) The Office shall provide written findings to the Program identifying areas of non-compliance with licensing requirements after each on-site inspection.~~

~~(7) Except for reports made in relation to foster homes, the licensee shall make copies of inspection reports available to the public upon request per 62A-2-118(5).~~

~~(8) The Office may adopt a written inspection report from a local government, certifying, contracting, or accrediting entity to assist in a determination whether a licensee has complied with a licensing requirement.~~

~~(9) The Office shall be allowed access to all program documentation and staff that may be located at an administrative location, away from the licensed site.~~

R501-1-9. Investigations of Alleged Violations.

~~(1) Unlicensed Programs.~~

~~(a) The Office shall investigate reports of unlicensed human service programs.~~

~~(b) Investigation of an unlicensed human service program may include interviewing anyone at the site, neighbors, or gathering information from any source that will aid the Office in making a determination as to whether or not the site should be licensed.~~

~~(c) An unlicensed human services program that meets licensure definition, but does not submit an application and fee, or fails to become licensed, shall be referred to the Office of the Attorney General, and the appropriate County Attorney.~~

~~(d) The Office may penalize a licensed program at all program sites when a program adds or operates an unlicensed site that requires licensure by the Office.~~

~~(2) Licensed Program Complaints and Critical Incidents.~~

~~(a) The Office shall investigate critical incidents and complaints involving alleged licensing violations regarding a licensed human services program.~~

~~(b) Complaints about licensees can come to the Office via any means from any source including the Office of Licensing email address: licensingconcerns@utah.gov.~~

~~(c) The Office retains discretion to decline investigation of a complaint that is anonymous, unrelated to current conditions of the program, or not an alleged violation of a rule or statute.~~

~~(d) Critical incidents that involve one or more clients and/or on-duty staff in a licensed setting or under the direct responsibility and supervision of the program shall be reported by the licensee as follows:~~

~~(i) report shall be made to DHS and legal guardians of involved clients within one business day;~~

~~(A) if the critical incident involves a client or service under a DHS contract, the critical incident report must be completed within 24 hours and may require a five day follow-up report to the involved DHS Division;~~

~~(B) if the critical incident involves a client or service to a youth currently in the custody of DHS or its Divisions an immediate live-person verbal notification to the involved Division is additionally required.~~

~~(ii) Initial critical incident reports to DHS shall include the following in writing:~~

~~(A) name of provider and all involved staff, witnesses and clients;~~

~~(B) date, time, and location of the incident, and date and time of incident discovery, if different from time of incident;~~

~~(C) descriptive summary of incident;~~

~~(D) actions taken; and~~

~~(E) actions planned to be taken by the program at the time of the report.~~

~~(F) identification of DHS contracts status, if any.~~

~~(iii) It is the responsibility of the licensee to collect and maintain and submit as requested original witness and participant witness statements and supporting documentation regarding all critical incidents that require individual perspectives to be understood.~~

~~(3) Investigative Process.~~

~~(a) In-person, or electronic investigations may include, but are not limited to:~~

~~(i) a review of on or offsite records;~~

~~(ii) interviews of licensee(s), person(s), client(s), or staff;~~

~~(iii) the gathering of information from collateral parties; and~~

~~(iv) site inspections.~~

~~(c) The Office will prioritize investigations of reports of unlicensed programs, complaints regarding licensed programs, and critical incidents following an assessment of risk to client health and safety as follows:~~

~~(i) priority allegations, as administratively identified by the Office as a potential imminent risk to the health and safety of clients, will require initial on-site contact by the Office within three business days. The Office may utilize law enforcement, Child or Adult Protective services, or other protection agencies to meet priority in on-site response;~~

~~(ii) all other allegations will require that the Office initiate an investigation within ten business days.~~

~~(d) Licensees and staff shall cooperate in any investigation.~~

~~(e) The Office may report any allegations or evidence of abuse, neglect, exploitation, mistreatment, illegal activities or fraud to clients, clients' legal guardians, law enforcement, insurance agencies, the insurance department, the Division of Occupational and Professional Licensing, or any other entity determined necessary by the Office.~~

~~(f) Pending investigations or those that do not result in a violation finding shall be classified as protected and only released in accordance with Utah Code Title 63G Chapter 2, Utah Government Access and Management Act.~~

R501-1-10. License Violations.

~~(1) When the Office finds evidence of violations of statute or rule, the Office shall do one of the following:~~

~~(a) provide written notification of the violation requiring the licensee to correct violation(s) with no formal follow-up; or~~

~~(b) provide written notification of violation and request a licensee to submit a corrective action plan in response to a written notification of a violation;~~

~~_____ (i) a licensee shall submit a written corrective action plan to the Office within ten calendar days of the request from the Office and the corrective action plan shall include:~~

~~_____ (A) a statement of each violation identified by the Office;~~

~~_____ (B) a detailed description of how the licensee will correct each violation and prevent additional violations;~~

~~_____ (C) the date by which the licensee will achieve compliance with administrative rules and statutes; and~~

~~_____ (D) involvement of program owner(s) and director(s), including each foster parent, if involving a licensed or certified foster home.~~

~~_____ (e) The Office shall review the submitted corrective action plan and either inform the licensee that the corrective action plan is approved; or inform the licensee that the corrective action plan is not approved and provide explanation;~~

~~_____ (i) the Office may permit a licensee to amend and resubmit its corrective action plan within five additional calendar days.~~

~~_____ (d) The Office shall issue a Notice of Agency Action imposing a penalty for violation(s) if the licensee fails to submit and comply with an approved corrective action plan.~~

~~_____ (e) A corrective action plan is not a penalty. Programs have the right to refuse the corrective action plan process and may preserve their appeal rights by requesting a penalty through an Office initiated Notice of Agency Action.~~

~~_____ (2) Provide a written notice of agency action initiating a penalty, as follows:~~

~~_____ (a) the Office may place a license on conditional status;~~

~~_____ (i) conditional status allows a program that is in the process of correcting violations to continue operation, subject to conditions established by the Office;~~

~~_____ (A) Failure to meet the terms of the conditions, and time frames outlined on the notice, could result in further penalty.~~

~~_____ (b) The Office may suspend a license for up to three years;~~

~~_____ (i) a human services program that has had its license suspended is prohibited from accepting new clients, and may only provide the services necessary to maintain client health and safety during their transition; and~~

~~_____ (ii) shall have and comply with written policies and procedures to transition clients into equivalent, safe, currently licensed programs or into the custody of their legal guardians.~~

~~_____ (c) The Office may revoke a license;~~

~~_____ (i) a human services program that has had its license revoked is prohibited from accepting new clients and may only provide the services necessary to maintain client health and safety during their transition; and~~

~~_____ (ii) shall have and comply with written policies and procedures to transition clients into equivalent, safe, currently licensed program or into the custody of their legal guardians.~~

~~_____ (d) Names of licensees and programs who have had their licenses revoked shall be maintained by the Office for a period of five years, and shall not be associated in any way with a licensed program during that five year period.~~

~~_____ (e) A licensee whose license has been suspended or revoked is responsible for the program staffing and health and safety needs of all clients while the suspension or revocation is pending.~~

~~_____ (f) The Office may place conditions, such as restricted admissions, to be in immediate effect in the Notice of Agency Action, if necessary, to protect the health and safety of clients.~~

~~_____ (g) The Office may utilize any other penalties pursuant to 62A-2, Subsections 112, 113 and/or 116.~~

~~_____ (h) The Office may consider chronicity, severity, and pervasiveness of violations when determining whether to simply~~

~~provide notification of violations with no follow up requirement; or to request a corrective action plan; or to apply a formal penalty to the program.~~

~~_____ (i) Repeated violations of the same rule or statute, or failure to comply with conditions of a Notice of Agency Action may elevate the penalty level assessed.~~

~~_____ (j) A licensee shall post the Notice of Agency Action on-site, and on the homepage of each of its websites, where it can be easily reviewed by all clients, guardians of clients, and visitors within five business days, and shall remain posted until the resolution of the penalty, unless otherwise instructed by the Office.~~

~~_____ (k) A licensee shall notify all clients, guardians and prospective clients of a Notice of Agency Action issued by the Office within five business days. Prospective and new clients will be notified for as long as the Notice of Agency Action is in effect.~~

~~_____ (l) Pending an appeal of a revocation, suspension or conditional license that restricts admissions, licensee shall not accept any new clients as outlined on the Notice of Agency Action, or while an appeal of a Notice of Agency Action penalty is pending without prior written authorization from the Office.~~

~~_____ (m) The Office shall electronically post Notices of Agency Action issued to a human services program, on the Office's website, in accordance with 62A-2-106.~~

~~_____ (n) Due Process: A Notice of Agency Action shall inform the applicant or licensee of the right to appeal in accordance with Administrative Rule 497-100.~~

~~R501-1-11. Licensing Code of Conduct and Client Rights.~~

~~_____ (1) Licensees and staff shall:~~

~~_____ (a) transparently represent services, fees, and policies and procedures to clients, guardians, prospective clients, and the public;~~

~~_____ (b) disclose any potential or existing conflicts of interest to the Office;~~

~~_____ (c) comply with all federal, state, and local laws that govern the program;~~

~~_____ (d) report all criminal activity;~~

~~_____ (i) significant criminal activity and medical emergencies shall be immediately reported to the appropriate emergency services agency per 62A-2-106-2;~~

~~_____ (e) comply with a written policy that addresses the appropriate treatment of clients, to include the rights of clients as outlined in this Section;~~

~~_____ (f) not abuse, neglect, harm, exploit, mistreat, or act in a way that compromises the health and safety of clients through acts or omissions, by encouraging others to act, or by failing to deter others from acting;~~

~~_____ (g) not use or permit the use of corporal punishment and shall only utilize restraint as defined in this Chapter and outlined in applicable Human Service Rules when an individual's behavior presents imminent danger to self or others;~~

~~_____ (h) maintain the health and safety of clients in all program services and activities, whether on or offsite;~~

~~_____ (i) provide services and supervision that is commensurate with the skills, abilities, behaviors, and needs of each client;~~

~~_____ (j) not serve clients outside the program's scope of services;~~

~~_____ (k) not commit fraud;~~

~~_____ (l) provide an insurer the licensee's records related to any services or supplies billed, upon request by an insurer or the Office;~~

~~_____ (m) not charge clients for any fees or expenses that were not previously disclosed to the client;~~

~~(n) accept fees only for the services or expenses the provider is willing and able to provide;~~

~~(o) not handle the major personal business affairs of a client, without request in writing by the client or legal representative;~~

~~(p) require that any licensee or staff member who is aware of, or suspects abuse, neglect, mistreatment, fraud, or exploitation shall ensure that a report is made to the Office and applicable investigative agencies as outlined in R501-1-10-2, and in compliance with mandatory reporting laws, including 62A-4a-403 and 62A-3-305;~~

~~(i) any licensee or staff member who is aware of, or suspects a violation of this Rule or any governing local ordinance or state or federal law, shall ensure that a report is made to the Office of Licensing via email at: licensingconcerns@utah.gov, or directly to the licenser of the specific program or site.~~

~~(2) Clients have the right to:~~

~~(a) be treated with dignity;~~

~~(b) be free from potential harm or acts of violence;~~

~~(c) be free from discrimination;~~

~~(d) be free from abuse, neglect, mistreatment, exploitation, and fraud;~~

~~(e) privacy of current and closed records;~~

~~(f) communicate and visit with family, attorney, clergy, physician, counselor, or case manager, unless therapeutically contraindicated or court restricted;~~

~~(g) be informed of agency policies and procedures that affect client or guardian's ability to make informed decisions regarding client care, to include:~~

~~(i) program expectations, requirements, mandatory or voluntary aspects of the program;~~

~~(ii) consequences for non-compliance;~~

~~(iii) reasons for involuntary termination from the program and criteria for re-admission;~~

~~(iv) program service fees and billing; and~~

~~(v) safety and characteristics of the physical environment where services will be provided.~~

~~(3) Clients shall be informed of these rights and an acknowledgment by the client or guardian shall be maintained in the client file.~~

~~(4) Licensees shall train all staff annually on agency policies and procedures, Licensing rules, and the Licensing Code of Conduct.~~

~~(i) verification this training shall be dated and acknowledged by each staff member.~~

R501-1-12. Compliance.

~~(1) A licensee that is in operation on the effective date of this Rule shall be given 60 days to achieve compliance with this Rule.]~~

R501-1-1. Authority and Purpose.

~~(1) This rule is authorized by Title 62A, Chapter 2, Licensure of Programs and Facilities.~~

~~(2) This rule clarifies the standard for:~~

~~(a) rules applicable to programs licensed under Title R501; and~~

~~(b) licensing procedures to be followed by the office in the enforcement of rules under Title R501.~~

~~(3) This rule provides definitions for Title R501.~~

R501-1-2. Scope.

~~(1) Except as specifically stated in categorical rule, Rule R501-1 applies to any program subject to licensure.~~

~~(2) Each licensee and person associated with the licensee shall comply with:~~

~~(a) Rule R501-14;~~

~~(b) any applicable categorical rule in Title R501; and~~

~~(c) any federal, state, or local law, rule, or ordinance.~~

R501-1-3. Definitions.

~~(1) Terms used in this rule are defined in Section 62A-2-101.~~

~~(2) "Abuse" means the same as defined in Sections 62A-3-301, 62A-4a-101, 78A-6-105, 80-1-102, and R512-80-2.~~

~~(3) "Body cavity search" means a visual or manual inspection of the body cavity in search of prohibited material. An inspection of a client's mouth after taking medication is not considered a body cavity search.~~

~~(4) "Category" means the type of human service license described in Section 62A-2-101.~~

~~(5) "Chemical Restraint" means any drug that is used to restrict an individual's freedom of movement for discipline, convenience, or imminent safety and not required to treat the individual's medical symptoms.~~

~~(6) "Clinical" means treatment or services delivered by a mental health or medical professional that is licensed by the Division of Occupational and Professional Licensing.~~

~~(7) "Compliant" means adherence to governing rule and statute or only minor violations that do not rise to the level of a corrective action plan or penalty.~~

~~(8) "Confidential communication" means communication between only the individuals referenced in Subsection 62A-2-123(6). Confidential communication does not allow for outside entities to have access to information contained in the confidential exchange.~~

~~(9) "Conflict of Interest" means a situation in which a person is in a position to derive personal benefit from actions or decisions made in their official capacity.~~

~~(10) "Critical Incident" means an incident that occurs while the program is providing a service or treatment and involves:~~

~~(a) abuse or suspected abuse;~~

~~(b) neglect or suspected neglect;~~

~~(c) exploitation or suspected exploitation;~~

~~(d) unexpected death;~~

~~(e) any client injury, including self-harm, requiring medical attention beyond basic first aid;~~

~~(f) any client injury that is a result of staff or client assault, restraint, or intervention;~~

~~(g) any prohibited practice as described in Section 62A-2-123;~~

~~(h) any restraint in a congregate care setting;~~

~~(i) any seclusion in a congregate care setting;~~

~~(j) any body cavity search;~~

~~(k) any strip search;~~

~~(l) except for a minor infraction, any illegal activity including significant criminal activity as defined in this section~~

~~(m) significant medical emergency as defined in this section, or any other protective service intervention;~~

~~(n) the unlawful or unauthorized presence or use of alcohol, substances, or harmful contraband items;~~

~~(o) the unauthorized presence or misuse of dangerous weapons;~~

~~(p) attempted self-directed violence;~~

(q) any on duty or client-involved staff sexual misconduct, any client unlawful sexual misconduct, or any consensual client sexual conduct between clients under the age of 16;

(r) client rights violations;

(s) department code of conduct violations;

(t) medication errors impacting client well-being, medical status, or functioning;

(u) the unauthorized departure of a client from a program;

(v) a contagious illness or situation requiring notification of or consultation with the local health department;

(w) any change to a client's environment compromising the immediate health or safety of the client including roof collapse, fire, flood, weather events, natural disasters, and infestations; or

(x) any other incident that compromises a client's immediate health or safety.

(11) "Direct Care Staff" means staff working directly with clients.

(12) "Direct Supervision" means in close physical proximity and actively supervising clients with the ability to immediately respond as necessary.

(13) "Director" means the same as defined in Section 62A-2-101 and does not mean a program director.

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

(15) "Exploitation" includes:

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

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

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

(d) sexual abuse of a minor or vulnerable adult as described in Sections 76-5b-201, 76-5b-202 and Subsection 76-5-111(4).

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

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

(18) "Initial license" means the license issued to operate a human services program during the licensee's first year of licensure. This license is considered provisional and allows for the licensee to demonstrate sustained compliance with licensing rules before renewal. An initial license following a lapse in license is not considered provisional.

(19) "Inspection" means an announced or unannounced visit of the licensed site as described in Section 62A-2-118.

(20) "Medication-Assisted Treatment" means the use of medications with counseling and behavioral therapies to treat substance use disorders or prevent opioid overdose.

(21) "Mistreatment" means emotional or physical mistreatment.

(22) "Neglect" means abandonment or the failure to provide necessary care, including nutrition, education, clothing,

shelter, sleep, bedding, supervision, health care, hygiene, treatment, or protection from harm. Neglect also means the same as defined in Sections 62A-3-301; 62A-4a-101; 76-5-110; and 80-1-102.

(23) "On duty" means individuals counted in supervision ratios and charged with supervising clients as a primary job requirement.

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

(a) is defined as a member in Section 62A-2-108;

(b) is listed on a foster home license;

(c) possesses the exclusive right to hold, use benefit from, enjoy, convey, transfer, and otherwise dispose of a program;

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

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

(25) "Parent program" means an applicant or licensee owning or directing multiple sites under the same general administrative organization.

(26) "Penalty" means an action taken by the office to deny, place a condition on, suspend, or revoke a human services license due to the licensee's non-compliance with statute or administrative rule. Penalty includes penalties as described in Section 62A-2-112. A penalty does not include corrective action plans.

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

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

(29) "Program" means Human Services program as defined in 62A-2-101 and may also be referred to as "Provider" in rules under this title.

(30) "Program director" means an individual responsible for day-to-day operations of a program.

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

(32) "Renewal license" means a license issued to a continuing program based upon the program's compliance with administrative rule and statute.

(33) "Residential program" means a program providing overnight care and includes the following license categories:

(a) recovery residence;

(b) residential support;

(c) residential treatment;

(d) outdoor youth;

(e) therapeutic school; and

(f) social detoxification.

(34) "Restraint" means physically restricting a person's freedom of movement, physical activity, or normal access to their body; and includes chemical and mechanical restraint. Restraint does not mean an escort used to lead, guide, or direct a client.

(35) "Seclusion" means the same as defined in Section 62A-2-101 and includes social isolation. Seclusion is not a voluntary time-out or medical quarantine and isolation when approved by a medical professional.

(36) "Significant criminal activity" means any unlawful activity by or against one of the program's clients or by or against an on duty staff member that poses a serious threat to client or staff health, safety, or well-being that includes:

(a) possession of an illegal substance or weapon;

(b) illegal physical or sexual misconduct or assault;

(c) riot;

(d) suspected fraud;

(e) suspected exploitation; and

(f) any significant criminal activity relevant to a program's population as described in the program's policy and procedure manual.

(37) "Significant medical emergency" means an acute injury or illness posing an immediate risk to a person's life or health or requires emergency medical care.

(38) "Site" means a human services program identified by a single geographic location and must be linked to the parent program, if one exists.

(39) "Staff" means an individual who is associated with a licensee.

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

(41) "Trauma informed" means overall practices that promote environments of healing and recovery rather than practices and services that may inadvertently re-traumatize.

(42) "Variance" means any authorized deviation from administrative rule as described in Section R501-1-8.

(43) "Violation" means an act or omission by a licensee, or any person associated with the licensee that is contrary to any administrative regulation, local, state, or federal law applicable to the program.

R501-1-4. Licensing Application Procedures.

(1) Initial and Renewal Application

(a) An applicant may not accept any fee, enter into any agreement to provide a client service, or provide any client service until licensed by the office.

(b) The office shall issue a license for a program only after verifying compliance with any applicable administrative rule or statute.

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

(i) each site subject to licensing;

(ii) any on and off-site program and client records; and

(iii) each staff and client.

(d) An applicant may withdraw an application for a license at any time during the application process. The applicant must notify the office in writing.

(e) An applicant seeking an initial or renewal license to operate a human services program shall submit:

(i) an application as provided by the office;

(ii) except as described in Subsection R501-1-7(2), the fee required for each category of human service program license applied for;

(iii) except as described in Subsection 62A-2-120(13), a background clearance for each person associated with the licensee as described in Section 62A-2-120 and Rule R501-1-9;

(iv) any required policy and procedure;

(v) for renewal purposes, rather than submitting each program policy and procedure, the applicant may choose to only submit each policy and procedure that has been modified;

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

(vii) documentation that verifies the applicant's compliance with, or exemption from, any local government zoning, health, fire, safety, and business license requirement.

(f) A program may not modify an approved policy without a new office approval as described in Section R501-1-9.

(g) If a program fails to submit a renewal application at least 30-days before the expiration date of the current license, the license may expire.

(h) A residential treatment program applying for an initial license shall submit proof that the program served notice of intent to operate as described in Subsection 62A-2-108.2.

(2) Application Expiration

(a) Except for a foster home application, an initial application that remains incomplete shall expire one year from the date of application.

(b) An initial application for a foster home that remains incomplete shall expire 90 days after the date of application unless extended by the office.

(c) An expired initial application is void. The program must submit a new initial application and applicable fees for each category of license requested.

(3) The office may deny the initial application or place a penalty on a renewal license if:

(a) the program failed to achieve or maintain compliance with each statute, rule, or ordinance related to the program;

(b) the office reasonably determines that the program is not likely to operate in compliance with any statute, rule, or ordinance;

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

(d) the office finds that a program maintains association with any individual with a license revoked by the office within the five-year period before to the date on the program's application.

(4) The office shall consider rule violation history when determining whether a program is likely to comply with any statute, rule, or ordinance.

(5) The office shall consider misleading information that has been presented by the program to the office, program clients, prospective clients, or public when determining whether a program is likely to comply with statute, rule, or ordinance.

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

R501-1-5. Licensing Determinations.

(1) The office may place an individualized parameter on a program license to promote the health, safety, and welfare of any client. Such parameters may include:

(a) an age restriction;

(b) an admission or placement restriction; or

(c) any other parameter specific to an individual site or program.

(2) A license certificate shall state the name, the site address, the license category, the maximum client capacity, any specific parameter, and the effective date of the license.

(3) The office may not issue an initial license to a site associated with a parent program if any other license associated with the parent program is under penalty or has a pending appeal.

(4) A program may apply for a two-year license if:

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

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

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

(d) the program submits twice the annual fee required for each category of license sought.

(5) License Expiration

(a) An expired license is void and may not be renewed unless an application and fees are submitted for an initial license. The

NOTICES OF PROPOSED RULES

program must be granted an initial license before providing any services, except as allowed in Subsection R501-1-4(5)(c).

(b) A license expires at midnight on the last day of the same month the license was issued, one year after the effective date on the license, except when:

(i) the office revokes the license before expiration;

(ii) the office extends the license beyond the date of expiration;

(iii) the licensee relinquished the license;

(iv) the licensee requested a shortened license expiration time frame; or

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

(c) Except for an action necessary to maintain the health and safety of a client while transitioning out of the program or obtaining a new license to operate, a program with an expired license may not accept any client, fee, enter any agreement to provide a client service, or provide any client service.

(6) Except as described in Subsection R501-1-5(6)(c), the office may extend a current license for a maximum 90-day period after the license expiration date.

(a) A program must submit a renewal application and applicable fee before the expiration date on the license.

(b) The office may extend a license only once.

(c) The office may extend a current license that is not in good standing with a penalty.

(d) The office shall grant a renewal license if the program remedies any non-compliance to the satisfaction of the office.

(e) The office shall reduce the license period for any renewal license granted immediately after an extension equal to the time period of the extension.

(7) A licensee wishing to voluntarily relinquish a license shall submit a written notice to the office. Voluntary relinquishment of a license may not be accepted by the office if a notice of agency action revoking the license has been initiated.

R501-1-6. Program Changes.

(1) Name Change

(a) A licensee may not change the name of a program or site without a renewal application submitted to the office.

(b) The licensee shall submit updated program documentation reflecting the new name to the office before making the name change public.

(c) The office may link the former name of the program to the new name on the licensing database, on each license certificate, and public website, for a two-year period after the name change.

(2) Relocation

(a) A licensee may change the location of a program.

(b) The licensee may not serve a client at any new program location without a license.

(c) Before moving any program to a new location, the licensee shall submit a renewal application as described in Subsection R501-1-4(1) at least 30 days before moving and an updated license for the new site must be issued. The application shall also include proof of:

(i) a business license at the new site; and

(ii) insurance coverage at the new site.

(d) A foster home may transfer a current license a new site only after:

(i) submitting a request to relocate to the office at least 30 days before moving to the new site; and

(ii) the office inspects and approves licensure at the new site; which approval shall occur within two weeks if a foster child is placed in a foster home or within 30 days if there are no current foster placements.

(e) If a foster child is placed in a foster home, it is the responsibility of the licensed foster parent to ensure the health and safety of the foster child during the transfer to the new site.

(f) Except as described in Subsection R501-1-6(2), moving from a licensed site voids that site's license.

(3) Capacity Change

(a) A licensee seeking to increase the maximum client capacity of a program shall submit a renewal application requesting the new capacity.

(b) The program may not serve additional clients until the program pays the renewal fee for a license renewal as required by the rules of the human service program category and the office issues an updated license.

(4) Add New License Category

(a) A program may request to add a new license category to an existing licensed site by submitting an initial application for the additional license and fees for an initial license.

(b) Each requirement for initial licensure must be verified.

(5) Add New Location

(a) A program may add an additional site of service by submitting an application and fees and receiving an initial license.

(b) Each requirement for initial licensure must be verified.

(6) Ownership Changes

(a) A program anticipating, or undergoing a change of ownership, shall submit in writing, before the change:

(i) any change to programming or service;

(ii) a declaration regarding responsibility for records and records retention to include an agreement, signed by both current and prospective owners and program directors, detailing how records will be retained and remain available to the office in accordance with licensing rules regardless of whether the program remains licensed;

(iii) names and contact information of any new directors or owners;

(iv) documentation of continuous insurance coverage; and

(v) an updated business license.

(b) The status of a license at the time of a change of ownership shall continue.

(7) The office may require a new initial application and fees for each license category for any substantial change under this section, which may include:

(a) a substantial change resulting in direct client impact;

(b) any change to programming;

(c) any change in the population served;

(d) any severed tie with a previous owner; or

(e) any disruption in the continuity of record retention.

R501-1-7. License Fees.

(1) The office shall collect licensing fees as described in Section 62A-2-106, and Title 63J, Chapter 5, Federal Funds Procedures Act.

(2) No licensing fee shall be required from a foster home or a division or office of the department.

(3) The office is not required to perform any on-site visit or document review until the person applying for a license pays the licensing fee.

(4) If a license is not granted by the office, a license application fee expires 12 months after the date of application.

(5) A fee paid by a licensee may not be transferred, prorated, reduced, waived, or refunded. Any cost incurred by the applicant in preparation for, or maintenance of licensure is the sole responsibility of the applicant.

(6) An applicant must pay an initial license fee for each category of human services program offered at each program site.

(7) An applicant must pay a renewal license fee and any capacity fee for each license that is renewed at each program site.

(8) A capacity fee is calculated based on the maximum licensed client capacity of the human service program.

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

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

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

R501-1-8. Variances.

(1) A licensee may not deviate from any administrative rule before receiving written approval signed by the director, or the director's designee.

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

(a) to compromise client health and safety; or

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

(3) A licensee seeking a variance must submit a written request to their licensing specialist that includes:

(a) the rule for which the variance is requested;

(b) the reason for the request;

(c) how the variance provides for the best interest of the client;

(d) any procedures that will be implemented to ensure the health and safety of each client; and

(e) the proposed start date and end date of the variance.

(4) The written request described in Subsection R501-1-8(3) must be submitted at least 30 days before the proposed start date unless the licensee documents a need to expedite the request.

(5) The office shall review the variance and notify the licensee of the approval, approval with conditions, or denial of the variance, in writing, within 30 days from receipt of the request.

(6) The licensee shall comply with the terms of a written variance, including any conditions or modifications contained within the approved written variance.

(7) A variance expires on the end date specified in the approval notice. Terms of the variance are no longer permitted by the office after the end date.

(8) The office may renew a variance if the program justifies the request and ensures the ongoing health and safety of each client.

R501-1-9. Required Approvals.

(1) As described in Subsection 62A-2-106(1), the office shall review and approve the following policies and procedures before program implementation by each licensee:

(a) any sex and gender discrimination policy as described in Section 62A-2-124; and

(b) any behavior management, suicide prevention, restraint, or seclusion policy or procedure used in a congregate care program as described in Section 62A-2-123 and Rule R501-1.

(2) Each sex and gender discrimination policy must include the required content and language as described in Subsection R501-1-23(3)(s).

(3) The office shall:

(a) provide written approval or denial of any policy and curriculum within 30 days of the date of submission;

(b) provide written feedback on any denied policy;

(c) re-review any denied policy or curriculum within 14 days of re-submission; and

(d) issue a written approval for any policy requiring approval by this section.

(4) The licensee shall submit any change to a policy or curriculum that has been approved by the office to the office for approval before implementing the proposed change.

(5) The office may withdraw approval and deny any previously approved policy or curriculum at any time or by providing written feedback to the program as described in Subsection R501-1-9(3).

R501-1-10. Monitoring.

(1) Except as described in Section 62A-2-123 for a congregate care program, the office shall conduct at least one annual on-site inspection in each program.

(2) The office may conduct as many inspections, announced or unannounced, as necessary to monitor compliance, investigate alleged violations, monitor corrective action plans or penalty compliance, or to gather information for license renewal.

(3) An on-site inspection shall take place during regular business hours.

(4) An applicant or licensee may not restrict the office's access to the site, client, staff, or any program records.

(5) A licensee and licensee's staff may not compromise the integrity of the office's information gathering process by withholding or manipulating information or influencing any specific response of staff or clients.

(6) The office shall consider each on-site inspection during the renewal or denial of the license application at the end of the license period.

(a) Pursuant to Subsection 62A-2-118(1), the office may accept another government entity's inspection results completed for a program during the effective license period or within the preceding quarter to the current license period to identify compliance or non-compliance with relevant rules.

(b) The office may review and consider any report from an accreditation agency or any other entity for each inspection conducted during or before the effective license period to determine compliance or violation of licensing rule.

(c) If a conflict arises between an oversight entity's requirement and rule, the program shall request a rule variance from the office.

(7) Except for a foster home, the licensee shall make a copy of any inspection report available to the public upon request as described in Subsection 62A-2-118(5).

(8) The office may adopt a written inspection report from a local government, certifying entity, contracting entity, or accrediting entity if the report offers information about the licensee's compliance with a licensing requirement.

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

R501-1-11. Investigations of Alleged Violations.

(1) Unlicensed Programs

(a) The office shall investigate each report of an unlicensed human service program.

(b) Investigation of an unlicensed human service program may include interviewing any individual or neighbor at the site or gathering information from any source that will aid the office in determining whether the site should be licensed.

(c) If an unlicensed human services program that requires licensure fails to become licensed and continues to operate, the office shall be refer the program to the office of the Attorney General, and the County Attorney.

(d) The office may penalize each site operated by a licensed program if the program adds or operates an unlicensed site that requires licensure.

(2) Licensed Program Complaints and Critical Incidents

(a) The office may investigate any critical incident or complaint that alleges a licensing violation regarding a licensed human services program.

(b) The office accepts a complaint about a licensee from any source, including the office website or complaint email address.

(c) The office may decline to investigate a complaint that is anonymous; unrelated to a current condition of the program; or not an alleged violation of a rule or statute.

(d) A critical incident that involves a client or on duty staff that occurs in a licensed setting or under the direct responsibility and supervision of the program shall be reported by the licensee as follows:

(i) a report shall be made to the office within one business day;

(ii) a notification shall be made to legal guardian of the involved client within a 24-hour period that begins at the time of the incident; and

(iii) if the critical incident involves a client or service to a youth currently in the custody of the department, the licensee shall make an immediate live-person verbal notification to the involved division.

(e) An initial critical incident report shall be made in writing and include the following:

(i) name of provider and names or unique initials of each involved staff, witnesses and clients with the ability to identify each set of unique initials upon request by the office;

(ii) date, time, and location of the incident, and date and time of incident discovery, if different from time of incident;

(iii) descriptive summary of incident;

(iv) any action taken;

(v) any action that the program plans to take at the time of the report; and

(vi) identification of department contract status.

(f) Upon request by the office, the licensee shall collect, maintain, and submit original witness statements and supporting documentation, including video footage if available, regarding each critical incident.

(3) Investigative Process

(a) An in-person or electronic investigation may include:

(i) a review of any on or off-site record;

(ii) interview of each licensee, witness, client, or staff;

(iii) gathering information from any collateral party; and

(iv) a site inspection.

(b) The office shall prioritize an unlicensed program, a complaint regarding a licensed program, and a critical incident following an assessment of risk to client health and safety as follows:

(i) an allegation identified by the office as a potential imminent risk to the health and safety of a client requires an initial on-site contact by the office within three business days of the report date; or

(ii) any other allegations that require the office initiate an investigation within ten business days of the report date.

(c) The office may use law enforcement, Child or Adult Protective services, or any other protection agency to meet a priority on-site response.

(d) A licensee and staff shall cooperate in any investigation.

(e) The office may report any allegation or evidence of abuse, neglect, exploitation, mistreatment, illegal activity or fraud to a client, clients' legal guardian, or any entity determined necessary by the office.

(f) If a program sells or arranges for client insurance coverage, the program must:

(i) inform the client in writing of the program's role and responsibility;

(ii) provide the insurer with any program provider record;

(iii) contact and cooperate with the insurance department during any dispute regarding a service or supply billed; and

(iv) not provide unlawful substance abuse patient brokering as described in Subsection 62A-2-116(5).

R501-1-12. License Violations.

(1) When the office finds evidence of a violation of statute or rule, the office shall do one of the following:

(a) provide written notification of each violation requiring the licensee to correct each violation with a dated request for remediation, if applicable;

(b) provide written notification of each violation and request a licensee to submit a corrective action plan in response to a written notification of a violation or pattern of similar violations over time; or

(c) issue a penalty if the office determines that a violation is serious enough to merit a penalty without first issuing a request for a corrective action plan.

(2) The office may consider the chronicity, severity, and pervasiveness of a violation when determining one of the following agency actions:

(a) notification of a violation;

(b) request for a corrective action plan; or

(c) issue a formal penalty.

(3) A repeated violation of rule or statute or failure to comply with a condition of a notice of agency action may elevate the penalty level assessed.

(4) When the office issues a request for a corrective action plan, a licensee shall submit a written corrective action plan to the office within ten business days from the date of the request and the corrective action plan shall include:

(a) a statement of each violation identified by the office;

(b) a detailed description of how the licensee will correct each violation and prevent an additional violation;

(c) the date by which the licensee will achieve compliance with administrative rule and statute; and

(d) describe the involvement of each program owner and director, including each foster parent, if involving a licensed or certified foster home.

(5) The office shall review corrective action plans submitted to the office and either inform the licensee that the

corrective action plan is approved or inform the licensee that the corrective action plan is not approved and provide explanation.

(6) If a corrective action plan is not approved, the office may permit a licensee to amend and resubmit its corrective action plan within five additional business days.

(7) A notification of violation or a request for a corrective action plan is not a penalty.

(8) A program may choose to refuse the notification of violation or corrective action plan process and preserve the program's appeal rights by instead requesting a penalty.

(9) The office may issue a penalty for a violation if the licensee fails to submit and comply with an approved corrective action plan.

(10) The office may provide a written notice of agency action issuing the following penalties:

(a) a conditional license;

(b) a suspended license for up to a three-year period; or

(c) a revoked license.

(11) A conditional license allows a program that is in the process of correcting a violation to continue operation, subject to each condition established by the office. Failure to meet each term, condition, and time frame outlined in the notice may result in further penalty action or denial of the renewal license application.

(12) When a license has been suspended, Subsection R501-1-12(14) applies, except as described in Subsection R501-1-12(13).

(13) If the placing department entity approves and elects to allow the foster child to remain in the placement, a suspended foster care provider may continue caring for a foster child currently placed at the time of suspension.

(14) A program that has had its license suspended or revoked shall:

(a) not accept new clients;

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

(c) subject to Subsection R501-1-12(13), develop and comply with a plan to transition each client out of the program and into an equivalent, safe, currently licensed programs or into the custody of the client's legal guardian; and

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

(15) The office shall maintain a record of each licensee with a revoked license for a five-year period. An individual identified in the record shall not associate with any other department licensed program during that five-year period.

(16) A licensee shall not employ, contract with, or in any way associate with a person identified on the record created in Subsection R501-1-12(15). A program in violation of this provision shall be subject to immediate penalty.

(17) The office may place a condition in the notice of agency action to protect the health and safety of clients. A condition included in the notice of agency action takes effect on the date of notice.

(18) Except when instructed by the office, a licensee shall post the notice of agency action on-site, and on the homepage of each of each program website, where it can be easily reviewed by each client, guardian of a client, and visitor within five business days, and shall remain posted until the resolution of the penalty.

(19) A licensee shall notify each client, guardian, and prospective client of a notice of agency action issued by the office

within five business days of receiving notice. Any prospective client must be notified for as long as the notice of agency action is in effect.

(20) If an appeal of a revocation, suspension or conditional license that restricts admission is pending, a licensee shall not accept any new client as outlined on the notice of agency action without prior written authorization from the office.

R501-1-13. Program Administrative and Direct Service Requirements.

(1) A program shall transparently identify services to the office, public, potential client, parent, or guardian regarding:

(a) contact information;

(b) the complaint reporting and resolution process;

(c) a description of each service provided;

(e) each program requirement and expectation;

(f) eligibility criteria outlining behavior, diagnosis, situation, population, and age that can be safely served;

(g) each cost, fee, and expense for a service and refund policy; and

(h) identification of each non-clinical, extracurricular, or supplemental service offered or referred.

(2) The following shall be posted in conspicuous places where each visitor, staff, and client may view:

(a) abuse reporting laws as described in Sections 62A-4a-403 and 62A-3-305;

(b) civil rights notice;

(c) Americans with Disabilities Act notice;

(d) the program license;

(e) any office notice of agency action; and

(f) a client rights poster.

(3) Program administration shall maintain compliance with or documentation of an exemption from any of the following requirements:

(a) a food handler permits for any person preparing meals for any other person;

(b) business licenses;

(c) capacity determinations, which capacity shall include each staff and client on premises and may not exceed the capacity limits placed by local authorities;

(d) fire clearance, if conducted separately from a business license;

(e) licensure and registration of any vehicles used to transport clients.

(4) The office may not issue a license in good standing to a program whose local clearances are under dispute.

(5) Program administration shall maintain:

(a) proof of financial viability of the program as verified by a financial professional;

(b) general liability insurance;

(c) professional liability insurance;

(d) vehicle insurance;

(e) fire insurance; and

(f) additional insurance as required to cover each program activity.

(6) Program administration shall ensure:

(a) each entity associated with the licensee read, understand, sign, and follow the current department code of conduct;

(b) current staff and client lists are available at each licensed site;

(c) the organizational and governance structure of the program, this includes:

(i) line of authority and responsibility;
(ii) a job description, including each duty and qualification for each job title; and
(iii) notification to the office of any program changes as described in Section R501-1-6;
(d) the program implements and follows a quality improvement plan that incorporates, at a minimum, client and staff grievances, feedback, and trends in licensing violations and incident reports;
(e) the program provides an interpreter or refers each client to appropriate resources as necessary to communicate with the client;
(f) at least one CPR and First Aid trained or certified staff member is available whenever staff and clients are present together;
(g) the program maintains an opioid overdose reversal kit on-site with on duty staff trained in its use if the program is serving, or is likely to serve, a client with a substance use disorder; and
(h) the program provides trainings and monitors staff to ensure compliance regarding program policy and procedures including:
(i) the needs of each client;
(ii) licensing rule;
(iii) client rights as described in Section R501-1-27;
(iv) department code of conduct;
(v) incident reporting;
(vi) program emergency response plan; and
(vii) CPR and first aid.
(7) A program serving education entitled children, as that term is defined in Subsection 62A-2-108.1, shall comply with Subsection 62A-2-108.1 regarding coordination of educational services to include completion of youth education forms at initial and renewal licensure.
(8) A program providing school on-site shall:
(a) maintain the established staff to client ratio with behavioral intervention trained staff in the school setting;
(b) be recognized as in good standing by an educational accreditation organization such as the State Board of Education or the National School Accreditation Board; and
(c) ensure each youth is taught at grade level.
(9) Clinical and medical staff are licensed or certified in good standing and any unlicensed staff are appropriately supervised as described in Title 58, Occupations and Professions.
(10) A program that utilizes telehealth for treatment shall comply with each applicable rule.

R501-1-14. Residential Program Additional Administration and Direct Services Requirements.

(1) A program providing residential service shall:
(a) demonstrate compliance with Section 62A-2-125;
(b) ensure each staff shift list remains current and available to the office upon request;
(c) ensure access to a medical clinic or a medical professional familiar with the program and population served; and
(d) provide a separate space for clients who are sick.
(2) A program providing residential service to youth who have been placed in Utah from outside of Utah shall demonstrate compliance with Title 62A, Chapter 4a, Part 7, Interstate Compact on Placement of Children.
(3) A congregate care program serving youth may allow an individual turning 18 to remain in the program as described in Subsection 62A-2-106(1) if:

(a) the individual remains in the custody of a State entity or the individual was admitted and continuously resided in the program for at least 30 days before the individual's 18th birthday;
(b) the program has a documented need for the individual to remain in the program;
(c) the program maintains responsibility for discharge to an appropriate setting when clinically appropriate and no later than the day an individual reaches 19 years of age;
(d) the program outlines a policy regarding the protection of younger clients by supervising or separating 18-year-old individuals from youth who are more than two years younger; and
(e) the individual signs a consent document outlining:
(i) the individual is consenting to remain in the program voluntarily and understands the individual is not required to remain against their will;
(ii) that any criminal offenses committed may result in being charged as an adult; and
(iii) that if the individual is involved in any critical incidents posing a risk to the health and safety of other program residents they may be discharged from the program.
(4) A congregate care program shall ensure weekly confidential communication with family in accordance with Section 62A-2-123.
(5) Before allowing a direct care staff to work unsupervised they must have an approved background clearance and be trained in the following:
(a) behavior management policy and curriculum including crisis intervention, appropriate use of restraint and seclusion, and de-escalation techniques;
(b) which practices are prohibited for congregate care programs by Section 62A-2-123;
(c) the clinical needs of each of the clientele;
(d) client rights;
(e) department code of conduct; and
(f) incident reporting.
(6) Direct care staff must be trained in the following within six months of hire:
(a) CPR; and
(b) first aid.

R501-1-15. Program Physical Facilities and Safety.

(1) Each program shall ensure the appearance and cleanliness of the building and grounds are maintained and free from health and fire hazards.
(2) Each program shall ensure that all appliances, plumbing, electrical, HVAC, and furnishings are maintained in operating order and in a clean and safe condition.
(3) Each program shall accommodate clients with disabilities as needed or appropriately refer to comparable services.
(4) Each program shall ensure that fire drills in non-outpatient programs shall be conducted and documented at least quarterly and program administration shall provide and document feedback regarding response time and process.
(5) Each program shall ensure that a 911 recognizable phone is always on-site with clients.
(6) Each program shall ensure that bathroom facilities for staff and clients allow for individual privacy and afford reasonable accommodation based on gender identity.
(7) Each program shall ensure that each bathroom shall be properly equipped with toilet paper, paper towels or a dryer, and soap.

(8) Each program shall ensure that each bathroom is ventilated by mechanical means or equipped with a window that opens.

(9) Each program shall maintain medications and potentially hazardous items on-site lawfully, responsibly, and with consideration of the safety and risk level of the population served. This shall include locked storage for each medication and hazardous chemical.

(10) Each program shall ensure that non-prescription medications, if stored on-site, are stored in original manufacturer's packaging together with the manufacturer's directions and warnings.

(11) Each program shall ensure that prescription medications, if stored on-site, are stored in original pharmacy packaging or individual pharmacy bubble pack together with the pharmacy label, directions, and warnings.

(12) Each program shall maintain a fully supplied first aid kit as recommended by the American Red Cross.

R501-1-16. Residential Program Additional Facilities and Safety Requirements.

(1) Each residential program shall ensure designated space is available for records, administrative work, and confidential phone calls for clients.

(2) Each residential program shall ensure bedroom assignments shall be made in accordance with each agency policy and individualized assessment described in Section 62A-2-124.

(3) Each residential program shall ensure that live-in staff have separate living spaces with a bathroom that is separate from client bathrooms.

(4) Each residential program shall ensure that each bedroom designated for clients shall be comparable to other similarly utilized bedrooms with similar access, location, space, finishings, and furnishings.

(5) Dormitory space is only allowed in an emergency homeless shelter or a program serving only adults.

(6) Each residential program shall ensure that each client is not locked in a bedroom.

(7) Each residential program shall ensure that each mirror or safety mirror is secured to the bathroom wall at a convenient height.

(8) Each residential program shall ensure that each bathroom is placed to allow access to each client without disturbing any other client during sleeping hours.

(9) Each residential program shall ensure that each bath or shower allows for individual privacy.

(10) Each residential program shall ensure that each client is supplied with hygiene supplies.

(11) Each residential program shall ensure that each sleeping area has a source of natural light and is ventilated by mechanical means or is equipped with a window that opens.

(12) Each residential program shall ensure that each bed is solidly constructed and non-portable.

(13) Each residential program shall ensure that each client is permitted to decorate and personalize the client's bedroom, while maintaining respect for each other resident and property.

(14) Each residential program that provides common laundry for towels, bedding, or clothing shall provide separate containers for soiled and clean laundry.

(15) Each residential program shall ensure that bedding and towels shall be laundered weekly and after each client is discharged.

(16) Each residential program permitting clients to do the client's own laundry shall provide equipment and supplies for washing and drying.

(17) Each residential program shall ensure that each individual is provided with at least 60 square feet in a multiple occupant bedroom and 80 square feet in a single occupant bedroom.

(18) Each residential program serving individuals with disabilities shall house no more than two persons in each bedroom.

R501-1-17. Food Service Requirements.

(1) Each program that provides meals for four or more, but less than 16, clients shall comply with a local health inspection as described in Rule R392-110, Food Service and Sanitation in Residential Facilities.

(2) Each program that provides meals shall ensure that meals are not used as incentive or punishment.

(3) Each program that provides meals shall provide nutritional counseling to staff and clients and designate staff responsible for food service. As part of these responsibilities, each program shall ensure that designated staff:

(a) maintain a current list of each client with special nutritional needs;

(b) ensure that each client with special nutritional needs has food storage and a preparation area that is not exposed to any identified allergen or contaminant; and

(c) except in a day treatment program serving clients for less than ten hours per day, or outpatient programs serving clients for less than six consecutive hours per day, provide a variety of three nutritious meals per day that is:

(i) served from dietician or nutritionist approved menus; or

(ii) for programs serving individuals experiencing homelessness, serve meals as required by USDA standard homeless settings.

(4) Each program that provides meals shall establish and post kitchen rules and privileges in a kitchen according to client needs and safe food handling practices.

(5) Each program that provides meals shall provide adequate dining space for each client that is maintained in a clean and safe condition.

(6) Each program that provides self-serve meals shall ensure that self-serve kitchen users are supervised, directed, and trained by a staff that has a Department of Health food handler's permit or is trained by Serv-Safe, USDA, or a comparable program.

R501-1-18. Program Staffing.

(1) Each program shall ensure adequate staffing such that the current population can be safely supervised including, where necessary, more staff than required by the usual staffing ratio.

(2) Each program shall identify a manager or qualified designee who shall be immediately available whenever the program is in operation or there shall be a qualified and trained substitute when the manager is absent or unavailable.

(3) Each program that offers clinical services shall employ or consult with licensed professional staff that include an individual who is familiar with the program and the needs of each client.

(4) Each program serving substance use disorder shall ensure each staff and client is screened for tuberculosis.

(5) Each program managing, storing, or administering client medication shall identify a medical professional to be responsible for the medication management policy, medication oversight, and staff training regarding medication management.

