

UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT
Filed October 03, 2023, 12:00 a.m. through October 16, 2023, 11:59 p.m.

Number 2023-21
November 01, 2023

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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Utah state bulletin.

Semimonthly.

1. Delegated legislation--Utah--Periodicals. 2. Administrative procedure--Utah--Periodicals.
- I. Utah. Office of Administrative Rules.

KFU440.A73S7

348.792'025--DDC

85-643197

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EDITOR'S NOTES

Revision to the Filing on Rule R64-4, ID 55840, from the October 15, 2023, Bulletin

The Department of Agriculture and Food (Department) has requested that updated information for the cost to the state budget for the proposed repeal and reenact for Rule R64-4, ID 55840, that was published in the October 15, 2023, Bulletin (2023-20, page 10) be made available. For questions, contact the persons listed in Box 1 below.

NOTICE OF PROPOSED RULE

TYPE OF FILING: Repeal and Reenact

Rule or Section Number:

R64-4

Filing ID: 55840

Agency Information

1. Department:	Agriculture and Food	
Agency:	Conservation	
Building:	TSOB South Bldg, Floor 2	
Street address:	4315 S 2700 W	
City, state and zip:	Taylorsville, UT 84129	
Mailing address:	PO Box 146500	
City, state and zip:	Salt Lake City, UT 84114-6500	
Contact persons:		
Name:	Phone:	Email:
Amber Brown	385-245-5222	Ambermbrown@utah.gov
Kelly Pehrson	385-977-2147	kwpehrson@utah.gov
Jim Bowcutt	435-232-4017	jdbowcutt@utah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule or section catchline:

R64-4. Agricultural Water Optimization Program

.....

Fiscal Information

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

A) State budget:

Under S.B. 277 (2023), \$200,000,000 (split between \$170,000,000 of general fund and \$30,000,000 of ARPA funding) was appropriated to the agricultural water optimization account for grants under this program.

Under line 205 of S.B. 277 (2023), the Department, along with the Department of Natural Resources is able to use 1.5% of account funds for program administration. The Department and the Department of Natural Resources has interpreted this language to allow 1% of the account funds to be used by the Department and 0.5% used by the Department of Natural Resources. Under this formula, up to a total of \$450,000 of the ARPA funding and \$2,550,000 of general fund may be used by the Department for administration expenses over the life of the program.

Based on how the Department anticipates grants will be awarded the Department plans to use approximately \$210,000 of this funding in FY 2024, \$710,000 in FY 2025, and \$615,000 in FY 2026 with approximately \$450,000 used in FY 2027.

Regulatory Impact Table			
Fiscal Cost	FY2024	FY2025	FY2026
State Government	\$210,000	\$710,000	\$615,000
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$210,000	\$710,000	\$615,000
Fiscal Benefits	FY2024	FY2025	FY2026
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	\$(210,000)	\$(710,000)	\$(615,000)

H) Department head comments on fiscal impact and approval of regulatory impact analysis:
 The Commissioner of the Department of Agriculture and Food, Craig W Buttars, has reviewed and approved this regulatory impact analysis.

Citation Information

6. 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 73-10g-205(6)	Section 73-10g-206	
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Public Notice Information

8. 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: 11/14/2023

9. This rule change MAY become effective on: 11/21/2023

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

Agency Authorization Information

Agency head or designee and title:	Craig W Buttars, Commissioner	Date:	10/02/2023
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End of the Editor's Notes Section

NOTICES OF PROPOSED RULES

A state agency may file a **PROPOSED RULE** when it determines the need for a substantive change to an existing rule. With a **NOTICE OF PROPOSED RULE**, an agency may create a new rule, amend an existing rule, repeal an existing rule, or repeal an existing rule and reenact a new rule. Filings received between October 03, 2023, 12:00 a.m., and October 16, 2023, 11:59 p.m. are included in this, the November 01, 2023, 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, 2023. 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 February 29, 2024, 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 FILING: New		
Rule or Section Number:	R68-41	Filing ID: 55858