(6) Each program or person involved with the prescription, administration, or dispensing of controlled substances shall maintain appropriate medical or pharmacy licenses and DEA registration numbers as described in 21 CFR 1301.21.

R501-1-19. Program Personnel Record Requirements.

(1) Each program shall create and maintain personnel information for each staff member, contracted employee, and volunteer.

(2) Personnel information shall include:

(a) any applicable qualification, experience, certification, or license;

(b) any approved and current office background clearance, except as excluded in Section R501-14-17;

(c) a department code of conduct that is signed by the staff member, contracted employee, or volunteer;

(d) any training records with the date completed, topic, and the individual's signed acknowledgment of training completion to include:

(i) current CPR and First Aid certification;

(ii) current policy and procedure training; and

(iii) proof of annual department code of conduct and behavior management training;

(e) any grievances or complaints made by or against the individual and actions taken by the program; and

(f) each crisis intervention or critical incident report involving the individual.

R501-1-20. Program Client Record Requirements.

(1) A program shall maintain client information to include the following:

(a) client name, address, email address, phone numbers, date of birth and identified gender;

(b) emergency contact names, including legal guardian where applicable, and at minimum, the emergency contact's physical address, current email address or current phone numbers;

(c) a program serving substance use disorder clients shall maintain compliance with an initial and annual client tuberculosis screening results in each client record;

(d) any information that could affect health safety or well-being of the client including each medication, allergy, chronic condition or communicable disease;

(e) intake screening and assessment;

(f) discharge documentation;

(g) treatment or service plan;

(h) progress notes and services provided with date and signature of staff completing each entry;

(i) individualized assessment for restriction of access to on-site items that could be used as weapons for self-directed violence or as an intoxicant;

(j) any referral arrangements made by the program;

(k) client or guardian signed consent or court order of commitment to services in lieu of signed consent for each treatment and non-clinical service;

(l) summary of attendance and absences;

(m) any grievances or complaints made by or against the client and actions taken by the program;

(n) each crisis intervention or critical incident report involving the client; and

(o) any signed agreements and consent forms.

(2) A program shall document a plan detailing how each program staff and client file shall be maintained and remain available

to the office and other agencies legally authorized to access the files for seven years regardless of whether the program remains licensed.

R501-1-21. Program Intake and Discharge requirements.

(1) A program shall complete an intake screening before accepting a client into the program. Intake screening shall assess at minimum:

(a) verification that the client meets the eligibility requirements of the program;

(b) verification that the client does not meet any of the exclusionary criteria that the program identified in policy as unable to serve;

(c) description of presenting needs;

(d) suicide risk screening;

(e) a program serving substance use disorder clients may not admit anyone who is unresponsive or unable to consent to care because the individual is experiencing convulsions, in shock, delirium tremens, in a coma, or unconscious; and

(2) A program serving incarcerated or court mandated justice involved clients shall:

(a) conduct a criminogenic risk assessment;

(b) comply with Justice Reinvestment Initiative certification requirements in accordance with Title R523 and R524; and

(c) separate high and low criminogenic risk populations.

(3) Following determination of eligibility, the client or parent or guardian shall sign and receive copies of the following agreements to be maintained as client records:

(a) fee agreement outlining costs of services including program, client, parent, or guardian responsibility for payment; and

(b) signed consent for treatment that outlines:

(i) rules of the program;

(ii) expectations of clients, parents, and guardians;

(iii) services to be provided;

(iv) Medicaid number, insurance information, and identification of any other entities that are billed for the client's services;

(v) client rights; and

(vi) licensing contact information.

(4) A discharge plan shall identify resources available to a client and include:

(a) reason for discharge or transfer;

(b) aftercare plan;

(c) summary of services provided; and

(d) progress evaluation.

R501-1-22. Residential Additional Program Intake and Discharge Requirements.

(1) An intake assessment shall be completed following an approved intake screening and no later than seven days from the admission date. The assessment shall consider and contain:

(a) gender identity and individualized assessment for bedroom and bathroom assignments;

(b) cultural background;

(c) dominant language and mode of communication;

(d) family history and dynamics;

(e) current and past health and medical history;

(f) social, psychological, developmental, vocational, and, as appropriate, educational factors;

(g) suicide risk screening; and

(h) authorization to serve and obtain emergency care.

(2) A program may not serve youth from out of state without a disruption plan as described in Section 62A-2-125 and, as applicable, Title 62A, Chapter 4a, Part 7, Interstate Compact Placement of Children.

(3) Each congregate care disruption plan must contain the following:

(a) a program must retain jurisdiction and responsibility for the youth while the youth remains in Utah;

(b) a program must complete an individualized disruption plan at the time of intake for each out of state client to include:

(i) who is responsible for the child's return in the event that placement at the facility disrupts;

(ii) current emergency contact information to include the name, address, phone and email address of the parent or responsible party;

(iii) a signed statement from parent or responsible party outlining the plan for the youth in the event of an unplanned disruption in care; and

(iv) a plan for safe transportation either to the state of origin, the responsible party identified in Subsection R501-1-22(3)(a) or to another licensed congregate care program.

(4) Each congregate care program may demonstrate compliance with Subsections R501-1-22(2) and R501-1-22(3) by producing the 100A and 100B forms and disruption plan as required by the Interstate Compact for the Placement of Children (ICPC).

(5) Each congregate Care program shall report private placements to the office as described in Section 62A-2-125 by the fifth business day of each month.

(6) Each congregate care program shall report each critical and non-critical restraint or seclusion to the office within one business day.

(7) Each congregate care program that fails to comply with Section 62A-2-125 shall be fined the actual cost of care incurred by entities maintaining the youth for purposes of locating, housing, and transporting the youth.

R501-1-23. Program Clinical Services.

(1) Each program providing clinical treatment shall assign a clinical director to ensure that assessment, treatment, and service planning practices are:

(a) regularly reviewed and updated;

(b) individualized; and

(c) designed to involve the participation of each client or each client's parent or guardian.

(2) Each program providing clinical treatment shall ensure that each person working directly with a client shall be informed of the client's individual treatment needs and advised of the best approach to working with that client.

(3) Each program providing clinical treatment shall ensure that client treatment plans are developed and signed by a licensed clinical professional within 30 days of admission.

(4) Each program providing clinical treatment shall ensure that discharge goals are identified in the initial treatment plan and treatment goals are structured around the identified discharge goals and objectives.

(5) Each program providing clinical treatment shall ensure that each client identified for treatment receives individual treatment at least weekly.

(6) Each program providing group counseling, family counseling, skills development, or other treatment shall ensure the treatment is offered and documented as prescribed in the treatment plan.

R501-1-24. Program Policy and Procedure Requirements.

(1) A program shall develop, implement, and comply with policies and procedures sufficient to ensure client health and safety and meet the needs of the client population served.

(2) Before initial licensure and as updates are made, policies and procedures shall be:

(a) submitted electronically to the office;

(b) approved by the office as required; and

(c) trained to each staff.

(3) Policy and procedures shall address:

(a) client eligibility;

(b) intake and discharge processes;

(c) client rights and responsibilities;

(d) staff and client grievance procedures;

(e) behavior management, addressing:

(i) appropriate and inappropriate behaviors of clients;

(ii) appropriate and inappropriate staff responses to client behaviors; and

(iii) staff response to a client leaving a program without permission;

(f) if applicable, seclusion policy;

(g) if applicable, restraint policy outlining that restraint is:

(i) only used as a temporary means to prevent harm to the client or in protection of others;

(ii) only to be completed by an individual with documented training in nonviolent crisis intervention and de-escalation techniques; and

(iii) is a last resort emergency safety measure only;

(h) instructions to staff regarding how to report and respond to significant criminal activity and significant medical emergencies;

(i) program plan for the prevention or control of infectious and communicable disease to include coordination with and following any guidance of the state or local health authorities, Center for Disease Control, and the department;

(j) critical incident reporting in accordance with Subsection R501-1-11(2);

(k) emergency procedures to instruct staff how to address incident reporting, continuity of care, transport, relocation, and client health and safety during natural disasters, extreme weather events, fire, utility or structural failures, or other unexpected disruptions to the program service;

(l) if transportation of clients is provided, the program shall meet the following requirements:

(i) insurance;

(ii) valid driver license;

(iii) adherence to Title 41, Motor Vehicles;

(iv) the driver to have a cell phone for immediate contact;

(v) vehicle maintenance;

(vi) emergency contact postings in the vehicle to include program name, address, and phone number to be called by first responders if needed;

(vii) vehicles to be equipped with a first aid kit as recommended by the American Red Cross; and

(viii) a policy to ensure that all clients exit the vehicle upon arriving at the destination unless directly supervised by a staff member;

(m) firearm policy that does not restrict constitutional or statutory rights regarding concealed weapons permits as described in Title 53, Chapter 5, Part 7, Concealed Firearms Act;

(n) smoking policy in accordance with Title 26, Chapter 38, Utah Indoor Clean Air Act;

(o) policies and procedures whenever clients are present in the program for six or more consecutive hours to address:

(i) provision of client meals and whether meals will be program-prepared, catered, or self-provided; and

(ii) administration of required medication if a program manages, stores or administers medication;

(p) description of any supplemental or contracted services that may be provided unrelated to the treatment or service plan or outside the scope of the license to include:

(i) summer camp;

(ii) wilderness excursion;

(iii) transportation;

(iv) extended outing;

(v) travel out of the state or country;

(vi) any supplemental machines or equipment, including training on their utilization and maintenance;

(vii) gaining informed consent from each client or client's parent or guardian for voluntary participation in these supplemental services; and

(viii) securing each necessary license, certification, or state and local permission before offering these services or operating with clients in a temporary or satellite location;

(g) unplanned discharge policy;

(r) suicide prevention policy addressing how to manage clients who screen with elevated risk levels;

(s) non-discrimination policy that includes:

(i) a prohibition of abuse, discrimination, and harassment based on race, color, sex, gender identity, sexual orientation, religion, or national origin;

(ii) policy and procedure described in Section 62a-2-124;

(iii) the requirement that each staff refer to the individual by their preferred name and pronouns;

(iv) a program requiring uniforms shall only permit gender neutral selection;

(v) assurance that treatment practices and staff training are trauma informed to identify and eliminate triggers for re-traumatization;

(vi) outline the consequences for staff or client intolerance, harassment, or bullying of staff or clients on the basis of gender identification or sexual orientation; and

(vii) required policy approval in accordance with Section R501-1-9;

(t) consequences for staff acting outside their training or policy and procedure; and

(u) record retention.

(4) Program-specific policies shall address any unique circumstances regarding physical facility, supervision, community safety and mixing populations.

(5) Record retention policy shall describe the program's plan and responsibility for retaining each client record for seven years or until a client turns 21 years of age, whichever comes later.

(7) Record retention policy shall describe the program's plan and responsibility for retaining each staff records for seven years.

(8) In accordance with Section 63G-2-309, a program may submit a written claim of business confidentiality and a concise statement of reasons supporting the claim of business confidentiality for records the program submits to the office that the program believes should be protected under Subsection 63G-2-305(1) or 63G-2-305(2), including program policies and procedures.

R501-1-25. Additional Policy and Procedure Requirements for Residential Programs.

(1) A program that provides meals for clients shall have and follow a food service policy. The food service policy must include:

(a) staff and client training on the policy;

(b) procedures for identifying and accommodating clients with special dietary needs;

(c) allowances for nutritious snacks to be available during restricted hours if the program restricts access to food and kitchen equipment;

(d) if serving parents and their children, requirements for consenting adult clients to maintain full responsibility for their, and their children's', special dietary needs;

(e) a written policy for when meals are prepared by clients to include the following:

(i) rules and privileges of kitchen use;

(ii) menu planning and procedures;

(iii) sharing self-prepared food;

(iv) nutrition and sanitation requirements;

(v) schedule of responsibilities; and

(vi) shopping and storage responsibilities;

(f) a residential program, excluding residential treatment program, may allow for client independence and responsibility for their own supplies, food, laundry or transportation with policies that outline resources and responsibility for the provision of these items; a program shall assist clients on a limited basis if they are temporarily unable to provide these items or services for themselves.

(2) A program managing, storing, or administering client medications shall have and follow a Medication Management policy to require:

(a) program and client responsibility for medication including storage and administration of medications on-site and, as applicable, when staff and clients are off-site in program related activities;

(b) if applicable, medication self-administration policy;

(c) if storing and administering medications, training required to administer medication and the process to be followed;

(d) recording medication dosages according to prescriptions;

(e) monitoring and recording effects and side effects of medications; and

(f) Logging doses and recording and reporting medication errors.

(3) Policy to train staff to identify and address:

(a) clients who pose a risk of violence;

(b) clients in possession of contraband;

(c) clients who are at risk for suicide;

(d) managing clients with mental health concerns;

(e) identifying the signs and symptoms of clients presenting under the influence of substances or alcohol; and

(f) prescribed staff responses to any of the circumstances listed in Subsection R501-1-25(3), including ongoing monitoring and assessment for remaining in the program.

(4) Policy regarding the care, vaccination, licensure, and maintenance of any animals on-site to include:

(a) assessment of pet allergies for any clients interacting with animals in the program;

(b) maintenance of required examinations, registrations, and vaccinations; and

(c) supervision of clients in the presence of animals.
(5) Client belongings policy that addresses:
(a) initial and updated inventory signed by the client;
(b) storage and return of each client belonging to the client or client's guardian at the time of discharge; and
(c) program shall replace any lost or stolen items for which the program is responsible.
(6) A program managing funds for client allowances must document each expense.
(7) A residential program shall develop and follow a policy for providing separate space for sick clients
(8) A ratio of one staff to one client during transports is only permissible when the program has conducted a safety assessment that indicates that client and staff safety is reasonably assured.

R501-1-26. Congregate Care Program Additional Policy and Procedure Requirement.

(1) A Congregate Care Program may not utilize any behavior management technique, restraint, seclusion or curriculum unless it has been approved by the office.
(2) The program's licensed clinical professional shall conduct regular reviews of client restraints, seclusions, behavioral interventions, and time outs to inform processing discussions with clients and training for direct care staff.
(3) A congregate care program shall have a contraband policy including what constitutes contraband and how the program ensures restriction of client access to contraband and dangerous weapons or materials.
(a) Strip searches and body cavity searches are prohibited by Section 62A-2-123 without documented, individualized justification for protection of an individual's health and safety.
(b) Strip search and body cavity search policies may not allow for strip searches to be performed as a universal practice and may only allow these searches to be conducted with individualized justification, documentation, and in accordance with a detailed policy approved by the office.
(c) Strip searches and body cavity searches may only be performed in congregate care by a medical professional outside of the line of sight of direct care staff.
(4) A congregate care suicide prevention policy may only be approved by the office if it complies with Subsection 62A-2-123(5).
(5) A congregate care behavior management policy may only be approved by the office if, in addition to complying with Section 62A-2-123, the policy reflects the following:
(a) each program staff shall employ behavior management techniques that are trauma informed and appropriate for the client's age, behavior, needs, developmental level, and past experiences and shall defer to the least restrictive method of behavior management available to control a situation;
(b) each program will ensure compliance with Section 62A-2-123 in each aspect of the program, including for a client who is under a contracted caregiver's supervision for transportation, outing, retreat, or similar activity;
(c) each program staff shall only use behavior management techniques that emphasize de-escalation and promote self-control, self-esteem, and independence; and
(d) each program shall identify a behavior management curriculum that emphasizes de-escalation and is compliant with Section 62A-2-123;

(e) only direct care staff familiar with the child and the child's needs shall conduct passive physical restraint;
(f) restraint will only be used if it will not cause undue physical discomfort, harm, or pain to the client;
(g) interventions that use painful stimuli are prohibited as a general practice;
(h) passive physical restraint shall be used only as an emergency, temporary means of physical containment to protect the consumer, other persons, or property from immediate harm;
(i) restraint may only continue as long as the client presents an immediate danger to self or others;
(j) passive physical restraint may not be used as a convenience to staff, a substitute for programming or associated with punishment in any way;
(k) clients, non-direct care staff, or other unauthorized individuals may not use any form of restraint;
(l) staff may not use physical work assignments or activities that inflict pain as behavior management techniques;
(m) appropriate de-escalation techniques and alternatives to restraint or seclusion;
(n) thresholds for restraints;
(o) the physiological and psychological impact of restraint;
(p) appropriate monitoring;
(q) staff shall be trained to recognize the physical signs of distress, positional asphyxia, and obtaining medical assistance;
(r) staff shall be trained how to intervene if another staff member fails to follow correct procedures when using a restraint;
(s) staff shall be trained on time limits for restraints;
(t) the process for obtaining clinical approval for continued restraints;
(v) the procedure for documenting and reporting restraints;
(w) the procedure for processing restraints with clients;
(x) the procedure for following up with staff after a restraint;
(y) how staff shall address injuries and complaints;
(z) department code of conduct; and
(aa) client rights listed in Section R501-1-27.
(6) A congregate care seclusion policy may only be approved by the office if it reflects the following:
(a) seclusion is only used to ensure the immediate safety of the child or others and must be terminated as soon as the risks have been mitigated, not to exceed four hours without clinical justification;
(b) staff who are familiar to the child must directly supervise the child for the duration of the seclusion;
(c) staff supervising seclusion shall ensure that any potentially harmful items or objects are removed from the seclusion environment;
(d) seclusion rooms shall measure a minimum of 75 square feet and have a minimum ceiling height of seven feet with no equipment, hardware or furnishings that obstruct staff's view of the client or present a hazard;
(e) seclusion rooms shall have either natural or mechanical ventilation with break resistant windows and either a break resistant two-way mirror or camera that allows for observation of the entire room;
(f) seclusion rooms may not have locking capability and may not be located in closets, bathrooms, unfurnished areas or other areas not designated as part of residential living space;
(g) bedrooms may not be utilized as a seclusion room and seclusion rooms may not be utilized as bedrooms;
(h) seclusion shall be documented in detail by the staff involved in initiating and supervising the seclusion episode;

NOTICES OF PROPOSED RULES

(i) seclusion episodes of more than two in a 24-hour period require clinical review and documentation regarding client suitability for remaining in the program; and

(i) client time-out may be used when addressing behavioral issues if:

(i) a client in time-out is never physically prevented from leaving the time-out area;

(ii) it takes place away from the area of activity or from other clients, such as in the client's bedroom;

(iii) staff monitors the client while in time-out; and

(iv) the reason for and duration of time-out is documented by staff on duty at the time it occurs.

R501-1-27. Client Rights.

(1) Clients have the right to:

(a) be treated with dignity;

(b) be referred to by their preferred pronouns

(c) be free from potential harm or acts of violence;

(d) be free from discrimination;

(e) be free from abuse, neglect, mistreatment, exploitation, unusual or unnecessary consequences, and fraud;

(f) privacy of current and closed records;

(g) communicate and visit privately with family, attorney, clergy, physician, counselor, or case manager, unless therapeutically contraindicated or court restricted; and

(h) be informed of program policies and procedures that affect client or guardian's ability to make informed decisions regarding client care, to include:

(i) program expectations, requirements, mandatory or voluntary aspects of the program;

(ii) consequences for non-compliance;

(iii) reasons for involuntary termination from the program and criteria for re-admission;

(iv) program service fees and billing; and

(v) safety and characteristics of the physical environment where services will be provided.

(2) Clients shall be informed of these rights and an acknowledgment by the client or guardian shall be maintained in the client file.

R501-1-28. Compliance.

(1) A licensee that is in operation on the effective date of this rule shall be given 60 days to achieve compliance with this rule.

KEY: licensing, human services

Date of Last Change: 2021~~January 17, 2019~~

Notice of Continuation: October 4, 2017

Authorizing, and Implemented or Interpreted Law: 62A-2-101 et seq.

NOTICE OF PROPOSED RULE

TYPE OF RULE: Repeal and Reenact

| | | |
|--------------------------------------|---------------|------------------------|
| Utah Admin. Code Ref (R no.): | R501-8 | Filing ID 54008 |
|--------------------------------------|---------------|------------------------|

Agency Information

| | |
|-----------------------|--|
| 1. Department: | Human Services |
| Agency: | Administration, Administrative Services, Licensing |

| | | |
|--|------------------------------------|-------------------|
| Building: | Multi Agency State Office Building | |
| Street address: | 195 N 1950 W | |
| City, state and zip: | Salt Lake City, UT 84116 | |
| Contact person(s): | | |
| Name: | Phone: | Email: |
| Janice Weinman | 385-321-5586 | jweinman@utah.gov |
| Jonah Shaw | 385-310-2389 | jshaw@utah.gov |
| Please address questions regarding information on this notice to the agency. | | |

General Information

2. Rule or section catchline:

R501-8. Outdoor Youth Programs

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 S.B. 127 passed in the 2021 General Session, Executive Order No. 2021-12, and based on stakeholder input. During the review of this rule, the Office of Licensing (Office) also discovered a number of minor issues that needed to be amended.

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 substantive changes are being done to bring this rule into compliance with the new requirements imposed upon human services programs by S.B. 127 (2021). In order to comply with Executive Order No. 2021-12, many changes are also being done to fix style issues to bring this rule text more in line with current rulewriting standards and to make the language of this rule more clear. This repeal and reenact also aligns outdated rules with current industry standards based on stakeholder input.

Fiscal Information

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

A) State budget:

There is no aggregate anticipated cost or savings to the state budget because all legislative changes have been accounted for through a fiscal note to supplement office resources for enforcement of this rule change.

B) Local governments:

There is no aggregate anticipated cost or savings to local governments because the proposed rule only supports local government requirements but does not impose any additional requirements on them.

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

The cost or savings impact on small businesses is inestimable because licensed programs are allowed to demonstrate rule compliance through policy and procedure development. Any additional costs as a result of the new policies and procedures will be self-imposed.

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

The cost or savings impact on non-small businesses is inestimable because licensed programs are allowed to demonstrate rule compliance through policy and procedure development and there a number of ways programs may choose to comply.

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

There is no impact on persons due to the enactment of these proposed rule changes, as the Office can only regulate small or non-small businesses meeting the statutory definition for licensure.

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

There will be no affected persons other than small or non-small businesses meeting the statutory definition for licensure.

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 proposal will not result in a fiscal impact to businesses. Tracy Gruber, 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 Executive Director of Human Services, Tracy Gruber, 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 62A-2-106 | Section 62A-2-101 | |
|-------------------|-------------------|--|

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

| | |
|--|------------|
| A) Comments will be accepted until: | 12/01/2021 |
|--|------------|

10. This rule change MAY become effective on:

12/08/2021
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: | Tracy Gruber, Executive Director | Date: | 10/04/2021 |
|--|-------------------------------------|--------------|------------|

R501. Human Services, Administration, Administrative Services, Licensing.

R501-8. Outdoor Youth Programs.

~~R501-8-1. Outdoor Youth Programs.~~

~~(1) The Office of Licensing in the Department of Human Services, shall license outdoor youth programs according to standards and procedures established by this rule.~~

~~R501-8-2. Authority and Purpose.~~

~~(1) Pursuant to 62A-2-101 et seq., the purpose of this rule is to define standards and procedures by which the Office of Licensing shall license outdoor youth programs. Programs designed to provide rehabilitation services to adjudicated minors shall adhere to these rules as established by the Division of Juvenile Justice Services, in accordance with 62A-7-104-11.~~

~~R501-8-3. Definitions.~~

~~(1) In addition to terms defined and used in Section 62A-2-101(20), Utah Code:~~

~~(a) "Consumer" means the minor being provided the service by the program, not the parent or contracting agent that has enrolled the minor in the program.~~

~~(b) "Field Office" means the office where all coordination of field operations take place.~~

~~(c) "Administrative Office" means the office where business operations, public relations, and the management procedures take place.~~

~~(d) "Outdoor Youth Program means a 24-hour intermediate outdoor group living environment with regular formal therapy including group, individual, and the inclusion of supportive family therapy."~~

~~R501-8-4. Administration.~~

~~(1) In addition to the following standards and procedures, all outdoor youth programs shall comply with R501-2, Core Standards, R501-1 General provisions and R501-14 Background Screenings.~~

~~(2) Records of enrollment of all consumers shall be on file at the field office at all times.~~

~~(3) Information provided to parents, community, and media shall be accurate and factual.~~

~~(4) Programs shall provide an educational component as determined by the Utah State Board of Education for consumers up to 18 years of age who have been removed from their educational opportunities for more than one month. The administrators of the program shall meet and cooperate with the local Board of Education.~~

~~(5) Programs which advertise as providing educational credit to consumers shall be approved by the Utah State Board of Education.~~

~~(6) The program shall have written procedures for handling any suspected incident of child abuse or Department of Human Services, hereinafter referred to as DHS, Provider Code of Conduct violation, including the following:~~

~~(a) a procedure for ensuring that the staff member involved does not work directly with the youth involved or any other youth in the program until the investigation is completed or formal charges filed and adjudicated,~~

~~(b) a procedure for ensuring that a director or member of the governing body involved in or suspected of abuse shall be relieved of their responsibility and authority over the policies and activities of the program, or any other youth program, as well as meet the sanctions as described in (a) above, until the investigation is completed or formal charges are filed and adjudicated, and~~

~~(c) a procedure for disciplining any staff member or director involved in an incident of child abuse or DHS Provider Code of Conduct violation, including termination of employment if found guilty of felony child abuse, or loss of position, including directorship if found guilty of misdemeanor child abuse.~~

~~(7) If any director or person in a management position is involved in or suspected of child abuse or neglect, the program shall submit to an extensive review by DHS or law enforcement officials to determine or establish the continued safe operation or possible termination of the program. The licensing review shall be completed within 72 hours.~~

~~(8) Failure to implement and comply with (6)(a) through (c), and (7), above will be grounds for immediate suspension or revocation of program license.~~

~~(9) Until charges of abuse, neglect or licensing violations are resolved, no license shall be issued to any program with owners, silent owners, or any staff management personnel that were prior owners or staff management personnel in a program against which the above charges were alleged.~~

~~(10) If charges result in a criminal conviction or civil or administrative findings that allegations were true, no license shall be issued to any program with owners, silent owners, or staff management personnel from the prior program.~~

~~R501-8-5. Program Requirements.~~

~~(1) Programs that operate in Utah and one or more other states shall meet the requirements for licensure as established for each of the states.~~

~~(2) There shall be a written plan for expedition groups, developed and approved by the program field director, and by the program executive director, and governing body, which shall not expose consumers to unreasonable risks.~~

~~(3) The program shall inventory all consumer personal items and shall return all inventoried items, except contraband, to the consumer following program completion. The consumer shall sign the inventory list at the time of inventory and again when items are returned.~~

~~(4) The Office of Licensing shall review and approve the program's training plan governing consequences for consumer conduct.~~

~~(5) Each consumer shall have clothing and equipment to protect the consumer from the environment. This equipment shall never be removed, denied, or made unavailable to a consumer. If a consumer refuses or is unable to carry all of his or her equipment, the group shall cease hiking, and reasons for refusal or inability to continue will be established and resolved before hiking continues. Program directors are responsible to train staff regarding this standard and to regularly monitor compliance. There shall never be a deprivation of any equipment as a consequence. Such equipment shall include the following:~~

~~(a) sunscreen; the program staff shall ensure appropriate consumer usage;~~

~~(b) insect repellent;~~

~~(c) with frame or no frame backpack weight to be carried by each consumer shall not exceed 20 percent of the consumer's body weight. If the consumer is required to carry other items, the total of all weight carried shall not exceed 30% of the consumer's body weight,~~

~~(d) personal hygiene items;~~

~~(e) female hygiene supplies;~~

~~(f) sleeping bags rated for the current seasonal conditions when the average nighttime temperature is 40 degrees F. or warmer;~~

~~(g) sleeping bags rated for the current seasonal conditions, shelter and ground pad for colder months when the average nighttime temperature is 39 degrees F. or lower, and~~

~~(h) basic clothing list to ensure consumer protection against seasonal change in the environment.~~

~~(6) The program shall provide consumers with clean clothing at least weekly and shall provide a means for consumers to bathe or otherwise clean their bodies a minimum of twice weekly. Female consumers shall be issued products for hygiene purposes.~~

~~(7) Hiking shall not exceed the physical capability of the weakest member of the group. Hiking shall be prohibited at temperatures above 90 degrees F. or at temperatures below 10 degrees F. Field staff shall carry thermometers, which accurately display current temperature. If a consumer cannot or will not hike, the group shall not continue unless eminent danger exists.~~

~~(8) The expedition plan including map routes, and anticipated schedules and times shall be carried by the field staff and recorded in the field office.~~

~~(9) Field staff shall maintain a signed, daily log or dictate a recorded log to be transcribed and signed immediately following termination of the activity.~~

~~(a) The log shall contain the following information; accidents, injuries, medications, medical concerns, behavioral problems, and all unusual occurrences.~~

~~(b) All log entries shall be recorded in permanent ink.~~

~~(c) These logs shall be available to state staff.~~

~~(10) Incoming and outgoing mail to parents, guardians, and attorneys shall not be restricted but shall be delivered in as prompt a manner as the location and circumstances dictate.~~

~~(11) Incoming and outgoing U.S. postal mail to parents, guardians, and attorneys shall not be restricted but shall be delivered in as prompt a manner as the location and circumstances dictate.~~

~~(12) Incoming mail from parents or guardians shall not be read or censored without written permission from a parent or guardian.~~

~~(13) All other mail may be restricted only by parental request in writing.~~

~~(14) All incoming mail may be required to be opened in the presence of staff. Contraband shall be confiscated.~~

~~(15) All local, state, and federal regulations and professional licensing requirements shall be met.~~

~~(16) Each program staff shall be required to carry with them a reliable time piece, which may include a wrist watch or pocket watch for the purpose of accurately reflecting the time of day, and for documentation purposes, such as recording the time of day in log notes and incident reports.~~

~~(17) The program shall have policy and procedure for suicide ideation that includes a review of any placement of a suicide watch on a consumer, by the program's clinical professional.~~

R501-8-6. Staff, Interns, and Volunteers.

~~(1) All staff, interns, and volunteers shall meet the provisions of R501-14.~~

~~(2) Each program shall have a governing body and an executive director who shall have responsibility and authority over the policies and activities of the program, and shall coordinate office and support services, training, etc.. The executive director shall have, at a minimum, the following qualifications:~~

~~(a) be at least 25 years of age,~~

~~(b) have a BA or BS degree or equal training and experience in a related field,~~

~~(c) have a minimum of two years of outdoor youth program administrative experience,~~

~~(d) have a minimum of 30 semester or 45 quarter hours education in recreational therapy or related experience or one year Outdoor Youth Program field experience,~~

~~(e) demonstrate complete knowledge and understanding of relevant licensing rules, and~~

~~(f) have completed an initial staff training, see R501-8-8.~~

~~(3) Each program shall have a program or field director who coordinates field operations, manages the field staff, and operates the field office. The program or field director shall meet, at a minimum, the following qualifications:~~

~~(a) be at least 25 years of age,~~

~~(b) have a BA or BS degree or equal training and experience in a related field,~~

~~(c) have minimum of two years of outdoor youth program field experience,~~

~~(d) have a minimum of 30 semester or 45 quarter hours education in recreational therapy or related field, or one year Outdoor Youth Program field experience,~~

~~(e) demonstrate complete knowledge and understanding of relevant licensing rules;~~

~~(f) have primary responsibility for field activities and visit in the field a minimum of two days a week with no more than five days between visits;~~

~~(g) prepare reports of each visit, document conditions of consumers, document interactions of consumers and staff, and ensure compliance with rules,~~

~~(h) be annually trained and certified in CPR and currently certified in standard first aid, and~~

~~(i) have completed an initial staff training, see R501-8-8.~~

~~(4) Each program shall have field support staff responsible for delivery of supplies to the field, mail delivery, communications, and first aid support. The field support staff shall meet, at a minimum, the following qualifications:~~

~~(a) be at least 21 years of age;~~

~~(b) have a high school diploma or equivalency;~~

~~(c) be annually trained and certified in CPR and currently certified in standard first aid, and~~

~~(d) have completed an initial staff training and field course, see R501-8-8.~~

~~(5) Each program group shall have senior field staff working directly with the consumer who shall meet, at a minimum, the following qualifications:~~

~~(a) be at least 21 years of age,~~

~~(b) have an associate degree or high school diploma with 30 semester or 45 quarter hours education and training or comparable experience and training in a related field,~~

~~(c) have six months outdoor youth program field experience or comparable experience which shall be documented in the individual's personnel file,~~

~~(d) be annually trained and certified in CPR and currently certified in standard first aid,~~

~~(e) have completed an initial staff training, see R501-8-8, and~~

~~(6) Each program shall have a field staff working directly with the consumers who shall meet, at a minimum, the following qualifications:~~

~~(a) be a minimum of 20 years of age,~~

~~(b) have a high school diploma or equivalency;~~

~~(c) have forty eight field days of outdoor youth program experience or comparable experience which shall be documented in the individual's personnel file;~~

NOTICES OF PROPOSED RULES

~~(d) exhibit leadership skill,~~
~~(e) be annually trained and certified in CPR and currently certified in standard first aid, and~~
~~(f) have completed an initial staff training.~~
~~(7) Each program shall have assistant field staff to meet the required consumer to staff ratio. Assistant field staff shall meet, at a minimum, the following qualifications:~~
~~(a) be a minimum of 19 years of age,~~
~~(b) have a high school diploma or equivalency,~~
~~(c) have twenty-four field days of outdoor youth programs experience,~~
~~(d) exhibit leadership skill,~~
~~(e) be annually trained and certified in CPR and currently certified in standard first aid, and~~
~~(f) have completed an initial staff training~~
~~(8) Each program shall have a multi-disciplinary team, accessible to consumers which shall include, at a minimum, the following:~~
~~(a) a licensed physician or consulting licensed physician,~~
~~(b) a treatment professional who may be one of the following:~~
~~(i) a licensed psychologist,~~
~~(ii) a licensed clinical social worker,~~
~~(iii) a licensed professional counselor,~~
~~(iv) a licensed marriage and family counselor, or~~
~~(v) a licensed school counselor~~
~~(c) All clinical and therapeutic personnel shall be licensed or working under a DOPL training program certified by the State of Utah.~~
~~(9) Each program may have academic and clinical interns who are learning the program practices while completing educational requirements.~~
~~(a) Interns shall be a minimum of 19 years of age.~~
~~(b) Initial training program shall be completed by all incoming staff including interns regardless of background experience.~~
~~(c) Clinical interns pursuing licensure shall be under the supervision of a licensed therapist.~~
~~(d) Academic interns shall be supervised by program staff.~~
~~(e) Interns shall not supervise consumers at any time.~~
~~(10) Each program may have program volunteers.~~
~~(a) Volunteers shall be under direct, constant supervision of program staff.~~
~~(b) Volunteers shall not be left in the role of supervising consumers at any time.~~
~~(c) Volunteers shall be at least 18 years of age and meet program guidelines.~~

R501-8-7. Staff to Consumer Ratio.

~~(1) Each youth group shall be supervised by at least two staff members at all times, one of which must be a senior field staff.~~
~~(2) In a mixed gender group, there shall be at least one female staff and one male staff.~~
~~(3) Expedition group size, including staff members, cannot exceed sixteen people with a minimum of a one to four staff to consumer ratio.~~
~~(4) Volunteers shall be counted as a consumer in figuring staff to consumer ratios.~~
~~(5) Expedition group size shall not exceed the number specified by federal, state, or local agencies in whose jurisdiction the program is operated.~~

R501-8-8. Staff Training.

~~(1) The program shall provide a minimum of eighty hours initial staff training.~~

~~(2) Initial staff training shall not be considered completed until the staff have demonstrated to the field director proficiency in each of the following:~~
~~(a) counseling, teaching and supervisory skills,~~
~~(b) water, food, and shelter procurement, preparation and conservation,~~
~~(c) low impact wilderness expedition and environmental conservation skills and procedures,~~
~~(d) consumer management, including containment, control, safety, conflict resolution, and behavior management,~~
~~(e) instruction in safety procedures and safe equipment use; fuel, fire, life protection, and related tools;~~
~~(f) instruction in emergency procedures; medical, evacuation, weather, signaling, fire, runaway and lost consumers;~~
~~(g) sanitation procedures; water, waste, food, etc.,~~
~~(h) wilderness medicine, including health issues related to acclimation, exposure to the environment, and environmental elements,~~
~~(i) CPR, standard first aid, first aid kit contents and use, and wilderness medicine,~~
~~(j) navigation skills, including map and compass use and contour and celestial navigation,~~
~~(k) local environmental precautions, including terrain, weather, insects, poisonous plants, response to adverse situations and emergency evacuation,~~
~~(l) leadership and judgment,~~
~~(m) report writing, including development and maintenance of logs and journals, and~~
~~(n) Federal, state, and local regulations, including Department of Human Services, Bureau of Land Management, United States Forest Service, National Parks Service, Utah State Department of Fish and Game.~~
~~(3) The completion of the minimum eighty hours initial staff training shall be documented and maintained in each personnel file.~~
~~(4) The field director shall document in each personnel file that the staff have demonstrated proficiency in each of the required topic areas as listed in (2) above.~~
~~(5) The initial staff training and demonstration of proficiency must be completed and documented before the staff person may count in the staff consumer ratio.~~
~~(6) The program shall also provide on-going training to staff in order to improve proficiency in knowledge and skills, and to maintain certifications. This training shall also be documented.~~

R501-8-9. Staff Health Requirements.

~~(1) Prior to engaging in any field activity, all staff shall adhere to the following:~~
~~(a) All field staff, interns, and volunteers shall have an annual physical examination and health history signed by a licensed medical professional. A recognized physical stress assessment shall be completed as part of the physical examination.~~
~~(b) Physical examinations shall be reviewed and maintained by the provider in the staff personnel file.~~
~~(c) All program staff, interns, and volunteers shall agree to submit to drug and alcohol screening as provided for by federal and state law.~~

R501-8-10. Consumer Admission Requirements.

~~(1) Consumers shall be at least 13 through 17 years of age and have a current health history which includes notation of limitations and prescriptive medications, completed and submitted within 30 days prior to entrance into the field program and verified by a parent or legal guardian.~~

~~_____ (2) Admissions screening shall be supervised by a treatment professional before consumer entrance into the field program and shall include the following:~~

~~_____ (a) a review of consumer social and psychological history with the parent or legal guardian prior to enrollment;~~

~~_____ (b) an interview with the consumer prior to entrance into the field program; and~~

~~_____ (c) a review of consumer's health history and physical examination by a licensed medical professional prior to entrance into the field program.~~

~~_____ (3) Consumer shall have a physical examination within 15 days prior to entrance to field program. Documentation of the examination, on a form provided by the program and signed by a licensed medical professional, shall be submitted to the program within 15 days prior to entrance to field program.~~

~~_____ (4) A physical examination form shall be provided to the licensed medical professional by the program and the form shall clearly state a description of the physical demands and environment of the program, and require the following information:~~

~~_____ (a) urinalysis drug screen;~~

~~_____ (b) CBC, blood count;~~

~~_____ (c) urinalysis for possible infections;~~

~~_____ (d) CMP, complete metabolic profile;~~

~~_____ (e) pregnancy test for all female consumers;~~

~~_____ (f) physical stress assessment;~~

~~_____ (g) determination by the physician if detoxification is indicated for consumer prior to entrance into field program;~~

~~_____ (h) and any other tests as deemed to be indicated.~~

~~_____ (5) Copies of consumer's medical forms shall be maintained at the field office and another copy carried by staff members in a waterproof container throughout the course.~~

~~_____ (6) Prior to placement in the program, psychological evaluations for consumers as indicated, who have a history of chronic psychological disorders.~~

~~_____ (7) Upon admission and for a period of no fewer than three days staff shall closely monitor the consumers for any health problems that may be a result of becoming acclimated to the environment.~~

~~R501-8-11. Water and Nutritional Requirements.~~

~~_____ (1) Six quarts of potable water shall be available per person, per day, minimum, plus one additional quart per person for each five miles hiked. Although it is not required that the entire amount be hand carried, access to water shall be available at all times during hiking.~~

~~_____ (2) In temperatures above 90 degrees F., staff shall make sure consumer intake is a minimum of three quarts of water per day, electrolyte replacement shall be available with the expeditionary group at all times.~~

~~_____ (3) In temperatures above 80 degrees F., water shall be available for coating consumer's body, and other cooling down techniques shall be available for the purpose of cooling as needed.~~

~~_____ (4) Water shall be available at each campsite. Water cache location information shall be verified with field staff before the group leaves camp each day.~~

~~_____ (5) Expedition group shall not depend on aerial drops for water supply. Aerial water drops shall be used for emergency situations only.~~

~~_____ (6) All water from natural sources shall be treated for sanitation to eliminate health hazards.~~

~~_____ (7) Each program shall have a written menu describing food supplied to the consumer which shall provide a minimum of 3000 calories per day. There must be fresh fruit and vegetables at least twice a week. Food shall never be withheld from a consumer for any reason.~~

Food may not be withheld as a punishment. If no fire is available, other food of equal caloric value, which does not require cooking shall be available.

~~_____ (a) The menu shall adjust to provide 30-100 percent increase in minimum dietary needs as energy expenditure such as exercise increases, or climate conditions such as cold weather dictate.~~

~~_____ (b) Food shall be from a balance of the food groups.~~

~~_____ (c) Forage items shall not be used toward the determination of caloric intake.~~

~~_____ (d) There shall be no program fasting for more than 24 hours per expeditionary cycle.~~

~~_____ (e) Multiple vitamin supplements shall be offered daily.~~

~~R501-8-12. Health Care.~~

~~_____ (1) First aid treatment shall be provided in a prompt manner.~~

~~_____ (2) When a consumer has an illness or physical complaint which cannot be treated by standard first aid, the program shall immediately arrange for the consumer to be seen and treated as indicated by a licensed medical professional.~~

~~_____ (3) Each consumer shall be assessed at least every 14 days for his physical condition by a qualified professional such as a Utah EMT. Blood pressure, heart rate, allergies, and general physical condition will be checked and documented. Any assessment concerns will be documented, and the consumer will be taken to the appropriate medical professional for treatment. Medical treatment shall be provided by medical personnel and medication provided as needed. There shall be no consequences to a consumer for requesting to see a health care professional or for anything said to a health care professional.~~

~~_____ (4) All prescriptive and over the counter medications shall be kept in the secure possession of designated staff and provided to consumers to be used as prescribed.~~

~~_____ (5) Prescriptive medication shall be administered as prescribed by a qualified medical practitioner who is licensed. Staff shall be responsible for the following:~~

~~_____ (a) supervise the use of all medication;~~

~~_____ (b) record medication, including time and dosage; and~~

~~_____ (c) record effects of medication, if any.~~

~~_____ (d) document any incidents of missed prescriptive medication; and~~

~~_____ (e) document any lost or missing prescriptive medication.~~

~~_____ (6) A foot check will be conducted at least twice daily and documented.~~

~~R501-8-13. Safety.~~

~~_____ (1) First aid kits shall include sufficient supplies for the activity, location, and environment and shall be available during all field activities.~~

~~_____ (2) Program shall have a support system that meets the following criteria:~~

~~_____ (a) Reliable daily two-way radio communications with additional charged battery packs, and a reliable backup system of contact in the event the radio system fails.~~

~~_____ (b) The support vehicles and field office shall be equipped with first aid equipment.~~

~~_____ (c) The support personnel shall have access to all contacts, i.e., telephone numbers, locations, contact personnel, and procedures for an emergency evacuation or field incident.~~

~~_____ (d) A.M. and P.M. contacts between field staff and support staff are to be relayed to the field office. Contact shall be available from field staff to field office on a continuous basis.~~

R501-8-14. Field Office.

- ~~_____ (1) Each program shall maintain a field office.~~
- ~~_____ (2) Communication system to the field office shall be monitored 24 hours a day when consumers are in the field.~~
- ~~_____ (3) Support staff shall respond immediately to any emergency situation.~~
- ~~_____ (4) Support staff on duty shall be within 1 hour of the field.~~
- ~~_____ (5) When staff are not present in the field office a contact telephone number shall be posted on the field office door, and the field director shall designate responsible on-call staff who shall continually monitor communications and will always be within 15 minutes travel time of the field office.~~
- ~~_____ (6) field office staff shall adhere to the following:~~
 - ~~_____ (a) maintain current staff and consumer files which include demographics, eligibility criteria, and medical forms as a minimum,~~
 - ~~_____ (b) maintain a current list of names of staff and consumers in each field group,~~
 - ~~_____ (c) maintain a master map of all activity areas,~~
 - ~~_____ (d) maintain copies of each expeditionary route with its schedule and itinerary, of which copies shall be sent to the Office of Licensing and local law enforcement, as requested by these agencies,~~
 - ~~_____ (e) maintain a log of communications,~~
 - ~~_____ (f) be responsible for training and orientation, management of field personnel, related files, and records,~~
 - ~~_____ (g) be responsible for maintaining communications, equipment inspection, and overseeing medical incidents, and~~
 - ~~_____ (h) provide all information as requested for review by state staff.~~

R501-8-15. Environmental Requirements.

- ~~_____ (1) All programs shall adhere to land use agencies requirements relative to sanitation and low impact camping.~~
- ~~_____ (2) Consumers shall be instructed daily in the observance of low impact camping requirements.~~
- ~~_____ (3) Personal hygiene supplies shall be of biodegradable materials.~~

R501-8-16. Emergencies.

- ~~_____ (1) Each program shall have a written plan of action for disaster and casualties to include the following:~~
 - ~~_____ (a) designation of authority and staff assignments,~~
 - ~~_____ (b) plan for evacuation,~~
 - ~~_____ (c) transportation and relocation of consumers when necessary, and~~
 - ~~_____ (d) supervision of consumers after evacuation or relocation.~~
- ~~_____ (2) The program shall have a written plan which personnel follow in medical emergencies and arrangements for medical care, including notification of consumer's physician and nearest relative or guardian.~~
- ~~_____ (3) The program shall have a written agreement for medical emergency evacuation as needed.~~
- ~~_____ (4) Emergency evacuation equipment shall be on stand-by.~~
- ~~_____ (5) The program shall make prior arrangements with local rescue services in preparation for possible emergency evacuation needs, which shall be reviewed every six months.~~

R501-8-17. Infectious Disease Control.

- ~~_____ (1) The program shall have policies and procedures designed to prevent or eliminate the spread of infectious and communicable diseases in the program.~~

R501-8-18. Transportation Services.

- ~~_____ (1) The program shall have policies and procedures which ensures the safe and humane transport of consumers between their homes and the program.~~
- ~~_____ (2) "Escort transportation services" means: The charging of a fee for having a responsible adult accompany the consumer during transportation from the consumers home to the program or back to their home.~~
- ~~_____ (3) Escort transportation services whether provided by the program or by an independent transportation service shall not be a requisite to enrollment in the program, but shall be the choice of the consumer's parent or guardian.~~
- ~~_____ (4) Programs that provide escort transportation services shall provide parents or guardians with the contact information of at least two other escort transportation services to allow them to have an informed decision.~~

R501-8-19. Transportation.

- ~~_____ (1) There shall be written policy and procedures for transporting consumers.~~
- ~~_____ (2) There shall be a means of transportation in case of emergency.~~
- ~~_____ (3) Drivers of vehicles shall have a valid drivers license and follow safety requirements of the State.~~
- ~~_____ (4) Each vehicle shall be equipped with an adequately supplied first aid kit.~~
- ~~_____ (5) When transporting any consumer for any reason, there shall be two staff present at all times, one of which shall be of the same sex as the consumer, except in emergencies.~~
- ~~_____ (6) Staff shall adhere to local, state, and federal laws concerning the operation of motor vehicles.~~
- ~~_____ (7) Staff and consumers shall wear seat belts at all times while the vehicle is moving.~~

R501-8-20. Evaluation.

- ~~_____ (1) Following the wilderness experience, each consumer shall receive a debriefing to include a written summary of the consumer's participation and the progress they achieved.~~
- ~~_____ (2) Parents, consumers, and other involved individuals shall be provided the opportunity and encouraged to submit a written evaluation of the wilderness experience, which shall be retained by the program for a period of two years.~~

R501-8-21. Solo Experiences.

- ~~_____ (1) If an Outdoor Youth Program conducts a solo component for consumers as part of the program they shall have and follow written policies and procedures, which shall include the following:~~
 - ~~_____ (a) A written description of the solo component to ensure that the consumers are not exposed to unreasonable risks.~~
 - ~~_____ (b) Staff shall be familiar with the site chosen to conduct solos.~~
 - ~~_____ (c) Plans for supervision shall be in place during the solo.~~
 - ~~_____ (d) Solo emergency plans.~~

R501-8-22. Stationary Camp Sites.

- ~~_____ (1) An outdoor youth program that maintains a designated location for the housing of consumers is considered stationary and shall be subject to additional fire, health and safety standards.~~
 - ~~_____ (a) A stationary Outdoor Youth Program camp shall be inspected by a state certified fire inspector before being occupied and on an annual basis thereafter. A copy of the inspection shall be maintained at the Outdoor Youth Program camp.~~

~~The inspection shall require:~~

~~(i) Fire Extinguishers. One (1) 2-A 10BC type fire extinguisher shall at minimum be in each of the following locations as required by the fire inspector:~~

~~(A) On each floor in any building that houses consumers;~~

~~(B) In any room where cooking or heating takes place;~~

~~(C) In a group of tents within a seventy-five (75) foot travel distance; and~~

~~(D) Each fire extinguisher shall be inspected annually by a fire extinguisher service agency.~~

~~(ii) Smoke Detectors. A smoke detector shall be in buildings where consumers sleep.~~

~~(iii) Escape Routes. A minimum of two (2) escape routes from buildings where consumers sleep.~~

~~(iv) Flammable Liquids. Flammable liquids shall not be used to start fires, be stored in structures that house consumers, or be stored near ignition sources. If generators are used, they will only be refueled by staff when the generator is not running and cool to the touch.~~

~~(v) Electrical. Wiring shall be properly attached and fused to prevent overloads.~~

~~(b) A stationary Outdoor Youth Program camp shall be inspected by the Local Health Department before being occupied and on an annual basis thereafter. A copy of the inspection shall be maintained at the site of the camp. The inspection shall require the following:~~

~~(i) Food. Food be stored, prepared and served in a manner that is protected from contamination.~~

~~(ii) Water Supply. The water supply shall be from a source that is accepted by the local health authority according to UAC R392-300 "Rules for Recreation Camp Sanitation," at the time of application and for annual renewal of such licenses.~~

~~(iii) Sewage Disposal. Sewage shall be disposed of through a public system, or in absence of a public system, in a manner approved by the local health authority, according to UAC R392-300 "Rules for Recreation Camp Sanitation".~~

R501-8-23. Non-Compliance With Rules.

~~(1) Due to the difficulty of monitoring outdoor programs and the inherent dangers of the wilderness, a single violation of the foregoing life and safety rules may result in immediate revocation of the license and removal of consumers from programs pursuant to General Provisions as found in R501-1.]~~

R501-8-1. Authority, Purpose, and Scope.

~~(1) This rule is authorized by Section 62A-2-106 and establishes standards for the licensure of outdoor youth programs. This rule is intended to supplement the general provisions required of each human services program in rule R501-1.~~

~~(2) In the event of conflict, this rule shall supersede other rules under Title R501~~

R501-8-2. Definitions.

~~(1) The terms used in this rule are defined in Sections 62A-2-101 and R501-1-3.~~

~~(2) "Essential equipment" means:~~

~~(a) food;~~

~~(b) potable water;~~

~~(c) sunscreen;~~

~~(d) insect repellent;~~

~~(e) personal hygiene items;~~

~~(f) sleeping bags rated for the current seasonal conditions;~~

~~(g) an additional shelter and ground pad for colder months when the average nighttime temperature is 39 degrees F. or lower; and~~

~~(h) basic clothing list and protective gear to ensure client protection against seasonal change in the environment.~~

~~(3) "Field" means geographic area in which program hiking, camping and related client services occur.~~

~~(4) "Field Office" means the office where coordination of field operations take place.~~

R501-8-3. Administration.

~~(1) Each outdoor youth program shall provide an educational component as determined by the Utah State Board of Education for clients 18 years of age or younger who have been removed from their educational opportunities for more than one month. The administrators of the program shall meet and document cooperation with the State Board of Education in accordance with Section 62A-2-108.1.~~

~~(2) Each outdoor youth program that advertises as providing educational credit to clients shall be approved by the Utah State Board of Education.~~

~~(3) Each outdoor youth program shall have a written policy for ensuring that any staff member involved in a suspected incident of child abuse or code of conduct violation does not work directly with the youth involved or any other youth in the program until the investigation is completed or formal charges have been filed and adjudicated.~~

R501-8-4. Program Requirements.

~~(1) Each program that operates in Utah and another state shall meet the requirements for licensure as established by each state.~~

~~(2) The program field director, program executive director, and governing body for each expedition group shall develop and approve a written plan which may not expose clients to unreasonable risks.~~

~~(3) Each outdoor youth program shall provide the office with each outdoor youth program training plan governing consequences for client and staff conduct, and the office shall review and approve the plan before implementation.~~

~~(4) Each outdoor youth program shall ensure that each client has clothing and equipment to protect the client from the environment. This equipment may never be removed, denied, or made unavailable.~~

~~(5) During an expedition, if a client refuses or is unable to hike or to carry the client's equipment, the group shall cease hiking. Each program shall establish, document, and resolve the reasons for the client's refusal or inability to continue before hiking continues.~~

~~(6) Each outdoor youth program shall ensure that deprivation of essential equipment or items shall not be used as a consequence.~~

~~(7) Each outdoor youth program shall conduct an individual assessment of each client's recommended backpack weight. Each backpack weight guideline may not exceed 20 % of the client's body weight. If a client is required to carry other items, the total weight carried shall not exceed 30 % of the client's body weight unless individually documented with parental permission to exceed this ratio.~~

~~(8) Each outdoor youth program shall provide clients with clean clothing at least weekly and shall provide a means for each client to bathe or otherwise clean the client's body at least twice weekly.~~

(9) Hiking shall not exceed the physical capability of the weakest member of the group. Hiking shall be prohibited at temperatures above 90 degrees F. or at temperatures below ten degrees F.

(10) A field staff in each group shall carry a means to accurately measure and display the current temperature.

(11) Each expedition plan including map routes, anticipated schedules, and times shall be carried by the field staff and recorded in the field office.

(12) A field staff in each group shall maintain a signed daily log or dictate a recorded log to be transcribed and signed immediately following termination of the activity to contain the following information:

(a) each critical incident;

(b) prescription compliance;

(c) each medical concern;

(d) each behavioral concern or refusal to hike and how the concern is addressed;

(e) each unusual occurrence; and

(f) each log entry shall be recorded in an un-editable format and remain available to the office upon request.

(13) Each program staff shall be required to carry an accurate, reliable time piece accurately reflecting the time of day and for documentation purposes in log notes and incident reports.

(14) Program administration is responsible to train each staff regarding the standards of this section and to regularly monitor and ensure compliance.

R501-8-5. Staff, Interns, and Volunteers.

(1) Each outdoor youth program shall have a governing body and an executive director who shall have responsibility and authority over the policies and activities of the program and shall coordinate office and support services and training. The executive director shall have the following qualifications:

(a) be at least 25 years of age;

(b) have a bachelor's degree or equal training and experience in a related field;

(c) have at least two years of outdoor youth program administrative experience;

(d) have at least 30 credit hours education in recreational therapy or related experience or one-year outdoor youth program field experience;

(e) demonstrate knowledge and understanding of relevant licensing rules; and

(f) have completed each required staff training.

(2) Each outdoor youth program shall have a direct care field director who has primary responsibility for coordinating field operations, managing field staff, operating the field office, and supervising emergency response procedures.

(3) A field director or a qualified designee shall:

(a) be trained as a direct care staff in accordance with Section R501-1-14;

(b) be at least 25 years of age;

(c) have a bachelor's degree or equal training and experience in a related field;

(d) have at least two years of outdoor youth program field experience;

(e) visit in the field at least two days a week with no more than five days between visits; and

(f) document each field visit, including:

(i) the condition of each client;

(ii) interactions with clients and staff;

(iii) incidents and interventions to be reported to each client's guardian and the office;

(iv) each report of compliance with Subsection 62A-2-123(6) regarding weekly confidential communication with family; and

(v) staff compliance with each policy and rule.

(4) Each outdoor youth program shall have field support staff to be responsible for delivering supplies and mail to the field, communication with each client in the field, and first aid support.

(5) Each outdoor youth program group shall have senior field staff working directly with the client who shall meet the following qualifications:

(a) be trained as a direct care staff in accordance with Section R501-1-14;

(b) be at least 21 years of age;

(c) have an associate's degree or high school diploma with 30 credit hours of education and training or comparable experience and training in a related field; and

(d) have six months outdoor youth program field experience or comparable experience which shall be documented in the individual's personnel file.

(6) Each outdoor youth program shall have a direct care field staff working directly with the clients who shall meet the following qualifications:

(a) be at least 20 years of age;

(b) have a high school diploma or equivalent;

(c) have 48 field-days of outdoor youth program experience or comparable experience which shall be documented in the individual's personnel file; and

(d) exhibit skilled leadership.

(7) Each outdoor youth program shall have at least three direct care assistant field staff. Assistant field staff shall meet the following qualifications:

(a) be at least 19 years of age;

(b) have a high school diploma or equivalent;

(c) have 24 field days of outdoor youth programs experience; and

(d) exhibit skilled leadership.

(8) Each outdoor youth program shall have a licensed physician and mental health professional accessible to each client.

(9) Each outdoor youth program may have interns or volunteers who are learning the program practices while completing educational requirements.

(a) Each intern shall be at least 19 years of age.

(b) Each volunteer shall be at least 18 years of age.

(c) Staff training shall be completed by each incoming staff including interns and volunteers regardless of background experience.

(d) Each volunteer and intern shall be supervised by the clinical director, program administration, or senior direct care staff.

(e) Each intern and volunteer shall never directly supervise a client.

R501-8-6. Client Supervision.

(1) Each youth group shall be directly supervised by at least three direct care staff, one of which must be a senior field staff.

(2) Each field group may not exceed 16 people with a ratio of at least one staff per four clients. Staff shall count towards the field group size.

(3) Each volunteer shall be counted as a client in figuring staff to client ratios.

(4) Field group size may not exceed the number specified by federal, state, or local agencies in whose jurisdiction the program is operated.

R501-8-7. Staff Training.

(1) An outdoor youth program shall provide at least 80 hours initial staff training.

(2) Initial staff training may not be considered completed until the staff have demonstrated to the field director proficiency in each of the following areas:

(a) counseling, teaching and supervisory skills;
(b) water, food, and shelter procurement, preparation, and conservation;

(c) low impact wilderness expedition and environmental conservation skills and procedures;

(d) client management, including containment, control, safety, conflict resolution, and behavior management;

(e) instruction in safety procedures and safe equipment use, fuel, fire, life protection, and related tools;

(f) instruction in emergency procedure, medical treatment, evacuation, weather, signaling, fire, and dealing with runaway and lost clients;

(g) sanitation procedures, water, trash, human waste, food handling;

(h) wilderness medicine, including health issues related to acclimation, exposure to the environment, and anaphylaxis;

(i) CPR, standard first aid, first aid kit contents and use, and the program's medication management policy and procedure;

(j) navigation skills, including map and compass use and contour and celestial navigation;

(k) local environmental precautions, including terrain, weather, spiders, ticks, scorpions, snakes, insects, predatory animals, poisonous plants, giardia, frostbite, hypothermia, heat exhaustion, dehydration, responses to adverse situations, and emergency evacuation;

(l) leadership and judgment;

(m) report writing, including required development and maintenance of logs; and

(n) federal, state, and local regulations.

(3) At least 80 hours of initial staff training shall be completed, documented, and maintained in each staff personnel file.

(4) The field director shall document in each personnel file how the field director determined that each staff has demonstrated proficiency in each of the required topic areas as listed in subsection two of this section.

(5) Each initial staff training and demonstration of proficiency must be completed and documented before the staff may count in the staff client ratio.

(6) Each program shall provide and document on-going staff training to improve proficiency in knowledge and skills and to maintain certifications.

R501-8-8. Staff Health Requirements.

(1) Prior to engaging in any field activity, each staff shall adhere to the following:

(a) each field staff, intern, and volunteer shall have an annual physical examination and health history signed by a licensed medical professional;

(b) a recognized physical stress assessment shall be completed as part of the physical examination of each staff;

(c) the physical examination of each staff shall be reviewed and maintained by the provider in the staff personnel file; and

(d) each program staff, intern, and volunteer shall submit to drug and alcohol screening upon request.

R501-8-9. Client Admission Requirements.

(1) Each client shall be no younger than 13 years of age and no older than 17 years of age and shall have a current health history report which includes notation of client physical limitations and prescriptive medications.

(2) The health history report shall be completed, submitted, and verified by each client's parent or guardian as part of the intake screening or assessment in accordance with Sections R501-1-18 and R501-1-23 and prior to entry into the field.

(3) An admissions assessment shall be conducted by a treatment professional before each client enters into the field and shall include the following:

(a) a review of each client's social and psychological history with the client's parent or legal guardian prior to enrollment; and

(b) an interview with the client prior to entrance into the field program.

(4) Prior to entry into the field and within 15 days of admission to the program, the following requirements must be met:

(a) a licensed medical professional must review each client's health history report and conduct a physical examination; and

(b) the program shall provide a physical examination form to a licensed medical professional that clearly states a description of the physical demands and environment of the program, and requires the following information before a client may enter the field:

(i) a urinalysis drug screen;

(ii) a complete blood count (CBC);

(iii) a complete metabolic profile (CMP) unless waived in writing by the client's guardian;

(iv) a urinalysis for possible infections;

(v) a pregnancy test;

(vi) a physical stress assessment;

(vii) a determination by the physician if detoxification is indicated for client prior to entrance into field portion of the program;

(viii) any other tests as necessary to assess fitness for the field portion of the program; and

(ix) a medical professional shall review current and historical medical data and approve the client to enter the field with recommendations for any medical monitoring.

(5) A copy of each client's medical forms and approvals shall be maintained at the field office and another copy shall be carried by staff members in a waterproof container throughout the field expedition.

(6) Before each client with a history of chronic psychological disorders may be placed in the program, the client must have a psychological evaluation.

(7) Upon admission and for a period of no fewer than three days in the field, direct care field staff shall closely monitor each client for any health problems that may be a result of hiking or living outdoors.

R501-8-10. Water and Nutritional Requirements.

(1) At least six quarts of potable water shall be available per person per day, plus one additional quart per person for each five miles hiked. Although it is not required that the entire amount be hand carried, water shall always be accessible during hiking.

(2) In temperatures above 90 degrees F., staff shall make sure each client's fluid intake is at least three quarts of water per day.

NOTICES OF PROPOSED RULES

(3) Each field group in the field shall always have electrolyte replacement available.

(4) In temperatures above 80 degrees F., water shall be available for coating each client's body, and other techniques shall be available for cooling as needed.

(5) Potable water shall be available at each campsite. Water cache location information shall be verified with field staff before the group leaves camp each day.

(6) No expedition group shall depend on aerial drops for water. Aerial water drops shall be used for emergency situations only.

(7) Water from natural sources shall be made safe to drink through boiling, filtering, or disinfection in accordance with the center for disease control guidance.

(8) Each outdoor youth program shall have a written menu describing food supplied to the client which shall provide at least 3000 calories per day while in the field. There must be fresh fruit and vegetables available at least twice a week. Food shall never be withheld from a client for any reason. If no fire is available, other food of equal caloric value, which does not require cooking, shall be available.

(a) The menu shall be adjusted to increase minimum dietary needs as energy expenditure, including exercise and climate conditions, dictate.

(b) Food shall be from a balance of the food groups.

(c) Forage items may not count toward the determination of caloric intake.

(d) Multiple vitamin supplements shall be offered daily.

R501-8-11. Health Care.

(1) Each outdoor youth program shall provide first aid treatment promptly.

(2) When a client has an illness or physical complaint that does not respond to or cannot be treated by standard first aid, the program shall immediately arrange for the client to be seen and treated as indicated by a licensed medical professional.

(3) Each client's physical condition shall be assessed at least every 14 days by a qualified medical professional. Blood pressure, heart rate, allergies, and general physical condition shall be checked and documented. Any assessment concerns shall be documented, and the client shall be taken to the appropriate medical professional for treatment. There may be no consequences issued to a client for requesting to see a health care professional or for anything said to a health care professional.

(4) Each prescription and over the counter medication shall be kept in the secure possession of designated staff and provided to clients in accordance with labels or prescription directions.

(5) Staff shall be trained for medication administration in accordance with Rule R501-1 and shall communicate with the field director and document reason and plan for any lost or missing prescription medication.

(6) A foot check will be conducted at least twice daily and documented.

R501-8-12. Safety.

(1) Each first aid kits shall include sufficient supplies for the activity, location, and environment as approved by the program's medical professional. First aid kit supplies shall be available during each field activity.

(2) Each outdoor youth program shall have a support system that meets the following criteria:

(a) reliable daily two-way radio communications between groups and with support staff, with additional charged battery packs

and a reliable backup system of contact in the event the radio system fails;

(b) the support vehicles and field office shall be equipped with first aid equipment;

(c) the support and field staff shall have access to contact information including telephone numbers, locations, contact personnel, maps, medical forms, and procedures for an emergency evacuation or field incident; and

(d) daily morning and evening contacts shall be completed between field staff, support staff, and the field office and contacts shall be documented in the field office log daily.

R501-8-13. Field Office.

(1) Each program shall maintain a field office.

(2) Communication systems between the field and the field office shall be monitored 24 hours a day when clients are in the field.

(3) Support staff shall respond immediately to any emergency situation.

(4) Support staff on duty shall be within one hour of any field group.

(5) When staff are not present in the field office a contact telephone number shall be posted on the field office door and the field director shall designate responsible on-call staff who shall continually monitor communications and will always be within 15 minutes travel time of the field office.

(6) Field office staff shall adhere to the following:

(a) maintain current staff and client records in accordance with Rule R501-1;

(b) maintain a master map of each activity area;

(c) maintain copies of each expeditionary route with its schedule and itinerary to be immediately available to the office and emergency medical services, law enforcement or search and rescue agencies as needed;

(d) maintain a log of daily communications;

(e) be responsible for training and orientation, management of field personnel, related files, and records; and

(f) be responsible for maintaining communications, inspecting equipment, and overseeing medical incidents.

R501-8-14. Environmental Requirements.

(1) Each outdoor youth program shall adhere to land use agency requirements including sanitation and low impact camping.

(2) Each client shall be continuously supervised in the observance of low impact camping requirements.

(3) Personal hygiene supplies shall be of biodegradable materials or packed out and properly disposed of.

R501-8-15. Evaluation.

(1) Following the wilderness experience, each client shall receive a debriefing to include a written summary of the client's participation and the progress the client achieved.

(2) Each guardian, client, or other involved individuals shall be provided the opportunity and be encouraged to submit a written evaluation of the wilderness experience, which shall be retained by the program in the client file record.

R501-8-16. Individual Experiences.

(1) If an outdoor youth program conducts an individual component for clients as part of the program, the program shall have and follow written policies and procedures, which shall include the following:

- (a) an assessment of each client's ability to safely participate in the experience;
- (b) a description of the individual component to ensure that each client is not exposed to an unreasonable risk;
- (c) guardian permission for the youth to participate in the experience;
- (d) a policy that individual experiences are not required and must be entered voluntarily by the client or only as clinically indicated;
- (e) a policy of providing preparatory instruction and guidance to the client prior to an individual experience;
- (f) an individual assessment of client readiness;
- (g) a description of the maximum duration of each individual experience;
- (h) a policy explaining that a solo experience may not be used as a punishment or general practice;
- (i) a policy that each staff shall be familiar with the area chosen to conduct individual experiences;
- (j) a supervision plan for each individual event with a frequent check-in to allow each client to rescind voluntary participation and go back to the group;
- (k) documentation of the duration of each individual event;
- (l) a plan for managing emergencies; and
- (m) documentation of how each individual program component is not used as seclusion or in violation of Section 62A-2-123.

R501-8-17. Stationary Camp Sites.

- (1) A program offering a stationary camp that does not provide a 24-hour outdoor group living environment may require residential treatment licensure.
- (2) An outdoor youth program that maintains a designated building to serve a client shall be subject to fire, health, and safety standards.
 - (a) A stationary outdoor youth program camp shall be inspected by a certified fire inspector before being occupied and on an annual basis thereafter. A copy of the inspection shall be maintained at the outdoor youth program camp.
 - (b) At least one 2-A-10BC type fire extinguisher shall be in a group of tents within a 75- foot travel distance.
 - (c) Flammable liquids may not be used to start fires, be stored in structures that house clients, or be stored near ignition sources. If generators are used, they will only be refueled by staff when the generator is not running and cool to the touch.
 - (d) A stationary outdoor youth program camp shall be inspected by the local health department before being occupied and on an annual basis thereafter. A copy of the inspection shall be maintained at the site of the camp.
 - (e) Food shall be stored, prepared, and served in a manner that is protected from contamination.
 - (f) Each water supply shall be from a source that is accepted by the local health authority according to Rule R392-300, Recreation Camp Sanitation, at the time of application and for annual renewal of such licenses.
 - (g) Sewage shall be disposed of through a public system, or in absence of a public system, in a manner approved by the local health authority, according to Rule R392-300, Recreation Camp Sanitation.

KEY: licensing, human services, youth

Date of Last Change: 2021~~January 17, 2019~~

Notice of Continuation: October 4, 2017

Authorizing, and Implemented or Interpreted Law: 62A-2-101 et seq.

NOTICE OF PROPOSED RULE

TYPE OF RULE: Repeal and Reenact

| | | | |
|--------------------------------------|----------------|------------------|--------------|
| Utah Admin. Code Ref (R no.): | R501-15 | Filing ID | 54009 |
|--------------------------------------|----------------|------------------|--------------|

Agency Information

| | | |
|-----------------------------|-------------------------------------|-------------------|
| 1. Department: | Human Services | |
| Agency: | Administration, Services, Licensing | Administrative |
| Building: | Multi Agency State Office Building | |
| Street address: | 195 N 1950 W | |
| City, state and zip: | Salt Lake City, UT 84116 | |
| Contact person(s): | | |
| Name: | Phone: | Email: |
| Janice Weinman | 385-321-5586 | jweinman@utah.gov |
| Jonah Shaw | 385-310-2389 | jshaw@utah.gov |

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

General Information

2. Rule or section catchline:

R501-15. Therapeutic Schools

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 S.B. 127 passed in the 2021 General Session, Executive Order No. 2021-12, and based on stakeholder input. During the review of this rule, the Office of Licensing (Office) also discovered a number of minor issues that needed to be amended.

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 substantive changes are being done to bring this rule into compliance with the new requirements imposed upon human services programs by S.B. 127 (2021). In order to comply with Executive Order No. 2021-12, many changes are also being done to fix style issues to bring this rule text more in line with current rulewriting standards and to make the language of this rule more clear. This repeal and reenact also aligns outdated rules

with current industry standards based on stakeholder input.

Fiscal Information

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

A) State budget:

There is no aggregate anticipated cost or savings to state budget because all legislative changes have been accounted for through a fiscal note to supplement office resources for enforcement of this rule change.

B) Local governments:

There is no aggregate anticipated cost or savings to local governments because the proposed rule only supports local government requirements but does not impose any additional requirements on them.

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

The cost or savings impact on small businesses is inestimable because licensed programs are allowed to demonstrate rule compliance through policy and procedure development. Any additional costs as a result of the new policies and procedures will be self-imposed.

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

The cost or savings impact on non-small businesses is inestimable because licensed programs are allowed to demonstrate rule compliance through policy and procedure development and there a number of ways programs may choose to comply.

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

There is no impact on persons due to the enactment of these proposed rule changes, as the Office can only regulate small or non-small businesses meeting the statutory definition for licensure.

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

There will be no affected persons other than small or non-small businesses meeting the statutory definition for licensure.

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 proposal will not result in a fiscal impact to businesses. Tracy Gruber, 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 Executive Director of Human Services, Tracy Gruber, 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 62A-2-101 | Section 62A-2-106 | Section 62A-2-123 |
| Section 62A-2-124 | Section 62A-2-125 | |

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: 12/01/2021

10. This rule change MAY become effective on: 12/08/2021

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: | Tracy Gruber, Executive Director | Date: | 10/04/2021 |
|--|-------------------------------------|--------------|------------|

R501. Human Services, Administration, Administrative Services, Licensing.**R501-15. Therapeutic Schools.****[R501-15 1. Authority and Purpose.**

1. This rule is authorized under Section 62A-2-106.
2. This rule establishes:
 - a. basic health and safety standards for therapeutic schools;
 - b. procedures and standards for permitting a therapeutic school to provide services to an adult in the same facility and under the same conditions as a child; and
 - c. minimum administration and financial requirements.

R501-15 2. Definitions.

1. "Academic professional" means an educator with a "level 2 license" or "level 3 license," issued in accordance with Section 53A-6-101 et seq.
2. "Adult" means a person 18 years of age or older.
3. "Background screening clearance" means written verification that the Office of Licensing has approved an applicant's criminal, abuse, neglect, and exploitation background screenings.
4. "Child" is defined in Section 62A-2-101.
5. "Client" is defined in Section 62A-2-101.
6. "Dangerous weapon" is defined in Section 76-10-501.
7. "Dietician" means an individual certified in accordance with Utah Code Ann. Title 58 Chapter 49.
8. "Direct access" is defined in Section 62A-2-101.
9. "Direct care staff" means an individual who provides educational, therapeutic services, supervision or care directly to a client, and does not include support staff who do not supervise clients and who only provide support services such as maintenance, office or kitchen duties.
10. "Directly supervised" is defined in Section 62A-2-120.
11. "Explosive, chemical, or incendiary device" is defined in Section 76-10-306.
12. "Facility" means the physical area where program activities take place, and includes the buildings and grounds that are owned or leased by the therapeutic school or its governing body.

13. "Firearm or antique firearm" are defined in Section 76-10-501.
14. "Incident report" means a written description of any notable event, including but not limited to any crime, discipline, injury or illness, or unauthorized absence, and how that event was addressed.
15. "Medical practitioner" means an individual licensed by the State of Utah under Utah Code Ann. Title 58 as a physician, dentist, physician's assistant, practical nurse, or registered nurse.
16. "Mental health therapist" is defined in Section 58-60-102.
17. "Mental illness" is defined in Section 62A-15-602.
18. "Mental retardation" means having significantly below average intellectual functioning, and at the same time needing help with two or more basic life skills.
19. "On call" means immediately available to staff by telephone, and able to be present on site within one hour after a staff telephone call for assistance.
20. "On duty" means awake, within visual and auditory proximity of clients, and immediately available to clients.
21. "Recreational therapist" means an individual licensed to practice recreational therapy in accordance with Utah Code Ann. Title 58 Chapter 40.
22. "Regular business hours" is defined in Section 62A-2-101.
23. "Residential treatment" is defined in Section 62A-2-101.
24. "Service plan" means a written description of the educational, therapeutic, and other services an individual client requires, as determined and updated after periodic assessments by a mental health therapist or an academic professional.
25. "Sick" means to have a fever, an illness that may be contagious, or to be experiencing diarrhea or vomiting.
26. "Staff" means therapeutic school directors, supervisors, faculty, employees, agents, interns or volunteers who provide any therapeutic school services.
27. "Supervisor designee" means a direct care staff who currently meets all qualifications described in R501-15-6.C and is assigned by the program Director to act as a supervisor for a specified limited period of time.
28. "Therapeutic school" is defined in Section 62A-2-101.

R501-15 3. Legal Requirements.

1. A therapeutic school shall comply with this R501-15 and:
 - a. R495-876, Provider Code of Conduct;
 - b. R501-2, Core Standards;
 - c. R501-14, Background Screening;
 - d. R710-4, Buildings Under the Jurisdiction of the State Fire Prevention Board;
 - e. R710-9, Rules Pursuant to the Utah Fire Prevention Law; and
 - f. all applicable local, state, and federal laws.
- 2.a. A therapeutic school shall comply with R501-19 and obtain a residential treatment license prior to offering any residential treatment services.
- b. A therapeutic school shall comply with R501-16 and obtain an intermediate secure treatment license prior to offering any intermediate secure treatment services.

R501-15 4. Administration Requirements.

1. A current policy and procedure manual will be maintained, and shall include:
 - a. admission criteria and procedures, which shall include:
 - i. A student may not attend a therapeutic school unless there is presented to the school a certificate of immunization from a licensed

NOTICES OF PROPOSED RULES

physician or authorized representative of the state or local health department stating that the student has received immunization against communicable diseases as required by Utah Administrative Rule R396-100, unless exempted as provided in Section 53A-11-302; and

ii. client admission, exclusion, and expulsion criteria described in Subsection R501-15-4.2.a.

b. quarterly client needs evaluation and assessment procedures;

c. behavior management training requirements;

d. methods for compliance with each section of this R501-15;

e. an emergency transportation plan, describing how the therapeutic school shall safely transport each client to the client's legal guardian within 48 hours;

f. an emergency response plan, describing how the therapeutic school shall safely care for each client in the event of severe weather, a fire, natural disaster, significant criminal activity, major medical incident, prolonged power outage, or other emergency; and

g. methods for compliance with each legal requirement.

2. A current client manual will be provided to each client and each client's legal guardian before the therapeutic school accepts any payment or processes any application to provide services. The manual shall include detailed descriptions of:

a. client admission, exclusion, and expulsion criteria and procedures, including but not limited to:

i. A therapeutic school shall not admit or provide services to an individual who:

A. has a recent history (within the past 2 years) of attempting suicide or making serious self-harm gestures (requiring medical or therapeutic treatment);

B. has a psychosis, schizophrenia, severe depression, mental retardation, or a severe mental illness (requiring medical or therapeutic treatment);

C. is violent, highly combative, or physically or sexually aggressive;

D. presents substantial security risks;

E. requires medical detoxification;

F. lacks the ability to engage in a rational decision making process or exhibits severely impaired judgment; or

G. has a history of repeated runaway attempts or incidents;

ii. A therapeutic school shall expel a client who exhibits high risk behavior or conditions, including but not limited to a client who:

A. attempts suicide or makes serious self-harm gestures (requiring medical or therapeutic treatment);

B. has a psychosis, schizophrenia, severe depression, mental retardation, or a severe mental illness (requiring medical or therapeutic treatment);

C. is violent, highly combative, or physically or sexually aggressive;

D. presents substantial security risks;

E. requires medical detoxification;

F. lacks the ability to engage in a rational decision making process or exhibits severely impaired judgment;

G. runs away or attempts to runaway more than two times;

H. uses or attempts to use illegal substances (including but not limited to drugs or alcohol) more than two times; or

I. exhibits any other behavioral or emotional conditions that require more intense supervision and treatment than that permitted in a therapeutic school;

b. academic accreditation, or disclosure that the school is not accredited;

c. curriculum;

d. criteria for awarding course credit, and whether credits are transferable;

e. grades, progress assessment, and testing;

f. academic and career counseling;

g. academic activities and methods;

h. graduation requirements;

i. post-graduation planning services;

j. methods of providing specialized structure and supervision of clients on site;

k. methods of providing specialized structure and supervision of clients off site;

l. services or treatment related to a client's disability, emotional development, behavioral development, familial development, or social development;

m. behavior management practices;

n. individual, group, or family counseling services;

o. therapeutic school rules, including but not limited to rules regarding discipline, searches, visitation, correspondence, and personal possessions;

p. food service and weekly menus;

q. physical education and recreational activities;

r. client rights statement;

s. permitted and prohibited weapons;

t. a client grievance policy, including an appeal process; and

u. name and contact information for the Office of Licensing.

3. All staff and client files, manuals, and records shall be maintained in an on-site office. The on-duty supervisor or supervisor designee shall have access to all locked files, including computer files, and make them available upon request to the Office of Licensing.

R501-15-5. Financial Requirements.

1. A therapeutic school shall provide a written disclosure of all fees and expenses a client may incur, and identify which fees may be non-refundable, before accepting any payment, processing any application, or entering any contract to provide client services.

2. A therapeutic school shall provide an itemized accounting of actual expenditures made on behalf of each client before requiring reimbursement from the client's guardian.

3. A therapeutic school shall maintain an accurate log of all funds deposited and all withdrawals made for the personal use of each client. Receipts for purchases of over \$20.00 shall be signed by the client and staff, and maintained with the log.

R501-15-6. Staff Requirements.

1. Each owner and board member of a therapeutic school shall successfully complete a minimum of 8 hours of annual training relating to therapeutic school services.

2. A therapeutic school shall employ a director who is responsible for daily client supervision and operation of the program.

a. A director shall be on duty or on call at all times.

b. The director shall:

i. be at least 25 years of age;

ii. have a BS or BS social services degree, or a minimum of three years of documented training or experience in providing therapeutic school or residential treatment services;

iii. have a minimum of two years of therapeutic school or residential treatment program supervisory experience; and

iv. demonstrate a comprehensive knowledge of this R501-15, R495-876, R501-1, R501-2, R501-3, R710-4, R710-9, and all applicable local, state, and federal laws.

c. The governing body of a therapeutic school may appoint an acting director to fulfill the responsibilities of the Director.

~~i. An acting director shall satisfy all requirements of Subsection R501-15-6.2.b at the time of appointment.~~

~~3. A therapeutic school shall have a minimum of one supervisor or supervisor designee on duty at all times.~~

~~a. A supervisor or supervisor designee shall have:~~

~~i. a demonstrated, documented competency and proficiency in providing services to children in out of home placements;~~

~~ii. qualifications, including education, experience, licensing or certification requirements, and current annual continuing education and training, directly related to providing:~~

~~A. specialized structure and supervision of clients; or~~

~~B. services or treatment related to a client's disability, emotional development, behavioral development, familial development, or social development;~~

~~iii. current certification in standard first aid;~~

~~iv. current certification in CPR;~~

~~v. current certification in passive restraint techniques; and~~

~~vi. current background screening clearance.~~

~~4. A therapeutic school shall maintain a staff manual, which shall include specific:~~

~~a. job descriptions for each staff position;~~

~~b. qualifications, including education, experience, and licensing or certification requirements, for each staff position;~~

~~c. competency and proficiency requirements for each staff position; and~~

~~d. continuing education and training requirements for each staff position.~~

~~5. Each staff with direct access to a client shall be directly supervised by a supervisor or supervisor designee until the staff:~~

~~a. achieves the qualifications, competency and proficiency requirements, and training requirements of the applicable job description;~~

~~b. receives current certification in standard first aid;~~

~~c. receives current certification in CPR;~~

~~d. receives current certification in passive restraint techniques;~~

~~e. successfully completes annual training in working with clients who have a history of failing to function at home or in school;~~

~~f. receives current background screening clearance; and~~

~~g. demonstrates a working knowledge of:~~

~~A. R495-876, Provider Code of Conduct;~~

~~B. R501-2, Core Standards;~~

~~C. R501-15, Therapeutic Schools;~~

~~D. the current therapeutic school policy and procedure manual;~~

~~E. the current therapeutic school client manual and~~

~~F. all applicable local, state, and federal laws.~~

~~6. A therapeutic school shall have a policy, subject to the approval of the Office of Licensing, which clearly defines the minimum levels of supervision of clients by direct care staff.~~

~~a. A therapeutic school shall submit a proposed minimum direct care staff to client ratio with its license application and each time the activities or the client population of the therapeutic school are modified.~~

~~b. A therapeutic school shall identify the minimum direct care staff to client ratio for each type of activity its clients engage in, including but not limited to various types of on-site and off-site activities, specific low risk and high risk activities, individual and group activities, and waking and sleeping hours.~~

~~c. A therapeutic school shall consider factors particular to its client population, including but not limited to clients' presenting~~

~~problems, risk to the community, age, maturity, behavior, and daily schedule, in determining its minimum direct care staff to client ratio.~~

~~d. A minimum of 2 staff shall be on duty at all times.~~

~~e. A minimum of one male staff shall be on duty when a male client is present, and a minimum of one female staff shall be on duty when a female client is present.~~

~~f. A client who has earned the privilege of unsupervised time off site shall be required to engage in two way communication with on duty direct care staff once every 4 hours.~~

~~i. A therapeutic school shall develop and adhere to a policy that specifies what measures shall be taken if a client fails to check in with staff when scheduled.~~

~~g. A therapeutic school's approved minimum direct care staff to client ratio shall be visibly posted.~~

~~h. A therapeutic school shall comply with approved minimum direct care staff to client ratios.~~

~~i. Support staff shall not be counted when ascertaining compliance with the approved minimum direct care staff to client ratios.~~

~~7. A therapeutic school shall be required to justify, to the satisfaction of the Office of Licensing, basic low risk, on site "waking hours" direct care staff to client ratio that does not meet or exceed:~~

~~a. two direct care staff on duty for 1-8 clients;~~

~~b. three direct care staff on duty for 9-24 clients;~~

~~c. four direct care staff on duty for 25-48 clients;~~

~~d. five direct care staff on duty for 49-96 clients;~~

~~e. 1:20 direct care staff to client ratio for 97 or more clients, and never any less than six direct care staff on duty.~~

~~8. A therapeutic school shall be required to justify, to the satisfaction of the Office of Licensing, any "sleeping hours" direct care staff to client ratio that does not meet or exceed:~~

~~a. two direct care staff on duty for 1-48 clients;~~

~~b. a 1:40 direct care staff to client ratio for 49 or more clients, and never any less than three direct care staff on duty.~~

R501-15-7. Documentation.

~~1. A therapeutic school shall maintain a current roster of all clients, including the name, date of birth, sex, and emergency contact information.~~

~~2. A therapeutic school shall maintain staff files, which shall include:~~

~~a. application and resume;~~

~~b. qualifications for the staff position held;~~

~~c. written competency evaluations, which shall be completed six months after the date of hire and a minimum of once annually;~~

~~d. continuing education, training, and certifications; and~~

~~e. background screening approval verification.~~

~~3. A therapeutic school shall maintain client files, which shall include:~~

~~a. application forms and contracts signed by client's legal guardian;~~

~~b. acknowledgment of client rights signed by client and client's legal guardian;~~

~~c. academic records, including quarterly progress reports and all records of standardized testing, grades, credits earned, and diplomas awarded;~~

~~d. medical records, including medication log and medical treatment records;~~

~~e. counseling notes, signed by the counselor;~~

~~f. incident reports, signed by supervisor or supervisor designee on duty; and~~

~~g. daily shift report, signed by supervisor or supervisor designee on duty.~~

R501-15-8. Client Services.

- ~~1. A service plan, to include specific educational and therapeutic goals, shall be developed within thirty days after admission.~~
 - ~~a. A service plan shall be reviewed, updated, and signed by the client and a supervisor no less than quarterly.~~
 - ~~i. the service plan shall include a quarterly reassessment of the suitability of the therapeutic school in providing for the client's needs.~~
 - ~~b. A copy of the service plan shall be provided to the client's legal guardian within two weeks after it is developed and within two weeks after it is updated.~~
- ~~2. A therapeutic school shall have written policies and procedures describing how medical services will be promptly provided.~~
 - ~~a. A therapeutic school that must travel more than thirty miles to an emergency room or 24-hour urgent care facility shall retain the on-call services of a medical practitioner and a licensed mental health therapist.~~
 - ~~b. Upon admission, each client shall be informed of the right to consult with a medical practitioner or a licensed mental health therapist.~~
- ~~3. A client who has a serious illness, who sustains a serious injury, or who requests the services of a medical practitioner, shall receive an immediate assessment by a certified wilderness first responder, certified EMT, or a medical practitioner.~~
 - ~~a. The therapeutic school shall attach the written assessment to an incident report.~~
 - ~~b. The therapeutic school shall comply with the recommendations of the certified wilderness first responder, certified EMT, or medical practitioner.~~
- ~~4. A monthly schedule of activities shall be posted in the common area and the office. Monthly schedules of activities shall be filed and retained for a minimum of one year.~~
- ~~5. A therapeutic school's academic curriculum shall be accredited by an accrediting entity recognized by the Utah State Board of Education, or it shall present an educational service plan and educational funding plan in accordance with Section 62A-2-108.1.~~
 - ~~a. The therapeutic school curriculum shall be provided to each client and the client's legal guardian prior to accepting any payment or processing any application to provide services.~~
 - ~~b. The therapeutic school curriculum shall be reviewed and updated annually.~~
 - ~~c. Modifications to the curriculum shall be provided to each client and the client's legal guardian within two weeks of any curriculum change.~~
- ~~6. The therapeutic school shall monitor and document each client's academic progress, and communicate this information to the client's legal guardian monthly.~~

R501-15-9. Physical Environment.

- ~~1. A therapeutic school shall provide written verification of compliance with:~~
 - ~~a. local zoning ordinances;~~
 - ~~b. local business license requirements;~~
 - ~~c. local building codes, as evidenced by the local governmental entity's building inspector;~~
 - ~~d. state fire prevention laws and rules; and~~
 - ~~e. state and local health codes and rules regarding sanitation and infectious disease control.~~
- ~~2. The building and grounds shall be maintained in a safe and sanitary manner.~~
- ~~3. A therapeutic school shall have on-site offices.~~

- ~~a. Staff and client records shall be stored in locked file cabinets when not in active use.~~
- ~~b. A private office shall be available for individual counseling sessions.~~
- ~~4. A therapeutic school shall provide indoor common areas, such as gymnasiums, recreation areas, cafeterias, classrooms, libraries, and lounges, for group activities.~~
 - ~~a. The total common area space in a therapeutic school shall be a minimum of thirty square feet per client.~~
 - ~~5.a. A therapeutic school shall maintain a minimum of 3 feet between beds and 2 feet at the end of each bed.~~
 - ~~b. Bedroom ceilings shall be a minimum of 7 feet in height.~~
 - ~~c. A minimum of fifty square feet per client shall be provided in a multiple-occupant bedroom.~~
 - ~~i. Storage space shall not be counted when calculating square footage requirements.~~
 - ~~d. A minimum eighty square feet per client shall be provided in a single-occupant bedroom.~~
 - ~~i. Storage space shall not be counted when calculating square footage requirements.~~
 - ~~e. Each client shall have a minimum of thirty cubic feet of private storage space.~~
 - ~~f. Sleeping areas shall have a source of natural light, and shall be ventilated by mechanical means or equipped with a screened window that opens.~~
 - ~~g. Each bed shall be solidly constructed.~~
 - ~~h. Bed mattresses shall be in a clean and safe condition.~~
 - ~~i. Each client shall be provided with clean linens upon arrival, when soiled, and a minimum of once per week.~~
 - ~~j. Sleeping quarters serving male and female clients shall be structurally separated.~~
 - ~~6. A therapeutic school shall provide a minimum of one toilet, one sink, one mirror, and one bathtub or shower, for each six clients.~~
 - ~~a. Each bathroom shall be designated for males only or for females only.~~
 - ~~b. A bathroom with multiple toilets, showers, or bathtubs shall be subdivided to preserve each client's privacy.~~
 - ~~c. Each bathroom shall be maintained in good operating order and in a clean and safe condition.~~
 - ~~d. Each bathroom shall be equipped with personal hygiene supplies, including but not limited to toilet paper, clean towels, tissues, and soap.~~
 - ~~e. Bathrooms shall be well-lighted and ventilated by mechanical means or equipped with a screened window that opens.~~
 - ~~7. Live-in staff shall have a separate bedroom with a private bathroom.~~
 - ~~8. Clients who are sick shall have a bedroom and bathroom separate from clients who are not sick.~~
 - ~~9. All furniture and equipment shall be maintained in a clean and safe condition.~~
 - ~~10. School desks or tables, lights, and chairs shall be provided for each client.~~
 - ~~11. A therapeutic school shall contract with a laundry service or shall provide laundry appliances and supplies for washing, drying, and ironing.~~
 - ~~a. Each client shall have a dirty laundry hamper for personal linens and clothing;~~
 - ~~b. all personal linens and clothing shall be laundered weekly;~~
 - ~~c. clients who launder their own linens or clothing shall have weekly access to laundry appliances and supplies for washing, drying, and ironing;~~

~~d. a common laundry hamper shall be provided for linens owned by the therapeutic school;~~
~~i. dirty linens shall be laundered within 72 hours; and~~
~~e. laundry appliances shall be maintained in a clean and safe operating condition.~~

~~12.a. Firearms, antique firearms, ammunition, and explosive, chemical, or incendiary devices, shall not be permitted on site.~~

~~b. Dangerous weapons, including but not limited to tools, knives (including kitchen knives), scissors, matches, lighters, clubs, bats, and arrows, shall be inaccessible to clients, except as specifically authorized in the client manual.~~

~~i. A therapeutic school's client manual shall describe which dangerous weapons are permitted and which dangerous weapons are prohibited on site.~~

~~A. the determination of permitted and prohibited dangerous weapons shall be made in accordance with the age and behavioral characteristics of the client population to be served.~~

~~ii. A therapeutic school's client manual shall describe how dangerous weapons shall be stored, and the circumstances under which they may be accessible to clients.~~

~~13.a. Animals and pets shall be free from disease and cared for in a safe and clean manner.~~

~~b. A therapeutic school shall maintain a file documenting the health of each pet or domestic animal on site. The file shall include written verification of each animal's current rabies vaccinations, species-specific vaccinations, health care, and health history.~~

R501-15-10. Food Service.

~~1. A therapeutic school shall contract with or employ a dietitian to plan nutritious, appetizing, snacks and meals.~~

~~a. a current weekly menu shall be posted in the kitchen and the office.~~

~~2. A therapeutic school shall provide snacks and three daily meals in accordance with the dietitian's menu.~~

~~3. A therapeutic school shall maintain a current log of each client's food allergies and other individual dietary needs, and comply with the instructions of the client's physician or dietitian.~~

~~4. A therapeutic school shall establish and post kitchen safety and sanitation rules.~~

~~5. A therapeutic school kitchen shall have clean, safe, and operational equipment and supplies for the preparation, storage, serving, and clean up of food.~~

~~6. A dining area shall be provided, with tables and chairs for each client.~~

~~7. The dining area shall be maintained in a clean and safe condition.~~

~~8. No staff or client shall prepare food without first obtaining Utah Department of Health food handler certification.~~

R501-15-11. Hazardous Chemicals and Materials.

~~1. A therapeutic school shall place all hazardous chemicals and materials, including but not limited to poisonous substances, explosive or flammable substances, laundry detergent and cleaning supplies, in locked storage when not in active use.~~

~~a. a client shall have no access to any hazardous chemicals or materials unless the client is directly supervised by staff.~~

~~2. A therapeutic school shall place all medications in locked storage when not in active use.~~

~~a. Non prescription medications shall be stored in their original manufacturer's packaging together with manufacturer's directions and warnings.~~

~~b. Prescription medications shall be stored in their original pharmacy packaging together with the pharmacy label, directions and warnings.~~

~~3. A therapeutic school supervisor or supervisor designee shall:~~

~~a. administer or oversee the self administration of prescription medications only as prescribed by a licensed physician;~~

~~b. administer or oversee the self administration of non-prescription medications only as directed by the manufacturer;~~

~~c. observe the client consume any medication;~~

~~d. maintain an individual client medication log, which shall include the medication, time and dosage dispensed, and the effects of the medication.~~

~~4. Each client medication log shall be maintained together with the medication in locked storage while the client is actively enrolled in the therapeutic school, and transferred to the client's file when the client leaves the therapeutic school.~~

~~5. Unused medications shall be destroyed by two staff; and the destruction shall be documented.]~~

R501-15-1. Authority and Purpose.

This rule is authorized under Section 62A-2-106 and establishes basic health and safety standards for therapeutic schools. These rules are intended to supplement the general provisions required of each human services program in Rule R501-1.

R501-15-2. Scope.

(1) Each therapeutic school shall comply with this rule and Rules R501-1, R501-14, and R710-4.

(2) Before offering any residential treatment services, each therapeutic school shall comply with Rule R501-19 and obtain a residential treatment license.

R501-15-3. Definitions.

The terms used in this rule are defined in Sections 62A-2-101 and R501-1-3.

R501-15-4. Administration.

(1) Each therapeutic school shall develop, maintain, and follow a current policy and procedure manual which shall include:

(a) except as described in Title 53G, Chapter 9, Part 3, Immunization Requirements, a requirement that a client may not attend a therapeutic school unless the school has been presented a certificate of immunization for the client from a licensed physician or authorized representative of the state or local health department stating that the client has received immunization as required by Rule R396-100;

(b) a procedure for quarterly evaluation and assessment of the needs of each client; and

(c) an emergency transportation plan describing how the therapeutic school shall safely transport each client to the client's legal guardian within 48 hours once the plan has been initiated.