Agency Information

1. Department:	Agriculture and Food	
Agency:	Plant Industry	
Building:	TSOB South Bldg, Floor 2	
Street address:	4315 S 2700 W	
City, state and zip:	Taylorsville, UT 84129-2128	
Mailing address:	PO Box 146500	
City, state and zip:	Salt Lake City, UT 84114-6500	
Contact persons:		
Name:	Phone:	Email:
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Cody James	385-515-1485	codyjames@utah.gov
Kelly Pehrson	385-977-2147	kwpehrson@utah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule or section catchline:
R68-41. Home Delivery and Courier
3. Purpose of the new rule or reason for the change:
The Department of Agriculture and Food (Department) is taking over management of medical cannabis pharmacy facilities following changes passed in H.B. 72 during the 2023 General Session. This rule will provide guidelines for the Department's management of pharmacies. This rule is primarily based on rules formerly used by the Department of Health and Human Services.
This rule specifically provides guidelines for medical cannabis home delivery and couriers.
4. Summary of the new rule or change:
This new rule includes operating standards for medical cannabis home delivery services and home delivery agents, as well as application and education requirements medical cannabis courier agents.

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 costs of program management previously incurred by the Department of Health and Human Services prior to the implementation of H.B. 72 will now be incurred by the Department.

B) Local governments:

This proposed rule will not impact local governments because they do not participate in the medical cannabis program.

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

There is no anticipated costs or savings to small businesses.

The program is paid for by licensing fees which will continue to support the program and will not change. Fee revenue will be transferred to the Department rather than the Department of Health and Human Services.

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

There is no anticipated costs or savings to non-small businesses.

The program is paid for by licensing fees which will continue to support the program and will not change. Fee revenue will be transferred to the Department rather than the Department of Health and Human Services.

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

Other persons will not be impacted by this rule because they do not participate in the medical cannabis program.

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

Compliance costs for affected persons will not change. Program requirements will generally be the same but will be managed by the Department.

Fees are not changing under this new rule.

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

Regulatory Impact Table			
Fiscal Cost	FY2024	FY2025	FY2026
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	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0
H) Department head comments on fiscal impact and approval of regulatory impact analysis:			
The Commissioner of the Department of Agriculture and Food, Craig W Butters, has reviewed and approved this regulatory impact analysis.			

Citation Information

6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:		
Section 4-41a-1202		

Public Notice Information

8. 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:	12/01/2023

9. This rule change MAY become effective on:	12/08/2023
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.	

Agency Authorization Information

Agency head or designee and title:	Craig W Butters, Commissioner	Date:	10/16/2023
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R68. Agriculture and Food, Plant Industry.**R68-41. Home Delivery and Courier.****R68-41-1. Authority and Purpose.**

(1) Subsection 4-41a-1202(1) authorizes this rule.

(2) This rule establishes medical cannabis home delivery operating standards, home delivery agent operating standards, courier agent application procedures, courier agent renewal application procedures, and courier agent certification standards.

R68-41-2. Definitions.

(1) "Card" means any type of medical cannabis card or registration card, whichever applies, authorized under Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis.

(2) "Courier agent" means a medical cannabis courier agent.

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

(4) "DHHS" means the Utah Department of Health and Human Services.

(5) "Electronic Verification System" or "EVS" means the same as the term is defined in Section 26B-4-201.

(6) "Inventory Control System" or "ICS" means the same as the term is defined in Section 4-41a-103.

(7) "Manifest" means the document required under Subsection 4-41a-404(2) to be in the possession of any individual transporting medical cannabis that does not have a valid medical cannabis card.

(8) "Medical cannabis" for the purposes of this rule, means medical cannabis or a medical cannabis device, as the terms are defined in Section 26b-4-201.

(9) "Pharmacy agent" means a medical cannabis pharmacy agent.

(10) "Pharmacy Medical Provider" or "PMP" means the same as the term is defined in Subsection 26B-4-201(45).

(11) "State electronic verification system" means the same as the term is defined in Section 26B-4-202 and Subsection 4-41a-102(44).

R68-41-3. Home Delivery Service -- Operating Standards.

(1) In addition to general operating standards established in Section 4-41a-1203 through Section 4-41a-1205, home delivery medical cannabis pharmacies, pharmacy agents, and couriers shall comply with the operating standards established in this rule.

(2) The following operating standards apply to home or caregiver facility delivery medical cannabis pharmacies and couriers.