(2) The manual described in this section shall include detailed descriptions of the therapeutic school's client admission, exclusion, and expulsion criteria and procedures, including:

(a) a requirement that the therapeutic school shall not admit or provide services to an individual who:

(i) within the past two years, has attempted suicide or made serious self-harm gestures requiring medical or therapeutic treatment;

(ii) has a mental health diagnosis of psychosis, schizophrenia, severe depression, mental retardation, or a severe mental illness requiring medical or therapeutic treatment;

(iii) is violent, highly combative, or physically or sexually aggressive;

(iv) presents substantial security risks;

(v) requires medical detoxification;

(vi) lacks the ability to engage in a rational decision-making process or exhibits severely impaired judgment; or

(vii) has a history of repeated runaway attempts or incidents;

(b) a requirement that the school shall expel a client who exhibits high risk behavior or conditions, including a client who:

(i) attempts suicide or makes serious self-harm gestures requiring medical or therapeutic treatment;

(ii) has a psychosis, schizophrenia, severe depression, mental retardation, or a severe mental illness requiring medical or therapeutic treatment;

(iii) is violent, highly combative, or physically or sexually aggressive;

(iv) presents substantial security risks;

(v) requires medical detoxification;

(vi) lacks the ability to engage in a rational decision-making process or exhibits severely impaired judgment;

(vii) runs away or has attempted to run away more than two times;

(viii) uses or attempts to use illegal substances more than two times; or

(ix) exhibits any other behavioral or emotional conditions that require more intense supervision and treatment than that permitted in a therapeutic school;

(c) the school's academic accreditation, or disclosure that the school is not accredited;

(d) the school's curriculum;

(e) the school's criteria for awarding course credit, and whether credits are transferable;

(f) the school's policy on grading, progress assessment, and testing;

(g) the academic and career counseling provided by the school;

(h) each school academic activity and method;

(i) each school graduation requirement;

(j) each school post-graduation planning service;

(k) each school method of providing on-site specialized structure and supervision;

(l) each method for providing off-site specialized structure and supervision;

(m) each service or treatment related to a client's disability, emotional development, behavioral development, familial development, or social development;

(n) each behavior management practice;

(o) each individual, group, or family counseling service;

(p) each therapeutic school rule;

(q) each food service and weekly menu;

(r) each physical education and recreational activity;

(s) a client rights statement;

(t) a statement on permitted and prohibited weapons;

(u) a client grievance policy and appeal process for the grievance policy; and

(v) contact information for the Office of Licensing.

(3) Each therapeutic school shall provide the client manual described in this section to each client and each client's legal guardian before the therapeutic school may accept any payment or process any application to provide services.

R501-15-5. Financial Requirements.

(1) Each therapeutic school shall provide an itemized accounting of expenditures made on behalf of a client before requiring reimbursement from the client's guardian.

(2) Each therapeutic school shall maintain an accurate log of each fund deposited and each withdrawal made for the personal use of each client.

R501-15-6. Staff Requirements.

(1) Each owner and board member of a therapeutic school shall successfully complete a minimum of eight hours of annual training relating to therapeutic school services.

(2) A therapeutic director or equally qualified acting director shall be immediately available to staff by telephone and able to arrive on-site within one hour after a staff telephone call for assistance and shall:

(a) be at least 25 years of age;

(b) have a Bachelor's degree in social work or a related field, or a minimum of three years of documented training or experience in providing therapeutic school or residential treatment services; and

(c) have a minimum of two years of therapeutic school or residential treatment program supervisory experience.

(3) A therapeutic school shall always have at least one direct care supervisor or supervisor designee on duty. A supervisor or supervisor designee shall:

(a) have a minimum of six months of experience providing services to children in out-of-home placements;

(b) meet each requirement for direct care staff as described in Section R501-1-14; and

(c) meet each qualification, including requirements for education, experience, licensing or certification, and current annual continuing education and training directly related to providing:

(i) specialized structure and supervision of clients; and

(ii) services or treatment related to a client's disability, emotional development, behavioral development, familial development, or social development.

(4) A therapeutic school shall maintain a staff manual, which shall include:

(a) specific job descriptions for each staff position;

(b) staff qualifications for each staff position, including requirements for education, experience, and licensing or certification;

(c) a requirement for continuing education, competency and proficiency, and job-specific training; and

(d) the required training for staff who will work with clients with a history of failing to function at home or school.

(5) At all times, at least two direct care staff shall provide direct supervision to clients.

(6) Each client who has earned the privilege of unsupervised time off-site shall be required to engage in two-way communication with on duty direct care staff once every four hours. Each therapeutic school shall develop and adhere to a policy that specifies what measures shall be taken if a client fails to check-in with staff as required by this subsection.

(7) Support staff shall not be included in the minimum staff to client ratios.

(8) A therapeutic school shall document and explain, to the satisfaction of the office, any waking hour direct care staff-to client ratio that does not meet the following minimum staffing requirements:

(a) where eight or fewer clients are present, there shall be at least two direct care staff on duty;

(b) where there are at least nine, but no more than 24 clients present, there shall be at least three direct care staff on duty;

(c) where there are at least 25, but no more than 48 clients present, there shall be at least four direct care staff on duty;

(d) where there are at least 49, but no more than 96 clients present, there shall be at least five direct care staff on duty; and

(e) where 97 or more clients are present, at least six direct care staff shall be on duty and there shall be a staff to client ratio of one direct care staff per 20 clients.

(8) A therapeutic school shall document and explain, to the satisfaction of the office, any sleeping hour direct care staff to client ratio that does not meet the following minimum requirements:

(a) where no more than 48 clients are present, there shall be at least two direct care staff on duty; and

(b) where 49 or more clients are present, there shall be at least three direct care staff on duty and there shall be a staff to client ratio of one direct care staff per 40 clients.

R501-15-7. Client Services.

(1) Each service plan shall include a quarterly assessment of the adequacy of the therapeutic school's policy, procedure, and practice in providing for each client's needs.

(2) Each therapeutic school shall provide each client's legal guardian with a copy of each service plan within two weeks after the service plan is developed or updated.

(3) Each therapeutic school that must travel more than 30 miles to an emergency room or 24-hour urgent care facility shall retain the on-call services of a medical practitioner and a licensed mental health therapist.

(4) Upon admission, each client shall be informed of the right to consult with a medical practitioner or a licensed mental health therapist.

(5) Each client who has a serious illness, who sustains a serious injury, or who requests the services of a medical practitioner, shall receive an immediate assessment by a certified wilderness first responder, certified EMT, or medical practitioner.

(6) Each therapeutic school shall attach the written assessment to an incident report.

(7) Each monthly schedule of activities shall be posted in the common area and the office and filed and retained for at least one year.

(8) Each therapeutic school academic curriculum shall either be accredited by an accrediting entity recognized by the Utah State Board of Education or the school shall present an educational service plan and educational funding plan in accordance with Section 62A-2-108.1.

(9) Each therapeutic school curriculum shall be provided to each client and the client's legal guardian prior to accepting any payment or processing any application to provide services.

(10) Each therapeutic school curriculum shall be reviewed and updated annually.

(11) Each modification to the curriculum shall be provided to each client and the client's legal guardian within two weeks of any curriculum change.

(12) Each therapeutic school shall monitor and document each client's academic progress and communicate the progress to the client's legal guardian each month.

R501-15-8. Physical Environment.

(1) Each therapeutic school shall provide indoor common areas for group activities such as gymnasiums, recreation areas, cafeterias, classrooms, libraries, and lounges.

(2) Each common area space in a therapeutic school shall contain at least 30 square feet per client.

(3) Each therapeutic school shall maintain at least three feet between beds and two feet at the end of each bed.

(4) Each bedroom ceiling shall be at least 7 feet in height.

(5) Each multiple occupant bedroom shall contain at least 50 square feet per client and each single occupant bedroom shall contain at least 80 square feet per client.

(6) Storage space shall not be counted when calculating square footage requirements.

(7) Each client shall have at least 30 cubic feet of private storage space.

(8) A therapeutic school shall provide each client with a school desk or table, light, and chair.

(9) A therapeutic school's client manual shall describe which dangerous weapons are permitted and which dangerous weapons are prohibited.

(a) Each determination of permitted and prohibited dangerous weapons shall be made in accordance with the age and behavioral characteristics of the client population to be served.

(b) Each therapeutic school's client manual shall describe how dangerous weapons shall be stored and the circumstances under which they may be accessible to clients.

KEY: human services, therapeutic schools

Date of Last Change: 2021|~~December 8, 2010~~

Notice of Continuation: November 30, 2020

Authorizing, and Implemented or Interpreted Law: 62A-2-106

NOTICE OF PROPOSED RULE

TYPE OF RULE: Repeal and Reenact

| | | |
|--------------------------------------|----------------|------------------|
| Utah Admin. Code Ref (R no.): | R501-19 | Filing ID |
| | | 54010 |

Agency Information

| | | |
|-----------------------------|--|-------------------|
| 1. Department: | Human Services | |
| Agency: | Administration, Administrative Services, Licensing | |
| Building: | Multi Agency State Office Building | |
| Street address: | 195 N 1950 W | |
| City, state and zip: | Salt Lake City, UT 84116 | |
| Contact person(s): | | |
| Name: | Phone: | Email: |
| Janice Weinman | 385-321-5586 | jweinman@utah.gov |
| Jonah Shaw | 385-310-2389 | jshaw@utah.gov |

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

General Information**2. Rule or section catchline:**

R501-19. Residential Treatment Programs

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

The rule is being changed in compliance with S.B. 127 passed in the 2021 General Session, Executive Order No. 2021-12, and based on stakeholder input. During the review of this rule, the Office of Licensing (Office) also discovered a number of minor issues that needed to be amended.

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 substantive changes are being done to bring this rule into compliance with the new requirements imposed upon human services programs by S.B. 127 (2021). In order to comply with Executive Order No. 2021-12, many changes are also being done to fix style issues to bring this rule text more in line with current rulewriting standards and to make the language of this rule more clear. This repeal and reenact also aligns outdated rules with current industry standards based on stakeholder input.

Fiscal Information**5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:****A) State budget:**

There is no aggregate anticipated cost or savings to state budget because all legislative changes have been accounted for through a fiscal note to supplement office resources for enforcement of this rule change.

B) Local governments:

There is no aggregate anticipated cost or savings to local governments because the proposed rule only supports local government requirements but does not impose any additional requirements on them.

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

The cost or savings impact on small businesses is inestimable because licensed programs are allowed to demonstrate rule compliance through policy and procedure development. Any additional costs as a result of the new policies and procedures will be self-imposed.

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

The cost or savings impact on non-small businesses is inestimable because licensed programs are allowed to demonstrate rule compliance through policy and procedure development and there a number of ways programs may choose to comply.

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

There is no impact on persons due to the enactment of these proposed rule changes, as the Office can only regulate small or non-small businesses meeting the statutory definition for licensure.

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

There will be no affected persons other than small or non-small businesses meeting the statutory definition for licensure.

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 proposal will not result in a fiscal impact to businesses. Tracy Gruber, 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 Executive Director of Human Services, Tracy Gruber, 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 62A-2-106 Section 62A-2-101

Public Notice Information

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

A) Comments will be accepted until: 12/01/2021

10. This rule change MAY become effective on: 12/08/2021

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: | Tracy Gruber, Executive Director | Date: | 10/04/2021 |
|--|----------------------------------|--------------|------------|

R501. Human Services, Administration, Administrative Services, Licensing.

R501-19. Residential Treatment Programs.

[R501-19-1. Authority.

Pursuant to Section 62A-2-101 et seq., the Office of Licensing shall license residential treatment programs according to the following rules.

~~R501-19-2. Purpose.~~

~~Residential treatment programs offer room and board and provides for or arranges for the provision of specialized treatment, rehabilitation or habilitation services for persons with emotional, psychological, developmental, or behavioral dysfunctions, impairments, or chemical dependencies. In residential treatment programs, consumers are assisted in acquiring the social and behavioral skills necessary for living independently in the community in accordance with Subsection 62A-2-101(15).~~

~~R501-19-3. Definition.~~

~~Residential treatment program means a 24 hour group living environment for four or more individuals unrelated to the owner or provider in accordance with Subsection 62A-2-101(15).~~

~~R501-19-4. Administration.~~

~~A. In addition to the following rules, all Residential Treatment Programs shall comply with R501-2, Core Standards.~~

~~B. A current list of enrollment of all registered consumers shall be on site at all times.~~

~~R501-19-5. Staffing.~~

~~A. The program shall have an employed manager who is responsible for the day-to-day resident supervision and operation of the facility. The responsibilities of the manager shall be clearly defined. Whenever the manager is absent there shall be a substitute available.~~

~~B. The program shall have a staff person trained, by a certified instructor, in standard first aid and CPR on duty with the consumers at all times.~~

~~C. Programs which utilize students and volunteers, shall provide screening, training, and evaluation of volunteers. Volunteers shall be informed verbally and in writing of program objectives and scope of service.~~

~~D. Professional staff shall include the following individuals who have received training in the specific area listed below:~~

~~1. Mental Health~~
~~a. a licensed physician or consulting licensed physician;~~
~~b. a licensed psychologist, or consulting licensed psychologist;~~

~~c. a licensed mental health therapist,~~
~~d. a licensed advanced practice registered nurse psychiatric mental health nurse specialist, or a consulting advanced practice registered nurse psychiatric mental health nurse specialist, and~~

~~e. if unlicensed staff are used, they shall be supervised by a licensed clinical professional.~~

~~2. Substance Abuse~~
~~a. a licensed physician, or a consulting licensed physician;~~
~~b. a licensed psychologist or consulting licensed psychologist;~~

~~c. a licensed mental health therapist or consulting licensed, mental health therapist, and~~

~~d. a licensed substance abuse counselor or unlicensed staff who work with substance abusers shall be supervised by a licensed clinical professional.~~

~~3. Children and Youth~~

~~a. a licensed physician, or consulting licensed physician;~~
~~b. a licensed psychologist, or consulting licensed psychologist, and~~

~~c. a licensed mental health therapist or consulting licensed mental health therapist, to provide a minimum of one hour of service to the program per week per consumer enrolled.~~

~~_____ d. A licensed medical practitioner, by written agreement, shall be available to provide, as needed, a minimum of one hour of service per week for every two consumers enrolled.~~

~~_____ e. Other staff trained to work with emotionally and behaviorally disturbed, or conduct disordered children and youth shall be under the supervision of a licensed clinical professional.~~

~~_____ f. A minimum of two staff on duty and, a staff ratio of no less than one staff to every four consumers shall exist at all times, except nighttime sleeping hours when staff may be reduced.~~

~~_____ g. A mixed gender population shall have at least one male and one female staff on duty at all times.~~

~~_____ 4. Services for People With Disabilities shall have a staff person responsible for program supervision and operation of the facility. Staff person shall be adequately trained to provide the services and treatment stated in the consumer plan.~~

R501-19-6. Direct Service.

~~_____ Treatment plans shall be reviewed and signed by the clinical supervisor. Treatment plans shall be reviewed and signed by the clinical supervisor, or other qualified individuals for Division of Services for People With Disabilities services. Plans shall be reviewed and signed as noted in the treatment plan.~~

R501-19-7. Physical Facilities.

~~_____ A. The program shall provide written documentation of compliance with the following items as applicable:~~

- ~~_____ 1. local zoning ordinances,~~
- ~~_____ 2. local business license requirements,~~
- ~~_____ 3. local building codes,~~
- ~~_____ 4. local fire safety regulations,~~
- ~~_____ 5. local health codes, and~~
- ~~_____ 6. local approval from the appropriate government agency for new program services or increased consumer capacity.~~

~~_____ B. Building and Grounds~~

~~_____ 1. The program shall ensure that the appearance and cleanliness of the building and grounds are maintained.~~

~~_____ 2. The program shall take reasonable measures to ensure a safe physical environment for consumers and staff.~~

R501-19-8. Physical Environment.

~~_____ A. Live-in staff shall have separate living space with a private bathroom.~~

~~_____ B. The program shall have space to serve as an administrative office for records, secretarial work and bookkeeping.~~

~~_____ C. Indoor space for free and informal activities of consumers shall be available.~~

~~_____ D. Provision shall be made for consumer privacy.~~

~~_____ E. Space shall be provided for private and group counseling sessions.~~

~~_____ F. Sleeping Space~~

~~_____ 1. No more than four persons, or two for Division of Services for People With Disabilities programs, shall be housed in a single bedroom.~~

~~_____ 2. A minimum of sixty square feet per consumer shall be provided in a multiple-occupant bedroom. Storage space will not be counted.~~

~~_____ 3. A minimum eighty square feet per individual shall be provided in a single-occupant bedroom. Storage space will not be counted.~~

~~_____ 4. Sleeping areas shall have a source of natural light, and shall be ventilated by mechanical means or equipped with a screened window that opens.~~

~~_____ 5. Each bed, none of which shall be portable, shall be solidly constructed, and be provided with clean linens after each consumer stay and at least weekly.~~

~~_____ 6. Sleeping quarters serving male and female residents shall be structurally separated.~~

~~_____ 7. Consumers shall be allowed to decorate and personalize bedrooms with respect for other residents and property.~~

~~_____ G. Bathrooms~~

~~_____ 1. The program shall have separate bathrooms for males and females. These shall be maintained in good operating order and in a clean and safe condition.~~

~~_____ 2. Bathrooms shall accommodate consumers with physical disabilities as required.~~

~~_____ 3. Each bathroom shall be properly equipped with toilet paper, towels, soap, and other items required for personal hygiene.~~

~~_____ 4. Bathrooms shall be ventilated by mechanical means or equipped with a screened window that opens.~~

~~_____ 5. Bathrooms shall meet a minimum ratio of one toilet, one lavatory, and one tub or shower for each six residents.~~

~~_____ 6. There shall be toilets and baths or showers which allow for individual privacy.~~

~~_____ 7. There shall be mirrors secured to the walls at convenient heights.~~

~~_____ 8. Bathrooms shall be located as to allow access without disturbing other residents during sleeping hours.~~

~~_____ H. Furniture and equipment shall be of sufficient quantity, variety, and quality to meet program and consumer needs.~~

~~_____ I. All furniture and equipment shall be maintained in a clean and safe condition.~~

~~_____ J. Programs which permit individuals to do their own laundry shall provide equipment and supplies for washing, drying, and ironing.~~

~~_____ K. Programs which provide for common laundry of linens and clothing, shall provide containers for soiled laundry separate from storage for clean linens and clothing.~~

~~_____ L. Laundry appliances shall be maintained in a clean and safe operating condition.~~

R501-19-9. Food Service.

~~_____ A. One staff shall be responsible for food service. If this person is not a professionally qualified dietitian, regularly scheduled consultation with a professionally qualified dietitian shall be obtained. Meals served shall be from dietitian approved menus.~~

~~_____ B. The staff responsible for food service shall maintain a current list of consumers with special nutritional needs and record in the consumers service record information relating to special nutritional needs and provide for nutrition counseling where indicated.~~

~~_____ C. The program shall establish and post kitchen rules and privileges according to consumer needs.~~

~~_____ D. Consumers present in the facility for four or more consecutive hours shall be provided nutritious food.~~

~~_____ E. Meals may be prepared at the facility or catered.~~

~~_____ F. Kitchens shall have clean, safe, and operational equipment for the preparation, storage, serving, and clean up of all meals.~~

~~_____ G. Adequate dining space shall be provided for consumers. The dining space shall be maintained in a clean and safe condition.~~

~~_____ H. When meals are prepared by consumers there shall be a written policy to include the following:~~

- ~~_____ 1. rules of kitchen privileges,~~
- ~~_____ 2. menu planning and procedures,~~
- ~~_____ 3. nutritional and sanitation requirements, and~~
- ~~_____ 4. schedule of responsibilities.~~

~~R501-19-10. Medication.~~

- ~~_____ A. The program shall have locked storage for medications.~~
- ~~_____ B. The program shall have locked storage for hazardous chemicals and materials, according to the direction of the local fire authorities.~~
- ~~_____ C. Prescriptive medication shall be provided as prescribed by a qualified physician, according to the Medical Practices Act.~~
- ~~_____ D. The program shall have designated qualified staff, who shall be responsible to:

 - ~~_____ 1. administer medication;~~
 - ~~_____ 2. supervise self medication;~~
 - ~~_____ 3. record medication, including time and dosage, according to prescription, and~~
 - ~~_____ 4. record effects of medication.~~~~

~~R501-19-11. Specialized Services for Substance Abuse.~~

- ~~_____ A. The program shall not admit anyone who is currently experiencing convulsions, in shock, delirium tremens, in a coma, or unconscious.~~
- ~~_____ B. At a minimum, the program shall document that direct service staff complete standard first aid and CPR training within six months of being hired. Training shall be updated as required by the certifying agency.~~
- ~~_____ C. Before admission, consumers shall be tested for Tuberculosis. Both consumers and staff shall be tested annually or as directed by the local health authority.~~

~~R501-19-12. Specialized Services for Programs Serving Children and Youth.~~

- ~~_____ A. Provisions shall be available for adolescents to continue their education with a curriculum approved by the State Office of Education.~~
- ~~_____ B. Programs which provide their own school shall be recognized by an educational accreditation organization, i.e., State Board of Education or the National School Accreditation Board.~~
- ~~_____ C. Individual, group, couple, and family counseling sessions or other appropriate treatment, including skills development, shall be conducted at least weekly, or more often if defined by the treatment plan. The consumer's record shall document the time and date of the service provided and include the signature of the counselor.~~
- ~~_____ D. An accurate record shall be kept of all funds deposited and withdrawn with the residential facility for use by a consumer. Consumer purchases of over \$20.00 per item, shall be substantiated by receipts signed by the consumer and appropriate staff.~~

~~R501-19-13. Specialized Services for Division of Services for People With Disabilities.~~

- ~~_____ A. Rules governing the daily operation and activities of the facility shall be available to all consumers and visitors, and shall apply to family members, consumers, and staff that come into the facility.~~
- ~~_____ B. The program shall have policy specifying the amount of time family or friends may stay as overnight guests.~~
- ~~_____ C. All consumers in residential programs shall have an individual plan that addresses appropriate day treatment.~~
- ~~_____ D. A monthly schedule of activities shall be shared with the consumer and available on request. Schedules shall be filed and maintained for review.~~
- ~~_____ E. A record of income, earned, unearned, and consumer service fees, shall be maintained by the provider.~~
- ~~_____ F. Residential facilities shall be located where school, church, recreation, and other community facilities are available.~~

~~_____ G. An accurate record shall be kept of all funds deposited with the residential facility for use by a consumer. This record shall contain a list of deposits and withdrawals. Consumer purchases of over \$20.00, per item, shall be substantiated by receipts signed by the consumer and professional staff. A record shall be kept of consumer petty cash funds.~~

~~_____ H. The program, in conjunction with the parent or guardian and the Division of Services for People With Disabilities support coordinator, shall apply for unearned income benefits for which a consumer is entitled.]~~

R501-19-1. Purpose and Authority.

This rule is authorized by Section 62A-2-106 and establishes standards for providers licensed to provide residential treatment and intermediate secure care. These rules are intended to supplement the general provisions required of all human services programs in Rule R501-1.

R501-19-2. Definitions.

The terms used in this rule are defined in Sections 62A-2-101 and R501-1-3.

R501-19-3. Administration.

(1) Each residential treatment program shall document local government approval for new program services or increased consumer capacity as described in Section 62A-2-108.2.

(2) Each residential treatment program serving a child shall provide direct supervision that meets supervision and ratio requirements.

(3) Each residential treatment program serving a child shall have no less than two direct care staff on duty.

(4) Each residential treatment program serving a child shall maintain a staff to client ratio of no less than one staff to every four clients or as otherwise dictated in department contract.

(5) Except as provided under Section R501-19-5, a residential treatment program serving a child may decrease the staff to client ratio during client sleeping hours to one staff to every 16 clients.

(6) Each residential treatment program serving a child may only decrease the number of staff as described in Section R501-19-4 if:

(a) each client is appropriately supervised to ensure health and safety at the ratio; and

(b) each direct care staff remains awake while on duty.

(7) Each residential treatment program shall increase each staff to client ratio as necessary to ensure the health and safety of the current client population.

(8) Direct supervision may only be performed by direct care staff who are in physical proximity to the clients and actively supervising with line-of-sight check-ins no less frequently than every 15 minutes.

(9) Except in an emergency situation that is caused by a client's behavior or medical needs, each direct care staff assigned to a one-on-one or line-of-sight supervision shall not be counted at the same time in the staffing ratio for any other client.

(10) Each program policy shall include how the program will accommodate client privacy in each bedroom space while assuring client health and safety.

(11) A residential treatment program may utilize on-site video surveillance to directly supervise a client in time out or seclusion or as an enhancement to minimum supervision ratio requirements. 15-minute physical check-ins must be conducted and documented when a client is being monitored by video.

NOTICES OF PROPOSED RULES

(12) Video surveillance in bedrooms may only be used by a residential treatment program:

- (a) with client, parent, or guardian permission;
- (b) when there is a documented need;
- (c) when the programs monitor cameras or checks in at intervals of 15-minutes or less; and
- (d) in a program serving an individual with disabilities, where video surveillance is in compliance with Rule R539-3.

(13) Each residential treatment program serving a child may provide step-down privileges to include unsupervised time and authorized departures from the program if:

- (a) the program maintains a 1:4 direct care staff to client ratio;
- (b) the program documents in the client record and communicates to each of the client's direct care staff individualized justification for the step-down privileges and which privileges are authorized by a clinical professional;
- (c) the program obtains written parental or guardian consent prior to allowing step-down privileges; and
- (d) the program provides to each client and parent or guardian a policy that includes:
 - (i) a description of what constitutes authorized departure and unsupervised time;
 - (ii) a description of how each step-down privilege, including authorized departure or unsupervised time, is achieved and rescinded;
 - (iii) a policy that the program will immediately communicate to each client parent or guardian and direct care staff when the step-down privileges have been rescinded; and
 - (iv) a statement that no step-down client is permitted to perform any direct care staff duties.

(14) Each residential treatment program serving adults may admit a 17-year-old under the following circumstances:

- (a) the program obtains written permission from the individual's parent or legal guardian;
- (b) the program provides clinical justification;
- (c) the program ensures that the individual sleeps in a separate room from adults or a room that the individual shares with adults no more than two years older than the individual;
- (d) the program ensures that any adult with direct access to the 17-year-old is directly supervised by a direct care staff; and
- (e) the program ensures enhanced safety and supervision measures for treating a minor in an adult setting.

(15) Each residential treatment program providing services to a substance use disorder client shall:

- (a) only admit a substance use disorder client with a level of care that falls within American Society of Addiction Medicine levels 3.1 through 3.5; and
- (b) obtain any required licenses before providing any service to a substance use disorder client outside of the residential milieu with a level of care described in Subsection R501-19-3(16).

(16) Each residential treatment program shall make any necessary accommodation before allowing a child to continue the child's education with a curriculum approved by the State Board of Education.

(17) Each program that provides education shall utilize a curriculum that is recognized by an educational accreditation organization such as the State Board of Education or the National School Accreditation Board.

(18) Each program that allows a client to participate in meal preparation shall ensure proper training and justify the client's participation in writing.

(19) Each residential treatment program shall provide individual, group, and family counseling or other treatment, including skills development, at least weekly or as outlined in the individual's treatment plan.

(20) Each residential treatment program that provides therapeutic service such as life skill development, psychoeducation, or social coaching shall be included in the therapeutic environment and be overseen by a clinical professional.

(21) Each residential treatment program shall document the time and date of each service provided to each client. Any documentation shall include the signature of the individual providing service.

(22) Each residential treatment program shall provide indoor space for free and informal client activities.

R501-19-4. Requirements for Intermediate Secure Treatment.

(1) Each intermediate secure treatment program shall clearly define in policy the responsibilities of the manager described in Section R501-1-18.

(2) Subsection R501-19-3(4) does not apply to an intermediate secure treatment program serving youth. Intermediate secure treatment programs serving youth shall maintain a staff to client ratio of no less than one staff to every five clients.

(3) The manager described in Section R501-1-18 shall:

- (a) be at least 25 years of age;
- (b) have a BA or BS degree or equivalent training in a human services related field; and
- (c) have at least three years management experience in a residential or secure treatment setting.

(4) Each direct care staff working in an intermediate secure treatment program shall be trained to work with a child with behavioral or mental health needs and shall work under the supervision of a licensed clinical professional.

(5) In addition to the direct care staff training requirements described in Subsection R501-1-14(5), each direct care staff working in an intermediate secure treatment program shall receive 30 hours of additional training annually that shall include training on the following topics:

- (a) human relations and communication skills;
 - (b) the special needs of children and families;
 - (c) problem solving and guidance;
 - (d) client rules and regulations;
 - (e) client record and incident documentation ;
 - (f) maintaining staff, client, and visitor safety in a secure setting; and
 - (g) universal precautions for blood borne pathogens.
- (6) Each intermediate secure treatment facility shall incorporate the use of fixtures and furnishings that help limit self-harm and suicide. Such fixtures and furnishings include:
- (a) plexiglass or safety glass;
 - (b) recessed lighting;
 - (c) sealed light fixtures;
 - (d) non-exposed fire sprinkler heads; and
 - (e) pressure release robe hooks.

R501-19-5. Specialized Services Required to Serve Clients Under the Division of Services for People With Disabilities.

(1) Each residential treatment program shall make policy and procedures governing each facility daily operation and activity available to each client and visitor. Each policy and procedures governing facility daily operation and activity shall apply to any individual that enters the facility.

(2) Each residential treatment program shall specify, in policy, the amount of time non-client individuals may stay as overnight guests.

(3) Each residential treatment program shall present each client with an individual plan that addresses appropriate day treatment.

(4) Each residential treatment program shall share with each client a monthly activity schedule.

(5) Each residential treatment program shall maintain a record of income earned and unearned, and client service fees.

(6) Each residential treatment facility shall be located within a reasonable distance from school, church, recreation, and other community facilities.

(7) Each residential treatment program shall maintain an accurate record of each fund deposited with the residential facility for client use. This record shall contain a list of each deposit and withdrawal.

(8) Each residential treatment program shall substantiate client purchase of over \$20 with receipts signed by the client and professional staff. Each residential treatment program shall keep a record of each client petty cash fund.

(9) Each residential treatment program shall, in conjunction with the support coordinator for the Division of Services for People With Disabilities and each client's parent or guardian, apply for unearned income benefits for which a client is entitled.

(10) In the event of a conflict between licensing rule and the Federal Home and Community Based Settings Final rule, the settings rule shall prevail.

KEY: human services, licensing

Date of Last Change: 2021[May 2, 2000]

Notice of Continuation: March 30, 2020

Authorizing, and Implemented or Interpreted Law: 62A-2-101 et seq.

NOTICE OF PROPOSED RULE

TYPE OF RULE: Repeal and Reenact

| | | |
|--------------------------------------|----------------|----------------------------------|
| Utah Admin. Code Ref (R no.): | R501-22 | Filing ID 54011 |
|--------------------------------------|----------------|----------------------------------|

Agency Information

| | | |
|-----------------------------|-------------------------------------|-------------------|
| 1. Department: | Human Services | |
| Agency: | Administration, Services, Licensing | Administrative |
| Building: | Multi Agency State Office Building | |
| Street address: | 195 N 1950 W | |
| City, state and zip: | Salt Lake City, UT 84116 | |
| Contact person(s): | | |
| Name: | Phone: | Email: |
| Janice Weinman | 385-321-5586 | jweinman@utah.gov |
| Jonah Shaw | 385-310-2389 | jshaw@utah.gov |

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

General Information

2. Rule or section catchline:

R501-22. Residential Support Programs

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

The rule is being changed in compliance with S.B. 127 passed in the 2021 General Session, Executive Order No. 2021-12, and based on stakeholder input. During the review of this rule, the Office of Licensing (Office) also discovered a number of minor issues that needed to be amended.

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 substantive changes are being done to bring this rule into compliance with the new requirements imposed upon human services programs by S.B. 127 (2021). In order to comply with Executive Order No. 2021-12, many changes are also being done to fix style issues to bring this rule text more in line with current rulewriting standards and to make the language of this rule more clear. This repeal and reenact also aligns outdated rules with current industry standards based on stakeholder input.

Fiscal Information

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

A) State budget:

There is no aggregate anticipated cost or savings to state budget because all legislative changes have been accounted for through a fiscal note to supplement office resources for enforcement of this rule change.

B) Local governments:

There is no aggregate anticipated cost or savings to local governments because the proposed rule only supports local government requirements but does not impose any additional requirements on them.

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

The cost or savings impact on small businesses is inestimable because licensed programs are allowed to demonstrate rule compliance through policy and procedure development. Any additional costs as a result of the new policies and procedures will be self-imposed.

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

The cost or savings impact on non-small businesses is inestimable because licensed programs are allowed to demonstrate rule compliance through policy and procedure development and there a number of ways programs may choose to comply.

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

There is no impact on persons due to the enactment of these proposed rule changes, as the Office can only regulate small or non-small businesses meeting the statutory definition for licensure.

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

There will be no affected persons other than small or non-small businesses meeting the statutory definition for licensure.

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 proposal will not result in a fiscal impact to businesses. Tracy Gruber, 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 Executive Director of Human Services, Tracy Gruber, 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 62A-2-106 | Section 62A-2-101 | |
|-------------------|-------------------|--|

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

| | |
|--|------------|
| A) Comments will be accepted until: | 12/01/2021 |
|--|------------|

10. This rule change MAY become effective on:

12/08/2021

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: | Tracy Gruber, Executive Director | Date: | 10/04/2021 |
|--|----------------------------------|--------------|------------|

R501. Human Services, Administration, Administrative Services, Licensing.

R501-22. Residential Support Programs.

~~**R501-22-1. Authority.**~~

~~Pursuant to Section 62A-2-101 et seq., the Office, shall license residential support programs according to the following rules.~~

R501-22-2. Purpose.

~~This rule establishes basic health and safety standards for residential support programs.~~

R501-22-3. Definitions.

~~(1) Residential support is defined in Section 62A-2-101.~~

~~(2) Temporary homeless youth shelter is defined in Section 62A-4a-501.~~

~~(3) Emergency homeless shelter includes homeless resource center and means any facility, the primary purpose of which is to provide a temporary shelter for those experiencing homelessness in general or for specific populations of those experiencing homelessness and does not require occupants to sign leases or occupancy agreements.~~

~~(a) Emergency shelters must operate with priority of the safety of those needing services and with an emphasis on transitioning into a more permanent housing setting.~~

~~(4) Receiving center means any facility operated with DHS approval to allow short-term residential support that may span multiple license types in order to assess and triage immediate client needs.~~

~~(a) Short-term residential support is intended to mitigate the initial identified problem, stabilize and return to the community as quickly and safely as possible.~~

~~(i) Stays lasting longer than 30 days shall only be permitted with individualized clinical documentation outlining the ongoing need and anticipated time frame for remaining in the receiving center setting.~~

~~(b) Placement in a receiving center is a voluntary alternative to a more restrictive placement and may not mandate treatment as a condition to residence.~~

~~(c) A receiving center is not a secure or lock-down facility.~~

R501-22-4. Administration.

~~(1) In addition to the following rules, all Residential Support Programs shall comply with Section R501-1-11, Subsection R501-1-2(9), R501-1-9(2) regarding critical incidents and Section R501-14 regarding staff or volunteer background screenings, applicable DHS contract requirements and all State and Federal Laws.~~

~~(a) In the event of a conflict between any oversight entity's requirements and OL rule, the program will appropriately seek rule variances or initiate administrative discussion to obtain resolution.~~

~~(2) Programs may offer treatment through referrals or within the agency by voluntary participation of the clients.~~

~~(a) Programs offering treatment shall obtain the appropriate categorical DHS license for that treatment~~

~~(b) Programs that mandate treatment as a condition to admission require a Residential Treatment license and are not considered Residential Support.~~

~~(3) Programs shall have current program information readily available to the office and the public, including a description of;~~

~~(a) program services;~~

~~(b) the client population served;~~

~~(c) program requirements and expectations;~~

~~(d) information regarding any clinical and non-clinical services offered;~~

~~(e) costs, fees, and expenses that may be assessed, including any non-refundable costs, fees or expenses; and~~

~~(f) complaint reporting and resolution processes.~~

~~(4) A list of current staff and clients shall be available to the Office and onsite at all times.~~

~~(5) Emergency shelters providing primarily domestic violence services may replace identifying victim client information wherever required by this rule with non-identifying victim client numbers in accordance with VAWA and Federal Confidentiality Mandates.~~

~~(6) Programs serving those experiencing homelessness in settings with one or more contracted service provider shall identify all key decision makers and service providers associated with the site license application.~~

~~(a) All identified contractors shall be subject to all licensing rules and requirements while operating in the licensed setting.~~

R501-22-5. Staffing.

~~(1) The program shall identify a director or qualified designee who shall be immediately available at all times that the program is in operation; the responsibilities of the manager shall be clearly defined.~~

~~(a) Whenever the manager is absent there shall be an employed and fully trained substitute to assume managerial responsibility.~~

~~(b) With the exception of Emergency Homeless and Domestic Violence Shelters, adult programs are not required to provide twenty-four hour supervision.~~

~~(2) The program shall establish a policy and procedure that identifies situations requiring medical attention and who the program utilizes to meet the medical needs of the program's clients.~~

~~(3) Programs shall ensure at least one CPR or First Aid trained or certified staff member is available onsite at all times with clients;~~

~~(4) Programs which utilize students and volunteers shall provide screening, training, and evaluation of the students or volunteers.~~

~~(a) A volunteer providing care in all emergency homeless and domestic violence shelters, without paid staff present, shall have direct communication access to designated staff at all times and shall have cleared background screenings prior to unsupervised client access. Volunteers shall be informed verbally and in writing of program objectives and scope of service.~~

~~(5) Programs shall consider the dynamic of the population in making a staffing decision to maintain compliance with ratio and staffing requirement of this rule.~~

R501-22-6. Direct Service.

~~(1) The program shall identify and provide to the office the organizational structure of the program including;~~

~~(a) names and titles of owners, directors and individuals responsible for implementing all aspects of the program;~~

~~(b) a job description, duties and qualifications for each job title;~~

~~(c) disclose any potential conflict of interest to the office;~~

~~(d) ensure that staff are licensed or certified in good standing as required and that unlicensed individuals providing direct client services shall do so only in accordance with the Mental Health Professional Practices Act;~~

~~(2) The program manager shall train and monitor staff compliance regarding;~~

~~(a) program policy and procedures;~~

~~(b) the needs of the program's clients;~~

~~(c) Rule R501-22;~~

NOTICES OF PROPOSED RULES

~~(d) the annual training on the Licensing Code of Conduct and client rights as outlined in Section R501-1-11; and~~
~~(e) the emergency response plan.~~
~~(3) The program manager shall also create and maintain a personnel file for each staff member to include:~~
~~(a) any applicable qualification, experience, certification or license;~~
~~(b) approved and current office background screening, except as excluded in Section R501-14-17; and~~
~~(c) training records with the date completed, topic and employee signature, verifying completion.~~
~~(4) A program shall comply with Rule R501-1 and maintain the following:~~
~~(a) proof of financial viability of the program;~~
~~(b) general liability insurance;~~
~~(c) professional liability insurance that covers all program staff;~~
~~(d) vehicle insurance for transporting a client;~~
~~(e) fire insurance;~~
~~(f) any additional insurance required to cover all program activities; and~~
~~(g) annual proof of completion for the National Mental Health Services Survey (NMHSS), if providing mental health services.~~
~~(5) The program shall develop, implement and comply with policies and procedures sufficient to ensure the health and safety and meet the needs of the client population served. Policy and procedure shall address at a minimum:~~
~~(a) client eligibility;~~
~~(b) intake and discharge process;~~
~~(c) client rights as outlined in Section R501-1-11;~~
~~(d) staff and client grievance procedures;~~
~~(e) behavior management;~~
~~(f) medication management;~~
~~(g) critical incident reporting as outlined in Subsections R501-1-2(9) and R501-1-9(2);~~
~~(h) emergency procedures;~~
~~(i) transportation of clients to include requirement of insurance, valid driver license, driver and client safety and vehicle maintenance;~~
~~(j) firearm policy, Subsection R501-22-7(22)(c);~~
~~(k) client safety including any unique circumstance regarding physical facility, supervision, community safety and mixing populations; and~~
~~(l) levels of client engagement offered by the program and what types of services are available to participants.~~
~~(6) Any supplemental services that may be provided outside the scope of licensure and the process followed for obtaining informed consent to voluntarily participate in these services.~~
~~(7) A program, excluding emergency homeless shelters whose requirements are outlined in Subsection R501-22-6(E), shall maintain client files to include the following:~~
~~(a) client name, address, email address, phone numbers, date of birth and gender;~~
~~(b) emergency contact names, including legal guardian where applicable, and a minimum of: an actual address, actual email address or actual phone numbers to reach identified contacts;~~
~~(c) all information that could affect health safety or well-being of the client to include all medications, allergies, chronic conditions or communicable diseases;~~
~~(d) a statement indicating how the client meets the admission criteria;~~

~~(e) description of presenting situation;~~
~~(f) intake assessment;~~
~~(g) grievance and complaint procedure;~~
~~(h) discharge documentation;~~
~~(i) service plan and services provided;~~
~~(j) any referral arrangements made by the program;~~
~~(k) any clinical services are recommended by treatment or service plans signed by a clinical professional and provided by appropriately credentialed and trained staff;~~
~~(l) a signed fee disclosure statement including Medicaid number, insurance information and identification of any other entities that are billed for the client's services;~~
~~(m) client or guardian signed consent or court order of commitment to services in lieu of signed consent for all treatment and non-clinical services;~~
~~(n) all crisis interventions or critical incident reports;~~
~~(o) detailed documentation of all clinical and non-clinical services provided with date and signature of staff completing each entry; and~~
~~(p) client treatment or service plans shall offer and document as many life-enhancing opportunities as are appropriate and reasonable.~~
~~(8) Emergency homeless shelters shall, at a minimum, be able to provide the following information, or have documented reasons why unobtainable, regarding each client:~~
~~(a) name;~~
~~(b) date of birth;~~
~~(c) race;~~
~~(d) ethnicity;~~
~~(e) gender;~~
~~(f) veteran status;~~
~~(g) disabling condition;~~
~~(h) start date;~~
~~(i) exit date;~~
~~(j) destination;~~
~~(k) relationship to head of household;~~
~~(l) client services location;~~
~~(m) prior living situation;~~
~~(n) case management logs and service plans as applicable;~~
~~(o) all information that could affect health safety or well-being of the client to include all medication;~~
~~(p) all documentation shall be updated to include all services and contacts and shall be summarily updated at 90-day intervals;~~
~~(q) all documentation shall remain in effect for re-opening for 30 days past the last shelter stay with the exception of single night stays; and~~
~~(r) service plans shall emphasize self-sufficiency and identify and refer to applicable resources.~~
~~(9) Programs shall have policies and procedures for training all staff to identify and address at a minimum:~~
~~(a) Clients who pose a risk of violence;~~
~~(b) Clients in possession of contraband;~~
~~(c) Clients who are at risk for suicide;~~
~~(d) Managing clients with mental health concerns;~~
~~(e) Identifying the signs and symptoms of clients presenting under the influence of substances or alcohol; and~~
~~(f) Prescribed staff responses to any of the above situations including ongoing monitoring and assessment for remaining in the program.~~
~~(10) Programs shall document a plan detailing how all program staff and client files shall be maintained and remain~~

available to the Office and other legally authorized access for seven years regardless of whether or not the program remains licensed.

~~(11) The program shall ensure that assessment, treatment and service planning practices are clinically appropriate, updated as needed, timely, individualized, and involve the participation of the client or guardian.~~

~~(12) All programs shall maintain documentation of all critical incidents as defined in Subsection R501-1-2(9) and as outlined in the DHS Critical Incident Reporting Guide.~~

~~(a) All critical incident reports shall be made to licensingconcerns@utah.gov or via the Office of Licensing Website within 24 hours.~~

~~(13) Incident reports will contain at a minimum:~~

~~(a) name of provider and all involved staff, clients and witnesses;~~

~~(b) date, time and location of the incident and date and time of incident discovery if different from the time of the incident;~~

~~(c) description of the incident;~~

~~(d) actions taken by program;~~

~~(e) actions planned to be taken by program; and~~

~~(f) program DHS contract status.~~

R501-22-7. Physical Facility.

~~(1) The program shall provide written documentation of compliance with the following:~~

~~(a) local zoning ordinances;~~

~~(b) local business license requirements;~~

~~(c) local building codes;~~

~~(d) local fire safety regulations;~~

~~(e) local health codes and clearance or exclusion from health clearance per Rule R392-110;~~

~~(f) local approval from the appropriate government agency for new program services or increased client capacity.~~

~~(2) All furniture and equipment shall be maintained in a clean and safe condition.~~

~~(3) The program shall post the following documents where they are clearly visible by clients, staff, and visitors:~~

~~(a) civil Rights and anti discrimination laws;~~

~~(b) program license;~~

~~(c) current or pending notices of agency action;~~

~~(d) abuse and neglect reporting laws; and~~

~~(e) client rights and grievance process.~~

~~(4) The program shall ensure that the physical environment is safe for clients and staff and that the appearance and cleanliness of the building and grounds are maintained.~~

~~(5) The program shall strictly adhere to and enforce all laws and rules, particularly those pertaining to the use and possession of illegal substances.~~

~~(6) Live-in staff shall each have separate living space with a private bathroom.~~

~~(7) The program shall have space to serve as an administrative office for records, secretarial work and bookkeeping.~~

~~(8) Space shall be provided for private and group counseling sessions if offered on-site.~~

~~(9) There shall be separate bathrooms, including a toilet, lavatory, tub or shower, for males and females. These shall be maintained in good operating order and in a clean and safe condition.~~

~~(a) Client to bathroom ratios shall be 10:1, except as outlined in Subsection R501-22-7(F)(11).~~

~~(b) Bathrooms shall accommodate clients with physical disabilities, as required by federal, state and local law.~~

~~(c) Each bathroom shall be maintained in good operating order and be provided with toilet paper, towels or hand dryers, and soap.~~

~~(d) There shall be mirrors secured to the walls at convenient heights.~~

~~(e) Bathrooms shall be placed as to allow access without disturbing other clients during sleeping hours.~~

~~(f) Bathrooms shall be ventilated by mechanical means or equipped with a screened window that opens.~~

~~(g) For domestic violence shelters and emergency homeless shelters, family members may share a bathroom.~~

~~(i) Where a bathroom is shared by more than one family or by children over the age of eight, parents or program staff shall ensure that privacy is protected.~~

~~(h) In temporary homeless youth shelters, a single occupancy unisex bathroom is permissible.~~

~~(i) In an emergency homeless shelter, a group bathroom that exceeds the minimum bathroom ratio set forth in Subsection R501-22-7(9)(a) are permissible if they are:~~

~~(i) approved by the local authority that determines capacity or by the Department of Health;~~

~~(ii) specifically designated for males and females in adult-only nightly shelter settings;~~

~~(iii) inspected, cleaned and re-stocked as needed and at least daily;~~

~~(iv) allow for individual privacy in bathing and toileting;~~

~~(v) at least one locking bathroom or stall is accessible for handicapped individuals; and~~

~~(vi) accommodate parents' needs for changing, toileting and bathing their children, if applicable.~~

~~(10) Sleeping accommodations, the following bedroom standards apply:~~

~~(a) Except as otherwise outlined in this rule, a minimum of 60 square feet per client shall be provided in a multiple occupant bedroom and 80 square feet in a single-occupant bedroom. Storage space shall not be counted.~~

~~(b) Emergency homeless settings shall have a policy to identify how to manage emergency overflow when capacity has been reached during extreme weather conditions.~~

~~(c) A sleeping area shall have a source of natural light and shall be ventilated by mechanical means or equipped with a screened window that opens.~~

~~(d) Pre-existing homeless sites may be excluded from natural light and screened window requirements as long as there is mechanical ventilation and an exit plan approved by the local fire authority.~~

~~(e) Each bed, none of which shall be portable, shall be solidly constructed and be provided with clean linens after each client's stay.~~

~~(f) The program shall have policies and procedures in place that allow for and encourage clients to have clean linens on at least a weekly basis.~~

~~(g) An emergency homeless program serving those experiencing homelessness may have portable beds, cots or mats as a means to accommodate the fluctuating client volume.~~

~~(h) Clean bedding shall be provided as needed and shall be laundered at least weekly.~~

~~(i) Sleeping quarters serving male and female clients shall be structurally separated except in family shelters serving populations experiencing homelessness, in which case families may be permitted to share bedroom space with rules outlined by the~~

program per Subsection R501-22-7(13)(d) and in dormitory settings allowed by this rule.