(3) Pharmacies and couriers shall:

(a) maintain an updated written operating plan for home delivery service, describing a plan to comply with standards established in this section and meeting the requirements of Subsection 4-41a-1202(14);

(b) ensure accurate record keeping of delivery information in the ICS;

(c) maintain a record of at least five years of the initials or unique identification codes that identify each pharmacy agent or courier agent;

(d) lock medical cannabis that is transported in a fully enclosed box, container, or cage, that is secured inside a delivery vehicle and ensure appropriate storage temperature throughout the delivery process to maintain the integrity of the product;

(e) maintain a current paper or electronic list of any employee who makes deliveries that includes each employee's name, department registration license classification and license number, and registration expiration date;

(f) upon request, provide the department with information regarding any vehicle used for the delivery service; including the vehicle's make, model, color, vehicle identification number, license plate number, insurance number, and Division of Motor Vehicle registration number;

(g) ensure that the manifest is not modified in any way after a pharmacy agent or courier agent departs from a home delivery medical cannabis pharmacy facility with a shipment appearing on the manifest;

(h) ensure that no person other than a pharmacy agent or courier agent is in a delivery vehicle during delivery or during the time medical cannabis is in the vehicle; and

(i) ensure that trip log documentation showing a specific route of delivery exists for a route driven by a pharmacy agent or courier agent on a specific day is immediately available for review by the department, upon request.

(4) When delivering medical cannabis to a medical cannabis cardholder's home or a caregiver facility, a pharmacy agent or courier agent may not:

(a) drop off medical cannabis with anyone other than a medical cannabis cardholder or a caregiver facility;

(b) perform a home delivery before 6 a.m. or after 10 p.m.;

(c) leave medical cannabis unattended in a delivery vehicle for more than one hour;

(d) make changes in dosage or quantity at the request of the medical cannabis cardholder during delivery; or

(e) consume medical cannabis while delivering medical cannabis.

(5) When delivering medical cannabis, a pharmacy agent or courier agent employed by a home delivery medical cannabis pharmacy or courier shall:

(a) wear an identification tag or similar form of identification that clearly identifies them to a medical cannabis cardholder and includes their position; and

(b) provide each cardholder or caregiver facility receiving a shipment with printed material that includes their contact information and hours when a PMP is available for counseling over the phone.

(6) Each pharmacy agent or courier agent shall ensure that vehicles used for home delivery::

(a) do not have any marking or other indication on the exterior that identifies what is being transported;

(b) are manned;

(c) have an active alarm system;

(d) have a global positioning system (GPS) monitoring device that is:

(i) not easily removable;

(ii) attached to the vehicle at any time that the vehicle contains medical cannabis; and

(iii) capable of storing and transmitting GPS data so it can be monitored by the home delivery medical cannabis pharmacy during transport of medical cannabis; and

(e) do not transport medical cannabis beyond the locations identified on a manifest.

(7) The limitation in Subsection R68-41-3(6)(f) does not apply to the transport of medical cannabis from a medical cannabis cardholder to be returned to the home delivery medical cannabis pharmacy.

(8) Vehicles used for home delivery may be subject to inspection by the department at any time.

(9) If medical cannabis goes missing during a home delivery route, the pharmacy agent or courier agent, shall:

(a) notify the home delivery medical cannabis pharmacy's supervising PMP within 24 hours of when the pharmacy agent or courier agent first became aware of the missing product;

(b) provide information regarding the missing product to the department and local law enforcement; and

(c) log the missing products into the ICS.

(10) A courier may not store medical cannabis at its facility. Medical cannabis delivered by the courier must be picked up from a home delivery medical cannabis pharmacy facility and either delivered to the medical cannabis cardholder's residence or returned to the home delivery medical cannabis pharmacy facility.

R68-41-4. Home Delivery Agent -- Operating Standards.

(1) In addition to operating standards established in Section 4-41a-1203 through Section 4-41a-1205 pharmacy and courier agents shall comply with the operating standards established in this rule.

(2) Each pharmacy and courier agent shall:

(a) ensure accurate records of delivery information are documented in the ICS;

(b) ensure that medical cannabis is locked in a fully enclosed box, container, or cage when transported and that appropriate storage temperature is maintained throughout the delivery process;

(c) ensure that the manifest is not modified in any way after they depart from a home delivery medical cannabis pharmacy facility with the shipment appearing on the manifest; and

(d) ensure that no person other than a pharmacy agent or courier agent is in a delivery vehicle during delivery or during the time medical cannabis is in the vehicle.