~~(j) A client shall be allowed to decorate and personalize bedrooms with respect for other clients and property unless agency policy and procedures transparently outline otherwise.~~

~~(11) Bedroom space standards shall apply for domestic violence shelters, family support centers, temporary homeless youth shelters, emergency homeless family shelters and children's shelters.~~

~~(a) A minimum of 40 square feet per client shall be provided in a multiple occupant bedroom. Storage space shall not be counted. The use of one crib for children under two years of age shall not be counted in the square foot requirement as long as it does not inhibit access to and from the room.~~

~~(b) Roll away and hide-a-beds may be used as long as the client square foot requirement is maintained.~~

~~(c) Family members are allowed to share bedrooms. Where bedrooms are shared by more than one family, parents or program staff shall make appropriate arrangements to ensure privacy is protected.~~

~~(12) For temporary homeless youth shelters, the following shall apply:~~

~~(a) A minimum of 40 square feet per client shall be provided in a multiple occupant dormitory style bedroom. Storage space shall not be counted.~~

~~(b) For youth with their own children, a minimum of 40 square feet per person shall be provided in a separately enclosed bedroom that houses only youth that have their own children. Storage space shall not be counted.~~

~~(13) For emergency homeless and temporary homeless youth shelters and receiving center the following shall apply:~~

~~(a) Dormitory style bedrooms are permitted with square footage and capacity determinations made by the local fire authority to include any staff present in the facility.~~

~~(b) If the local fire authority does not identify capacity, Licensing square footage requirements apply to determine capacity.~~

~~(c) The program shall have a policy to identify how to manage overflow when capacity has been reached.~~

~~(14) The program shall outline policies and procedures regarding:~~

~~(a) rules and guidelines for families or mixed genders sharing the same dormitory space or bedrooms, including boundaries and separation of unrelated residents;~~

~~(b) securing personal belongings;~~

~~(c) supervision responsibility for own children;~~

~~(d) conflict resolution or nuisance and disruptive behavior;~~

~~(e) housekeeping responsibilities;~~

~~(f) daily schedules;~~

~~(g) prohibited items and search policy;~~

~~(h) medication policy to include, lawful storage, staff and client responsibilities and administration policy~~

~~(15) A receiving center with multiple license types will ensure that policies and procedures, staffing ratios where appropriate and staff training is commensurate with the highest level of license type and spans all populations if staff are shared between settings.~~

~~(a) A receiving center will outline in policy and procedure and consumer agreements how separation of populations under each license will be maintained and under which circumstances interactions between populations will be permitted.~~

~~(16) Furniture and equipment shall be of sufficient quantity, variety, and quality to meet program and client need.~~

~~(a) All furniture and equipment shall be maintained in a clean and safe condition.~~

~~(17) The program shall have locked storage for medications and shall adhere to medication policies regarding locked storage, staff and client responsibilities and administration of medications.~~

~~(a) The program shall maintain potentially hazardous items on-site lawfully, responsibly and with consideration of the safety and risk level of the population served.~~

~~(18) The program shall have a weapons policy that identifies that when weapons are brought into the facility, those weapons shall be secured by the program in a locked storage area or removed from the premises.~~

~~(19) Programs which permit clients to do their own laundry shall provide equipment and supplies for washing and drying~~

~~(a) A program which provide for common laundry of linen and clothing, shall provide containers for soiled laundry separate from storage for clean linens and clothing unless otherwise outlined in the program policy and procedure manual. Programs that require clients to provide their own laundry supplies and locate a laundromat for laundering, will have a policy to assist clients on a limited basis when they are unable to provide these services for themselves.~~

~~(b) Laundry appliances shall be maintained in good operating order and in a clean and safe condition.~~

R501-22-8. Food Service.

~~(1) Staff shall be responsible for food service when the program provides meals for clients.~~

~~(a) Meals shall be served from dietician approved menus or in accordance with USDA standard for Homeless settings.~~

~~(2) In self-serve programs, one staff member shall be trained by Serv Safe, USDA, Dept. of Health Food Handler's permit or a comparable program to oversee kitchen use and redirect and train kitchen users as needed.~~

~~(a) The staff responsible for food service shall maintain a current list of clients with special nutritional needs and record in client records all information relating to special nutritional needs and provide for nutritional counseling to staff and clients where indicated.~~

~~(b) In self-serve programs, the staff responsible for food service shall ensure that all clients with special nutritional needs have food storage and preparation areas that are not exposed to any identified allergens or contaminants.~~

~~(3) Programs are permitted to establish policies and procedures requiring adult clients to maintain full responsibility for their, and their children's, special dietary need as long as the client signs off on this responsibility prior to entering the program.~~

~~(4) The program shall establish and post kitchen rules and privileges in communal kitchen and dining space according to client needs and safe food handling practices.~~

~~(5) Homeless settings may create policies regarding meals and snacks according to established practices, USDA guidelines incoming food donations and volunteer scheduling.~~

~~(6) Adequate dining space shall be provided for all clients and shall be maintained in a clean and safe condition.~~

~~(7) When meals are prepared by clients, there shall be a written policy to include the following:~~

~~(a) sanitation requirements; and~~

~~(b) shopping and storage responsibilities.~~

R501-22-9. Specialized Services for Substance Use Disorders.

~~(1) The program shall not admit anyone who is currently experiencing convulsions, in shock, delirium tremens, in a coma or unconscious.~~

~~(2) All homeless shelters and other programs potentially serving substance use disorder clients shall provide evidence of ongoing coordination with the local health authorities regarding managing communicable diseases within the licensed setting to include that staff are informed regarding:~~

- ~~(a) types of communicable diseases;~~
- ~~(b) recognizing signs and symptoms;~~
- ~~(c) steps to take when a potential disease is identified or outbreak occurs; and~~
- ~~(d) screening staff and clients for risk of tuberculosis.~~

~~(2) All homeless shelters and other programs potentially interacting with opioid users shall have at least one opioid overdose reversal kit onsite with on duty staff trained to utilize it as needed.~~

~~(3) A licensed substance abuse treatment program shall complete the National Survey of Substance Abuse Treatment annually.~~

~~R501-22-10. Specialized Services for Programs Serving Children.~~

~~(1) The program shall provide clean and safe age appropriate toys for children.~~

~~(2) The program shall provide an outdoor play area enclosed with a five foot safety fence or enclosure as otherwise required by local ordinances.~~

~~(3) Only custodial parents, legal guardian, or persons designated in writing are allowed to remove any child from the program.~~

~~(4) The program shall provide adequate staff to supervise children at all times or be available to monitor parents supervising their own children.~~

~~(5) The program shall comply as required with the Interstate Compact on the Placement of Children (ICPC), including ensuring the disruption plan is followed when a minor presents at a shelter as a result of a failed ICPC placement in a Utah residential setting.~~

~~(6) The Program shall comply with Subsection 62A-2-108(1) when sending education entitled children to the school within the district where the program is located to include:~~

- ~~(a) required contents of educational service plans; and~~
- ~~(b) ongoing compliance with educational service plans.~~

~~R501-22-11. Specialized Services for Domestic Violence Shelters.~~

~~(1) The program shall provide and document the following information both verbally and in writing to the client: Shelter rules, reason for termination, and confidentiality issues.~~

~~(2) Parents are responsible for supervising their children while at the shelter. If parents are required to be away from the shelter or involved in shelter activities without their children, they shall arrange for appropriate child care services.~~

~~(3) Domestic violence shelter action plans shall include the following:~~

- ~~(a) a review of danger and lethality with victim and discussion of the level of the victim's risk of safety;~~
- ~~(b) a review of safety plan with the victim;~~
- ~~(c) a review of the procedure for a protective order and referral to appropriate agency or clerk of the court authorized to issue the protective order; and~~
- ~~(d) a review of supportive services to include, but not limited to medical, self sufficiency, day care, legal, financial, and housing assistance.~~

~~(4) The program shall facilitate connecting services to those resources as requested. Appropriate referrals shall be made,~~

~~when indicated, and documented in the client record for victim treatment, psychiatric consultation, drug and alcohol treatment, or other allied services.~~

~~(5) Domestic violence shelter staff completing action plans shall at a minimum be supervised by an experienced and trained Domestic Violence provider.~~

~~R501-22-12. Specialized Services for Temporary Homeless Youth Shelters.~~

~~(1) Temporary homeless youth shelters shall provide a staff ratio of no less than one direct care staff to ten youth.~~

~~(2) Youth admitted shall be under the age of 18.~~

~~(a) Youth may be admitted with their own biological children of any age.~~

~~(3) Temporary Homeless Youth Shelters may provide shelter to individuals 18 through 20 year old clients under the following conditions:~~

~~(a) each 18 through 20 year old is placed in age and gender appropriate sleeping quarters outside of the minor population;~~

~~(b) each 18 through 20 year old remains in the program voluntarily and is made aware of program rules and the repercussions of criminal behavior as an adult~~

~~(c) 1:10 ratio is maintained~~

~~(4) Youth and 18-20 year old clients shall be assessed by facility staff who meet the qualifications of a mental health therapist as defined in Section 58-60-102, to determine whether they are an imminent risk of harming themselves or others. Youth who are assessed as an imminent risk shall be referred to programs qualified to serve them.~~

~~(a) Individualized documentation shall be maintained outlining risk of harm and justification statement for all clients being served in the youth setting.~~

~~(5) Temporary homeless youth shelters shall comply with Subsection 62A-4a-501 regarding mandatory notifications.~~

~~(6) Temporary homeless youth shelters shall comply with Subsection 62A-2-108.1 to coordinate educational requirements for all youth admitted.~~

~~(7) Temporary homeless youth shelters shall maintain responsibility for coordinating and transitioning youth and 18 through 20 year old clients to more appropriate settings when they are unable to remain in the Youth setting.~~

~~R501-22-13. Specialized Services for Emergency Homeless Shelters.~~

~~(1) Emergency homeless shelters shall adhere to a ratio of no less than 2 direct care staff present or available to clients at all times. A ratio of 1:40 shall be maintained during weekday daytime hours with ratios increased but not decreased as the dynamics of the population dictate.~~

~~(2) This staffing and capacity ratio can be exceeded during extreme weather, on weekends and during sleeping hours in emergency homeless settings if:~~

~~(a) there is an identified and utilized chain of command for on-call availability;~~

~~(b) the program has a surveillance camera system; or~~

~~(c) the program has an emergency radio onsite and all staff on-duty are trained regarding how and when it is to be used; or~~

~~(d) The program identifies and can rely upon other means of back up support in the event of an emergency.~~

~~(3) Emergency homeless shelters shall require all adult residents to sign an agreement form at admission which outlines that visitors are allowed on premises to assist with housing, food stamps,~~

NOTICES OF PROPOSED RULES

assessments, religious, social and other client specific needs. The agreement outlines that participation in any meetings or groups with these visitors is strictly voluntary. The client's signature on the form and voluntary participation in the visitation constitutes the client's invitation to these visitors in the DHS licensed setting. Clients who have not signed the agreement shall not participate in any voluntary services offered onsite.

(a) Staff in the homeless settings may not be considered visitors.

R501-22-14. Specialized Services for Programs serving clients of the Division of Services for People with Disabilities.

(1) In accordance with the Federal Home and Community Based Services (HCBS) Settings Final Rule, programs serving HCBS Waiver clients shall complete and adhere to the characteristics of a compliant setting outlined in the Residential Attestation Agreement form and Self Assessment Survey for each licensed site.

(a) Residential Attestation Agreement forms can be found here http://health.utah.gov/lte/hcbstransition/Files/Residential_Attestation.pdf

(b) Copies of this form shall be located in program documentation and updated as needed.

(c) In the event of a conflict between Licensing rule and Settings rule, the Settings rule shall prevail.

(d) Any violations of the Settings rule noted by the office shall be reported to the Office of Quality Design for contract consideration. After 2022, violations of settings rule will constitute a violation of federal law.

R501-22-15. Compliance.

(1) Programs operating within the scope of this rule at the time it is made effective shall have 60 days to come into compliance with this rule.]

R501-22-1. Authority and Purpose.

This rule is authorized under Section 62A-2-106 and establishes basic health and safety standards for residential support programs. These rules are intended to supplement the general provisions required of each human services program in Rule R501-1.

R501-22-2. Definitions.

(1) The terms used in this rule are defined in Sections 62A-2-101 and R501-1-3.

(2) "Temporary homeless youth shelter" is defined in Section 80-5-102.

(3) "Emergency homeless shelter" means any facility that has a primary purpose of providing a temporary shelter for those experiencing homelessness and does not require each occupant to sign a lease or occupancy agreement.

(4) "Receiving center" means any facility that has received written office approval to allow short-term residential support. A receiving center is not a secure or lock-down facility.

R501-22-3. Administration.

(1) Each residential support program may offer treatment through referrals or within the agency by voluntary client participation.

(2) Each residential support program that offers treatment shall obtain the appropriate categorical department license for that treatment.

(3) Each residential support program serving an individual experiencing homelessness in a setting with a contracted service provider shall identify each key decision maker and service provider associated with the license application. While operating in the licensed setting, the identified decision maker and service provider shall be subject to each licensing rule and requirement.

(4) Residential support may not require treatment as a condition of admission.

R501-22-4. Staffing.

(1) Each residential support program serving adults is not required to provide 24-hour supervision unless that program is an emergency homeless shelter or a domestic violence shelter.

(2) Each program shall establish a policy and procedure that identifies each situation requiring medical attention and how the program will meet the client's medical needs.

(3) Each program that accepts the services of a student or volunteer shall provide screening, training, and evaluation for each student or volunteer.

(4) Each volunteer that provides care without a paid staff present in any emergency homeless shelter or domestic violence shelter shall have direct communication access to designated staff and shall have a cleared background screening prior to unsupervised client access.

(5) Each volunteer shall be informed verbally and in writing of program objectives and the scope of service.

(6) Each emergency homeless shelter shall be able to provide the following information regarding each client or have documented reasons why each piece of information is not obtainable:

(a) name;

(b) date of birth;

(c) race;

(d) ethnicity;

(e) gender;

(f) veteran status;

(g) disabling condition;

(h) start date;

(i) exit date;

(j) destination;

(k) relationship to head of household;

(l) service location;

(m) prior living situation;

(n) case management log and service plan, where applicable;

(o) information that could affect health, safety, or well-being, include medication needs;

(p) documentation, which shall be updated to include each service and contact and shall be summarily updated at 90-day intervals; and

(q) service plans, which shall emphasize self-sufficiency and identify and refer to applicable sources.

(7) Documentation for each client shall remain in effect for re-opening for 30 days past the last shelter stay with the exception of single night stays.

R501-22-5. Physical Facility.

(1) Except as otherwise provided in this section, each residential support program shall have at least one bathroom for every ten clients.

(2) Each domestic violence shelter and emergency homeless shelter may allow family members to share a bathroom.

Where a bathroom is shared by more than one family or by children over the age of eight, either the child's parent or program staff shall ensure that client privacy is maintained.

(3) Each emergency homeless shelter may exceed the bathroom ratio set forth in Subsection R501-22-5(1) if:

(a) each bathroom ratio is approved by either the local authority that determines capacity or the Department of Health;

(b) each bathroom ratio specifically designated for males and females in adult-only nightly shelter settings;

(c) each bathroom is inspected, cleaned, and re-stocked daily and as needed;

(d) the emergency homeless shelter ensures individual privacy in bathing and toileting;

(e) each individual with disabilities has access to at least one locking bathroom or stall; and

(f) each emergency homeless shelter accommodates each parent's needs for changing, toileting, and bathing their children.

(4) Each emergency homeless setting shall have a policy to identify how to manage emergency overflow when capacity has been reached during extreme weather conditions.

(5) Each residential support program shall have a policy and procedure that allows and encourages each client to have clean linen at least weekly.

(6) Each emergency homeless program may have portable beds, cots, or mats to accommodate fluctuating client volume.

(7) Each residential support program shall provide clean bedding to each client as needed. Bedding shall be laundered at least weekly.

(8) Each family may be permitted to share bedroom space with rules outlined by the program as described in this rule and in dormitory settings allowed by this rule.

(9) The following bedroom standards apply to domestic violence shelters, family support centers, temporary homeless youth shelters, emergency homeless family shelters, and children's shelters:

(a) Each program shall provide at least 40 square feet per client in a multiple occupant bedroom. Storage space and the use of one crib for children under two years of age shall not be counted in the square foot requirement as long as the crib does not inhibit access to and from the room.

(b) Each program may use roll away and hide-a-beds as long as the client square foot requirement is maintained.

(c) Each family member is allowed to share a bedroom with another family member. Where a bedroom is shared by more than one family, program staff shall make appropriate arrangements to ensure client privacy.

(10) Each temporary youth shelter shall ensure that children in a temporary youth shelter with their own children shall have at least 40 square feet per person in a separately enclosed bedroom that houses only children that have their own children. Storage space may not be counted in the square foot requirement.

(11) Each emergency homeless shelter, temporary homeless youth shelter, and receiving center shall ensure that the standards of this subsection are met.

(a) Dormitory style bedrooms may be permitted with square footage and capacity determinations made by the local fire authority. Capacity determinations shall include any staff present in the facility.

(b) If the local fire authority does not identify capacity, licensing square footage requirements apply.

(c) There is a policy to identify how to manage overflow when capacity has been reached.

(12) Each program shall outline policies and procedures regarding:

(a) rules and guidelines for each family or mixed gender sharing the same dormitory space or bedroom, including each individualized bedroom assignment;

(b) securing personal belongings;

(c) responsibility for each client supervising the client's own children;

(d) conflict resolution;

(e) nuisance and disruptive behavior;

(f) housekeeping responsibilities;

(g) daily schedules;

(h) prohibited items; and

(i) search policy.

(13) Each program that requires a client to provide the client's own laundry supplies and locate a laundromat for laundering shall have a policy to assist each client on a limited basis when the client is unable to provide the client's laundry supplies and locate a laundromat.

R501-22-6. Specialized Services for Client's With Substance Use Disorders.

(1) Each program may not admit anyone who is currently experiencing convulsions, shock, delirium tremens, unconsciousness, or is in a coma.

(2) Each residential support program potentially serving clients with substance use disorder shall provide evidence of ongoing coordination with the local health authorities regarding managing communicable diseases within the licensed setting.

(3) Staff shall be informed regarding:

(a) various types of communicable diseases;

(b) recognizing signs and symptoms of communicable diseases;

(c) steps to take when a potential disease is identified or an outbreak occurs; and

(d) screening staff and clients for risk of tuberculosis.

(4) A licensed substance abuse treatment program shall complete the National Survey of Substance Abuse Treatment annually.

R501-22-7. Specialized Services for Programs Serving Children.

(1) Each residential support program serving only child populations is considered "congregate care" as defined in Section 62A-2-101 and must adhere to each requirement of Sections 62A-2-120, 62A-2-123 and 62A-2-124 for background clearances, policy development and behavior management practices. This subsection applies to youth programs who retain clients past the age of 18 to complete treatment or education.

(2) Each residential support program shall provide clean and safe age appropriate toys for children.

(3) Each residential support program shall provide an outdoor play area enclosed with a five-foot safety fence or enclosure as otherwise required by local ordinances.

(4) Only a custodial parent, legal guardian, or person designated in writing is allowed to remove any child from the program.

(5) Each residential support program shall provide adequate staff to supervise children or be available to monitor parents supervising their own children.

(6) Each residential support program shall comply as required with the Interstate Compact on the Placement of Children (ICPC), including by ensuring the disruption plan is followed when

NOTICES OF PROPOSED RULES

a minor presents at a shelter as a result of a failed ICPC placement in a Utah residential setting.

R501-22-8. Specialized Services for Domestic Violence Shelters.

(1) Each domestic violence shelter shall provide to the client, verbally and in writing, and document shelter rules, reasons for termination, and confidentiality issues.

(2) Each parent is responsible for supervising the parent's child while at the shelter. If a parent is required to be away from the shelter or involved in shelter activities without the parent's child, the parent shall arrange for appropriate child-care services.

(3) Each domestic violence shelter action plan shall:

(a) a review and discuss with each victim danger and lethality and discuss the level of the victim's risk of safety assessment;

(b) review the victim's safety plan with each victim;

(c) review the procedure for a protective order and a refer the victim to the appropriate agency or clerk of the court authorized to issue the protective order; and

(d) review supportive services for each client, including medical care, self-sufficiency, day care, legal assistance, financial assistance, and housing assistance.

(4) Each program shall facilitate connecting services to identified resources.

(5) An appropriate referral shall be made and documented when indicated in the client record for victim treatment, psychiatric consultation, drug and alcohol treatment, or other allied service.

(6) Each domestic violence shelter staff completing an action plan shall be supervised by an experienced and trained domestic violence provider.

R501-22-9. Specialized Services for Temporary Homeless Youth Shelters.

(1) Each temporary homeless youth shelter shall provide a staff ratio of at least one direct care staff for every ten children.

(2) Each individual admitted shall be under the age of 18.

(3) Each child may be admitted with the child's own biological children.

(4) Each temporary homeless youth shelter may provide shelter to an individual that is older than 18 but younger than 21 under the following conditions:

(a) each individual that is older than 18 but younger than 21 is placed in age and gender appropriate sleeping quarters away from the minor population;

(b) each individual that is older than 18 but younger than 21 remains in the program voluntarily and is made aware of program rules and the repercussions of criminal behavior as an adult;

(c) a ratio of at least one staff to every ten clients is maintained; and

(d) children and individuals who are older than 18 but younger than 21 shall be assessed by a facility staff that is a mental health therapist, as described in Section 58-60-102, to determine whether the individual is at imminent risk of harming themselves or others. Individuals that are assessed as at imminent risk shall be referred to programs qualified to serve them.

(5) Each temporary youth homeless shelter shall document and maintain individualized assessments of risk of harm and justification for each client admitted in the youth setting.

(6) Each temporary homeless youth shelter shall comply with Section 80-5-601 regarding mandatory notifications.

(7) Each temporary homeless youth shelter shall comply with Section 62A-2-108.1 to coordinate educational requirements for each individual.

(8) Each temporary homeless youth shelter shall coordinate and transition each client to a more appropriate setting when the client is unable to remain in the youth setting.

R501-22-10. Specialized Services for Emergency Homeless Shelters.

(1) Each emergency shelters shall prioritize the safety of those needing services and emphasize transitioning into a more permanent housing setting.

(2) Each emergency homeless shelter shall ensure that no less than two direct care staff are always present and available. A ratio shall be maintained of no fewer than one staff present for every 40 clients during weekday daytime hours. Ratios may be increased as needed.

(3) An emergency homeless shelter may deviate from the staffing and capacity ratio requirements of Subsection R501-22-10(2) in emergency homeless settings during extreme weather, on weekends, and during sleeping hours if:

(a) the program has a documented chain of command for on-call availability;

(b) the program has a surveillance camera system;

(c) the program has an emergency radio onsite and each staff on-duty are trained regarding how and when it is to be used; or

(d) the program identifies and can rely upon other means of back up support in case of emergency.

(4) Each emergency homeless shelter shall require each adult resident to sign an agreement form at admission which outlines that visitors are allowed on premises to assist with housing, food stamps, assessments, religious, social and other client-specific needs. Each agreement shall outline that participation in any meetings or groups with these visitors is strictly voluntary. Each client signature on the form and voluntary participation in the visitation shall constitute the client's invitation to these visitors in the department licensed setting. Each client that has not signed the agreement shall not participate in any voluntary services offered onsite. Staff in the homeless setting may not be considered a visitor as outlined in this section.

R501-22-11. Specialized Services for Programs Serving Clients of the Division of Services for People with Disabilities.

(1) In accordance with the federal Home and Community-Based Services (HCBS) Settings final rule, programs serving HCBS Waiver clients shall complete and adhere to the characteristics of a compliant setting outlined in the residential attestation agreement form and self-assessment survey for each licensed site.

(2) Copies of the residential attestation agreement form and self-assessment shall be located in program documentation and updated as needed.

(3) In the event of a conflict between this rule and the Settings Final Rule the Settings rule shall prevail.

(4) The office shall report any violation of the settings rule to the Office of Quality Design for contract consideration. After 2022, violations of settings rule will constitute a violation of federal law.

R501-22-12. Receiving Centers.

(1) Each receiving center may be licensed under multiple license types to be able to assess and triage immediate client needs.

(2) Each receiving center may offer short-term residential support that is intended to mitigate the initial identified problem, stabilize each client, and return each client to the community as quickly and safely as possible.

(3) Each receiving center shall outline in policy and procedure and consumer agreements how each population will be separated and maintained and under which circumstances interactions between populations will be permitted.

(4) Each receiving center shall include individualized clinical documentation for each instance in which a stay lasts longer than 30 days. The individualized clinical documentation shall outline the ongoing need and anticipated time frame during which the client will remain in the receiving center.

(5) Each placement in a receiving center shall be a voluntary alternative to a more restrictive placement. A receiving center may not mandate treatment as a condition to residence.

R501-22-13. Compliance.

(1) Programs operating within the scope of this rule at the time it is made effective shall have 60 days to come into compliance with this rule.

KEY: human services, licensing

Date of Last Change: ~~2021 May 11, 2020~~

Notice of Continuation: April 1, 2015

Authorizing, and Implemented or Interpreted Law: 62A-2-101 et seq.

NOTICE OF PROPOSED RULE

TYPE OF RULE: Repeal

| | | |
|--------------------------------------|-----------------|------------------------|
| Utah Admin. Code Ref (R no.): | R527-302 | Filing ID 54004 |
|--------------------------------------|-----------------|------------------------|

Agency Information

| | | |
|--|-------------------------------|-----------------|
| 1. Department: | Human Services | |
| Agency: | Recovery Services | |
| Street address: | 515 E 100 S | |
| City, state and zip: | Salt Lake City, UT 84102-4211 | |
| Mailing address: | PO Box 45033 | |
| City, state and zip: | Salt Lake City, UT 84145-0033 | |
| Contact person(s): | | |
| Name: | Phone: | Email: |
| Casey Cole | 801-741-7523 | cacole@utah.gov |
| Jonah Shaw | 801-538-4225 | jshaw@utah.gov |
| Please address questions regarding information on this notice to the agency. | | |

General Information

2. Rule or section catchline:

R527-302. Income Withholding Fees

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

Pursuant to Executive Order No. 2021-12, this rule is being repealed as a result of the review to become consistent with the current edition of the Office of Administrative Rules' Rulewriting Manual. The information provided in this rule is clearly provided in statute making this rule unnecessary.

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 is being repealed in its entirety.

Fiscal Information

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

A) State budget:

The repeal of this rule is due to Executive Order No. 2021-12. It is technical in nature and does not reflect substantive changes to current practices or procedures. It is not anticipated that this repeal would create a fiscal cost or savings to the state budget.

B) Local governments:

The repeal of this rule is due to Executive Order No. 2021-12. It is technical in nature and does not reflect substantive changes to current practices or procedures. It is not anticipated that this repeal would create a fiscal cost or savings to local governments.

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

The repeal of this rule is due to Executive Order No. 2021-12. It is technical in nature and does not reflect substantive changes to current practices or procedures. It is not anticipated that this repeal would create a fiscal cost or savings to small businesses.

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

The repeal of this rule is due to Executive Order No. 2021-12. It is technical in nature and does not reflect substantive changes to current practices or procedures. It is not anticipated that this repeal would create a fiscal cost or savings to non-small businesses.

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

The repeal of this rule is due to Executive Order No. 2021-12. It is technical in nature and does not reflect substantive changes to current practices or procedures. It is not anticipated that this repeal would create a fiscal cost or savings to persons other than small businesses, non-small businesses, state, or local government entities.

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

There are no compliance costs associated with the repeal of this rule. It is technical in nature and does not reflect substantive changes to current practices or procedures.

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 proposal will not result in a fiscal impact to businesses because this rule is being repealed. Tracy Gruber, 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 Executive Director of Human Services, Tracy Gruber, 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 62A-11-406 | Section 78A-2-216 | URCP Rule 64D |
| 15 U.S.C. 1673(b) | Section 62A-1-111 | Section 62A-11-107 |

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: 12/01/2021

10. This rule change MAY become effective on: 12/08/2021

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: | Tracy Gruber, Executive Director | Date: | 10/04/2021 |
|--|----------------------------------|--------------|------------|

R527. Human Services, Recovery Services.

[R527-302. Income Withholding Fees.

R527-302-1. Purpose and Authority.

1. The Office of Recovery Services is authorized to create rules necessary for the provision of social services by Section 62A-11-107.

2. This rule establishes procedures for a payor of income to withhold a one time fee to offset administrative costs incurred when processing a withholding order pursuant to Rule 64D, Utah Rules of Civil Procedure, and Section 78A-2-216(1)(b).

R527-302-2. Income Withholding Fees.

1. When the Office of Recovery Services/Child Support Services (ORS/CSS) initiates income withholding against a payor of income for payment of an obligor's child support, the payor of income may deduct a one time \$25.00 fee to offset the administrative costs it incurs to process the withholding pursuant to Rule 64D, Utah Rules of Civil Procedure, and Subsection 78A-2-216(1)(b).

2. A payor of income may choose to deduct the entire \$25.00 in the first month of withholding, or, pursuant to Subsection 62A-11-406(4), a payor may choose to deduct the \$25.00 in monthly increments (for example, \$5.00 per month for 5 months) until the full amount has been deducted, provided the total amount withheld does not exceed the maximum amount permitted under Subsection 303(b) of the Consumer Credit Protection Act, 15 U.S.C. 1673(b).

KEY: child support, income withholding fees

Date of Last Change: June 25, 2008

Notice of Continuation: December 15, 2017

Authorizing, and Implemented or Interpreted Law: 62A-11-406; 78A-2-216; Rule 64D, Utah Rules of Civil Procedure]

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

| | | |
|--------------------------------------|-----------------|------------------|
| Utah Admin. Code Ref (R no.): | R527-378 | Filing ID |
| | | 54005 |

Agency Information

| | | |
|-----------------------------|-------------------------------|-------------------|
| 1. Department: | Human Services | |
| Agency: | Recovery Services | |
| Street address: | 515 E 100 S | |
| City, state and zip: | Salt Lake City, UT 84102-4211 | |
| Mailing address: | PO Box 45033 | |
| City, state and zip: | Salt Lake City, UT 84145-0033 | |
| Contact person(s): | | |
| Name: | Phone: | Email: |
| Mary Burgener | 801-741-7465 | mburgene@utah.gov |
| Casey Cole | 801-741-7523 | cacole@utah.gov |
| Jonah Shaw | 801-538-4225 | jshaw@utah.gov |

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

General Information

| |
|---|
| 2. Rule or section catchline: |
| R527-378. Withholding of Social Security Benefits |

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

Pursuant to Executive Order No. 2021-12, this rule is being amended to become consistent with the current edition of the Office of Administrative Rules' Rulewriting Manual.

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 is being amended to meet the standards found in the Administrative Rules' Rulewriting Manual, pursuant to Executive Order No. 2021-12.

Fiscal Information**5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:****A) State budget:**

The amendment to this rule is due to Executive Order No. 2021-12. Therefore, there are no anticipated costs or savings to the state budget due to this amendment.

B) Local governments:

The amendment to this rule is due to Executive Order No. 2021-12. Therefore, there are no anticipated costs or savings for local governments due to this amendment.

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

The amendment to this rule is due to Executive Order No. 2021-12. Therefore, there are no anticipated costs or savings to small businesses due to this amendment.

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

The amendment to this rule is due to Executive Order No. 2021-12. Therefore, there are no anticipated costs or savings to non-small businesses due to this amendment.

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

The amendment to this rule is due to Executive Order No. 2021-12. Therefore, there are no anticipated costs or savings to other persons due to this amendment.

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

The amendment to this rule is due to Executive Order No. 2021-12. Therefore, there are no compliance costs due to this amendment.

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 amendment will not result in a fiscal impact to businesses. Tracy Gruber, 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 Executive Director of Human Services, Tracy Gruber, 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 62A-11-107 | Section 62A-1-111 | |
|-----------------------|-------------------|--|

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: 12/01/2021

10. This rule change MAY become effective on: 12/08/2021

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: | Tracy Gruber, Executive Director | Date: | 10/04/2021 |
|--|-------------------------------------|--------------|------------|

R527. Human Services, Recovery Services.**R527-378. Withholding of Social Security Benefits.****R527-378-1. ~~[Withholding of Social Security Benefits]~~ Authority and Purpose.**

~~[If social security is the obligor's sole means of support and the case is an arrears only case, the notice to the Social Security Administration to withhold income shall be limited to 25 percent of the social security benefit amount.]~~ (1) The Department of Human Services (DHS) may create rules necessary for social services pursuant to Section 62A-1-111. The Office of Recovery Services (ORS) may adopt, amend, and enforce rules pursuant to Section 62A-11-107.

(2) The purpose of this rule is to set limits on the amount withheld from social security benefits in certain situations.

R527-378-2. Withholding of Social Security Benefits.

~~If social security is the obligor's sole means of support and the case is an arrears only case, the notice to the Social Security Administration to withhold income shall be limited to 25% of the social security benefit amount.~~

KEY: child support, social security

Date of Last Change: 2021~~[January 15, 1999]~~

Notice of Continuation: June 2, 2017

Authorizing, and Implemented or Interpreted Law: 62A-1-111; 62A-11-107

NOTICE OF PROPOSED RULE

TYPE OF RULE: Repeal

| | | | |
|--------------------------------------|----------|------------------|-------|
| Utah Admin. Code Ref (R no.): | R527-928 | Filing ID | 54016 |
|--------------------------------------|----------|------------------|-------|

Agency Information

| | | |
|--|-------------------------------|------------------|
| 1. Department: | Human Services | |
| Agency: | Recovery Services | |
| Street address: | 515 E 100 S | |
| City, state and zip: | Salt Lake City, UT 84102-4211 | |
| Mailing address: | PO Box 45033 | |
| City, state and zip: | Salt Lake City, UT 84145-0033 | |
| Contact person(s): | | |
| Name: | Phone: | Email: |
| Scott Weight | 801-741-7435 | sweigh2@utah.gov |
| Casey Cole | 801-741-7523 | cacole@utah.gov |
| Jonah Shaw | 801-538-4225 | jshaw@utah.gov |
| Please address questions regarding information on this notice to the agency. | | |

General Information

| |
|--|
| 2. Rule or section catchline: |
| R527-928. Lost Checks |
| 3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?): |
| This rule is being repealed because Office of Recovery Services (ORS) does not currently provide any services to the greater Department of Human Services (DHS) related to DHS issued checks. The procedures contained in this rule do not represent the process for ORS issued checks. Similar issues for ORS are resolved by the financial institutions or with help from the Attorney General's Office relying on existing statute. |
| 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 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: |
| This rule does not reflect the ORS process regarding lost checks and is therefore being repealed. It is not anticipated that this repeal would create a fiscal cost or savings to the state budget. |

B) Local governments:

This rule does not reflect the ORS process regarding lost checks and is therefore being repealed. It is not anticipated that this repeal would create a fiscal cost or savings to local governments.

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

This rule does not reflect the ORS process regarding lost checks and is therefore being repealed. It is not anticipated that this repeal would create a fiscal cost or savings to small businesses.

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

This rule does not reflect the ORS process regarding lost checks and is therefore being repealed. It is not anticipated that this repeal would create a fiscal cost or savings to non-small businesses.

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

This rule does not reflect the ORS process regarding lost checks and is therefore being repealed. It is not anticipated that this repeal would create a fiscal cost or savings to other persons.

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

There are no compliance costs associated with the repeal of this rule, it is technical in nature and does not reflect substantive changes to current practices or procedures.

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 proposal will not result in a fiscal impact to businesses because this rule is being repealed. Tracy Gruber, 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 |

NOTICES OF PROPOSED RULES

| | | | |
|---|------------|------------|------------|
| Small Businesses | \$0 | \$0 | \$0 |
| Non-Small Businesses | \$0 | \$0 | \$0 |
| Other Persons | \$0 | \$0 | \$0 |
| Total Fiscal Cost | \$0 | \$0 | \$0 |
| Fiscal Benefits | | | |
| State Government | \$0 | \$0 | \$0 |
| Local Governments | \$0 | \$0 | \$0 |
| Small Businesses | \$0 | \$0 | \$0 |
| Non-Small Businesses | \$0 | \$0 | \$0 |
| Other Persons | \$0 | \$0 | \$0 |
| Total Fiscal Benefits | \$0 | \$0 | \$0 |
| Net Fiscal Benefits | \$0 | \$0 | \$0 |
| B) Department head approval of regulatory impact analysis: | | | |
| The Executive Director of Human Services, Tracy Gruber, 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 35A-3-601 | Section 35A-3-603 | Section 62A-11-104 |
| Section 62A-11-107 | Section 62A-1-111 | Title 70A, Chapter 3 |

Public Notice Information

| | |
|---|------------|
| 9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.) | |
| A) Comments will be accepted until: | 12/01/2021 |

| | |
|---|------------|
| 10. This rule change MAY become effective on: | 12/08/2021 |
| 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: | Tracy Gruber, Executive Director | Date: | 10/04/2021 |
|--|----------------------------------|--------------|------------|

R527. Human Services, Recovery Services.

~~[R527-928. Lost Checks.~~

R527-928 1. Authority and Purpose.

1. The Department of Human Services is authorized to create rules necessary for the provision of social services by Section 62A-1-111 and 62A-11-107.

2. The purpose of this rule is to specify the responsibility and procedures for the Office of Recovery Services/Child Support Services for issuing a new check that has been lost or stolen.

R527-928 2. Responsibility for Collection and Investigation.

ORS shall be responsible for the collection and investigation of lost or stolen Department of Human Services checks. The term check and warrant are used interchangeably.

R527-928 3. Cashing Department of Human Services Issued Checks.

The Department of Human Services has specific policy concerning the replacement of department issued checks which have been reported as lost or stolen and on which a stop payment has been placed or where the check has been returned as a forged check to the financial institution or store.

The Department will only replace a department issued check for any bank or store if all of the following conditions have been met:

1. An employee of the cashing establishment personally observed the payee endorse the check. This includes the original payee and any third party to whom the payee may have made the check payable.

2. An employee of the cashing establishment examined a picture bearing governmental issued media presented by the payee and was satisfied that the person presenting the check is in fact the payee. Examples of acceptable identification are, a Utah Motor Vehicle Operator's License or a Utah Identification card. Identification must be obtained for all payees endorsing the check. The employee must note the source of the identification and the identification number on the check.

3. The employee who approved the cashing of the check must have made an identifying mark, such as initials, which will identify the employee in the event legal action is initiated at a later date.

4. The replacement check to the cashing establishment must be requested within 120 days of the date of notification of the stop payment.

KEY: public assistance programs, banks and banking, fraud

Date of Last Change: April 7, 2008

Notice of Continuation: June 2, 2017

Authorizing, and Implemented or Interpreted Law: 70A-3; 35A-3-601; 35A-3-603; 62A-11-104; 62A-11-107]

| NOTICE OF PROPOSED RULE | | |
|-------------------------------|---------|-----------------|
| TYPE OF RULE: Amendment | | |
| Utah Admin. Code Ref (R no.): | R590-79 | Filing ID 53998 |

Agency Information

| | | |
|-----------------------------|------------------------------------|-----------------|
| 1. Department: | Insurance | |
| Agency: | Administration | |
| 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: |
| R590-79. Life Insurance Disclosure Rule |
| 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 No. 2021-12. During the review of this rule, the Department of Insurance (Department) discovered a number of minor issues that need to be amended. |
| 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. Others are changes to make the language of this rule more clear. The new Section R590-79-7 is being updated to use the Department's current language. Section R590-79-9 is being removed because penalties are already provided for in statute. Section R590-79-10 is being removed because this rule is already in force. The changes do not add, remove, or change any regulations or requirements. |

Fiscal Information**5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:****A) State budget:**

There is no anticipated cost or savings to the state budget. The changes are largely clerical in nature and will not change how the Department functions.

B) Local governments:

There is no anticipated cost or savings to local governments. The changes are largely clerical in nature and will not affect local governments.

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

There is no anticipated cost or savings to small businesses. The changes are largely clerical in nature and will not affect small businesses.

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

There is no anticipated cost or savings to non-small businesses. The changes are largely clerical in nature and will not affect non-small businesses.

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

There is no anticipated cost or savings to any other persons. The changes are largely clerical in nature.

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

There are no compliance costs for any affected persons. The changes are largely clerical in nature.

G) 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-2-201 | Section 31A-22-425 | |

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: | 12/01/2021 |

| | |
|--|------------|
| 10. This rule change MAY become effective on: | 12/08/2021 |
| 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: | 10/04/2021 |
|--|---|--------------|------------|

R590. Insurance, Administration.**R590-79. Life Insurance Disclosure Rule.****R590-79-1. Authority.**

This rule is ~~[adopted and]~~ promulgated by the commissioner pursuant to Sections 31A-2-201~~[(3) wherein the commissioner may make rules to implement the provisions of Title 31A, and Section] and 31A-22-425~~[(1) wherein the commissioner may make rules to establish standards for buyer's guides and disclosures].

R590-79-2. Purpose and Scope.

(1) The purpose of this rule is to require an insurer ~~[to deliver to purchasers of]~~ to provide to a life insurance~~[, purchaser information [which will improve-] to assist the purchaser's ability to select-] in selecting a plan of life insurance [most-] appropriate for the purchaser's needs, [and improve the purchaser's understanding of the basic features of the policy being purchased or under consideration for purchase.~~

~~This rule does not prohibit the use of additional material which is not in violation of this rule or any other statute or rule.~~

R590-79-3. Scope.

~~Except as hereinafter exempted, this rule shall apply]~~

(2) This rule applies to:

~~(a) any solicitation, negotiation, or procurement of life insurance [occurring] within this state. [This rule shall apply to]; and~~

~~(b) any issuer of a life insurance contract[s] including a fraternal benefit society[ies].~~

(3) Unless otherwise ~~[specifically]~~ included, this rule ~~[shall]~~ does not apply to:

~~[A-](a) an annuity[ies];~~

~~[B-](b) credit life insurance;~~

~~[C-](c) group life insurance [except for-], except that a disclosure[s] relating to a preneed funeral contract[s] or prearrangement[s. These disclosure requirements] shall extend to the issuance or delivery of a certificate[s] as well as to the [master-] policy[ies];~~

~~[D-](d) a life insurance policy[ies] issued in connection with a pension and welfare plan[s] as defined by [and which are subject to] the [federal-] Employee Retirement Income Security Act of 1974 (ERISA), [as amended] 29 U.S.C. 18, et seq.; or~~

~~[E-](e) variable life insurance [under which the amount and duration of the death benefits and cash values vary according to the investment experience of a separate account].~~

R590-79-[4]3. Definitions.

~~[In addition to the definitions in Section 31A-1-301, the following definitions shall apply for the purposes of this rule] Terms used in this rule are defined in Section 31A-1-301 and Rule R590-177. Additional terms are defined as follows:~~

~~[A. A.](1)~~ "Buyer's [G]uide" means a document [which] that contains, and is limited to, the language contained in the "Life Insurance Buyer's Guide," as adopted and periodically amended by, and available from] the National Association of Insurance Commissioners, 2000 edition, which is incorporated in this rule by reference].

~~[B. Current Scale of Nonguaranteed Elements.](2)~~ "Current scale of nonguaranteed elements" means a formula or other mechanism that produces values for an illustration as if there is no change in the basis of those values after the time of illustration.

~~[C.](3)~~ "Generic name" means a short title [which is descriptive of] that describes the premium and benefit patterns of a policy or a rider, such as "whole life", "term life", or "flexible premium adjustable life".

~~[D.](4)(a)~~ "Nonguaranteed [E]lement[s]" means [the] any premium[s], credited interest rate[s] including any bonus, benefit[s], value[s], non-interest based credit[s], charge[s], or element[s] of a formula[s] used to determine any of these that are subject to company discretion and are not guaranteed at issue.

(b) An element is considered non[-]guaranteed if any [of the] underlying non[-]guaranteed element[s] are] is used in its calculation.

~~[E.](5)~~ "Policy [D]ata" means a display or schedule of numerical values, both guaranteed and nonguaranteed, for each policy year or a series of designated policy years of the following information:

- (a) illustrated annual, other periodic, and terminal dividends;
- (b) premiums;
- (c) death benefits;
- (d) cash surrender values; and
- (e) endowment benefits.

~~[F.(1).](6)~~ "Policy summary" means a written statement describing only the guaranteed elements of the policy[—A policy summary must include the following information:

(a) A prominently placed title as follows: STATEMENT OF POLICY COST AND BENEFIT INFORMATION:

(b) The name and address of the insurance producer, or, if no producer is involved, a statement of the procedure to be followed in order to receive responses to inquiries regarding the policy summary.

(c) The full name and home office or administrative office address of the company in which the life insurance policy is to be or has been written.

(d) The generic name of the basic policy and each rider.

(e) The following amounts, where applicable, for the first five policy years and representative policy years thereafter sufficient to clearly illustrate the premium and benefit patterns, including, but not necessarily limited to, the tenth and twentieth policy years, and at least one age from 60 through 65 or maturity, whichever is earlier:

- (i) The annual premium for the basic policy.
- (ii) The annual premium for each optional rider.
- (iii) Guaranteed amount payable upon death, at the beginning of the policy year regardless of the cause of death other than suicide, or other specifically enumerated exclusions, which is provided by the basic policy and each optional rider, with benefits provided under the basic policy and each rider shown separately.

(iv) Total guaranteed cash surrender values at the end of the year with values shown separately for the basic policy and each rider.

(v) Guaranteed endowment amounts payable under the policy which are not included under guaranteed cash surrender values above.

(f) The effective policy loan annual percentage interest rate, if the policy contains this provision, specifying whether this rate is applied in advance or in arrears. If the policy loan interest rate is adjustable, the policy summary shall indicate the maximum annual

percentage rate, and shall also indicate that the annual percentage rate will be determined by the company in accordance with the provisions of the policy and the applicable law.

(g) The date on which the policy summary is prepared.

(2) The policy summary must consist of a separate document. All information required to be disclosed must be set out in such a manner as not to minimize or render any portion thereof obscure. Any amounts which remain level for two or more years of the policy may be represented by a single number if it is clearly indicated what amounts are applicable for each policy year. Amounts in item F.(1)(e) of this section shall be listed in total, not on a per thousand nor per unit basis. If more than one insured is covered under one policy or rider, death benefits shall be displayed separately for each insured or for each class of insureds if death benefits do not differ within the class. Zero amounts shall be displayed as zero and may not be displayed as a blank space.

(3) If an illustration subject to the requirements of R590-177, Life Insurance Illustrations Rule, is used in the sale of a policy, a policy summary is not required].

~~[G. Preneed Funeral Contract or Prearrangement means.](7)~~ "Preneed funeral contract" and "prearrangement" each mean an agreement by or for an individual before that individual's death relating to the purchase or provisions of specific funeral or cemetery merchandise or services.

R590-79-[5]4. Disclosure Requirements.

~~[A.](1)~~ The insurer shall provide a [B]uyer's [G]uide and either a policy summary or [a life] illustration [that is in compliance with Rule R590-177, Life Insurance Illustrations Rule,] when the policy is delivered or prior to delivery of the policy if [so] requested.

~~[B. The insurer shall provide a Buyer's Guide to any prospective purchaser upon request.~~

~~C.](2)(a)~~ The policy summary must be a separate document.

(b) Any information required to be disclosed must be displayed in a way that does not minimize or obscure any portion of the information.

(c) Any amount that remains level for two or more years of the policy may be represented by a single number if it is clearly indicated which amount applies for each policy year.

(d) An amount in Subsection (3)(c) shall be listed in total, not on a per thousand nor per-unit basis.

(e) If more than one insured is covered under one policy or rider, a death benefit shall be displayed separately for each insured or for each class of insureds if death benefits do not differ within the class.

(f) A zero amount shall be displayed as zero and may not be displayed as a blank space.

(3) A policy summary must include the following information:

(a) A prominently placed title as follows: STATEMENT OF POLICY COST AND BENEFIT INFORMATION.

(b) The name and address of the insurance producer or, if no producer is involved, the procedure to be followed to receive a response to an inquiry regarding the policy summary.

(c) The full name and home office or administrative office address of the company in which the life insurance policy is to be or has been written.

(d) The generic name of the policy and each rider.

(e) The following amounts, where applicable, for the first five policy years and representative policy years thereafter, sufficient to illustrate the premium and benefit patterns, including the 10th and 20th policy years, and at least one age from 60 through 65 or maturity, whichever is earlier:

(i) The annual premium for the policy.