(3) When delivering medical cannabis to a cardholder's home, a pharmacy agent or courier agent may not:

(a) drop off medical cannabis with anyone other than a medical cannabis cardholder or a caregiver facility employee;

(b) perform a home delivery before 6 a.m. or after 10 p.m.;

(c) leave medical cannabis unattended in a delivery vehicle for more than 60 minutes unless the courier agent or pharmacy agent is staying overnight in the process of conducting a delivery;

(d) make a change in dosage or quantity at the request of the cardholder during a delivery;

(e) consume medical cannabis while delivering medical cannabis; or

(f) transport medical cannabis beyond the locations that appear on the manifest.

(4) When delivering medical cannabis, a pharmacy agent or courier agent shall:

(a) wear an identification tag or similar form of identification that clearly identifies them to a cardholder and includes their position; and

(b) provide each cardholder or facility caregiver with printed material that includes a home delivery medical cannabis pharmacy's contact information and hours for counseling over the phone with a PMP.

(5) If medical cannabis goes missing during a home delivery route, the pharmacy agent or courier agent shall notify the home delivery medical cannabis pharmacy's supervising PMP within 24 hours of when the medical cannabis pharmacy agent first became aware of the missing product.

R68-41-5. Medical Cannabis Courier Agent -- Application Procedures.

(1) The application procedures established in this section shall govern applications for the initial issuance of a courier agent registration card under Title 4, Chapter 41a, Cannabis Production Establishments and Pharmacies.

(2) Each card applicant shall apply using forms available in the EVS from the department.

(3) The department may issue a card only if the applicant meets the card requirements established under Title 4, Chapter 41a, Cannabis Production Establishments and Pharmacies and department rule.

(4) The department shall provide written notice of denial to an applicant who submits a complete application if the department determines that the applicant does not meet the card requirements.

(5) If the department receives an incomplete application, they shall provide written notice to the applicant indicating that the application is closed unless the applicant corrects the deficiency within the time specified in the notice, and otherwise meets all card requirements.

(6) The department shall send the written notice of denial or incomplete application to the applicant's last email address shown in the department's EVS database unless the applicant has requested to be notified by regular mail.

(7) Each applicant shall maintain a current email and mailing address with the department. Notice to the last email address on file with the department constitutes legal notice unless the applicant has requested notification by regular mail.

R68-41-6. Medical Cannabis Courier Agent - Renewal Application Procedures.

(1) Renewal application procedures established in this section shall govern applications to renew a courier agent registration card under Title 4, Chapter 41a, Cannabis Production Establishments and Pharmacies.

(2) Each card applicant shall apply using renewal application forms available from the department.

(3) The department shall issue a card to an applicant who submits a complete renewal application if the department determines that the applicant meets the card requirements.

(4) The department shall provide written notice of denial to an applicant who submits a complete renewal application if the department determines that the applicant does not meet the card requirements.

(5) If an applicant submits an incomplete application, the department shall provide written notice indicating that the renewal application is closed unless the applicant corrects the deficiency within the time period specified in the notice and otherwise meets all card requirements.

(6) The department shall send a renewal notice to each cardholder at least 30 days before the expiration date shown on the cardholder's card. The notice shall include instructions to renew the card via the department's website and shall be sent to the cardholder's last email in the EVS database unless they have requested notification by regular mail.

(7) Each cardholder shall maintain a current email address and mailing address with the department. Emailing to the last email address furnished to the department constitutes legal notice unless the cardholder requests notification by regular mail.

(8) A courier agent shall renew their courier agent registration card with the department within five days after the registration card's expiration date. Failure to renew an expired card within five days shall result in the applicant having to submit a new application for a courier agent registration card and pay for a new fingerprint background check.

R68-41-7. Medical Cannabis Courier Agent - Continuing Education Requirement.

The department's certification standard for initial and renewal registration of a medical cannabis courier agent card is successful completion of a one-hour continuing education course offered or approved by the department regarding state medical cannabis law, patient privacy and federal health information privacy laws, and other topics.