(ii) The annual premium for each optional rider.

(iii) The guaranteed amount payable upon death, at the beginning of the policy year regardless of the cause of death or other specifically enumerated exclusion, that is provided by the policy and each optional rider, with benefits provided under the policy and each rider shown separately.

(iv) The total guaranteed cash surrender values at the end of the year with values shown separately for the policy and each rider.

(v) The guaranteed endowment amounts payable under the policy that are not included under the guaranteed cash surrender values in Subsection (3)(c)(iv).

(f)(i) The effective policy loan annual percentage interest rate, if the policy contains this provision, specifying whether this rate is applied in advance or in arrears.

(ii) If the policy loan interest rate is adjustable, the policy summary shall indicate the maximum annual percentage rate and shall indicate that the annual percentage rate will be determined by the company in accordance with the provisions of the policy and applicable law.

(g) The date on which the policy summary is prepared.

(4) For the purposes of this rule, the annual premium for a policy or rider, for which the company reserves the right to change the premium, shall be the maximum annual premium.

(5) ~~[Flexible Premium and Benefit Policies.]~~ For a policy~~[ies]~~ commonly called "universal life insurance" and ~~any~~ similarly structured policy~~[ies]~~, the policy summary shall indicate when the policy will expire based on the interest rates and mortality rates and other charges guaranteed in the policy and the anticipated or assumed annual premiums shown in the policy summary.

~~[D. Requirements applicable to existing policies.]~~

~~—~~ (6) Upon request by the policyholder, the insurer shall furnish either policy data or an in~~[-]~~-force illustration as follows:

(1)a) For a policy~~[ies]~~ issued prior to January 1, 1997~~[-, the effective date of R590-177, Life Insurance Illustrations Rule]~~, the insurer shall furnish policy data~~[-, or at its option, an in force illustration meeting the requirements of R590-177, Life Insurance Illustrations Rule]~~ or an in-force illustration.

(2)b) For a policy~~[ies]~~ issued on or after January 1, 1997~~[that were]~~, and declared not to be used with an illustration, the insurer shall furnish policy data, limited to guaranteed values~~[-, if it has chosen not to furnish an in force illustration meeting the requirements of R590-177, Life Insurance Illustrations Rule]~~ or an in-force illustration.

(3)c) ~~[If the]~~ For a policy ~~[was]~~ issued on or after January 1, 1997, and declared to be used with an illustration, ~~[an in force illustration shall be provided]~~ the insurer shall provide an in-force illustration.

(4)d)(i) Unless otherwise requested, the policy data shall be provided for 20 consecutive years beginning with the previous policy anniversary.

(ii) The statement of policy data shall include nonguaranteed elements according to the current scale, the amount of outstanding policy loans, and the current policy loan interest rate.

(iii) ~~[P]~~ Any policy value~~[s]~~ shown shall be based on the current application of nonguaranteed elements in effect at the time of the request.

(iv) The insurer may charge a reasonable fee for the preparation of the statement after providing one annually without charge.

~~[E.]~~ (7) For a life insurance policy or certificate with a death benefit not exceeding \$15,000:

(a) the insurer shall disclose the following:

(i) the limited death benefit whenever a policy limits death benefits during a period following the inception date of coverage; and

(ii) the possibility that premiums paid over several years may exceed the death benefit whenever that possibility exists; and

(b) the disclosure shall be provided to the applicant no later than delivery of the policy or certificate.

(8) ~~[Preneed Funeral Contracts or Prearrangements.]~~ The following information shall be ~~[adequately]~~ disclosed at the time an application is made ~~[prior to accepting the applicant's initial premium or deposit]~~ for a preneed funeral contract or prearrangement ~~[which is funded or to]~~ that is or will be funded by a life insurance policy, prior to accepting the applicant's initial premium or deposit:

(1)a) ~~[F]~~ the fact that a life insurance policy is involved or is being used to fund a prearrangement;

(2)b) ~~[F]~~ the nature of the relationship among the soliciting producer or producers, the provider of the funeral or cemetery merchandise or services, the administrator, and any other person;

(3)c) ~~[F]~~ the relationship of the life insurance policy to the funding of the prearrangement and the nature and existence of any guarantees relating to the prearrangement;

(4)d) ~~[F]~~ the impact on the prearrangement of any:

(a)i) ~~[of any]~~ changes in the life insurance policy, including ~~[but not limited to]~~ changes in the assignment, beneficiary designation, or use of the proceeds;

(b)ii) ~~[of any]~~ penalties to be incurred by the policyholder ~~[as a result of]~~ due to failure to make premium payments; and

(e)iii) ~~[of any]~~ penalties to be incurred or monies to be received ~~[as a result of]~~ due to cancellation or surrender of the life insurance policy;

(5)f) ~~[A]~~ a list of the merchandise and services ~~[which]~~ that are applied or contracted for in the prearrangement and ~~[all]~~ any relevant information concerning the price of the funeral services, including an indication that the purchase price is either guaranteed at the time of purchase or to be determined at the time of need;

(6)g) ~~[All relevant]~~ any information concerning what occurs and whether any entitlements or obligations arise if there is a difference between the proceeds of the life insurance policy and the amount ~~[actually]~~ needed to fund the prearrangement~~[-]~~;

~~—~~ (7) Any penalties or restrictions, including but not limited to geographic restrictions or the inability of the provider to perform, on the delivery of merchandise, services or the prearrangement guarantee~~[-]~~; and

(8)h) ~~[The fact that]~~ whether a sales commission or other form of compensation is being paid and ~~[if so]~~, the identity of ~~[such]~~ each individual~~[s]~~ or entity~~[ies]~~ to whom it is paid.

R590-79-65. General Requirements.

~~[A.]~~ (1) Each insurer shall maintain at its home office or principal office, a complete ~~[file containing one copy of each document authorized by the insurer for use pursuant to this rule. Such file shall contain one copy of each authorized form for a period of three years following the date of its last authorized use]~~ and accurate record of each document provided to the policyholder under this rule.

~~[B.]~~ (2)(a) A producer shall inform ~~[the]~~ a prospective purchaser, prior to commencing a life insurance sales presentation, that ~~[he or she]~~ the producer is acting as a life insurance producer ~~[and inform the prospective purchaser]~~.

(b) A producer shall inform the prospective purchaser of the full name of the insurance company ~~[which]~~ the producer is representing ~~[to the buyer. In sales situations in which a producer is not involved, the insurer shall identify its full name]~~.

(c) If a producer is not involved in the sale, the insurer shall provide its full name to the prospective purchaser.

(d) A presentation commences with an initial contact with a prospective purchaser in person, by telephone, by electronic

communication, or by way of printed materials, particularly where rates or values are quoted or when policy or contract representations are made.

~~[C. Terms-](3) A producer shall not use terms such as financial planner, investment advisor, financial consultant, or financial counseling[shall not be used];~~

~~(a) unless properly licensed if required; or[~~in such a way as~~]~~

~~(b) to imply that the [insurance-]producer is generally engaged in an advisory business [in which-]where compensation is unrelated to sales unless such is [actually-]the case and is represented by way of a required disclosure.~~

~~[D.](4) Any reference to a nonguaranteed element[s] shall include:~~

~~(a) a statement that the item is not guaranteed and is based on the company's current scale of nonguaranteed elements[~~(use appropriate special term such as "current dividend" or "current rate" scale.)~~ If];~~

~~(b) a statement that a nonguaranteed element [would-]may be reduced by the existence of a policy loan[~~, a statement to that effect~~] shall be included in any reference to a nonguaranteed element[s- A-]; and~~

~~(c) a presentation or depiction of a policy issued on or after January 1, 1997, that includes nonguaranteed elements over a period of years shall be governed by Rule R590-177[~~, Life Insurance Illustrations Rule.~~~~

~~E. For a life insurance policy or certificate with a death benefit not exceeding \$15,000, the insurer shall provide disclosure of the following:~~

~~(1) limited death benefits whenever a policy limits death benefits during a period following the inception date of coverage;~~

~~(2) the possibility that premiums paid over several years may exceed the death benefit whenever that possibility exists.~~

~~The disclosure shall be provided to the applicant no later than delivery of the policy or certificate].~~

~~[F.](5) The policy summary, the [life-]illustration[~~that is subject to the requirements of R590-177, Life Insurance Illustrations Rule~~], and [all-]any other sales materials must be complete, consistent, and not misleading[~~. If asterisks are used to reference footnotes, the asterisk must be clear and easily seen.~~~~

~~G. For the purposes of this rule, the annual premium for a basic policy or rider, for which the company reserves the right to change the premium, shall be the maximum annual premium].~~

~~[H.](6) If the policy will lapse under the guaranteed assumptions unless a premium higher than the planned premium is paid, that fact must be disclosed and the date, policy duration, or attained age of lapse must be disclosed in the policy summary and any periodic report.~~

R590-79-[7]6. Failure to Comply.

Failure of an insurer to provide [or deliver a Buyer's Guide]a buyer's guide and either a policy summary or [life-]illustration[~~subject to the requirements of R590-177, Life Insurance Illustrations Rule~~], as provided in this rule [shall constitute-]is an omission [which-]that misrepresents the benefits, advantages, conditions, or terms of an insurance policy.

R590-79-[8]7. Severability.

~~[If any provision of this rule or application to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of this provision to other persons or circumstances shall not be affected.~~

~~R590-79-9. Penalties.~~

~~A person found to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.~~

~~R590-79-10. Enforcement Date.~~

~~The commissioner will begin enforcing this revised rule 45 days after its effective date.]If any provision of this rule, Rule R590-79, or its application to any person or situation is held invalid, such invalidity does not affect any other provision or application of this rule that can be given effect without the invalid provision or application. The remainder of this rule shall be given effect without the invalid provision or application.~~

KEY: insurance law

Date of Last Change: 2021[November 24, 2009]

Notice of Continuation: August 20, 2019

Authorizing, and Implemented or Interpreted Law: 31A-2-201

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code Ref (R no.): R590-83

Filing ID
53999

Agency Information

| | | |
|-----------------------------|------------------------------------|-----------------|
| 1. Department: | Insurance | |
| Agency: | Administration | |
| 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:

R590-83. Unfair Discrimination on the Basis of Sex or Marital Status

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 No. 2021-12. During the review of this rule, the Department of Insurance (Department) discovered a number of minor issues that need to be amended.

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. Others are changes to make the language of this rule more clear and Section R590-83-6 is being updated to use the Department's current language. The changes do not add, remove, or change any regulations or requirements.

Fiscal Information

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

A) State budget:

There is no anticipated cost or savings to the state budget. The changes are largely clerical in nature and will not change how the Department functions.

B) Local governments:

There is no anticipated cost or savings to local governments. The changes are largely clerical in nature and will not affect local governments.

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

There is no anticipated cost or savings to small businesses. The changes are largely clerical in nature and will not affect small businesses.

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

There is no anticipated cost or savings to non-small businesses. The changes are largely clerical in nature and will not affect non-small businesses.

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

There is no anticipated cost or savings to any other persons. The changes are largely clerical in nature.

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

There are no compliance costs for any affected persons. The changes are largely clerical in nature.

G) 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-2-201 | Section 31A-23a-402 | |
|-------------------|---------------------|--|

Public Notice Information

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

A) Comments will be accepted until: 12/01/2021

10. This rule change MAY become effective on: 12/08/2021

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: | 10/04/2021 |
|--|---|--------------|------------|

R590. Insurance, Administration.**R590-83. Unfair Discrimination on the Basis of ~~[Sex]~~ Gender or Marital Status.****R590-83-1. Authority.**

This rule is promulgated by the commissioner pursuant to S[ub]sections 31A-2-201(3)(a), which empowers the Commissioner to enforce Title 31A and to make rules to implement its provisions, and Subsection] and 31A-23a-402(4), which empowers the commissioner to define and prohibit unfair marketing practices].

R590-83-2. Purpose and Scope.

(1) The purpose of this rule is to identify and define certain practices ~~[which]~~ that the commissioner finds are unfair and discriminatory.

(2) This rule applies to an insurer engaged in the business of insurance.

R590-83-3. ~~[Scope]~~ Definitions.

~~[This rule applies to all new or renewal insurance contracts offered for sale in Utah]~~ Terms used in this rule are defined in Section 31A-1-301.

R590-83-4. Availability Requirements and Prohibited Transactions.

~~[Availability of any-]~~ (1) An ~~[insurance contract may not be denied to an]~~ insured or prospective insured may not be denied coverage on the basis of ~~[sex-]~~ gender or marital status ~~[of the insured or prospective insured]~~.

(a) The amount of benefits payable, or any term, condition, or type of coverage may not be restricted, modified, excluded, or reduced on the basis of ~~[the sex-]~~ gender or marital status ~~[of the insured or prospective insured, except m]~~.

(b) Marital status may not be considered ~~[for the purpose of]~~ when defining eligibility for dependent or family coverage. ~~[An insurer may treat a polygamous relationship differently than a monogamous relationship for purposes of defining or providing dependent or family coverage provided that the treatment reflects~~

~~reasonable treatment of the interests of the affected parties and safeguards the economic interests of the insurer and other policyholders or prospective policyholders. Any insurer or representative of an insurer acting in contravention of this rule shall be deemed to have engaged in an unfair or deceptive act or practice as provided by Chapter 23a, Title 31A. Examples of the practices prohibited by this section]~~

(2) Prohibited practices include:

(a) denying, canceling or refusing to renew coverage, or providing coverage on different terms, because the insured or prospective insured is residing with another person not related by blood or marriage;

(b) offering coverage to ~~[males]~~ an individual of a particular gender gainfully employed at home, employed part-time, or employed by relatives while denying or offering reduced coverage to ~~[females-]~~ an individual of a different gender similarly employed;

(c) reducing disability benefits for ~~[females-]~~ an individual of a particular gender who becomes disabled while not gainfully employed full-time outside the home when a similar reduction is not applied to ~~[males]~~ an individual of a different gender;

(d) denying ~~[females-]~~ an individual of a particular gender a waiver of premium provisions that are available to ~~[males]~~ an individual of a different gender, or offering the provisions to ~~[females-]~~ an individual of a particular gender only for contract limits that are lower than those available to ~~[males]~~ an individual of a different gender;

(e) refusing to offer maternity benefits to ~~[insureds- or prospective insureds-]~~ an insured or prospective insured purchasing an individual contract[s] when a comparable family coverage contract[s] offers maternity benefits;

(f) denying, under a group contract[s], dependent[s] coverage to ~~[husbands-]~~ the spouse of ~~[female employees-]~~ an employee of a particular gender when dependent[s] coverage is available to ~~[wives-]~~ the spouse of ~~[male employees]~~ an employee of a different gender;

(g) offering coverage to ~~[males-]~~ an individual of a particular gender in certain occupations while denying coverage or offering more limited coverage to ~~[females-]~~ an individual of a different gender in the same occupational categories;

(h) offering ~~[males-]~~ an individual of a particular gender higher benefit levels or longer benefit[s] periods, or both, than are offered to ~~[females-]~~ an individual of a different gender in the same classifications;

(i) offering a contract[s] containing different definitions of disability for ~~[females and males-]~~ an individual of a particular gender and an individual of a different gender in the same classifications;

(j) offering a contract[s] containing different waiting and elimination periods for ~~[females and males]~~ an individual of a particular gender and an individual of a different gender;

(k) requiring ~~[female applicants-]~~ an applicant of a particular gender to submit to a medical examination[s] while not requiring ~~[males]~~ an applicant of a different gender to submit to ~~[the-]~~ a medical examination[s] for the same coverage;

(l) establishing different benefit options for ~~[females and males]~~ an individual of a particular gender and an individual of a different gender;

(m) denying to a divorced or a single person[s] coverage available to a married person[s];

(n) limiting the amount of coverage available to an insured or prospective insured based upon the person's marital status;

(o) denying an employee[s] of ~~[one sex-]~~ a particular gender insurance benefits that are offered to a dependent[s] who ~~[are-]~~ is of the same ~~[sex-]~~ gender as the employee[s];

(p) denying a married or separated ~~[female-]~~ individual of a particular gender the right to obtain or continue coverage in ~~[her-]~~ the

NOTICES OF PROPOSED RULES

individual's own name when the same does not apply to [males]an individual of a different gender;

(q) establishing different issue age requirements for [females and males]an individual of a particular gender and an individual of a different gender;

(r) establishing different occupational classifications for [females and males]an individual of a particular gender and an individual of a different gender;

(s) denying coverage to an unwed person[s] or their dependent[s], or both.

R590-83-5. Class Rating Differentials.

(1) The establishment of reasonable and consistently applied class rating differentials does not constitute a practice prohibited by Section [4]R590-83-3[. This rule may not be deemed to prohibit charging different premium rates on the basis of sex].

(2) Unless otherwise prohibited by law, this rule permits charging different premium rates on the basis of gender.

R590-83-6. Severability.

[If any provision of this rule is held invalid, it may not affect the provisions of this rule that can be given effect, and to that extent, the provisions of this rule are declared to be severable.]If any provision of this rule, Rule R590-83, or its application to any person or situation is held invalid, such invalidity does not affect any other provision or application of this rule that can be given effect without the invalid provision or application. The remainder of this rule shall be given effect without the invalid provision or application.

KEY: insurance law

Date of Last Change: 2021[1989]

Notice of Continuation: August 20, 2019

Authorizing, and Implemented or Interpreted Law: 31A-23a-402; 31A-2-201

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

| | | |
|--------------------------------------|-----------------|------------------------|
| Utah Admin. Code Ref (R no.): | R590-140 | Filing ID 54018 |
|--------------------------------------|-----------------|------------------------|

Agency Information

| | | |
|-----------------------------|------------------------------------|-----------------|
| 1. Department: | Insurance | |
| Agency: | Administration | |
| 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:

R590-140. Reference Filings of Rate Service Organization Prospective Loss Costs

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 No. 2021-12. During the review of this rule, the Department of Insurance (Department) discovered a number of minor issues that need to be amended.

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. Other changes make the language of this rule more clear and updates the new Section R590-140-9 to use the Department's current language. The changes do not add, remove, or change any regulations or requirements.

Fiscal Information

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

A) State budget:

There is no anticipated cost or savings to the state budget. The changes are largely clerical in nature and will not change how the Department functions.

B) Local governments:

There is no anticipated cost or savings to local governments. The changes are largely clerical in nature and will not affect local governments.

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

There is no anticipated cost or savings to small businesses. The changes are largely clerical in nature and will not affect small businesses.

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

There is no anticipated cost or savings to non-small businesses. The changes are largely clerical in nature and will not affect non-small businesses.

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

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

There is no anticipated cost or savings to any other persons. The changes are largely clerical in nature.

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

There are no compliance costs for any affected persons. The changes are largely clerical in nature.

G) 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-2-201

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: 12/01/2021

10. This rule change MAY become effective on: 12/08/2021

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: | 10/13/2021 |
|--|---|--------------|------------|

R590. Insurance, Administration.

R590-140. Reference Filings of Rate Service Organization Prospective Loss Costs.

R590-140-1. Authority.

This rule is promulgated by the [Insurance C] commissioner pursuant to [the general authority granted under Subsections 31A-2-201(1) and 31A-2-201(3)(a) to adopt rules for the implementation of the Utah Insurance Code] Section 31A-2-201.

R590-140-2. Purpose and Scope.

[Pursuant to 31A-19a-205, rate filings made by individual insurers in compliance with the requirements of Section 31A-19a-203 may include rates, pure premium rates and supplementary information prepared by a rate service organization. The purpose of this rule is to set forth rules and procedural requirements which the commissioner deems necessary to carry out the provisions of Section 31A-19a-203 as to the rate and supplementary rate information filings of property and casualty insurers that refer to and incorporate, in whole or in part, prospective loss costs filings made by rate service organizations.

R590-140-3. Applicability and Scope.

~~This rule applies to the types of insurance described in Section 31A-19a-101 and to insurers making filings under Section 31A-19a-203 subject to any exemptions the commissioner may order pursuant to Section 31A-19a-103](1)(a) The purpose of this rule is to regulate reference filings and insurers that make reference filings.~~

~~(b) This rule establishes procedures and requirements for a property and casualty insurer to comply with the requirements of Section 31A-19a-203 regarding rate and supplementary rate information filings that refer to and incorporate a rate service organization's prospective loss costs filings.~~

~~(2)(a) This rule applies to any kind or line of direct insurance written on risks or operations except insurance exempt under Subsection 31A-19a-101(2)(a)(ii).~~

~~(b) Except for an insurer exempt under Section 31A-19a-103, this rule applies to an insurer making a filing under Section 31A-19a-203.~~

R590-140-4[3]. Definitions.

~~[For the purpose of this rule, the commissioner adopts the definitions as particularly set forth in Section 31A-1-301, and Section 31A-19a-102 in addition to the following] Terms used in this rule are defined in Sections 31A-1-301 and 31A-19a-102. Additional terms are defined as follows:~~

~~(1) "Reference filing" means a [filing of] prospective loss costs filing, a supporting information filing, or both, made by a licensed rate service organization[. An insurer that subscribes to the rate service organization may refer to or incorporate elements of reference filings in its own filings].~~

R590-140-5[4]. Filings of Advisory Prospective Loss Costs and Adjustment Factors.

~~(1) A rate service organization may develop and make a reference filing[s] containing advisory prospective loss costs.[The]~~

~~(2) Each reference filing [must] shall:~~

~~(a) contain the statistical data and supporting information for [the] each calculation[s] or assumption[s] underlying [those] the prospective loss costs; and~~

~~(b) [be filed and effective in the same manner as rates filed pursuant to Section 31A-19a-203] comply with the rate filing requirements under Section 31A-19a-203.~~

~~(2[3]) An insurer may [make a filing of rates by] file rates if the insurer:~~

~~(a) becomes[ing] a participating insurer of a licensed rate service organization that makes an advisory prospective loss costs reference filing[s of advisory prospective loss costs];~~

~~(b) authorizes[ing] the commissioner to accept a reference filing[s] on [its] the insurer's behalf; and~~

~~(c) files[ing with the commissioner] the information required in Section R590-140-6[5] with the commissioner.~~

~~(3[4]) If an insurer [chooses] follows the procedure outlined in Subsection [(2) above](3), the insurer's rates shall be:~~

~~(a) the prospective loss costs filed by the rate service organization[pursuant to Subsection (1)]; and~~

~~(b) any adjustment in effect for the insurer under Section R590-140-5 to the filed prospective loss costs[filed as required by Section R590-140-6 that are in effect for that insurer].~~

~~(4)[5] [The filing of an adjustment to the prospective loss costs by an insurer shall become effective in accordance with the provisions of Section 31A-19a-203 that apply to the filing of rates] An insurer's adjustment regarding a prospective loss costs filing becomes~~

~~effective in accordance with the rate filing requirements under Section 31A-19a-203.~~

R590-140-6[5]. Required Filing Documents.

~~(1) An insurer's filing [by an insurer] that refers to a rate service organization's reference filing of prospective loss costs [made by a rate service organization must] shall include:~~

~~(a) the Utah[TAH] Insurer Loss Costs Multiplier Filing Forms [P] pages one and two; and~~

~~(b) if applicable, the Expense Constant Supplement[if applicable. Samples of these forms are available from the Utah Insurance Department].~~

~~(2) Sample forms of the Utah Insurer Loss Costs Multiplier Filing Forms and the Expense Constant Supplement are available on the department's website: <https://insurance.utah.gov>.~~

R590-140-7[6]. Supplementary Rate Information.

~~(1) A rate service organization may develop and [make filings of] file supplementary rate information.[These]~~

~~(2) Each supplementary rate information filing[s] shall [be made in accordance] comply with Sections 31A-19a-203 and 31A-19a-205.~~

~~(2[3]) An insurer may [make a filing of] file supplementary rate information [by] if the insurer:~~

~~(a) becomes[ing] a participating insurer of a licensed rate service organization; and~~

~~(b) authorizes[ing] the commissioner to accept a filing by the rate service organization on the insurer's behalf[of the insurer].~~

~~(3[4]) Except for a[ny] modification filed by the insurer, the insurer's supplementary rate information [of the insurer] filing must be the same as [that filed by] the rate service organization's supplementary rate information filing.~~

R590-140-8[7]. Filing of Rate and Manual Pages.

~~(1) [If the] An insurer is not required to develop or file final rate pages with the commissioner if the insurer's final rates [of an insurer] are determined solely by applying [its] the insurer's adjustment[as presented] in the Utah[TAH] Insurer Loss Costs Multiplier Filing Forms [P] pages one and two and, if applicable, the Expense Constant Supplement[if applicable,] to the prospective loss costs [that are] contained in the reference filing and printed in the rate service organization's rating manual[of the rate service organization, the insurer is not required to develop or file its final rate pages with the commissioner].~~

~~(2) [If an] An insurer must file final rate pages with the commissioner if:~~

~~(a) the insurer prints and distributes the final rate pages for [its] the insurer's own use; and~~

~~(b) the rates are based on the application of [its] the insurer's filed adjustments to [the] a rate service organization's prospective loss costs[of a rate service organization, the insurer must file those pages with the commissioner].~~

~~(3) [If] An insurer must submit the insurer's rates to the commissioner when a rate service organization does not print prospective loss costs in [its] the rate service organization's rating manual[the insurer must submit its rates to the commissioner].~~

~~(4) [If a rate service organization does not] An insurer must file certain premium elements, such as minimum premiums, [these must be filed by the insurer] when a rate service organization does not file the premium elements.~~

R590-140-[9]8. Existing Rates and Deviations.

(1) Nothing in ~~[these procedures shall be construed to]~~ this rule may require a rate service organization or ~~[its]~~ the rate service organization's participating insurers to refile rates previously filed with the commissioner.

(2) A ~~rate service organization's~~ participating insurer ~~[of a rate service organization]~~ may continue to use ~~[all]~~ any rate[s] and deviation[s] currently filed for ~~[its]~~ the insurer's use until the insurer:

(a) ~~makes [its own filing to change its rates by making an independent filing or by filing] an independent filing to change the insurer's rates; or~~

(b) ~~files the Utah [TAH] Insurer Loss Costs Multiplier Filing Forms [P] pages one and two and, if applicable, the Expense Constant Supplement[, if applicable that adopts the] adopting:~~

(i) ~~a rate service organization's prospective loss costs[- of a rate service organization or an]; or~~

(ii) ~~the insurer's adjustment to the rate service organization's prospective loss costs[- by the insurer].~~

(3) ~~[In order that the commissioner may verify the rates being used, the insurer is required to maintain documentation demonstrating that the rates and deviations being used by the insurer have been filed with the commissioner. These documents must be produced at the request of the commissioner. Failure or refusal to do so may subject the insurer to sanctions pursuant to 31A-2-308.] An insurer shall maintain any document that:~~

(a) ~~demonstrates the insurer is using rates and deviations that have been filed with the commissioner; and~~

(b) ~~the commissioner may use to verify the insurer's rates.~~

R590-140-[10]2. Severability.

~~[If any provision of this rule or its application to any person or circumstance is for any reason held to be invalid, its invalidity may not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.] If any provision of this rule, Rule R590-140, or its application to any person or situation is held invalid, such invalidity does not affect any other provision or application of this rule that can be given effect without the invalid provision or application. The remainder of this rule shall be given effect without the invalid provision or application.~~

KEY: insurance

Date of Last Change: ~~2021~~ June 8, 2000

Notice of Continuation: February 13, 2020

Authorizing, and Implemented or Interpreted Law: 31A-2-201

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code Ref (R no.): **R590-161**

Filing ID
54000

Agency Information

| | |
|------------------------|------------------------------------|
| 1. Department: | Insurance |
| Agency: | Administration |
| 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:**

R590-161. Disability Income Policy Disclosure

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 No. 2021-12. During the review of this rule, the Department of Insurance (Department) discovered a number of minor issues that needed to be amended.

4. Summary of the new rule or change (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. Other changes remove an outdated provision, make the language of this rule more clear and update the new Section R590-161-5 to use the Department's current language. The changes do not add, remove, or change any regulations or requirements.

Fiscal Information**5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:****A) State budget:**

There is no anticipated cost or savings to the state budget. The changes are largely clerical in nature and will not change how the Department functions.

B) Local governments:

There is no anticipated cost or savings to local governments. The changes are largely clerical in nature and will not affect local governments.

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

NOTICES OF PROPOSED RULES

There is no anticipated cost or savings to small businesses. The changes are largely clerical in nature and will not affect small businesses.

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

There is no anticipated cost or savings to non-small businesses. The changes are largely clerical in nature and will not affect non-small businesses.

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

There is no anticipated cost or savings to any other persons. The changes are largely clerical in nature.

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

There are no compliance costs for any affected persons. The changes are largely clerical in nature.

G) 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-2-201 | | |
|-------------------|--|--|

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: 12/01/2021

10. This rule change MAY become effective on: 12/08/2021

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: | 10/04/2021 |
|--|---|--------------|------------|

R590. Insurance, Administration.

R590-161. ~~Disability~~ Income Replacement Insurance Policy Disclosure.

R590-161-1. Authority.

This rule is ~~issued pursuant to the authority vested in the commissioner under~~ promulgated by the commissioner pursuant to Section 31A-2-201.

R590-161-2. Purpose and Scope.

(1) The purpose of this rule is to require that an insurer providing an income replacement insurance policy give notice to each insured regarding reduction of benefit provisions.

(2) This rule applies to an insurer that provides an income replacement insurance policy.

R590-161-3. Definition.

["Disability Income Policy" means a group or individual insurance policy that provides for payments to the insured to replace income lost from accident or sickness] Terms used in this rule are defined in Section 31A-1-301.

R590-161-[3]4. Rule.

[A.] Unless the reduction is clearly explained in the outline of coverage, the group certificate, and the policy, the amount of benefit payable by an insurer under [a disability] an income replacement insurance policy may not be reduced by any:

(1) worker's compensation benefit paid to the insured; [or]

(2) social security benefit paid to the insured; or

(3) [any] other amount the insured has received, or is entitled to receive by law or contract, including any other [disability contract.

B. Any insurer that has disability income policies in effect that have reduction of benefit provisions that were not clearly explained in the outline of coverage, the group certificate, and the policy, will, within 30 days after the effective date of this rule, send notices to these insureds that clearly explain these reductions] income replacement insurance policy.

R590-161-[4]5. Severability.

[If any provision of this rule or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of the provision to other persons or circumstances shall not be affected thereby.] If any provision of this rule, Rule R590-161, or its application to any person or situation is held invalid, such invalidity does not affect any other provision or application of this rule that can be given effect without the invalid provision or application. The remainder of this rule shall be given effect without the invalid provision or application.

KEY: insurance

Date of Last Change: 2021[1994]

Notice of Continuation: September 21, 2018

Authorizing, and Implemented or Interpreted Law: 31A-2-201

NOTICE OF PROPOSED RULE

TYPE OF RULE: Repeal and Reenact

| | | |
|--------------------------------------|---------------|----------------------------------|
| Utah Admin. Code Ref (R no.): | R708-2 | Filing ID 54012 |
|--------------------------------------|---------------|----------------------------------|

Agency Information

| | |
|-----------------------------|--------------------------|
| 1. Department: | Public Safety |
| Agency: | Driver License |
| Street address: | 4501 S 2700 W |
| City, state and zip: | Salt Lake City, UT 84129 |
| Mailing address: | PO Box 144501 |

| | | |
|--|-------------------------------|---------------------|
| City, state and zip: | Salt Lake City, UT 84114-4501 | |
| Contact person(s): | | |
| Name: | Phone: | Email: |
| Kim Gibb | 801-964-4482 | kgibb@utah.gov |
| Tara Zamora | 801-964-4483 | tarazamora@utah.gov |
| Britani Flores | 801-884-8313 | bflores@utah.gov |
| Please address questions regarding information on this notice to the agency. | | |

General Information**2. Rule or section catchline:**

R708-2. Commercial Driver Training Schools

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

The purpose of this change is to clarify the requirements needed to obtain a license for a commercial driver training school. It clarifies the requirements needed to obtain a license to be an instructor and tester for commercial driver training schools. Language has been added to comply with H.B.18 passed in the 2021 General Session. This rule has been completely restructured for cohesion.

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 filing condenses some information that was repetitive in the repealed rule. Rule sections have changed order from the repealed rule for cohesion and to enable a better understanding of the contents. Rule sections have been updated to reflect current technology by adding the Driver License Division's Driver Education Management System (DEMS) to update antiquated record keeping practices. Language regarding observation hours required for driver education has been modified to be in compliance with new legislation.

Fiscal Information**5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:****A) State budget:**

This rule change is not expected to have any fiscal impact on state government because this rule filing is to remove repetitive information, as well as change the order of the titles for ease of understanding. The requirements contained within this rule have not changed.

B) Local governments:

This rule change is not expected to have any fiscal impact on local governments because this rule filing is to remove repetitive information, as well as change the order of the titles for ease of understanding. The requirements contained within this rule have not changed.

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

This rule change is not expected to have any fiscal impact on small businesses because this rule filing is to remove repetitive information, as well as change the order of the titles for ease of understanding. The requirements contained within this rule have not changed.

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

This rule change is not expected to have any fiscal impact on non-small businesses because this rule filing is to remove repetitive information, as well as change the order of the titles for ease of understanding. The requirements contained within this rule have not changed.

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

This rule change is not expected to have any fiscal impact on other persons because this rule filing is to remove repetitive information, as well as change the order of the titles for ease of understanding. The requirements contained within this rule have not changed.

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

There are no compliance costs associated with this rule.

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 will not have an impact on businesses. The changes are being made in an effort to streamline the language in this rule in the interest of clarity. Nothing has changed procedurally, with the exception of the removal of the requirement that six hours of observation training be completed in order to successfully pass a driver education course, as is required due to the passage of H.B. 18 (2021). 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 53-3-505

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: 12/01/2021

| | |
|--|------------|
| 10. This rule change MAY become effective on: | 12/08/2021 |
| 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: | Christopher Caras, Division Director | Date: | 10/07/2021 |
|--|--------------------------------------|--------------|------------|

R708. Public Safety, Driver License.**~~[R708-2. Commercial Driver Training Schools.~~****~~R708-2-1. Authority.~~**

~~This rule is authorized by Section 53-3-505.~~

~~R708-2-2. Purpose.~~

~~Sections 53-3-501 through 509 require the Driver License Division to administer the Commercial Driver Training Schools Act by licensing and regulating commercial driver training schools and instructors of these schools. Rule R708-2 assists the division in implementing these sections.~~

~~R708-2-3. Definitions.~~

~~(1) "Crime of moral turpitude" means an offense under the statutes of this state or any other jurisdiction, which under the rules of evidence may be used to impeach a witness or includes:~~

- ~~(a) theft;~~
- ~~(b) tax evasion;~~
- ~~(c) issuing bad checks;~~
- ~~(d) deceptive business practices;~~
- ~~(e) perjury;~~
- ~~(f) extortion;~~
- ~~(g) falsifying government records;~~
- ~~(h) receiving stolen property;~~
- ~~(i) sex offenses;~~
- ~~(j) driving under the influence and alcohol related reckless driving;~~
- ~~(k) assault; and~~
- ~~(l) domestic violence offenses.~~

~~R708-2-4. Testing Only School Limitations.~~

~~(1) A testing only school may conduct behind the wheel or observation instruction, or both, upon approval by the division.~~

~~(2) A testing only school may not engage in education or training of persons, either practically or theoretically, to drive motor vehicles except under one of the following circumstances:~~

- ~~(a) when counseling the driver following a test in reference to errors made during the administration of the test; or~~
- ~~(b) when conducting behind the wheel or observation instruction as approved by the division.~~

~~(3) A tester may not test an individual who has completed any behind the wheel or observation instruction through the testing only school with which the tester is employed.~~

~~R708-2-5. Licensing Requirement for a Commercial Driver Training School.~~

~~(1) Every corporation, partnership or person who owns a commercial driver training school shall obtain a license from the division. Commercial driver training school license applications may be obtained from the Driver License Division at 4501 South 2700 West, Salt Lake City, Utah. Applicants are also responsible for obtaining any business licenses required by the municipality or county in which they are located. Commercial driver training School and business licenses must be conspicuously displayed in the licensee's principal place of business and branch offices. Each commercial driver training school shall be inspected by a division representative before it can be licensed.~~

~~(2) A license expires one year from the date of issued. The fee for an original license is \$100. The annual fee for a renewal license is \$100. The annual fee for each branch license is \$30. Fees shall be payable to the Department of Public Safety. When a license is revoked, refused issuance, or reinstatement, no part of the fee will be refunded.~~

~~(3) Licenses are not transferable.~~

~~(4) When a license is lost or destroyed, a duplicate shall be issued upon payment of a fee of \$10. A notarized affidavit setting forth the date the license was lost or destroyed and the surrounding circumstances shall be submitted to the division.~~

~~(5) When any commercial driver training school or branch office is discontinued, the commercial driver training school or branch office license shall be surrendered to the division within five days. The licensee shall state in writing the reason for the surrender.~~

~~(6) Any branch office or classroom facility in a location other than the commercial driver training school's principal place of business shall be separately licensed. A branch office shall meet the same requirements as the commercial driver training school's principal place of business and shall be similarly equipped and perform substantially the same services. Application for a branch office license shall be made on an application form provided by the division. Branch offices shall be inspected by a division representative before they may be licensed.~~

~~(7) Before becoming licensed, each commercial driver training school shall employ a licensed operator to operate the commercial driver training school and each branch office. The current licensed operator shall be identified on the application maintained by the division for each commercial driver training school or branch office. A single operator may operate multiple branch offices of the same school. When the operator discontinues employment with the commercial driver training school, a new operator shall be employed before continuation of operations and the operations of any branch offices for which the individual has been identified as the operator.~~

~~(a) An individual may not be employed with more than one commercial driver training school or testing only school at a time.~~

~~(8) Unless one school has been designated by the division as a testing only school, two or more schools owned by separate individuals and owned under different school names may not operate from the same facility or office space. A clear separation of the schools shall be identified, and each school shall comply with standards set forth in Rule R708-2.~~

~~(9) Each school or classroom facility shall post signs to identify the school by name as the school is listed on the school certification.~~

~~R708-2-6. Licensing Requirement for a Testing Only School.~~

~~(1) Every corporation, partnership or person who owns a testing only school shall obtain a school license from the division.~~

NOTICES OF PROPOSED RULES

School license applications may be obtained from the Driver License Division at 4501 South 2700 West, Salt Lake City, Utah. Applicants are also responsible for obtaining any business licenses required by the municipality or county in which they are located. School and business licenses must be conspicuously displayed in the licensee's principal place of business and branch offices. Each school shall be inspected by a division representative before it may be licensed.

~~(2) A license expires one year from the date of issue. The fee for an original license is \$100. The annual fee for a renewal license is \$100. The annual fee for each branch license is \$30. Fees shall be payable to the Department of Public Safety. If a license is revoked, refused issuance, or reinstatement, no part of the fee will be refunded.~~

~~(3) Licenses are not transferable.~~

~~(4) When a license is lost or destroyed, a duplicate shall be issued upon payment of a fee of \$10. A notarized affidavit setting forth the date the license was lost or destroyed and the surrounding circumstances shall be submitted to the division.~~

~~(5) When any school or branch office is discontinued, the school or branch office shall surrender its license to the division within five days. The licensee shall state in writing the reason for surrender.~~

~~(6) Any branch office in a location other than the school's principal place of business shall be separately licensed. A branch office shall meet the same requirements as the school's principal place of business and shall be similarly equipped and perform substantially the same services. Application for a branch office license shall be made on an application form provided by the division. A division representative shall inspect branch offices before they may be licensed.~~

~~(7) An individual may not be employed with more than one commercial driver training school or testing only school at a time.~~

~~(8) Unless one school has been designated by the division as a testing only school, two schools owned by separate individuals and owned under different school names may not operate from the same facility or office space. A clear separation of the schools shall be identified, and each school shall comply with standards set forth in Rule R708-2.~~

~~(9) Each school or classroom facility shall post signs to identify the school by name as the school is listed on the school certification~~

~~(10) It is not required that a testing only school maintain a classroom facility in the school or branch office location. A testing only school location and branch office shall have a designated area in which to maintain required files and records.~~

R708-2-7. Application for a Commercial Driver Training School License or a Testing Only School License.

~~(1) Application for an original or renewal commercial driver training school license or a testing only school license shall be made on forms provided by the division, signed by the applicant, and notarized. In the case of a partnership, the application shall be signed by each partner.~~

~~(2) In the case of a corporation, the application shall be signed by an officer of the corporation. Applications must be submitted at least 60 days prior to licensing. An appointment shall be made when the application is filed to have the school inspected by a division representative.~~

~~(3) Every application shall be accompanied by the following supplementary documents:~~

~~(a) samples of each form, receipt, and curriculum to be used by the school;~~

~~(b) a schedule of fees for each services to be performed by the school;~~

~~(c) a fingerprint card for each applicant, partner or corporate officer. A Bureau of Criminal Identification check shall be done by the division on each applicant, partner, and corporate officer. Applicants are responsible for paying the cost associated with the criminal history check. Fingerprints may be taken by any law enforcement agency. The division may require renewal applicants to submit new fingerprint cards and pay the cost associated with the criminal history check;~~

~~(d) a certificate of insurance for each vehicle used for driver training or testing purposes;~~

~~(e) a copy of each test and criterion, with answers, that the school requires in order for a student to satisfactorily complete the driver training course which are subject to approval of the division; including copies of translations;~~

~~(f) evidence that a surety bond has been obtained by the school in compliance with Section R708-2-8; and~~

~~(g) a certified copy of a certificate of incorporation as required in a case of a corporation.~~

~~(4) The division may require that a credit check be performed for each applicant. Based on the results of the credit check, the division may deny certification.~~

R708-2-8. Surety Bond Requirements.

~~(1) The amount of the surety bond shall be determined by the division with the use of a formula that incorporates the number of students that the school is capable of instructing over a period of three months based on its facility, equipment, personnel, and the tuition that would be collected from each student, with a minimum requirement of \$5,000 coverage and a maximum requirement of \$60,000 coverage.~~

~~(2) When, at any time, there is a change in the number of instructors, the number of vehicles, or the size of the classroom facility, the division shall reevaluate the amount of the required surety bond and adjust it accordingly.~~

~~(3) Cancellation of the surety bond is grounds for revocation, probation, or refusal to issue or renew the school license. A school designated by the Department of Public Safety as a testing only school may not be required to obtain a surety bond unless it has been authorized by the division to conduct behind the wheel training.~~

~~(4) A school that does not charge tuition for driver education is not required to maintain a surety bond.~~

R708-2-9. Application Requirements for a Commercial Driver Training School Instructor License.

~~(1) Every person who serves as an instructor in a commercial driver training school, including the owner, operator, partner or corporate officer of the licensee, substitute or part time instructor, shall obtain an instructor's license from the division. This license shall be valid only for the specific driver training school listed on the license.~~

~~(2) A license expires one year from issue date. The fee for an original license is \$30. The annual fee for a renewal license is \$20. Fees shall be payable to the Department of Public Safety. If a license is revoked, refused issuance, or refused renewal, no part of the fee shall be refunded.~~

~~(3) Licenses are not transferable.~~

~~(4) When an instructor license is lost or destroyed, a duplicate shall be issued upon payment of a fee of \$6. A notarized affidavit setting forth the date the license was lost or destroyed and the surrounding circumstances shall be submitted to the division.~~

R708-2-10. Application Requirements for a Commercial Driver Training School Operator License.

~~(1) Every person who serves as an operator of a commercial driver training school, including the owner, operator, partner or~~

corporate officer of the licensee, substitute or part time instructor, shall obtain an operator license from the division. This license shall be valid only for the specific driver training school listed on the license.

(2) A school operator license is not valid unless accompanied by a valid instructor license.

(a) Requirements for licensure as a school operator include:

- (i) six college semester credit hours;
- (ii) eight college quarter credit hours in business related courses through an accredited college or university;
- (iii) two years experience operating a business; or
- (iv) any combination thereof.

(b) An applicant for operator shall submit evidence by form of transcripts or resume as proof of this requirement.

(c) Each potential school operator shall submit to the division a business plan. The plan shall contain written acknowledgement of reading, understanding, and a willingness to comply with Rule R708-2. The plan shall also describe how the school will meet the requirements of R708-2. The division shall approve the business plan prior to licensure.

(d) Individuals functioning in the capacity of a commercial driver training school operator prior to January 1, 2003, shall not be required to comply with Subsection R708-2-10(2)(e).

(3) An expired license expires one year from the date issued.

(4) Licenses are non-transferable.

(5) When an operator license is lost or destroyed, a duplicate shall be issued upon request. A notarized affidavit setting forth the date the license was lost or destroyed and the surrounding circumstances shall be submitted to the division.

R708-2-11. Additional Requirements for Commercial Driver Training School Instructors.

(1) In addition to obtaining a license, a commercial driver training school instructor shall:

- (a) have a valid Utah driver license;
- (b) be at least twenty-one years of age;
- (c) have at least three years of driving experience in the United States, Canada, or a country with which the state of Utah has established a license reciprocity agreement;
- (d) have a driving record free:
 - (i) of a conviction for a moving violation; or
 - (ii) of a chargeable accident resulting in suspension or revocation of the driver license during the two year period immediately prior to application and during employment;
- (e) be checked to determine if there is an unsatisfactory driving record in any state;
- (f) be in acceptable physical condition as required by Section 12;

(g) complete specialized professional preparation in driver safety education consisting of at least 21 quarter hours, or 14 semester hours of credit as approved by the division. Of the 21 quarter hours or 14 semester hours, one class shall be in teaching methodology and another class shall include basic driver training instruction or organization and administration of driver training instruction;

(h) pass a written test given by the division which may cover the following:

- (i) commercial driver training school rules;
- (ii) traffic laws;
- (iii) safe driving practices;
- (iv) motor vehicle operation;
- (v) teaching methods and techniques;
- (vi) statutes pertaining to commercial driver training schools;
- (vii) business ethics;

(viii) office procedures and record keeping;

(ix) financial responsibility;

(x) no fault insurance;

(xi) procedures involved in suspension or revocation of an individual's driving privilege;

(xii) material contained in the "Utah Driver Handbook"; and

(xiii) traffic safety education programs;

(i) pass a practical driving test;

(j) pass the same standard eye test that is given to applicants who apply for a Utah operator or commercial driver license; and

(k) submit a fingerprint card for a criminal history check and pay the cost associated with the criminal history check.

(2) Commercial driver training schools shall be responsible for sponsoring, controlling, and supervising the actions of instructors.

(a) No school may knowingly employ any instructor if the instructor has been convicted of or there are reasonable grounds to believe that the instructor has committed a felony or a crime of moral turpitude.

(3) The instructor's license must be in the possession of the instructor at all times while providing behind the wheel or classroom instruction.

R708-2-12. Application and Medical Requirements for a Commercial Driver Training School Instructor License.

(1) Application for an original or renewal instructor's license shall be made on forms provided by the division, signed by the applicant and notarized. Applications shall be submitted at least 60 days prior to licensing.

(2) The original and each yearly renewal application shall be accompanied by a medical profile form provided by the division and completed by a health care professional as defined in Subsection 53-3-302(2).

(3) The medical profile form shall indicate any physical or mental impairments that may preclude service as a commercial driver training school instructor. The physical examinations shall take place no earlier than three months prior to application.

(4) The commercial driver training school desiring to employ the applicant as an instructor shall sign the application verifying that the applicant is employed by the school.

(5) When deemed necessary by the division, an applicant seeking to renew an instructor's license may be required to take a driving skills test.

(6) When deemed necessary by the division, an applicant seeking to renew an instructor license may be required to resubmit a fingerprint card for a criminal history check and pay the cost associated with the criminal history check.

R708-2-13. Additional Training Requirements.

All holders of school licenses, operator licenses, and instructor licenses may at the discretion of the division be required to attend training by the division regarding new statutes or rules.

R708-2-14. Classroom and Behind The Wheel Instruction.

(1) Classroom instruction for students shall meet or exceed 18 hours and shall be conducted in not less than nine separate class sessions on nine separate days of two hours per class. Each classroom session shall be numbered to be identified on the student record. Classroom curriculum may not be repeated in any of the nine sessions provided to a student except in the form of a review of materials covered in a previous classroom session.

(a) The time frame allotted for review is not to exceed 10 minutes per classroom session. Not more than five of the classroom

hours may be devoted to showing slides or films. Instructors shall not use or do anything that may distract their attention away from the classroom instruction. For example, use of phones or other electronic devices, reading, sleeping, or helping walk in customers while conducting any classroom training.