KEY: medical cannabis, medical cannabis courier agent, medical cannabis home delivery

Date of Last Change: 2023

Authorizing, and Implemented or Interpreted Law: 4-41a-1202

NOTICE OF PROPOSED RULE

TYPE OF FILING: Amendment

Rule or Section Number:	R82-1	Filing ID: 55828
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Agency Information

1. Department:	Alcoholic Beverage Services	
Agency:	Administration	
Street address:	1625 S 900 W	
City, state and zip:	Salt Lake City, UT 84104	
Mailing address:	PO Box 30408	
City, state and zip:	Salt Lake City, UT 84130-0408	
Contact persons:		
Name:	Phone:	Email:
Vickie Ashby	801-977-6801	vickieashby@utah.gov
Ericka Evans	801-977-6800	eaevans@utah.gov

Please address questions regarding information on this notice to the persons listed above.

General Information

2. Rule or section catchline:

R82-1. General

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

This rule change corrects technical issues found during annual agency rules review.

4. Summary of the new rule or change:

This rule change corrects cross references to the Utah Code and federal regulations, spacing, punctuation, terminology, and makes other technical changes.

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 a fiscal impact on the state budget because the rule change is technical in nature.

B) Local governments:

This rule change is not expected to have a fiscal impact on local governments' revenues or expenditures because the rule change is technical in nature.

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

This rule change is not expected to have a fiscal impact on small businesses because the rule change is technical in nature.

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

This rule change is not expected to have a fiscal impact on non-small businesses because the rule change is technical in nature.

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

This rule change is not expected to have a fiscal impact on persons other than small businesses, non-small businesses, or state or local government entities because the rule change is technical in nature.

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 is not expected to have a compliance cost because the rule change is technical in nature.

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

Regulatory Impact Table

Fiscal Cost	FY2024	FY2025	FY2026
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	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head comments on fiscal impact and approval of regulatory impact analysis:

The Executive Director of the Department of Alcoholic Beverage Services, Tiffany Clason, has reviewed and approved this regulatory impact analysis.

Citation Information

6. 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 32B-1-206	Section 32B-1-607	Section 32B-2-202
Section 32B-2-206		

Public Notice Information

8. 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: 12/01/2023

9. This rule change MAY become effective on: 12/08/2023

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

Agency Authorization Information

Agency head or designee and title:	Tiffany Clason, Executive Director	Date:	10/02/2023
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R82. Alcoholic Beverage Services, Administration.

R82-1. General.

R82-1-101. Scope and Effective Date.

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

R82-1-102. Definitions.

Definitions of terms in the Act are used in Title R82, except where the context of the terms in Title R82 clearly indicates a different meaning.

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

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

(3) "Controlled Group of Manufacturers" means a group of incorporated or non-incorporated alcohol manufacturers that are related directly or indirectly through more than 50% common ownership or control by any person. Additionally, an alcohol manufacturer is considered to be part of a controlled group of manufacturers if more than 50% of the alcohol manufacturing entity is owned or controlled directly or indirectly either by, or in common with, another alcohol manufacturer.

(4) "Department " or "DABS" means the Utah Department of Alcoholic Beverage Services.

(5) "Director" means the director of the Department of Alcoholic Beverage Services.

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

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

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

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

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

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

(9) "Person" means the same as that term is defined in Section 68-3-12.5.

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

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

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

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

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

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

R82-1-103. General Provisions.

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

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

(3) For purposes of this rule, "cash only" means:

(a) cash;

(b) certified check;

(c) bank draft;

(d) cashier's check; or

(e) United States Post Office money order.

(4) The Department may assess the legal rate of interest provided in Sections 15-1-1 through 15-1-3 for any debt or obligation owed to the Department by a licensee, permittee, package agent, or any other person.

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

(a) insufficient funds;

(b) refer to maker; or

(c) account closed.

(6) Receipt of a check payable to the Department which is returned by the bank for any of the reasons listed in Subsection (4)(a) may result in the immediate suspension of the license, permit, or operation of the package agency of the person tendering the check until legal tender of the United States of America, certified check,

bank draft, cashier's check, or United States post office money order is received at the Department offices, 1625 S. 900 West, Salt Lake City, Utah, plus the \$20 returned check charge. Failure to make good the returned check and pay the \$20 returned check charge within 30 days after the license, permit, or operation of the package agency is suspended, is grounds for revocation of the license or permit, or termination of the package agency contract, and the forfeiture of the licensee's, permittee's, or package agent's bond.