(b) Classroom instruction shall cover the following areas:

- (i) attitudes and physical characteristics of drivers;
- (ii) driving laws with special emphasis on Utah law;
- (iii) driving in urban, suburban, and rural areas;
- (iv) driving on freeways;
- (v) basic maintenance of the motor vehicle;
- (vi) affect of drugs and alcohol on driving;
- (vii) motorcycles, bicycles, trucks, and pedestrian's in traffic;
- (viii) driving skills;
- (ix) Utah's motor vehicle laws regarding financial responsibility and no fault insurance, and a driver's responsibility when involved in an accident; and

(x) suspension or revocation of a driver license.

(2) Behind the wheel includes instruction a student receives while driving a commercial driver training vehicle or while operating a driving simulator. Instruction shall include a minimum of six hours of instruction in a dual control vehicle with a licensed instructor. Each student shall be limited to a maximum of two hours of behind the wheel instruction per day. An instructor may not conduct more than ten hours of behind the wheel instruction within a period of 24 hours and must have at least eight consecutive hours of off duty time between each ten hour shift.

(a) The instructor and no more than one student shall occupy the front seat of the vehicle. Under no circumstances shall there be more than five individuals in the vehicle. Instructors shall not use or do anything that may distract their attention away from the student driver. Instructors may not use cellular phones or other electronic devices, read, sleep, or engage in other similar distracting behaviors while conducting behind the wheel training.

(b) behind the wheel instruction shall include student practice in using vehicle controls to start, shift gears, make right and left turns, stop, backup, and park. This instruction shall begin under relatively simple conditions and progress until the student has acquired reasonable skill in operating the vehicle under varying traffic conditions;

(c) students shall receive experience in driving on urban streets, open highways, or freeways. Behind the wheel instruction shall include the experience of driving under variable conditions which may be used by the instructor at different times of the day and year. Special emphasis should be given to teaching students to show courtesy to other drivers and pedestrians;

(d) students may receive behind the wheel training in a driving simulator. If the simulator is fully interactive the student will receive behind the wheel training in the ratio of two hours driving the simulator and receive one hour of behind the wheel driving. If the simulator is non fully interactive the student will receive behind the wheel training in the ratio of four hours driving the simulators and receive one hour of behind the wheel driving. An instructor shall be present at all times during all simulator training. The division shall approve all simulators prior to training.

(e) each student will be limited to a maximum of either two hours of behind the wheel instruction or two hours of simulation instruction per day;

(f) students shall receive a minimum of six hours of observation time to observe the instructor, other student drivers and other road users. This instruction may include instructor demonstrations, for which hour for hour credit will be given, and may not exceed two hours per day. Students observing from the rear seat, as

well as the student driver, should benefit from time in the vehicle. The instructor's role is not merely to provide driving experience for the student behind the wheel, but to make the vehicle a practical classroom on wheels where all students may learn about the problems which face a driver and the appropriate solution to such problems;

(g) behind the wheel instruction may not be conducted for a student unless the student has been issued a learner permit by the division or the student is in possession of a valid Utah driver license, a temporary permit issued by the division, or a valid out of state or out of country driver license; and

(h) while conducting behind the wheel instruction, students and instructors shall adhere to any driving restrictions listed on the learner permit.

(3) All classroom and behind the wheel instruction shall be conducted by an individual who is licensed as a commercial driver training school instructor as specified in Rule R708-2.

(a) Unless the division grants approval to a commercial driver training school to provide classroom instruction from an unlicensed expert, such as a police officer on a limited basis, the school may not conduct classroom or behind the wheel instruction or allow another individual to conduct classroom or behind the wheel instruction without an instructors license.

(4) Commercial driver training schools shall provide each student a copy of the current Utah Driver Handbook. The handbook may not be used as the sole text of the course, but as an essential aid when Utah traffic laws are studied. Handbooks may be obtained by the commercial driver training schools from the division.

R708-2-15. Extended Learning Course.

(1) A commercial driver training school may offer an extended learning course of instruction as a substitute for the classroom instruction set forth in Section R708-2-11 provided an institution of higher learning and the division approve the course.

(2) An institution of higher learning shall direct any operations of an extended learning course. The institution of higher learning shall notify the division in writing when it has approved a commercial driver training school's extended learning course. The institution of higher learning will monitor any approved extended learning course to ensure the course runs as originally planned.

(a) The institution of higher learning shall notify the division of any substantive changes in the course as well as any approval of changes. The institution of higher learning may approve the extended learning course of more than one commercial driver training school.

(3) An extended learning course shall consist, at a minimum, of:

(a) a text;

(b) a workbook; and

(c) a 50 question competency test that addresses the subjects described in Subsection R708-2-11.

(4) All materials, including texts, workbooks, and tests, used in the course shall be submitted by the commercial driver training school to the division for approval.

(5) The average study time required to complete the workbook exercises shall meet or exceed 30 hours.

(6) An extended learning student must complete all workbook exercises.

(7) An extended learning student shall pass the 50 question written competency test with a score of 80% or higher.

(8) Testing shall occur under the following conditions:

(a) the extended learning student shall take the test at the commercial driver training school or proctored testing facility approved by the division;

- ~~_____ (b) the identity of the extended learning student shall be verified by the licensed instructor prior to testing;~~
- ~~_____ (c) the extended learning student shall complete the test without any outside help;~~
- ~~_____ (d) the commercial driver training school shall maintain, at least, three separate 50 question competency tests created from a test pool of at least 200 questions;~~
- ~~_____ (e) the extended learning student shall be given a minimum of three opportunities to pass the test. After each failure, the commercial driver training school or approved proctored testing facility shall provide the student with additional instruction to assist the student to pass the next test;~~
- ~~_____ (f) the original fees for the course shall include the three opportunities to pass the test and any additional instruction required;~~
- ~~_____ (g) an extended learning student shall pass the test in order to complete driver training; and~~
- ~~_____ (h) the commercial driver training school shall maintain for four years records of all tests administered. Test records shall include the results of all tests taken by every student.~~

R708 2-16. Completion Certificates.

- ~~_____ (1) Upon completion of the requirements of the driver training course, the commercial driver training school shall release to the student a form consisting of a certificate of training and a certificate of completion that shall be signed by the instructor.~~
- ~~_____ (2) The student shall present the certificate of completion to the division when the student makes application for a driver license.~~
- ~~_____ (3) Duplicate certificates of completion may be obtained for \$5.~~
- ~~_____ (4) After the division has provided notice to a commercial driver training school of intent for agency action to occur, it is a violation of Rule R708 2 for the commercial driver training school to allow students to enroll in a driver training course to accept money from students.~~
- ~~_____ (5) In the event the division revokes or refuses licensure renewal to the commercial driver training school, access to the division record-keeping program will be denied immediately.~~

R708 2-17. Commercial Driver Training Vehicles.

- ~~_____ (1) Commercial driver training vehicles used for behind the wheel instruction shall be properly registered, maintained in safe mechanical condition, and equipped with the following:~~
 - ~~_____ (a) functioning dual control brakes;~~
 - ~~_____ (b) outside and inside mirrors for the driver for the purpose of observing rearward;~~
 - ~~_____ (c) inside mirror for the instructor, for the purpose of observing rearward;~~
 - ~~_____ (d) a separate seat belt for each occupant;~~
 - ~~_____ (e) functioning heaters and defrosters; and~~
 - ~~_____ (f) a functioning fire extinguisher, first aid kit, safety flares and reflectors.~~
- ~~_____ (2) Students shall receive instruction in either standard shift or automatic transmission vehicles. The commercial driver training school shall have the option of choosing the type of transmission.~~
- ~~_____ (3) If instruction is given in snow or on icy road surfaces, tire chains or snow tires shall be used in compliance with local police or highway patrol recommendations.~~
- ~~_____ (4) Vehicles shall be capable of passing a state safety inspection at all times during their instructional use. Failure to maintain a vehicle in safe operating condition is grounds for the revocation of the license of the commercial driver training school operating the vehicle.~~

The division may require additional safety testing of the vehicle in addition to the state safety inspection. The commercial driver training school will be responsible for any additional costs that may be assessed.

~~_____ (5) Vehicles unable to meet safety standards shall be replaced by the commercial driver training school.~~

~~_____ (6) It is the responsibility of the commercial driver training school to notify the division of any vehicle added to or deleted from their fleet. No vehicle may be used for driver training until it passes inspection by the division.~~

~~_____ (7) Each vehicle used by a commercial driver training school for driver training shall be properly identified to safeguard against accidents. A vehicle is properly identified when the words "STUDENT DRIVER" are displayed on the front and rear and on both the left and right sides of the vehicle. The letters shall be at least three inches in height.~~

~~_____ (8) Advertising or other markings on the vehicle for identifying or advertising the commercial driver training school shall be approved by the division and should not distract from the words "STUDENT DRIVER".~~

R708 2-18. Notification of Accident.

~~_____ If any driver training vehicle is involved in an accident during the course of instruction, the commercial driver training school shall notify the division in writing within five working days of the date of the accident and submit to the division a copy of the investigating law enforcement officer's accident report as soon as it is available.~~

R708 2-19. Insurance.

~~_____ (1) Each commercial driver training school or testing only school must file with the division evidence of the minimum required insurance with an insurance company authorized to do business in Utah. Each commercial driver training school or testing only school shall maintain suitable insurance coverage on each vehicle used in the driver training program sufficient to protect the instructor, students, and the public. The minimum insurance coverage is that required by the Utah Insurance Code, in Title 31A, Chapter 22, Part 3.~~

~~_____ (2) The insurance company supplying the policy shall furnish to the division a certificate of insurance and shall notify the division immediately upon cancellation of the insurance. Operation of a vehicle without the required minimum insurance coverage shall be grounds for revocation of the license.~~

R708 2-20. Contracts.

~~_____ (1) A student shall not be given lessons, lectures, tutoring or any other service relating to instruction in driver training, unless a written contract approved by the division has been executed by the commercial driver training school and the student.~~

~~_____ (a) Both the student and a representative of the commercial driver training school authorized to enter into a contract and listed on the application shall sign the contract. When the student is under 18 years of age, the contract shall also be signed by a parent or legal guardian prior to any instruction.~~

~~_____ (2) A copy of the contract shall be given to the student and the original retained by the commercial driver training school.~~

~~_____ (3) The commercial driver training school shall provide the student with a receipt upon payment. The commercial driver training school shall maintain a copy of all receipts.~~

R708 2-21. Records.

~~_____ (1) Each commercial driver training school shall use the division's record-keeping computer program to maintain the following:~~

NOTICES OF PROPOSED RULES

_____ (a) records for all students showing name, date of birth, type of training, date, exact time of day for the beginning and ending of all training administered;

_____ (b) names of the instructors giving lessons or instruction; and

_____ (c) identification of the vehicle license plate number or simulator in which any behind-the-wheel and observation instruction is given.

_____ (2) Records shall be updated within 24 hours of instruction for each student.

_____ (a) maintain original copies of the student contracts and receipts, current vehicle insurance information, and surety bond information;

_____ (3) Each commercial driver training school:

_____ (a) shall maintain accurate and current records;

_____ (b) shall review the records of all schools at least annually; and

_____ (c) may observe the instruction given both in the classroom and behind the wheel.

_____ (4) The division shall review the operation of the commercial driver training school when the division deems necessary.

_____ (5) The loss or destruction of any record that a commercial driver training school is required to maintain shall be immediately reported by affidavit stating:

_____ (a) the date the record was lost or destroyed; and

_____ (b) the circumstances involving the loss or destruction.

_____ (6) The commercial driver training school shall retain all records for four years.

_____ (7) When deemed necessary by the division, the commercial driver training school shall make the records available for the purpose of conducting an audit.

_____ (a) When making the records available for audit purposes, the division shall provide a receipt to the commercial driver training school operator which will include:

_____ (i) the name and location of the commercial driver training school;

_____ (ii) the date of removal of records;

_____ (iii) information that specifies all records removed;

_____ (iv) the signature of the operator; and

_____ (v) the signature of a division representative.

_____ (8) Upon return of the records, the receipt shall be updated to reflect the date the records were returned, the signature of the operator, and the signature of the division representative returning the records.

_____ (9) The division shall hold the records for the minimum amount of time necessary so an audit may occur without creating an unnecessary hardship or inconvenience.

_____ (a) Each commercial driver training school shall provide all records to the division immediately upon request for the purpose of an audit or review. When a hearing occurs subsequent to an audit, records not provided by the commercial driver training school at the time of the audit may not be considered as evidence during the hearing.

R708 2 22. Advertising and School Location.

_____ (1) Commercial driver training schools and testing only schools may not imply or expressly guarantee that a driver license is assured. The display of a sign such as "Driver License Secured Here" is prohibited.

_____ (2) A commercial driver training school or testing only school may display on its premises a sign reading, "This School is Licensed by the State of Utah."

_____ (3) No commercial driver training school or testing only school may solicit business directly or indirectly or display or distribute

any advertising material within 1500 feet of a building in which vehicle registrations or driver licenses are issued to the public.

_____ (4) In municipalities having a population of 50,000 or more, no license will be issued for a commercial driver training school or testing only school if the school's place of business is located within 1500 feet of a facility in which vehicle registrations or driver licenses are issued to the public. When either school is established in a location prior to the origination of a facility located within 1500 feet of the school in which vehicle registrations or driver licenses are issued to the public, the school may continue operation. However, the school's location may not be transferred to another corporation, partnership, or owner, under the same school name or a different school name.

_____ (5) No commercial driver training school or testing only school may change its place of business or location without prior approval from the division.

_____ (6) Each commercial driver training school shall provide classroom space, either in its own building or in any other building approved by the division. The classroom shall have seating for all students, access to sanitary facilities, and appropriate training aids, including blackboards, charts, and projectors. Classroom facilities and buildings shall comply with federal, state, and local building, fire, safety and health codes.

_____ (7) No commercial driver training school or testing only school may use any Department of Public Safety, Driver License Division logos, letterhead, or license recreations as part of their advertising.

R708 2 23. Change of Address, Employees, and Officers.

_____ (1) A commercial driver training school or testing only school shall immediately notify the division in writing when there is any change in residence or business address of owner operator, partner, officer, or employee of the school.

_____ (2) The commercial driver training testing only school shall immediately notify the division in writing when there is any change in the owner or the operator and shall provide the same information that would be required on an original application by the corporation.

_____ (3) Failure to notify the division of any change of address, of the owner or the operator is grounds for revocation of the school license.

_____ (4) The commercial driver training school or testing only school shall immediately notify the division in writing of any employee no longer employed by the school. Failure to notify the division of change is grounds for revocation.

R708 2 24. Change in Ownership.

_____ (1) When any ownership change occurs in the commercial driver training school or testing only school, the school shall immediately notify the division in writing by the new owner and a new application shall be submitted.

_____ (a) An application shall be considered a renewal when one or more of the original licensees remain part owner of the school. When the change in ownership involves a new applicant not named in the application for the last current license or renewal license of the school, the license shall be considered a new application.

_____ (2) The division may permit continuance of the commercial driving training school or testing only school by the current licensee, pending processing of the application made by the new applicant to whom ownership of the school is to be transferred.

_____ (3) Upon issuance of the new license, the prior license shall be immediately surrendered to the division. Refund of any part of the license fee is not permitted.

R708-2-25. Grounds for Revocation, Probation or Refusal to Issue or Renew Instructor License, Operator License, or School License.

~~(1) Following a hearing, the division may revoke, place on probation, or refuse to renew a license for either an instructor or operator of a commercial driver training school or a testing only school.~~

~~(a) The division may also refuse to issue a license for an instructor, operator, commercial driver training school or a testing only school.~~

~~(b) A license may be revoked, placed on probation or refused for renewal for any of the following reasons:~~

~~(i) failure to comply with any of the provisions of Title 53, Chapter 3, Part 5 Commercial Driver Training Schools Act;~~

~~(ii) failure to comply with any of the provisions of Rule 708-2;~~

~~(iii) cancellation of surety bond as required in Subsection R708-2-8;~~

~~(iv) providing false information in an application or form required by the division;~~

~~(v) violation of Subsection R708-2-11 pertaining to moving violations or an accident that results in a suspension or revocation of a driver license;~~

~~(vi) failure to permit the division or its representatives to inspect any school classroom, record, or vehicle used in instruction;~~

~~(c) conviction of a felony, or conviction of or reasonable grounds to believe an instructor has committed, a crime of moral turpitude;~~

~~(d) conviction of a felony, or conviction of or reasonable grounds to believe any licensee has committed a crime of moral turpitude; and~~

~~(i) failure to appear for a hearing on any of the above charges.~~

~~(2) Any proceeding to revoke, place on probation, or refuse to issue or renew an instructor license, operator license, commercial driver training school license or a testing only school license is an informal adjudicative proceeding under the Utah Administrative Procedures Act, Section 63G-4-202.~~

~~(3) Any licensee who has had a license revoked shall not be eligible to reapply for a license until six months have elapsed since the date of the revocation. The applicant shall complete an application for an original license and meet all applicable requirements for an original license. In addition to the other fees provided in Subsection R708-2-5, the licensee shall be required to pay a \$75 reinstatement fee for each license revoked to the division upon application for reinstatement.~~

~~(a) Upon receipt of a completed application for an instructor license, operator license, commercial driver training school license or a testing only school, and applicable documentation and fees, the division shall conduct a review process as established by the division director in order to determine eligibility for reinstatement or re-licensure.~~

~~(b) Notice of final decision shall be in writing by the division within twenty days of receipt of evidence that all requirements have been met for reinstatement or re-licensure.~~

~~(c) When a request for reinstatement is denied, the applicant shall have an opportunity to request a hearing in writing within five days of receipt of the final decision of the division.~~

R708-2-26. Procedures Governing Informal Adjudicative Proceedings.

~~(1) The following procedures will govern informal adjudicative proceedings:~~

~~(a) the division shall commence an action to revoke, place on probation, or refuse to issue or renew a license by the issuance of notice of agency action. The notice of agency action shall comply with the provisions of Subsection 63G-4-201;~~

~~(b) no response is required to the notice of agency action;~~

~~(c) an opportunity for a hearing shall be granted on a revocation, probation or refusal to issue or renew a license when the division receives in writing a proper request for a hearing;~~

~~(d) the division will send written notice of a hearing to the licensee or applicant at least ten days prior to the date of the hearing;~~

~~(e) no discovery, either compulsory or voluntary, shall be permitted prior to the hearing except that all parties shall have access to information in the division's files, and to investigator information and materials not restricted by law;~~

~~(f) the division shall designate an individual or panel to conduct the hearing; and~~

~~(g) within twenty days after the date of the close of the hearing or after the failure of a party to appear for the hearing, the individual or panel conducting the hearing shall issue a written decision which shall constitute final agency action. The decision shall state the decision, the reason for the decision, notice of right to request reconsideration under Subsection 63G-4-302, notice of right of judicial review under Subsection 63G-4-402, and the time limits for filing an appeal to the appropriate district court.~~

~~(2) A commercial driver training school, after being notified of the division's intent to take action, may not transfer any contracts, records, properties, training activities, obligations, or licenses to another party.~~

~~(3) If a commercial driver training school license is revoked, placed on probation or refused renewal, the existing classroom, behind-the-wheel, and observation training hours may not be transferred to another school for completion.~~

~~(4) If a commercial driver training school license is revoked or refused renewal under the emergency provisions of the school shall not be authorized to conduct business unless otherwise determined at a hearing.~~

~~(5) If an instructor license is revoked, placed on probation, or refused renewal under the emergency provisions of Section 63G-4-502, and the school license is valid, the school may continue operation provided that an instructor employed by the school with a valid instructor license ensures operation does not compromise public safety.~~

~~(6) If an operator license is revoked, placed on probation, or refused renewal under the emergency provisions of Section 63G-4-502, and the school license is valid, the school may continue operation provided that an operator employed by the school with a valid operator license ensures operation does not compromise public safety.~~

~~(7) An instructor license, operator license, commercial driver training school license or a testing only school license may be placed on probation upon approval of the director of the division or designee.~~

~~(a) Any licensee placed on probation shall be subject to a period of close supervised probation conditions to be determined by the division. During a period of probation, provided that the terms of the probation agreement are adhered to by the probationer licensee. The instructor license, operator license, commercial driver training school license or a testing only school license shall remain intact and the instructor, operator, or school will be allowed to continue operation.]~~

R708-2. Commercial Driver Training Schools, Instructors, and Operators.**R708-2-1. Purpose.**

(1) This purpose of this rule is to establish criteria in accordance with Title 53, Chapter 3, Part 5, Commercial Driver Training Schools Act for:

(a) the licensure and regulation of commercial driver training schools, operators, instructors, and administrative personnel;

(b) classroom and behind-the-wheel instruction;

(c) home-study and online courses; and

(d) commercial driver training school vehicles.

R708-2-2. Authority.

This rule is authorized by Section 53-3-505.

R708-2-3. Definitions.

(1) Terms used in this rule are defined in Sections 53-3-102 and 53-3-502.

(2) In addition:

(a) "act of moral turpitude" means conduct that:

(i) is done knowingly contrary to justice, honesty or good morals;

(ii) has an element of falsification or fraud; or

(iii) contains an element of harm or injury directed to another person or another property.

(b) "branch" means an office or location of business other than the schools' principal place of business;

(c) "commercial driver training school" means a school that is licensed to conduct classroom, behind-the-wheel, and observation training, and may also be authorized to conduct:

(i) home-study or online courses; or

(ii) driving skills testing under R708-37.

(d) "DEMS" means Driver Education Management System, the division's official record keeping program;

(e) "license" means a commercial driver training school license, a testing only school license, a commercial driver training school instructor license or a commercial driver training school operator license issued in accordance with this rule;

(f) "school" means a commercial driver training school or a testing only school;

(g) "tester" means a school instructor who is certified to administer driving skills tests under Rule R708-37; and

(h) "testing only school" means a school that is licensed to conduct:

(i) driving skills testing under Rule R708-37; or

(ii) behind-the-wheel or observation training.

R708-2-4. Commercial Driver Training School and Testing Only School Licenses.

(1) Each corporation, partnership or person who owns a commercial driver training school shall obtain a commercial driver training school license from the division.

(2) Each corporation, partnership or person who owns a testing only school shall obtain a testing only school license from the division.

(3) An application for an original or renewal school license or a branch office shall be:

(a) submitted on a form provided by the division and signed by:

(i) the owner of the school;

(ii) each partner in the case of a partnership; and

(iii) an officer of the corporation in the case of a corporation; and

(b) accompanied by:

(i) a business license issued by the municipality or county that the school is located;

(ii) samples of each form and receipt to be used by the school;

(iii) a copy of the curriculum to be used by the school if it is a commercial driver training school;

(iv) a schedule of fees for each service to be performed by the school;

(v) a certificate of insurance with an insurance company authorized to do business in the state for each vehicle used for driver training or testing purposes that reflects the minimum insurance coverage as required under Section 31A-22-304;

(vi) a copy of each test, including answers and copies of translations used by the school, that the school requires for a student to satisfactorily complete the driver training course, which are subject to approval of the division;

(vii) evidence that a surety bond has been obtained by the school in compliance with Section R708-2-5; and

(viii) a certified copy of a certificate of incorporation as required in the case of a corporation.

(4) An application for an original school license shall be accompanied by:

(a) a fingerprint card for each applicant, partner, or corporate officer for a criminal background check; and

(b) payment for the cost associated with each criminal background check.

(5) Fees for a school license or branch office license application and renewal:

(a) are established in accordance with Section 63J-1-504;

(b) can be found online at the Driver License Division's website;

(c) shall be payable to the Department of Public Safety; and

(d) are non-refundable.

(6) Each school and branch office shall be inspected by a division representative before it may be licensed.

(7) A commercial driver training school shall maintain a classroom facility in the school office location and in each commercial driver training school branch office. Each classroom shall be equipped with:

(a) seating for each student;

(b) access to sanitary facilities; and

(c) appropriate training aids such as, blackboards, charts, and projectors.

(8) Classroom facilities and buildings shall comply with federal, state, and local building, fire, safety and health codes.

(9) A testing only school or testing only branch office:

(a) is not required to maintain a classroom facility; and

(b) shall maintain a designated office area to retain required files and records.

(10) A school license expires one year from the date of issuance or renewal.

(11) A school license is only valid for use in connection with the school listed on the license, and may not be transferred to another school or another person.

(12) Each branch office or classroom facility in a location other than the school's principal place of business shall be separately licensed. A branch office shall meet the same requirements as the commercial driver training school's principal place of business and shall be similarly equipped and perform substantially the same services.

(13) When any commercial driver training school or branch office is discontinued, the school or branch office license shall be surrendered to the division within five days. The licensee shall state in writing the reason for the surrender.

(14) Before becoming licensed, each commercial driver training school shall employ a licensed operator to operate the commercial driver training school and each branch office. The current licensed operator shall be identified on the application maintained by the division for each commercial driver training

school or branch office. A single operator may operate multiple branch offices of the same school. When the operator discontinues employment with the commercial driver training school, a new operator shall be employed before continuation of operations and the operations of any branch offices where the individual has been identified as the operator.

(15) A school shall be responsible for sponsoring and supervising instructors employed by the school.

(16) A school shall not knowingly employ an instructor if the instructor has been convicted of, or there are reasonable grounds to believe that the instructor has committed, a felony or a crime of moral turpitude.

(17) Schools or branch offices owned by separate individuals and owned under different school names may not operate from the same facility or office space. A clear separation of the schools shall be identified, and each school shall comply with standards set forth in this rule.

(18) A testing only school may not be located in a building that is occupied by a commercial driver training school.

(19) A school or branch office may not change its place of business or location without prior approval from the division.

(20) Each school or classroom facility shall post signs to identify the school by name as the school is listed on the school certification.

(21) School and business licenses must be conspicuously displayed in the licensee's principal place of business and branch offices.

(22) A duplicate school license may be issued if the license is lost or destroyed following submittal to the division of:

- (a) a written statement setting forth the date the school license was lost or destroyed and the surrounding circumstances; and
- (b) payment of a duplicate license fee.

R708-2-5. Surety Bond Requirements.

(1) Each school shall obtain a surety bond with a minimum requirement of \$5,000 coverage, except as provided under Subsection R708-2-5(3).

(2) Cancellation of the surety bond is grounds for revocation, probation, or refusal to issue or renew the school license.

(3) A school licensed as a testing only school is not required to obtain a surety bond unless it has been authorized by the division to conduct behind-the-wheel training.

R708-2-6. Commercial Driver Training School Instructor License.

(1) Each instructor employed by a commercial driver training school, including an owner, operator, partner, corporate officer, or a substitute or part-time instructor, shall obtain a commercial driver training school instructor license from the division prior to instructing for the commercial driver training school.

(2) To qualify for a commercial driver training school instructor license, the applicant shall:

- (a) have a valid Utah driver license;
- (b) be at least 21 years of age;
- (c) have at least three years of driving experience in the United States;
- (d) have a driving record free of:
 - (i) a conviction for a moving violation; or
 - (ii) a chargeable accident resulting in suspension or revocation of the driver license during the two year period immediately prior to application and during employment.

(e) complete a specialized professional preparation course in driver safety education as required in Rule R708-53 or at least 21 quarter hours of credit in instruction and administration of driver safety education from an accredited college or university; and

(f) pass a practical written and driving skills test.

(3) An application for an original or renewal commercial driver training school instructor license shall be:

(a) submitted on a form provided by the division;

(b) signed by the applicant and the owner of the commercial driver training school that will employ the applicant; and

(c) accompanied by a Functional Ability Evaluation Medical Report provided by the division and completed by a health care professional as defined in Subsection 53-3-302(2).

(4) The physical examination associated with the completion of the Functional Ability Evaluation Medical Report:

(a) shall take place no earlier than three months prior to application; and

(b) will result in refusal to issue a driver training school instructor license if a medical condition exists that results in:

- (i) a restriction being imposed against the person's driving privilege, with the exception of a corrective lenses restriction; or
- (ii) the denial of the person's driving privilege.

(c) a commercial driver training school instructor license holder shall submit a subsequent Functional Ability Evaluation Medical Report upon request by the division.

(5) An application for an original commercial driver training school instructor license shall be accompanied by:

- (a) a fingerprint card for a criminal background check; and
- (b) payment for the cost associated with the criminal background check.

(6) Fees for a commercial driver training school instructor license application and renewal:

- (a) are established in accordance with Section 63J-1-504;
- (b) can be found online at the Driver License Division's website;

(c) shall be payable to the Department of Public Safety; and

(d) are non-refundable.

(7) A commercial driver training school instructor license expires one year from the date of issuance.

(8) A commercial driver training school instructor license is only valid for use in connection with the driver training school listed on the license, and may not be transferred to another driver training school, or another person.

(a) a commercial driver training school instructor shall not be employed as an instructor or provide instruction for:

- (i) more than one school; or
- (ii) a combination of a school and a high school.

(b) a commercial driver training school instructor employed as an instructor by both a school and a high school prior to January 1, 2022:

(i) shall be allowed to continue employment as an instructor for both entities, and

(ii) if employment is terminated for either the school or high school, shall comply with Subsection R708-2-6(8)(a).

(9) A duplicate commercial driver training school instructor license may be issued if the license is lost or destroyed following submittal to the division of:

- (a) a written statement setting forth the date the commercial driver training school instructor license was lost or destroyed and the surrounding circumstances; and
- (b) payment of a duplicate instructor license fee.

R708-2-7. Application Requirements for a Commercial Driver Training School Operator License.

(1) Each person who serves as an operator of a commercial driver training school, including the owner, operator, partner, corporate officer, or a substitute or part-time instructor, shall obtain an operator license from the division prior to performing duties related to the operation of a commercial driver training school.

(2) In addition to obtaining a commercial driver training school instructor license under Section R708-2-6 an applicant for a commercial driver training school operator license shall submit to the division:

(a) an application for an original or renewal commercial driver training school operator license:

(i) on a form provided by the division; and

(ii) signed by the applicant and the owner of the commercial driver training school that will employ the applicant.

(b) evidence in the form of transcripts or a resume that establishes completion of:

(i) six college semester credit hours;

(ii) eight college quarter credit hours in business related courses through an accredited college or university;

(iii) two years of experience operating a business; or

(iv) any combination thereof.

(c) a business plan to be approved by the division prior to licensure that contains:

(i) written acknowledgement of reading, understanding, and a willingness to comply with Rule R708-2; and

(ii) a description as to how the school will meet the requirements of Rule R708-2.

(3) A commercial driver training school operator license expires one year from the date of issuance.

(4) A commercial driver training school operator license is only valid for use in connection with the school listed on the license, and may not be transferred to another school, or another person.

R708 2-8. DEMS Access Authorization for Administrative Personnel.

(1) Each person who is employed by a school to perform administrative duties, and requires authorization to access DEMS for the school, shall submit an application:

(a) on a form approved by the division;

(b) signed by the applicant;

(c) signed by the owner of the school as verification of employment by the school; and

(d) accompanied by a fingerprint card for a criminal background check and payment for the cost associated with the criminal background check.

(2) Each commercial school will be responsible to train personnel on DEMS.

R708-2-9. Additional Training Requirements for Licensees and Authorized Persons.

(1) Persons licensed or authorized under this rule shall be required to attend training at the discretion of the division.

(2) Each commercial school will be responsible to train their instructors on DEMS.

R708-2-10. Instruction and Driving Skills Testing Limitations.

(1) A testing only school may conduct behind-the-wheel or observation instruction, or both, upon approval by the division.

(2) A testing only school may not engage in education or training of persons, either practically or theoretically, to drive motor vehicles except under one of the following circumstances:

(a) when counseling the driver following a test in reference to errors made during the administration of the test; or

(b) when conducting behind-the-wheel or observation instruction as approved by the division.

(3) A tester may not test an individual who has completed any classroom, behind-the-wheel or observation instruction through the testing only school that the tester is employed with.

R708-2-11. Classroom and Behind-The-Wheel Instruction.

(1) Classroom and behind-the-wheel instruction shall be conducted by an individual who is licensed as a commercial driver training school instructor as specified in this rule.

(2) The commercial driver training school instructor license shall be in the possession of the instructor each time behind-the-wheel or classroom instruction is provided.

(3) Unless the division grants approval to a commercial driver training school to provide classroom instruction conducted by an unlicensed expert, such as a police officer on a limited basis, the school may not conduct classroom or behind-the-wheel instruction or allow another individual to conduct classroom or behind-the-wheel instruction without a commercial driver training school instructor license.

(4) Commercial driver training schools shall provide each student a copy of the current Utah Driver Handbook. The handbook may not be used as the sole text of the course, but as an essential aid when traffic laws are studied. Handbooks may be obtained from the division.

(5) Instructors shall not use or do anything that may distract their attention away from the classroom instruction, or the student driver during behind-the-wheel instruction, such as use of phones or other electronic devices, reading, sleeping, or helping walk-in customers while conducting any classroom training.

(6) Classroom instruction shall meet or exceed 18 hours and shall be conducted in not less than nine separate class sessions, of two hours each, on nine separate days.

(7) Each classroom session shall be numbered to be identified on the student record.

(8) Classroom curriculum shall not be repeated in any of the nine sessions except in the form of a review of materials covered in a previous classroom session. The time frame allotted for review shall not exceed ten minutes per classroom session.

(9) Not more than five of the classroom hours shall be devoted to showing slides or films.

(10) Classroom instruction shall cover the following areas:

(a) attitude and physical characteristics of drivers;

(b) driving laws with special emphasis on Utah law;

(c) driving in urban, suburban and rural areas;

(d) driving on freeways;

(e) basic maintenance of the motor vehicle;

(f) effect of drugs and alcohol on driving;

(g) motorcycles, bicycles, trucks and pedestrians in traffic;

(h) driving skills;

(i) Utah's motor vehicle laws regarding financial responsibility and no fault insurance, and a driver's responsibility when involved in an accident;

(j) suspension or revocation of a driver license; and

(k) information on improving air quality and reducing emissions.

(11) Schools shall update their curriculum annually with any new laws or changes to a current law that will affect drivers. Any changes to the curriculum shall be submitted to the division for approval.

(12) Behind-the-wheel instruction includes instruction a student receives while driving a commercial driver training vehicle or while operating a driving simulator.

(13) Behind-the-wheel instruction may not be conducted for a student unless the student has been issued a learner permit by the division or the student is in possession of a valid driver license or temporary permit issued by the division, or a valid out of state or out of country driver license.

(14) While conducting behind-the-wheel instruction, students and instructors shall adhere to any driving restrictions listed on the learner permit or driver license.

(15) A student shall receive a minimum of six hours of instruction in a dual-control vehicle with a licensed instructor.

(16) Students may receive behind-the-wheel training in a driving simulator as specified in Section 53-3-505.5 to satisfy the requirements under Subsection R708-2-11(15).

(17) Each student shall be limited to a maximum of either two hours of behind-the-wheel instruction or two hours of simulation instruction per day.

(18) An instructor shall not conduct more than ten hours of behind-the-wheel instruction within a period of 24 hours and must have at least eight consecutive hours of off-duty time between each ten hour shift.

(19) The instructor and no more than one student shall occupy the front seat of the vehicle. Under no circumstances shall there be more than five individuals in the vehicle.

(20) Behind-the-wheel instruction shall include student practice in using vehicle controls to start, shift gears, make right and left turns, stop, backup, and park. This instruction shall begin under relatively simple conditions and progress until the student has acquired reasonable skill in operating the vehicle under varying traffic conditions.

(21) Students shall receive experience in driving on urban streets, open highways, or freeways. Behind-the-wheel instruction shall include the experience of driving under variable conditions that may be used by the instructor at different times of the day and year. Special emphasis should be given to teaching students to show courtesy to other drivers and pedestrians.

(22) Students may receive observation training at the discretion of the school however; it is not required to obtain a driver license.

R708-2-12. Home-Study and Online Course.

(1) A commercial driver training school may offer a home-study or online learning course of instruction as a substitute for the classroom instruction set forth in Section R708-2-11 provided the commercial school has been in business a minimum of 2 years, violation free and is approved by the division.

(2) The division will monitor any approved home-study or online course to ensure the course runs as originally planned.

(3) The average study time required to complete the workbook exercises shall meet or exceed 30 hours.

(4) A home-study or online course shall consist, at a minimum, of:

(a) a text;

(b) a workbook; and

(c) a 50-question competency test that addresses the subjects described in Section R708-2-11.

(5) Materials, including texts, workbooks, and tests, used in the course shall be submitted by the commercial driver training school to the division for approval.

(6) The commercial driver training school shall notify the division of any substantive changes in the course.

(7) A home-study or online student shall:

(a) complete the workbook exercises; and

(b) pass the 50-question written competency test with a score of 80% or higher.

(8) Testing shall occur under the following conditions:

(a) the home-study or online student shall take the test in person at the commercial driver training school with a licensed instructor or a state approved proctor present;

(b) the identity of the home-study or online student shall be verified by a licensed instructor or a state approved proctor prior to testing;

(c) the home-study or online student shall complete the test without any outside help;

(d) the commercial driver training school shall maintain at least three separate 50-question competency tests created from a test pool of at least 200 questions;

(e) the home-study or online student shall be given a minimum of three opportunities to pass the test; (f) after each test failure, the commercial driver training school or approved proctored testing facility shall provide the student with additional instruction to assist the student to pass the next test;

(g) the fees paid by the student for the driver training course shall include the three opportunities to attempt to pass the test and any additional instruction required;

(h) a home-study or online student shall pass the test to complete the driver training course;

(i) the commercial driver training school shall maintain records of each test administered for four years; (j) test records shall include the results of each test administered to students; and

(j) upon completion of the requirements of the driver training course, the commercial driver training school shall enter the completion date and score into DEMS within 24 hours.

(9) An approved testing proctor shall:

(a) be employed by a licensed commercial driver training school for a minimum of 2 months prior to proctoring tests for students; and

(b) possess a valid commercial driver training school instructor license.

(10) Each commercial driver training school will be responsible to provide training for DEMS to proctors employed by the commercial driver training school.

R708-2-13. Commercial Driver Training Vehicles.

(1) Commercial driver training vehicles used for behind-the-wheel instruction shall be properly registered, maintained and clean, in safe mechanical condition, and equipped with the following:

(a) functioning dual-control brakes;

(b) outside and inside mirrors for the driver to observe rearward;

(c) inside mirror for the instructor to observe rearward;

(d) a separate seat belt for each occupant;

(e) functioning heaters and defrosters; and

(f) a functioning fire extinguisher, first aid kit, safety flares, spare tire with jack and or self-inflating tire, and reflectors that are readily accessible.

(2) Students shall receive instruction in either standard shift or automatic transmission vehicles. The commercial driver

NOTICES OF PROPOSED RULES

training school shall have the option of choosing the type of transmission.

(3) If instruction is given in snow or on icy road surfaces, tire chains, all season radial tires, or snow tires shall be used in compliance with local police or highway patrol recommendations.

(4) Failure to maintain a vehicle in safe operating condition is grounds for the revocation of a school license and the vehicle will be placed out of service immediately. When deemed necessary by the division, safety testing of the vehicle may be required. The school will be responsible for any costs that may be assessed.

(5) Vehicles unable to meet safety standards shall be replaced by the school.

(6) It is the responsibility of the school to notify the division of any vehicle added to or deleted from their fleet. A vehicle shall not be used for driver training or testing until it passes inspection by the division.

(7) Each vehicle used by a school for driver training or testing shall be properly identified to safeguard against accidents. A vehicle is properly identified when the words "STUDENT DRIVER" are displayed on the front and rear and on both the left and right sides of the vehicle. The letters shall be at least three inches in height.

(8) Advertising or other markings on the vehicle for identifying or advertising the commercial driver training school shall be approved by the division and shall not distract from the words "STUDENT DRIVER".

(9) Each school shall maintain insurance coverage on each vehicle used for driver training or testing as required under Section R708-2-4.

R708-2-14. Notification of a Crash.

If any vehicle is involved in an accident during the course of instruction or testing, the school shall notify the division in writing within five working days of the date of the accident and submit to the division a copy of the investigating law enforcement officer's accident report as soon as it is available.

R708-2-15. Contracts.

(1) A student shall not be given lessons, lectures, tutoring or any other service relating to instruction in driver training, unless a written contract approved by the division has been executed by the school and the student.

(2) The contract shall contain the student's full legal name, full address and date of birth.

(3) Both the student and a representative of the school authorized to enter into a contract and listed on the application shall sign the contract. When the student is under 18 years of age, the contract shall also be signed by a parent or legal guardian prior to any instruction.

(4) A copy of the contract shall be given to the student and the original retained by the school.

(5) The school shall provide the student with a receipt upon each payment made on behalf of the student, and shall maintain a copy of each receipt.

R708-2-16. Records.

(1) Each school shall use DEMS to maintain the following:

(a) records for each student including:

(i) the student's name;

(ii) date of birth;

(iii) the type of training completed by the student; and

(iv) the date and exact time of day for the beginning and ending of any training administered.

(b) names of the instructors providing lessons or instruction; and

(c) identification of the vehicle license plate number or simulator used for behind-the-wheel and observation instruction provided.

(2) In the event the division revokes or refuses to renew a school license, access to DEMS shall be denied immediately.

(3) Records shall be updated within 24 hours of instruction for each student.

(4) Each school shall maintain accurate and current records, and shall retain original copies of the student contracts and receipts, current vehicle insurance information, and surety bond information for a period of 4 years.

(5) The division shall review the records of each school annually at a minimum.

(6) The loss or destruction of any record that a school is required to retain shall be immediately reported to the division in writing, and shall include the date the record was lost or destroyed and the circumstances involving the loss or destruction.

(7) The school shall make records available to the division immediately upon request to facilitate an audit or review.

(8) When the division removes records from the school for audit purposes, the division shall provide a receipt to the school operator that includes:

(a) the name and location of the school;

(b) the date of removal of records;

(c) information that specifies the records removed;

(d) the signature of the operator; and

(e) the signature of the division representative removing the records.

(9) When the division returns records to the school, the division shall update the receipt under Subsection R708-2-16(9) to include:

(a) the date the records were returned;

(b) the signature of the operator; and

(c) the signature of the division representative returning the records.

(10) The division shall hold the records for the minimum amount of time necessary so an audit may occur without creating an unnecessary hardship or inconvenience.

R708-2-17. Advertising and School Location.

(1) Schools may not imply or expressly guarantee that a driver license is assured. The display of a sign such as "Driver License Secured Here" is prohibited.

(2) A school may display on its premises a sign reading, "This School is licensed, or approved, by the State of Utah".

(3) No school may solicit business directly or indirectly or display or distribute any advertising material within 1500 feet of a building where vehicle registrations or driver licenses are issued to the public.

(4) In municipalities having a population of 50,000 or more, a school license shall not be issued if the proposed school's place of business is located within 1500 feet of a facility where vehicle registrations or driver licenses are issued to the public.

(5) When a school is established in a location prior to the origination of a facility located within 1500 feet of the school where vehicle registrations or driver licenses are issued to the public, the school may continue operation. However, the school's location may not be transferred to another corporation, partnership, or owner, under the same school name or a different school name.

(6) No commercial driver training school or testing only school may change its place of business or location without prior approval from the division.

(7) No school may use Department of Public Safety or Driver License Division logos, letterhead, or driver license recreations, or imply that they have the ability to issue or withhold a driver license or learner permit.

R708-2-18. Change of Address, Employees, and Officers.

(1) A school shall immediately notify the division in writing when there is any change in residence or business address of an owner, partner, officer, instructor, or employee of the school.

(2) A representative of the school shall immediately notify the division in writing when there is any change in the ownership or the operator of the school, and shall ensure that a new application for school or operator licensure is submitted in accordance with Section R708-2-4 or R708-2-7.

(3) A school shall immediately notify the division in writing when an employee terminates employment with the school.

R708-2-19. Change in Ownership.

(1) When any ownership change occurs in a school, the school shall immediately notify the division in writing by the new owner and a new application shall be submitted as specified in Section R708-2-4.

(2) An application shall be considered a renewal when one or more of the original licensees remain as a part owner of the school.

(3) When the change in ownership involves a new applicant not named in the application for the most recent school license issued, the license shall be considered a new application.

(4) The division may permit continuance of operation of the school by the current licensee pending processing of the application made by the new applicant to whom ownership of the school is to be transferred.

(5) Upon issuance of a new school license, the prior license shall be immediately surrendered to the division.

R708-2-20. Grounds for Revocation, Probation or Refusal to Issue or Renew a License.

(1) The division may:

(a) refuse to issue license; or

(b) following issuance of a notice of agency action, revoke, place on probation, or refuse to renew a license.

(2) A license may be revoked, placed on probation or refused renewal or issuance for:

(a) failure to comply with Title 53, Chapter 3, Part 5 Commercial Driver Training Schools Act;

(b) failure to comply with this rule;

(c) cancellation of a surety bond as required in Section R708-2-5;

(d) providing false information in an application or form required by the division;

(e) failure to permit the division or its representatives to inspect any school classroom, record, or vehicle used in instruction or testing;

(f) conviction of a felony, or conviction of or reasonable grounds to believe an instructor has committed, an act of moral turpitude; or

(g) failure to appear for a hearing.

(3) A proceeding to revoke, place on probation, or refuse to issue or renew a license is designated as an informal adjudicative proceeding under Section 63G-4-202.

(4) Upon receipt of notice of agency action, a school shall not:

(a) allow a student to enroll in a driver training course or accept payment from a student; or

(b) transfer contracts, records, properties, training activities, obligations, or licenses to another party.

(5) A licensee who has had a license revoked shall not be eligible to reapply for a license until six months have elapsed since the date of the revocation.

(6) The applicant shall submit an application and required documentation for an original license, meet the requirements for an original license, and pay required reinstatement and licensing fees.

(7) Upon receipt of a completed application for a license, in addition to required documentation and applicable fees, the division shall conduct a review process as established by the division director to determine eligibility for reinstatement or re-licensure.

(8) Notice of the division's final decision shall be provided in writing to the applicant within 20 days of receipt of the completed application, required documentation, and fees.

(9) When a request for reinstatement is denied, the applicant shall have an opportunity to request a hearing in writing within 20 days of receipt of the division's final decision.

(10) Any licensee who has had a license revoked by the division two times shall not be eligible to reapply for a license.

R708-2-21. Procedures Governing Informal Adjudicative Proceedings.

(1) The following procedures will govern informal adjudicative proceedings:

(a) the division shall commence an action to revoke, place on probation, or refuse to issue or renew a license by the issuance of notice of agency action;

(i) the notice of agency action shall comply with Section 63G-4-201; and

(ii) the notice of agency action shall not require a response from the recipient.

(b) an opportunity for a hearing shall be granted on a revocation, probation or refusal to issue or renew a license when the division receives in writing a proper request for a hearing;

(c) the division shall send written notice of a hearing to the licensee or applicant at least 14 days prior to the date of the hearing;

(d) no discovery, either compulsory or voluntary, shall be permitted prior to the hearing except that each party shall have access to information in the division's files, and to investigator information and materials not restricted by law;

(e) the division shall designate an individual or panel to conduct the hearing;

(f) within 20 days after the date of the close of the hearing, or after the failure of a party to appear for the hearing, the individual or panel conducting the hearing shall issue a written decision that shall constitute final agency action; and

(g) the written decision shall state the decision, the reason for the decision, notice of right to request reconsideration under Section 63G-4-302, notice of right of judicial review under Section 63G-4-402, and the time limits for filing an appeal to the appropriate district court.

(3) If a commercial driver training school license is revoked, placed on probation or refused renewal:

(a) contracts, records, properties, training activities, obligations, or licenses shall not be transferred to another party; and

(b) existing classroom and behind-the-wheel training hours shall not be transferred to another school for completion.

NOTICES OF PROPOSED RULES

(4) If a commercial driver training school license is revoked or refused renewal under Section 63G-4-502, the school shall not be authorized to conduct business unless otherwise determined at a hearing.

(5) If an instructor license is revoked, placed on probation, or refused renewal under Section 63G-4-502, and the school license is valid, the school may continue operation provided that an instructor employed by the school with a valid instructor license ensures operation does not compromise public safety.

(6) If an operator license is revoked, placed on probation, or refused renewal under Section 63G-4-502, and the school license is valid, the school may continue operation provided that an operator employed by the school with a valid operator license ensures operation does not compromise public safety.

(7) A license may be placed on probation upon approval of the division director or designee.

(a) A licensee placed on probation shall be subject to a period of close supervision with conditions determined by the division.

(b) During a period of probation, provided that the terms of the probation agreement are adhered to by the probationer licensee, the license shall remain valid.