(7) In addition to the remedies listed in Subsection (4)(b), the Department may require that the licensee, permittee, or package agent transact business with the Department on a cash-only basis. The determination of when to put a licensee, permittee, or package agency operator on cash-only basis and the length of the cash-only restriction shall be at the discretion of the Department and shall be based on the following factors:

- (a) the dollar amount of the returned check;
- (b) the number of returned checks;
- (c) the length of time the licensee, permittee, or package agency operator has had a license, permit, or package agency with the Department;
- (d) the time necessary to collect the returned check; and
- (e) any other circumstances.

(8) A returned check received by the Department from or on behalf of an applicant for or holder of a single event permit or temporary special event beer permit may, at the discretion of the Department, require that the person or entity that applied for or held the permit be on cash-only basis for any future events requiring permits from the Commission.

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

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

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

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

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

R82-1-104. Advertising.

(1) Authority. This rule is made pursuant to ~~[subsection 32B-1-206(4)]~~ Subsection 32B-1-206, which authorizes the advertising of alcoholic product in this state under guidelines established by the Commission except to the extent prohibited by Title 32B, Alcoholic Beverage Control Act.

(2) Definitions.

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

billboard, sign, or other public display, public transit card, other periodical literature, publication or in a radio or television broadcast, or in any other media.

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

(A) labels on products; or

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

(b) For purposes of this rule, "minor" ~~[or "minors" shall mean persons]~~ means a person under the age of 21 years.

(3) Application.

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

(b) 27 C.F.R. Sec. 7.4[7-50] provides that federal laws apply only to the extent that the laws of a state impose similar requirements with respect to advertisements of malt beverages manufactured and sold or otherwise disposed of in the state. This rule, therefore, adopts and incorporates by reference federal laws, previously referenced in ~~[subparagraph (a)]~~ Subsection (3)(a) relating to the advertising of malt beverage products.

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

(5) ~~A[any]~~ any advertising of liquor and beer by manufacturers, suppliers, importers, local industry representatives, wholesalers, permittees, and licensed retailers of such products, and ~~[t]~~ Type 4 and 5 package agencies, as ~~[defined]~~ described in R82-2-301, shall comply with the advertising requirements listed in ~~[subpart]~~ Subsection (6)[-of this rule].

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

(a) may not violate any federal laws referenced in ~~[subpart]~~ Subsection (3)[-of this rule];

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

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

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

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

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

- (g) may not encourage or condone drunk driving;
- (h) may not depict the act of drinking;
- (i) may not promote or encourage the sale to or use of alcohol by minors;
- (j) may not be directed or appeal primarily to minors by:
 - (i) using any symbol, language, music, gesture, cartoon character, or childhood figure such as Santa Claus that primarily appeals to minors;
 - (ii) employing any entertainment figure or group that appeals primarily to minors;
 - (iii) placing advertising in magazines, newspapers, television programs, radio programs, or other media where most of the audience is reasonably expected to be minors, or placing advertising on the comic pages of magazines, newspapers, or other publications;
 - (iv) placing advertising in any school, college or university magazine, newspaper, program, television program, radio program, or other media, or sponsoring any school, college or university activity;
 - (v) using models or actors in the advertising that are or reasonably appear to be minors;
 - (vi) advertising at an event where most of the audience is reasonably expected to be minors; or
 - (vii) using alcoholic beverage identification, including logos, trademarks, or names on clothing, toys, games or game equipment, or other materials intended for use primarily by minors[-];
 - (k) may not portray use of alcohol by a person while that person is engaged in, or is immediately about to engage in, any activity that requires a high degree of alertness or physical coordination;

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

(m) may not offer alcoholic beverages without charge;

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

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

(7) Violations. A violation of this rule may result in:

(a) any administrative penalties authorized by [s]Section 32B-3-205[-]; or ~~and may result in~~

(b) the imposition of the criminal penalty of a class B misdemeanor pursuant to [s]Section 32B-4-304.

R82-1-105. Label Approvals.

(1) Authority. This rule is made pursuant to ~~sections 32B-1-601 through 32B-1-608~~ Section 32B-1-607 which gives the Commission the authority to adopt rules necessary to ~~fully~~ implement ~~certain aspects of~~ the Malted Beverage[s] Act[-];

(2) Purpose.

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

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

(c) This rule:

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

(ii) defines the meaning of certain terms in the Malted Beverage[s] Act; and

(iii) establishes the format of certain words and phrases required on the containers and packaging of certain malted beverages as required by ~~—~~ [s]Section 32B-1-606.

(3) Definitions.

(a) "Revision" means any change to packaging that significantly modifies the notice that the product is an alcoholic beverage.

~~[(3)](4) Application[~~of Rule~~].~~

(a)(i) Except as provided in subpart (4)(a)(iii), a[A] complete set of original labels for each size of container must accompany each application for label and packaging approval[-], including[-]

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

(ii) Original containers will not be accepted.

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

(A) color reproductions that are exact size; or

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

(b)(i) Except as provided in subpart (4)(b)(ii), an[An] application for approval is required for any revision of a previously approved label.

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

~~—(d) An application for approval is not required for any changes[-]~~ (ii) An application for approval is required for a revision to packaging that relates to subject matter other than the required notice that the product is an alcoholic beverage, such as temporary seasonal or promotional themes.

~~[(e)](c)(i)~~ Pursuant to [s]Section 32B-1-606, a malted beverage that is packaged in a manner that is similar to a label or package used for a nonalcoholic beverage must bear a prominently displayed label or a firmly affixed sticker on the container that includes the statement "alcoholic beverage" or "contains alcohol".

(ii) Any packaging of a flavored malt beverage must also prominently include, either imprinted on the packaging or imprinted on a sticker firmly affixed to the packaging the statement "alcoholic beverage" or "contains alcohol".

(iii) The words in the statements described in subparts (4)(c)(i) and (ii) must appear:

~~[(A)](A)~~ in capital letters and bold type;

~~[(B)](B)~~ in a solid contrasting background;

~~[(C)](C)~~ on the front of the container and packaging;

~~[(D)](D)~~ in a format that is readily legible; and

~~[(E)](E)~~ separate and apart from any descriptive or explanatory information.

[(d)](d)(i) Pursuant to [s]Section 32B-1-606, the label on a flavored malt beverage container shall state the alcohol content as a percentage of alcohol by volume or by weight.

(ii) The statement described in subpart (4)(d)(i) must appear:

(A) in capital letters and bold type;
(B) in a solid contrasting background;
(C) in a format that is readily legible; and
(D) separate and apart from any descriptive or explanatory information.

R82-1-106. Alcohol Content.

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

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

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

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

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

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

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

R82-1-107. Department Training Programs.

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

(2) Application of the rule.

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

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

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

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

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

R82-1-208. Percentage Lease Agreements.

(1) The authority for this rule is Section 32B-1-208

(2) This rule establishes the following:

(a) the maximum percentage of revenue from alcohol sales a percentage lease agreement may require; and

(b) the procedure for submitting a percentage lease to the department.

(3) As used in this section, "Percentage lease" means the same as in Section 32B-1-208.

(4)(a) The maximum percentage of revenue from alcohol sales allowed in a percentage lease is 19%, whether that percentage is:

(i) described through a rent-sharing or profit-sharing agreement;

(ii) calculated in part on the gross sales or profits of the licensee, including profits from the sale of alcoholic beverages; or

(iii) described in the percentage lease in some other manner.

(b) Parties to a percentage lease must submit a copy to the department for review as part of the application for licensing.

(c) If during the review process, the Department cannot determine how alcohol sales in a percentage lease agreement are being shared, based on the language in the percentage lease agreement, the department staff shall return the lease agreement and license application, and the Commission may decline to act on the application.

(d) An applicant may resubmit a lease once the language in the lease is sufficiently clear for the Department to determine that no more than 19% of profits from the sale of alcoholic beverages will be distributed to a lessor.

(e) The lessor cannot control or acquire an ownership interest in the business of the lessee.

(f) An industry representative is prohibited from profit-sharing and ownership of retail license operations.

R82-1-304. Background Checks for Resort Licensees.

(1) The authority for this rule is Subsection 32B-1-304(7)(a).

(2) This rule describes what "engages in the management" of a resort means for purposes of determining which individuals must undergo a background check as part of the application process for a resort license.

(3) As used in this section, "engages in the management of a resort licensee" means manages or controls:

(a) the daily operations of the business entity of the resort licensee; or

(b) the finances of the resort licensee.

(4) An individual who engages in the management of a resort licensee shall undergo a background check as part of the application process for obtaining or renewing a resort license.