KEY: driver education, schools, rules and procedures

Date of Last Change: 2021 ~~August 8, 2008~~

Notice of Continuation: January 20, 2017

Authorizing, and Implemented or Interpreted Law: 53-3-505

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

| | | |
|--------------------------------------|-----------------|----------------------------------|
| Utah Admin. Code Ref (R no.): | R722-300 | Filing ID 54003 |
|--------------------------------------|-----------------|----------------------------------|

Agency Information

| | | |
|-----------------------------|---|--------------------|
| 1. Department: | Public Safety | |
| Agency: | Criminal Investigations and Technical Services, Criminal Identification | |
| Street address: | 3888 W 5400 S | |
| City, state and zip: | Taylorsville, UT 84129 | |
| Contact person(s): | | |
| Name: | Phone: | Email: |
| Kim Gibb | 801-556-8198 | kgibb@utah.gov |
| Greg Willmore | 801-965-4533 | gwillmor@utah.gov |
| Nicole Borgeson | 801-281-5072 | nshepherd@utah.gov |

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

General Information

2. Rule or section catchline:

R722-300. Concealed Firearm Permit and Instructor Rule

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

This filing is being submitted to incorporate changes made as a result of the passage of H.B. 216 from 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):

A new provision is being added to allow a provisional permit holder to apply for a concealed carry permit within 90 days of their 21st birthday.

Fiscal Information

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

A) State budget:

This rule change is not expected to have any impact on state government revenues or expenditures because it only allows a provisional permit holder to apply 30 days sooner for a concealed carry permit.

B) Local governments:

This rule change is not expected to have any impact on local governments' revenues or expenditures because it does not affect government at the local level.

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

This rule change is not expected to have any impact on small businesses' revenues or expenditures because it does not affect small businesses.

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

This rule change is not expected to have any impact on non-small businesses' revenues or expenditures because it does not affect non-small businesses.

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

This rule change is not expected to have any impact on revenues or expenditures for persons other than small businesses, non-small businesses, state or local government entities because it only allows for a provisional permit holder to apply 30 days sooner for a concealed carry permit.

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

This rule change will not result in any compliance costs for affected persons because it only allows for a provisional permit holder to apply 30 days sooner for a concealed carry permit.

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 not have any fiscal impact on businesses because this rule change only extends the period of time that is allowed for a provisional permit holder to apply for a concealed carry permit by 30 days. 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:

| | | |
|------------------------------------|--|--|
| Sections 53-5-701 through 53-5-712 | | |
|------------------------------------|--|--|

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: 12/01/2021

10. This rule change MAY become effective on: 12/08/2021

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: | Greg Willmore, Division Director | Date: | 10/07/2021 |
|--|----------------------------------|--------------|------------|

R722. Public Safety, Criminal Investigations and Technical Services, Criminal Identification.

R722-300. Concealed Firearm Permit and Instructor Rule.

R722-300-1. Purpose.

The purpose of this rule is to establish procedures whereby the bureau administers the Concealed Firearms Act in accordance with Title 53, Chapter 5, Part 7, Concealed Firearms Act.

R722-300-2. Authority.

This rule is authorized by Subsection 53-5-704(17), which provides that the commissioner may make rules necessary to administer Title 53, Chapter 5, Regulation of Firearms, and Section 53-5-707.6.

R722-300-3. Definitions.

(1) Terms used in this rule are defined in Sections 53-5-702, 53-5-711, 76-10-501.

(2) In addition:

(a) "applicant" means an individual seeking to obtain or renew a permit, a temporary permit, an instructor certification, or an LEOJ permit from the bureau;

(b) "certified firearms instructor" means an individual certified by the bureau pursuant to Subsection 53-5-704(9) who can certify that an applicant meets the general firearm familiarity requirement under Subsection 53-5-704(8);

(c) "certified firearms instructor official seal" means a red, self-inking stamp containing the information required in Subsection 53-5-704(11)(a)(iii), which meets the design requirements described on the bureau's website;

(d) "crime of violence" means a crime under the laws of this state, any other state, the United States, or any district, possession, or territory of the United States which has, as an element, the use, threatened use, or attempted use of physical force or a dangerous weapon;

(e) "felony" means a crime under the laws of this state, any other state, the United States, or any district, possession, or territory of the United States for which the penalty is a term of imprisonment in excess of one year;

(f) "FBI" means the Federal Bureau of Investigation;

(g) "instructor certification" means a concealed firearm instructor certification issued by the bureau pursuant to Subsection 53-5-704(9);

(h) "LEOJ permit" means a permit to carry a concealed firearm issued to a judge or law enforcement official by the bureau pursuant to Section 53-5-711;

(i) "nonresident" means a person who:

(i) does not live in ~~the state of~~ Utah; or

(ii) has established a domicile outside Utah, as that term is defined in Section 41-1a-202[~~7~~];

(j) "NRA" means the National Rifle Association;

(k) "offense involving domestic violence" means a crime under the laws of this state, any other state, the United States, or any district, possession, or territory of the United States involving any of the conduct described in:

(i) Section 77-36-1; or

(ii) 18 U.S.C Subsection 921(a)(33);

(l) "offense involving moral turpitude" means a crime under the laws of this state, any other state, the United States, or any district, possession, or territory of the United States involving conduct ~~which~~ that:

(i) is done knowingly contrary to justice, honesty, or good morals;

(ii) has an element of falsification or fraud; or

(iii) contains an element of harm or injury directed to another person or another's property;

(m) "offense involving the use of alcohol" means a crime under the laws of this state, any other state, the United States, or any district, possession, or territory of the United States involving any of the conduct described in:

(i) Section 32B-4-409;

(ii) Section 32B-4-421;

(iii) Subsection 41-6a-501(2) related to the use of alcohol;

(iv) Section 41-6a-526; or

(v) Section 76-10-528 related to carrying a dangerous weapon while under the influence of alcohol;

(n) "offense involving the unlawful use of narcotics or controlled substances" means:

(i) any offense listed in Subsection 41-6a-501(2) involving the use of a controlled substance;

(ii) any offense involving the use or possession of any controlled substance found in Title 58, ~~Chapters 37, 37a, or 37b~~ Chapter 37, Utah Controlled Substances Act, Title 58, Chapter 37a, Utah Drug Paraphernalia Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act; or

(iii) the crime of carrying a dangerous weapon while under the influence of a controlled substance pursuant to Section 76-10-528;

(o) "past pattern of behavior involving unlawful violence" means verifiable incidents, regardless of whether there has been an arrest or conviction, that would lead a reasonable person to believe that an individual has a violent nature and would be a danger to themselves or others, including an attempt or threat to commit suicide;

(p) "permit" means a permit to carry a concealed firearm issued by the bureau pursuant to Section 53-5-704 or 53-5-704.5;

(q) "POST" means the Utah Department of Public Safety, Division of Peace Officer Standards and Training;

(r) "revocation" means the permanent deprivation of a permit, instructor certification, or certificate of qualification, however revocation does not preclude an individual from applying for a new permit, instructor certification, or certificate of qualification if the reason for revocation no longer exists;

(s) "suspension" means the temporary deprivation, for a specified period of time, of a permit, instructor certification, or certificate of qualification; and

(t) "temporary permit" means a temporary permit to carry a concealed firearm issued by the bureau pursuant to Section 53-5-705.

R722-300-4. Application for a Permit to Carry a Concealed Firearm.

(1)(a) An applicant seeking to obtain a permit shall submit a completed permit application packet to the bureau.

(i) The bureau may not accept an application more than:

~~(A) 60 days prior to the applicant's date of permit eligibility;~~
or

(B) 90 days prior a provisional permit holder's 21st birthday.

(b) The permit application packet shall include:

(i) a written application form provided by the bureau with the address of the applicant's permanent residence;

(ii) a photocopy of a state-issued driver license or identification card;

(iii) one recent color photograph of passport quality ~~which~~ that contains the applicant's name written on the back of the photograph, unless the applicant submitted a photo ~~which~~ that meets these requirements to the bureau within the previous three years;

(iv) one completed FBI applicant fingerprint card, ~~FD-258~~ [f] Form FD-258[~~7~~], with the applicant's legible fingerprints;

(v) non-refundable fees as required under Sections 53-5-707, 53-5-707.5, and 53-10-108, and a fee for services provided by the FBI to conduct a federal background check as provided in Subsections 53-5-707(6)(a) and 53-5-707.5(4)(a), in the form of cash, check, money order, or credit card;

(vi) evidence indicating that the applicant has general familiarity with the types of firearms to be concealed as required by Subsection 53-5-704(6)(d);

(vii) any mitigating information that the applicant wishes the bureau to consider when determining whether the applicant meets the qualifications set forth in Subsection 53-5-704(2)(a); and

(viii) a copy of the applicant's current concealed firearm or weapon permit or provisional concealed firearm or weapon permit issued by the applicant's state of residency pursuant to Subsections 53-5-704(4)(a) and 53-5-704.5(3)(a), unless the applicant is an active duty service member who presents orders requiring the active duty service

member to report for duty in Utah or an active duty service member spouse who presents the active duty service member's orders requiring the service member to report for duty in Utah.

(2) An applicant may establish evidence of general familiarity with the types of firearms to be concealed as required in Subsection 53-5-704(6)(d) by submitting a signed certificate, issued within one year of the date of the application, bearing a certified firearms instructor's official seal, certifying that the applicant has completed the required firearms course of instruction established by the bureau.

(3) If the applicant is employed as a law enforcement officer, the applicant:

(a) may not be required to pay the application fee; and

(b) may establish evidence of general familiarity with the types of firearms to be concealed as required in Subsection 53-5-704(6)(d) by submitting documentation from a law enforcement agency located within ~~the state of~~ Utah indicating that the applicant has successfully completed the firearm qualification requirements of that agency within the last five years.

(4)(a) Upon receipt of a complete permit application packet, the bureau shall conduct a thorough background investigation to determine if the applicant meets the requirements found in Subsections 53-5-704(2) and ~~53-5-704(3)~~.

(b) The background investigation shall consist of the following:

(i) sending the fingerprint card to the FBI for a review of the applicant's criminal history record pursuant to Section 53-5-706; and

(ii) verifying the accuracy of the information provided in the application packet through a search of local, state and national records ~~[which] that~~ may include ~~[-but is not limited to,-]~~ the following:

(A) the Utah Computerized Criminal History database;

(B) the National Crime Information Center database;

(C) the Utah Law Enforcement Information Network;

(D) state driver license records;

(E) the Utah Statewide Warrants System;

(F) juvenile court criminal history files;

(G) expungement records maintained by the bureau;

(H) the National Instant Background Check System;

(I) the Utah Gun Check Inquiry Database;

(J) Immigration and Customs Enforcement records; ~~[-and]~~

(K) Utah Department of Corrections Offender Tracking System; and

(L) the Mental Gun Restrict Database.

(5)(a) If the background check indicates that an applicant does not meet the qualifications set forth in Subsection 53-5-704(2)(a), the bureau shall consider any mitigating circumstances submitted by the applicant.

(b) If the applicant does not meet the qualifications set forth in Subsection 53-5-704(2)(a) because the applicant has been convicted of a crime, the bureau may find that mitigating circumstances exist if the applicant was not convicted of a registerable sex offense, as defined in Subsection 77-41-102(17) and the following time periods have elapsed from the date the applicant was convicted or released from incarceration, parole, or probation, whichever occurred last:

(i) five years in the case of a class A misdemeanor;

(ii) four years in the case of a class B misdemeanor; or

(iii) three years in the case of any other misdemeanor or infraction.

(c) Notwithstanding any other provision, the bureau may not grant a permit if the applicant does not meet the qualifications in Subsection 53-5-704(2)(a)(viii).

(6)(a) If the bureau determines that the applicant meets the requirements found in Subsections 53-5-704(2) and 53-5-704(3), the bureau shall issue a permit to the applicant within 60 days.

(b) The permit shall be mailed to the applicant at the address listed on the application.

(7)(a) If the bureau determines that the applicant does not meet the requirements found in Subsections 53-5-704(2), 53-5-704(3), and 53-5-704(4), the bureau shall mail a letter of denial to the applicant, return receipt requested.

(b) The denial letter shall state the reasons for denial and indicate that the applicant has a right to request a review hearing before the board by filing a petition for review within 60 days as provided in Subsection 53-5-704(16).

R722-300-5. Application for a Concealed Firearms Instructor Certification.

(1)(a) An applicant seeking to be certified as a ~~Utah~~ concealed firearms instructor shall submit a completed instructor certification application packet to the bureau.

(b) The instructor certification application packet shall include:

(i) a written instructor certification application form provided by the bureau with the applicant's residential or physical address and public contact information;

(ii) a photocopy of a state-issued driver license or identification card;

(iii) one recent color photograph of passport quality ~~[which] that~~ contains the applicant's name written on the back of the photograph, unless the applicant submitted a photo ~~[which] that~~ meets these requirements to the bureau within the previous five years;

(iv) a photocopy of a valid Utah concealed firearm permit;

(v) a non-refundable processing fee in the form of cash, check, money order, or credit card;

(vi) evidence that the applicant has completed a firearm instructor training course from the NRA or POST, or received training equivalent to one of these courses, as required by Subsection 53-5-704(9)(a)(iii); and

(vii) evidence that the applicant has completed the course of instruction provided under the direction of the bureau and passed the certification test provided in Subsection 53-5-704(9)(c), within one year of the date of the application.

(2)(a) An applicant who has not completed a firearm instructor training course from the NRA or POST, may meet the requirement in Subsection R722-300-5(1)(b)(v) by providing evidence that the applicant has completed a firearm instructor training course that is at least eight hours long and includes the following training components:

(i) instruction and demonstration on:

(A) the safe, effective, and proficient use and handling of firearms;

(B) firearm draw strokes;

(C) the safe loading, unloading and storage of firearms;

(D) the parts and operation of a handgun;

(E) firearm ammunition and ammunition malfunctions, including misfires, hang fires, squib loads, and defensive ~~[f]~~ or protection ammunition vs. practice ammunition;

(F) firearm malfunctions, including failure to fire, failure to eject, feed way stoppage and failure to go into battery;

(G) shooting fundamentals, including shooter's stance ~~[-ete-]~~; and

(H) firearm range safety rules; and
 (ii) a practical exercise with a proficiency qualification course consisting of not less than 30 rounds and a required score of 80% or greater to pass.

(b) The evidence required in Subsection R722-300-5(2)(a) shall include a copy of the:

(i) course completion certificate showing the date the course was completed and the number of training hours completed; and
 (ii) training curriculum for the course completed.

(3)(a) If the bureau determines that an applicant meets the requirements found in Subsection 53-5-704(9), the bureau shall issue an instructor certification to the applicant.

(b) An instructor certification identification card shall be mailed to the applicant at the residential or physical address listed on the application.

(4)(a) If the bureau determines that the applicant does not meet the requirements found in Subsection 53-5-704(9), the bureau shall mail a denial letter to the applicant, return receipt requested.

(b) The denial letter shall state the reasons for denial and indicate that the applicant has a right to request a review hearing before the board by filing a petition for review within 60 days as provided in Subsection 53-5-704(16).

R722-300-6. Renewal of a Concealed Firearms Permit or Concealed Firearms Instructor Certification.

(1)(a) An applicant seeking to renew a permit or an instructor certification shall submit a completed renewal packet to the bureau.

(b) The renewal packet for an applicant seeking to renew a permit shall include:

(i) a written or electronic renewal form provided by the bureau with the current address of the applicant's permanent residence;

(ii) a copy of the applicant's current concealed firearm or weapon permit or provisional concealed firearm or weapon permit issued by the applicant's state of residency pursuant to Subsections 53-5-704(4)(a) and 53-5-704.5(3)(a), unless the applicant is an active duty service member who presents orders requiring the active duty service member to report for duty in Utah or an active duty service member spouse who presents the active duty service member's orders requiring the service member to report for duty in Utah;

(iii) one recent color photograph of passport quality[;];

(A) unless the licensee submitted a photo ~~[which]~~that meets these requirements to the bureau within the previous five years; and

~~[(A)]~~(B) if the renewal application is not submitted electronically, the photo must contain the applicant's name written on the back of the photograph; and

(iv) a non-refundable processing fee in the form of cash, check, money order, or credit card, unless the applicant is an active duty service member who presents orders requiring the active duty service member to report for duty in Utah or an active duty service member spouse who presents the active duty service member's orders requiring the service member to report for duty in Utah.

(v) Prior to renewal of a permit, an applicant shall watch the firearm safety and suicide prevention video described in Section R722-300-12, and affirm that hethe applicant has watched the video in connection with the application process.

(c) The renewal packet for an applicant seeking to renew an instructor certification shall include:

(i) a written or electronic renewal form provided by the bureau with the applicant's residential or physical address and the applicant's public contact information;

(ii) one recent color photograph of passport quality[;];

(A) unless the applicant submitted a photo ~~[which]~~that meets these requirements to the bureau within the previous three years; and

~~[(A)]~~(B) if the renewal application is not submitted electronically, the photo must contain the applicant's name written on the back of the photograph;

(iii) a photocopy of a valid Utah concealed firearm permit;

(iv) a non-refundable processing fee in the form of cash, check, money order, or credit card; and

(v) evidence that the instructor has completed the course of instruction provided under the direction of the bureau and passed the certification test provided in Subsection 53-5-704(9)(c), within one year of the date of the application.

~~[(A)]~~(vi) The course of instruction for instructor certification renewal may be completed in person or via an online training course administered by the bureau.

(2) A renewal packet may be submitted no earlier than 60 days prior to the expiration of a current permit or certification.

(3)(a) A fee will be collected for renewal packets submitted on a permit or an instructor certification that has been expired for more than 30 days but less than one year.

(b) Renewal packets for a permit or an instructor certification which has been expired for more than one year will not be accepted and the applicant will have to re-apply for a permit or an instructor certification.

(4) When renewing a permit or an instructor certification the bureau shall conduct a background investigation.

(5)(a) If the bureau determines that the applicant meets the requirements to renew a permit or an instructor certification, the bureau shall mail the renewed permit or instructor certification identification card to the applicant.

(b) The renewed permit or instructor certification identification card shall be mailed to the applicant at the address listed on the renewal application.

(6)(a) If the bureau determines that the applicant does not meet the requirements to renew a permit or an instructor certification, the bureau shall mail a denial letter to the applicant, return receipt requested.

(b) The denial letter shall state the reasons for denial and indicate that the applicant has a right to request a review hearing before the board by filing a petition for review within 60 days as provided in Subsection 53-5-704(16).

(7) Provisional permits issued pursuant to Section 53-5-704.5 may not be renewed.

R722-300-7. Application for a Temporary Permit to Carry a Concealed Firearm.

(1)(a) ~~[In order to]~~ To obtain a temporary permit an applicant shall submit a completed permit application packet to the bureau as provided by Section R722-300-4.

(b) In addition, the applicant shall provide written documentation to establish extenuating circumstances ~~[which]~~that would justify the need for a temporary permit to carry a concealed firearm.

(2) When reviewing an application for a temporary permit to carry a concealed firearm the bureau shall conduct the same background investigation as provided in Section R722-300-4.

(3)(a) If the bureau finds that extenuating circumstances exist to justify the need for a temporary permit, the bureau shall issue a temporary permit to the applicant.

(b) The temporary permit shall be mailed to the applicant at the address listed on the application.

(4) If the bureau finds that the applicant is otherwise eligible to receive a permit under Section 53-5-704, the bureau shall request that the applicant surrender the temporary permit prior to the issuance of the permit under Section 53-5-704.

R722-300-8. LEOJ Permits.

(1)(a) ~~[In order to]~~ To obtain an LEOJ permit under Section 53-5-711, an applicant shall submit a completed permit application packet to the bureau as provided by Section R722-300-4.

(b) In addition, the applicant shall provide written documentation to establish to the satisfaction of the bureau that the applicant:

(i) ~~[the applicant]~~ is a law enforcement official or judge as defined in Section 53-5-711; and

(ii) ~~[that the applicant]~~ has completed the course of training required by Subsection 53-5-711(2)(b).

(2) When reviewing an application for an LEOJ permit the bureau shall conduct the same background investigation as if the individual were seeking a permit.

(3)(a) If the bureau finds that the applicant meets the requirements found in Subsection 53-5-711(2), the bureau shall issue an LEOJ permit to the applicant.

(b) The LEOJ permit shall be mailed to the applicant at the address listed on the application.

(4)(a) If the bureau finds that the applicant does not meet the requirements found in Subsection 53-5-711(2), the bureau shall mail a denial letter to the applicant, return receipt requested.

(b) The denial letter shall state the reasons for denial and indicate that the applicant has a right to request a review hearing before the board by filing a petition for review within 60 days as provided in Subsection 53-5-704(16).

(5)(a) When the bureau receives notice that an LEOJ permit holder resigns or is terminated from a position as a law enforcement official or judge, the LEOJ permit will be revoked and the bureau shall issue a permit, pursuant to Section 53-5-704, if the former LEOJ permit holder otherwise meets the requirements found in that section.

(b) If a former LEOJ permit holder gains new employment as a law enforcement official or judge, the bureau shall re-issue an LEOJ permit.

R722-300-9. Suspension or Revocation of a Permit to Carry a Concealed Firearm, Concealed Firearms Instructor Certification, or an LEOJ Permit.

(1) A permit may be suspended or revoked for any of the following reasons:

(a) the bureau determines that the permit holder does not meet the requirements found in Subsection 53-5-704(2);

(b) the bureau determines that the permit holder has committed a violation under Subsection 53-5-704(3); or

(c) the permit holder knowingly and willfully provided false information on an application for a permit, or a renewal of a permit.

(2) An instructor certification may be suspended or revoked for any of the following reasons:

(a) the bureau determines that the instructor has become ineligible to possess a firearm under Section 76-10-506 or federal law; or

(b) the instructor knowingly and willfully provided false information to the bureau.

(3) An LEOJ permit may be suspended or revoked for any of the following reasons:

(a) the bureau determines that an LEOJ permit holder is no longer employed as a law enforcement official or judge; or

(b) an LEOJ permit holder fails to provide proof of annual requalification by November 30 of each year as required by Section 53-5-711.

(4)(a) If the bureau suspends or revokes a permit, an instructor certification, or an LEOJ permit, the bureau shall mail a notice of agency action to the permit holder, instructor, or LEOJ permit holder, return receipt requested.

(b) The notice of agency action shall state the reasons for suspension or revocation and indicate that the permit holder, instructor, or LEOJ permit holder has a right to request a review hearing before the board by filing a petition for review within 60 days as provided in Subsection 53-5-704(16).

R722-300-10. Review Hearing Before the Board.

(1)(a) Review hearings before the board shall be informal and be conducted ~~[according to the provisions in]~~ in accordance with Section 63G-4-203.

(b) At the hearing, the bureau shall establish the allegations contained in the notice of agency action by a preponderance of the evidence.

(2) Upon request, an applicant, permit holder, instructor, or LEOJ permit holder who is seeking review before the board is entitled to review ~~[all]~~ the materials in the bureau's file upon which the bureau intends to use in the hearing.

(3) In accordance with Section 63G-4-209 the board may enter an order of default against an applicant, permit holder, instructor, or LEOJ permit holder who fails to appear at the hearing.

(4) Within 30 days of the date of the hearing the board shall issue an order ~~[which]~~ that:

(a) states the board's decision and the reasons for the board's decision; and

(b) indicates that the applicant, permit holder, instructor, or LEOJ permit holder has a right to appeal the decision of the board by filing a petition for judicial review within 30 days as provided in Section 63G-4-402.

R722-300-11. Records Access.

(1)(a) Information, except for the name of certified instructors and their public contact information, provided to the bureau by an applicant shall be considered "private" in accordance with Subsection 63G-2-302(2)(d).

(b) The name of certified instructors and their public contact information shall be considered public information.

(2) Information gathered by the bureau and placed in an applicant's file shall be considered "protected" in accordance with Subsection 63G-2-305(9).

(3) When a permit has been issued to an applicant, the names, address, telephone numbers, dates of birth, and Social Security numbers of the applicant are protected records pursuant to Section 53-5-708.

R722-300-12. Firearm Safety and Suicide Prevention Video.

(1) The bureau shall meet with the Division of Substance Abuse and Mental Health as needed to approve concepts and scripts for a firearm safety and suicide prevention video ~~[in order]~~ to ensure compliance with ~~[provisions set forth in]~~ Section 53-5-707.6.

~~(a)~~ (2) Once concepts and scripts are established, the bureau and the Division of Substance Abuse and Mental Health will produce the video and make it available for viewing.

(3) The firearm safety and suicide prevention video will be made available to an applicant seeking renewal of their concealed firearm permit:

NOTICES OF PROPOSED RULES

- (a) online, in connection with an electronic or mail in renewal; or
- (b) at the bureau's office location for an applicant who appears in person to renew.

Date of Last Change: ~~2021~~January 9, 2020

Notice of Continuation: April 14, 2020

Authorizing, and Implemented or Interpreted Law: 53-5-701 through 53-5-~~712~~711; ~~53-5-707.6~~

KEY: concealed firearm permits, concealed firearm permit instructors

End of the Notices of Proposed Rules Section

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the agency is required to review the rule. This review is intended to help the agency determine, and to notify the public, that the administrative rule in force is still authorized by statute and necessary. Upon reviewing a rule, an agency may: repeal the rule by filing a **PROPOSED RULE**; continue the rule as it is by filing a **FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (REVIEW)**; or amend the rule by filing a **PROPOSED RULE** and by filing a **REVIEW**. By filing a **REVIEW**, the agency indicates that the rule is still necessary.

A **REVIEW** is not followed by the rule text. The rule text that is being continued may be found in the online edition of the *Utah Administrative Code* available at 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.): | R277-318 | Filing ID: 52811 |
|--------------------------------------|-----------------|-------------------------|

Agency Information

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|--|-------------------------------|----------------------------------|
| 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

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|---|--|
| 2. Rule catchline: | R277-318. Teacher Salary Supplement Program |
| 3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule: | This rule is authorized by the Utah Constitution, Article X, Section 3, which vests general control and supervision over public education in the Board; Subsection 53E-3-401(4) allows the Board to make rules to execute the Board's duties and responsibilities under the Utah |

Constitution and state law; and Section 53F-2-504 which directs the Board to make rules regarding the administration of the Teacher Salary Supplement Program.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

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 continues to be necessary because it establishes application and appeal procedures for administration of the Teacher Salary Supplement Program. Therefore, this rule should be continued.

Agency Authorization Information

| | | | |
|--|--|--------------|------------|
| Agency head or designee, and title: | Angie Stallings, Deputy Superintendent of Policy | Date: | 10/07/2021 |
|--|--|--------------|------------|

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

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|--------------------------------------|-----------------|-------------------------|
| Utah Admin. Code Ref (R no.): | R277-421 | Filing ID: 50412 |
|--------------------------------------|-----------------|-------------------------|

Agency Information

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|-----------------------|----------------|
| 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

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| 2. Rule catchline: |
| R277-421. Out-of-State Tuition Reimbursement |
| 3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule: |
| This rule is authorized by the Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board; 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 Section 53G-6-305 which outlines when a school district may pay out-of-state tuition for a resident student to attend a school district out of state. |
| 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 was approved by the State Board of Education for continuation and continues to be necessary because it establishes procedures for obtaining Board approval for reimbursement of out-of-state tuition expenses, calculating reimbursement costs, and recording out of state students in district records. |

Agency Authorization Information

| | | | |
|--|--|--------------|------------|
| Agency head or designee, and title: | Angie Stallings, Deputy Superintendent of Policy | Date: | 10/07/2021 |
|--|--|--------------|------------|

| FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION | | |
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| Utah Admin. Code Ref (R no.): | R277-438 | Filing ID: 50428 |

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

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| 2. Rule catchline: |
| R277-438. Dual Enrollment |
| 3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule: |
| This rule is authorized by the Utah Constitution, Article X, Section 3, which vests general control and supervision over public education in the Board; Subsection 53E-3-501(1)(b)(i) which directs the Board to establish rules and minimum standards for access to programs; 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 Section 53G-6-702 which governs dual enrollment. |
| 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 was approved by the State Board of Education for continuation and continues to be necessary because it provides consistent statewide procedures and criteria for a home school and private school student's participation in a public school course, co-curricular activity, or program. |

Agency Authorization Information

| | | | |
|--|--|--------------|------------|
| Agency head or designee, and title: | Angie Stallings, Deputy Superintendent of Policy | Date: | 10/07/2021 |
|--|--|--------------|------------|

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

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|--------------------------------------|-----------------|-------------------|--------------|
| Utah Admin. Code Ref (R no.): | R277-746 | Filing ID: | 50538 |
|--------------------------------------|-----------------|-------------------|--------------|

Agency Information

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|--|-------------------------------|----------------------------------|
| 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

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| 2. Rule catchline: |
| R277-746. Driver Education Programs for Utah Schools |
| 3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule: |
| This rule is authorized by the Utah Constitution, Article X, Section 3, which vests general control and supervision of public education in the Board; Subsection 53E-3-401(4) which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and Subsection 53G-10-502(4) which directs the Board to prescribe rules for driver education classes in the public schools. |
| 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 was approved by the State Board of Education for continuation and continues to be necessary because it incorporates by reference the Board's Driver Education manual, which specifies standards and procedures for local school districts conducting automobile driver education.

Agency Authorization Information

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|--|--|--------------|------------|
| Agency head or designee, and title: | Angie Stallings, Deputy Superintendent of Policy | Date: | 10/07/2021 |
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

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|--------------------------------------|-----------------|-------------------|--------------|
| Utah Admin. Code Ref (R no.): | R277-922 | Filing ID: | 50554 |
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Agency Information

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|--|-------------------------------|----------------------------------|
| 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

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|---|
| 2. Rule catchline: |
| R277-922. Digital Teaching and Learning Grant Program |
| 3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule: |
| This rule is authorized by the Utah Constitution, Article X, Section 3, which vests general control and supervision over public education in the Board; 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 Section 53F-2-510, the Digital Teaching and Learning Grant Program, which requires the Board to establish a qualifying grant program and adopt rules related to administration of the Digital Teaching and Learning Grant Program. |

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

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 was approved by the State Board of Education for continuation and continues to be necessary because it establishes an application and grant review committee and process and gives direction to LEAs participating in the Digital Teaching and Learning Program.

Agency Authorization Information

| | | | |
|--|--|--------------|------------|
| Agency head or designee, and title: | Angie Stallings, Deputy Superintendent of Policy | Date: | 10/07/2021 |
|--|--|--------------|------------|

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

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|--------------------------------------|-----------------|-------------------------|
| Utah Admin. Code Ref (R no.): | R392-401 | Filing ID: 50926 |
|--------------------------------------|-----------------|-------------------------|

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

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| 2. Rule catchline: |
| R392-401. Roadway Rest Area Sanitation |

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

This rule is authorized under Sections 26-1-5 and 26-15-2, and Subsection 26-1-30(23).

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

No comments 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 sets standards for health, safety, and welfare of individuals and for the prevention of the spread of disease in or from a roadway rest area. Therefore, this rule should be continued. The Department received no comments in opposition to the continuation of this rule.

Agency Authorization Information

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|--|--|--------------|------------|
| Agency head or designee, and title: | Nathan Checketts, Interim Executive Director | Date: | 10/15/2021 |
|--|--|--------------|------------|

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

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|--------------------------------------|---------------|-------------------------|
| Utah Admin. Code Ref (R no.): | R850-8 | Filing ID: 52025 |
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Agency Information

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|--|--------------------------------------|--------------------|
| 1. Department: | School and Institutional Trust Lands | |
| Agency: | Administration | |
| Room no.: | Suite 500 | |
| Street address: | 675 E 500 S | |
| City, state and zip: | Salt Lake City, UT 84102-2818 | |
| Contact person(s): | | |
| Name: | Phone: | Email: |
| Mike Johnson | 801-538-5180 | mjohnson@utah.gov |
| Lisa Wells | 801-538-5154 | lisawells@utah.gov |
| Please address questions regarding information on this notice to the agency. | | |

General Information**2. Rule catchline:**

R850-8. Adjudicative Proceedings

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

Section 53C-I-304 requires the Board of Trustees (Board) for the School and Institutional Trust Lands Administration (SITLA) to establish due process rules for the resolution of conflicts regarding actions taken by the Board, director, and SITLA. This rule provides the procedures for aggrieved parties to petition for administrative or judicial review of the actions taken.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

No written comments have been received by the agency concerning this rule since the previous five-year review filed in 10/18/2016.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

There continues to be a need for a mechanism for aggrieved parties to petition for redress of SITLA or Board actions which affect an interest held by the parties. This rule provides for a reasonable and effective way for the board to address challenges to agency and board actions. Therefore, this rule should be continued.

Agency Authorization Information

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|--|-----------------------|--------------|------------|
| Agency head or designee, and title: | Dave Ure, Director | Date: | 10/07/2021 |
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

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|--------------------------------------|---------------|-------------------|--------------|
| Utah Admin. Code Ref (R no.): | R926-5 | Filing ID: | 52140 |
|--------------------------------------|---------------|-------------------|--------------|

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:**

R926-5. State Park Access Highways Improvement Program

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

Subsection 72-3-207(4) requires the Department of Transportation (Department) to make and maintain an administrative rule that administers the State Park Access Highways Improvement Program and establishes procedures for a county or municipality to apply for a grant of program money.

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:

The Department must continue Rule R926-5 because it satisfies Subsection 72-3-207(4) requirements, which remain in effect.

Agency Authorization Information

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| Agency head or designee, and title: | Carlos M. Braceras, PE, Executive Director | Date: | 10/04/2021 |
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

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|--------------------------------------|---------------|-------------------------|
| Utah Admin. Code Ref (R no.): | R930-2 | Filing ID: 52136 |
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Agency Information

| | | |
|--|---------------------------------|------------------------|
| 1. Department: | Transportation | |
| Agency: | Preconstruction | |
| 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

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| 2. Rule catchline: |
| R930-2 Public Hearings |
| 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 72-1-201 authorizes the Department of Transportation (Department) to make rules for the administration of the Department, state transportation systems, and programs. Public hearings are critical to the Department's ability to obtain feedback from the public that helps it plan, design, and construct the state's transportation systems in a way that harmonizes with the public's needs. |
| 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:

Since this rule facilitates the Department's ability to obtain feedback from the public that helps it plan, design, and construct the state's transportation systems in a way that harmonizes with the public's needs, this rule must be continued.

Agency Authorization Information

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| Agency head or designee, and title: | Carlos M. Bracerias, PE, Executive Director | Date: | 10/05/2021 |
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

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|--------------------------------------|---------------|-------------------------|
| Utah Admin. Code Ref (R no.): | R930-3 | Filing ID: 52138 |
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Agency Information

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|--|---------------------------------|------------------------|
| 1. Department: | Transportation | |
| Agency: | Preconstruction | |
| 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

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| 2. Rule catchline: |
| R930-3. Highway Noise Abatement |
| 3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule: |
| Subsection 72-6-111(4) requires the Department of Transportation (Department) to make and maintain an administrative rule that establishes noise abatement measures for construction and maintenance of appurtenances. This rule satisfies those requirements. |
| 4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule: |
| There has not been a complaint documented that was specific to this rule. However, the Department received many comments regarding the policy which implements this rule in the Department's processes. These mainly concern the process of evaluating noise impacts and proposing noise abatement mitigation. These comments are generally procedural, resolved by communicating with constituents and clarifying the policy where necessary. |
| 5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any: |
| The Department must continue Rule R930-3 because it satisfies Subsection 72-6-111(4) requirements, which remain in effect. |

Agency Authorization Information

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| Agency head or designee, and title: | Carlos M. Bracerias, PE, Executive Director | Date: | 10/04/2021 |
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

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|--------------------------------------|---------------|-------------------------|
| Utah Admin. Code Ref (R no.): | R930-5 | Filing ID: 53184 |
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Agency Information

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|-----------------------------|---------------------------------|
| 1. Department: | Transportation |
| Agency: | Preconstruction |
| 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

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| 2. Rule catchline: |
| R930-5 Establishment and Regulation of At-Grade Railroad Crossings |
| 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 54-4-15, Establishment and Regulation of Grade Crossings, grants the Department of Transportation (Department) express authority to make this rule and the Department has general authority to make this rule under Subsection 72-1-201(1)(h). |
| 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 received written comments from an interested railroad that opposed a proposed change to Section R930-5-8 in November and December of 2020. The Department also received written comments from two municipalities that favored the change to Section R930-5-8 during the first half of 2021. The Department effectuated the proposed changes 03/25/2021. |
| 5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any: |
| Rule R930-5 is critical to the Department's statutory duty to foster safety of at-grade railroad crossings and fulfills state law delegating authority to the Department to assign responsibility for railroad crossing improvements. This rule also incorporates by reference numerous federal regulations designed to enhance safety of at-grade railroad crossings. Therefore, this rule should be continued. |

Agency Authorization Information

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| Agency head or designee, and title: | Carlos M. Braceras, PE, Executive Director | Date: | 10/05/2021 |
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

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| Utah Admin. Code Ref (R no.): | R930-6 | Filing ID: 52145 |
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Agency Information

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|--|---------------------------------|------------------------|
| 1. Department: | Transportation | |
| Agency: | Preconstruction | |
| 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

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| 2. Rule catchline: |
| R930-6 Access Management |

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

Section 72-1-201 authorizes the Department of Transportation (Department) to make rules for the administration of the Department, state transportation systems, and programs. This rule serves to establish highway access management procedures and standards to protect Utah's state highway system. The state highway system constitutes a valuable resource and a major public investment. Controlling access to certain parts of the state's highway system facilitates traveler safety and reduces delay and congestion. Further, Subsections 72-2-117(8) and 72-3-109(2) require the development of a model access management policy for the location and construction of approach roads and driveways entering state highways. This rule fulfills that statutory mandate.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

The Department has received a few written comments from parties concerning the efficiency of our access permit process and a desire for clarification on some technical definitions. Many of these comments addressed interactions with the Department prior to the 2019 amendments to this rule, which improved efficiency considerably, particularly through the implementation of a pre-application meeting.

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 serves to establish highway access management procedures and standards to protect Utah's state highway system. Failure to manage access to and from state highways can cause an increase in accidents, increased traffic congestion, decline in operating speed, loss of traffic carrying capacity, and increased traffic delays. The Department must continue this rule for the sake of the public's convenience and safety.

Agency Authorization Information

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| Agency head or designee, and title: | Carlos M. Braceras, PE, Executive Director | Date: | 10/05/2021 |
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End of the Five-Year Notices of Review and Statements of Continuation Section

NOTICES OF FIVE-YEAR REVIEW EXTENSIONS

Rulewriting agencies are required by law to review each of their administrative rules within five years of the date of the rule's original enactment or the date of last review (Section 63G-3-305). If the agency finds that it will not meet the deadline for review of the rule (the five-year anniversary date), it may file a **NOTICE OF FIVE-YEAR REVIEW EXTENSION (EXTENSION)** with the Office of Administrative Rules. The **EXTENSION** permits the agency to file the review up to 120 days beyond the anniversary date.

Agencies have filed **EXTENSIONS** for the rules listed below. The "Extended Due Date" is 120 days after the anniversary date.

EXTENSIONS are governed by Subsection 63G-3-305(6).

| NOTICE OF FIVE-YEAR REVIEW EXTENSION | | |
|--------------------------------------|----------|------------------|
| Utah Admin. Code Ref (R no.): | R307-301 | Filing ID: 50608 |

Agency Information

| | | |
|--|------------------------------------|----------------|
| 1. Department: | Environmental Quality | |
| Agency: | Air Quality | |
| Building: | Multi-Agency State Office Building | |
| Street address: | 195 N 1950 W | |
| City, state and zip: | Salt Lake City, UT 84116 | |
| Mailing address: | PO Box 144820 | |
| City, state and zip: | Salt Lake City, UT 84114-4820 | |
| Contact person(s): | | |
| Name: | Phone: | Email: |
| Bo Wood | 385-499-3416 | rwood@utah.gov |
| Please address questions regarding information on this notice to the agency. | | |

General Information

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| 2. Rule catchline: |
| R307-301: Utah and Weber Counties: Oxygenated Gasoline Program as a Contingency Measure |
| 3. Reason for requesting the extension and the new deadline date: |
| During the five-year review analysis, the Division of Air Quality (DAQ) staff determined that this rule may no longer be needed because the ordinary ethanol content of today's blended gasoline fuels substantially exceeds the 3% maximum ethanol blend required by this rule if the contingency measure were triggered. In addition, neither Utah or Weber County has exceeded the carbon monoxide standard since 2002 and other, more effective contingency measures remain in place should this trend reverse. This extension will give the DAQ staff time to coordinate with EPA in pursuit of a repeal of the rule. The new deadline is 05/27/2022. |

Agency Authorization Information

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|-------------------------------------|-------------------------|-------|------------|
| Agency head or designee, and title: | Bryce C. Bird, Director | Date: | 10/01/2021 |
|-------------------------------------|-------------------------|-------|------------|

End of the Notices of Five-Year Review Extensions Section

NOTICES OF FIVE-YEAR EXPIRATIONS

Rulewriting agencies are required by law to review each of their administrative rules within five years of the date of the rule's original enactment or the date of last review (Section 63G-3-305). The Office of Administrative Rules (Office) is required to notify agencies of rules due for review at least 180 days prior to the anniversary date. If the agency finds that it will not meet the deadline for review of the rule (the five-year anniversary date), it may file a **NOTICE OF FIVE-YEAR EXTENSION (EXTENSION)** with the Office. However, if the agency fails to file either the **FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION** or the **EXTENSION** by the date provide by the Office, the rule expires.

Upon expiration of the rule, the Office files a **NOTICE OF FIVE-YEAR EXPIRATION (EXPIRATION)** to document the action. The Office is required to remove the rule from the *Utah Administrative Code*. The agency may no longer enforce the rule and it must follow regular rulemaking procedures to replace the rule if it is still needed.

The Office has filed **EXPIRATIONS** for each of the rules listed below which were not reviewed in accordance with Section 63G-3-305. These rules have expired and have been removed from the *Utah Administrative Code*.

The expiration of administrative rules for failure to comply with the five-year review requirement is governed by Subsection 63G-3-305(8).

NOTICE OF EXPIRED RULE

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|----------------------------------|--------|--------------|
| Utah Admin. Code Ref (R no.): | R907-3 | ID No. 52092 |
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Agency Information

| | | |
|-----------------------|------------------------|----------------------|
| 1. Department: | Transportation | |
| Agency: | Administration | |
| Street address: | 4501 S 2700 W | |
| City, state, and zip: | Taylorsville, UT 84129 | |
| Contact person(s): | | |
| Name: | Phone: | Email: |
| Nancy L. Lancaster | 801-957-7102 | rulesonline@utah.gov |

General Information

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|---|------------|
| 2. Title of rule (catchline): | |
| R907-3. Administrative Procedure | |
| 3. Effective Date: | 10/08/2021 |
| 4. Summary: | |
| The five-year review and notice of continuation was not filed for this rule by the deadline. This rule has expired and will be removed from the Utah Administrative Code. | |

End of the Notices of Notices of Five Year Expirations 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

Plant Industry

No. 53755 (Amendment) R68-22: Industrial Hemp Research
Published: 08/15/2021
Effective: 10/01/2021

No. 53708 (Amendment) R68-26: Industrial Hemp Product Registration and Labeling
Published: 08/01/2021
Effective: 10/01/2021

No. 53704 (New Rule) R68-37: Industrial Hemp Cannabinoid Product Testing
Published: 08/01/2021
Effective: 10/01/2021

Auditor

Administration

No. 53561 (New Rule) R123-7: Required Governmental Entities' Posting of Financial Information to Transparent Utah, formerly known as the Utah Public Finance Website
Published: 06/15/2021
Effective: 10/05/2021

Commerce

Real Estate

No. 53856 (Amendment) R162-2c: Utah Residential Mortgage Practices and Licensing Rules
Published: 09/15/2021
Effective: 10/26/2021

No. 53635 (New Rule) R162-2h: Affiliated Title Business Rule
Published: 09/15/2021
Effective: 10/26/2021

Government Operations

Facilities Construction and Management

No. 53609 (Amendment) R23-31: Executive Residence Mansion
Published: 07/15/2021
Effective: 10/27/2021

Governor

Economic Opportunity

No. 53834 (Repeal) R357-1: Rural Fast Track Program
Published: 09/01/2021
Effective: 10/12/2021

No. 53838 (Amendment) R357-5: Motion Picture Incentive Rule
Published: 09/01/2021
Effective: 10/12/2021

No. 53835 (Repeal) R357-19: Business Resource Centers
Published: 09/01/2021
Effective: 10/12/2021

No. 53769 (Repeal) R357-20: Education Computing Partnerships
Published: 09/01/2021
Effective: 10/12/2021

No. 53890 (Amendment) R357-29: Rural County Grant Program Rule
Published: 09/15/2021
Effective: 10/26/2021

No. 53895 (New Rule) R357-42: Redeveloping Matching Grant Rule
Published: 09/15/2021
Effective: 10/26/2021

NOTICES OF RULE EFFECTIVE DATES

Health

Family Health and Preparedness, Primary Care and Rural Health

No. 53847 (Amendment) R434-100: Physician Visa Waivers

Published: 09/01/2021

Effective: 10/13/2021

Human Services

Administration

No. 53889 (Amendment) R495-882: Termination of Parental Rights

Published: 09/15/2021

Effective: 10/25/2021

Child and Family Services

No. 53851 (Repeal) R512-1: Description of Division Services, Eligibility, and Service Access

Published: 09/15/2021

Effective: 10/23/2021

No. 53852 (Repeal) R512-204: Child Protective Services, New Caseworker Training

Published: 09/15/2021

Effective: 10/23/2021

Recovery Services

No. 53888 (Amendment) R527-3: Definitions

Published: 09/15/2021

Effective: 10/25/2021

No. 53887 (Repeal) R527-37: Closure Criteria for Support Cases

Published: 09/15/2021

Effective: 10/25/2021

No. 53882 (Repeal) R527-253: Collection of Child Support Judgments

Published: 09/15/2021

Effective: 10/25/2021

Services for People with Disabilities

No. 53734 (New Rule) R539-11: Strategy Report Advisory Committee

Published: 08/01/2021

Effective: 10/22/2021

No. 53734 (Change in Proposed Rule) R539-11: Strategy Report Advisory Committee

Published: 09/15/2021

Effective: 10/22/2021

Insurance

Administration

No. 53857 (Amendment) R590-70: Insurance Holding Companies

Published: 09/15/2021

Effective: 10/25/2021

No. 53844 (Repeal) R590-76: Health Maintenance Organizations and Limited Health Plans

Published: 09/01/2021

Effective: 10/12/2021

No. 53841 (Repeal) R590-88: Prohibited Transactions Between Producers And Unauthorized Multiple Employer Trusts

Published: 09/01/2021

Effective: 10/12/2021

No. 53858 (Amendment) R590-103: Security Deposits

Published: 09/15/2021

Effective: 10/25/2021

No. 53859 (Amendment) R590-120: Surety Bond Forms

Published: 09/15/2021

Effective: 10/25/2021

No. 53878 (Amendment) R590-124: Loss Information Rule

Published: 09/15/2021

Effective: 10/25/2021

No. 53879 (Amendment) R590-127: Rate Filing Exemptions

Published: 09/15/2021

Effective: 10/25/2021

No. 53880 (Amendment) R590-129: Unfair Discrimination Based Solely Upon Blindness or Physical or Mental Impairment

Published: 09/15/2021

Effective: 10/25/2021

Title and Escrow Commission

No. 53842 (Amendment) R592-8: Application Process for an Attorney Exemption for Agency Title Insurance Producer Licensing

Published: 09/01/2021

Effective: 10/12/2021

No. 53845 (Amendment) R592-9: Assessment for Title Insurance Recovery, Education, and Research Fund

Published: 09/01/2021

Effective: 10/12/2021

No. 53843 (Amendment) R592-10: Title Insurance Regulation Assessment for Agency Title Insurance Producers and Title Insurers

Published: 09/01/2021

Effective: 10/12/2021

Natural Resources

Geological Survey

No. 53634 (Amendment) R638-1: Acceptance and Maintenance of Confidential Information

Published: 08/15/2021

Effective: 10/20/2021

Wildlife Resources

No. 53885 (Amendment) R657-10: Taking Cougar

Published: 09/15/2021

Effective: 10/25/2021

No. 53886 (Amendment) R657-41: Conservation and
Sportsman Permits

Published: 09/15/2021

Effective: 10/25/2021

End of the Notices of Rule Effective Dates Section