R82-1-304.1. Background Checks for Public Service Permittees.

(1) The authority for this rule is Subsection 32B-1-304(7)(b).

(2) This rule describes what "engages in the management" of the airline, railroad, or other public conveyance means for the purposes of determining which individuals must undergo a background check as part of the application process for a public service permit.

(3) As used in this section, "engages in the management of the airline, railroad, or other public conveyance means manages or controls:

(a) the daily operations of the local branch of the entity that holds the public service permit; or

(b) the finances of the local branch of the entity that holds the public service permit.

(4) An individual who engages in the management of the airline, railroad, or other public conveyance shall undergo a background check as part of the application process for obtaining or renewing a public service permit.

KEY: alcoholic beverages

Date of Last Change: ~~April 28~~, 2023

Authorizing, and Implemented or Interpreted Law: 32B-2-202;
32B-1-206[208; 32B-1-304(7)(a); 32B-1-304(7)(b)]

NOTICE OF PROPOSED RULE

TYPE OF FILING: Amendment

Rule or Section Number:	R82-2	Filing ID: 55830
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Agency Information

1. Department:	Alcoholic Beverage Services	
Agency:	Administration	
Street address:	1625 S 900 W	
City, state and zip:	Salt Lake City, UT 84104	
Mailing address:	PO Box 30408	
City, state and zip:	Salt Lake City, UT 84130-0408	
Contact persons:		
Name:	Phone:	Email:
Vickie Ashby	801-977-6801	vickieashby@utah.gov
Ericka Evans	801-977-6800	eaevans@utah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule or section catchline:
R82-2. Administration
3. Purpose of the new rule or reason for the change:
This rule change is made to conform with statutory changes made in S.B. 173 during the 2023 General Session, to remove irrelevant deadlines given increased flexibility from implementation of an online licensing and permitting system, and to clarify Alcoholic Beverage Services Commission subcommittee duties.
4. Summary of the new rule or change:
This rule change corrects internal cross references, clarifies the definition of "crime of moral turpitude," clarifies Alcoholic Beverage Services Commission subcommittee duties, removes reference to the 5 p.m. cut-off for late license renewal applications, corrects technical numbering issues, prohibits sale of spirituous liquor in containers smaller than 200 milliliters except as provided in Section 32B-2-303, clarifies statutory authority for this rule, and makes other technical changes.

Fiscal Information

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

A) State budget:

This rule is not expected to have a fiscal impact on the state budget because this rule change is technical in nature or consistent with current and previous Department of Alcoholic Beverage Services (Department) practice.

B) Local governments:

This rule change is not expected to have a fiscal impact on local governments' revenues or expenditures because this rule change is technical in nature or consistent with current and previous department practice.

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

This rule change is not expected to have a fiscal impact on small businesses because this rule change is technical in nature or consistent with current and previous Department practice.

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

This rule change is not expected to have a fiscal impact on non-small businesses because this rule change is technical in nature or consistent with current and previous Department practice.

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 a fiscal impact on persons other than small businesses, non-small businesses or state or local government entities because this rule change is technical in nature or consistent with current and previous Department practice.

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 is not expected to have a compliance cost because this rule change is technical in nature or consistent with current and previous Department practice.

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

Regulatory Impact Table			
Fiscal Cost	FY2024	FY2025	FY2026
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	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0
H) Department head comments on fiscal impact and approval of regulatory impact analysis:			
The Executive Director of the Department of Alcoholic Beverage Services, Tiffany Clason, has reviewed and approved this regulatory impact analysis.			

Citation Information

6. 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 32B-1-102	Section 32B-2-201.5	Section 32B-2-202
Section 32B-2-504	Section 32B-2-605	Section 32B-5-303

Public Notice Information

8. 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:	12/01/2023

9. This rule change MAY become effective on:	12/08/2023
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.	

Agency Authorization Information

Agency head or designee and title:	Tiffany Clason, Executive Director	Date:	10/02/2023
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R82. Alcoholic Beverage Services, Administration.

R82-2. Administration.

R82-2-101. Notice of Hearings.

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

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

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

R82-2-102. Emergency Meetings.

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

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

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

R82-2-103. Electronic Meetings.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(7) Requests to Amend a Record. An individual may contest the accuracy or completeness of a document pertaining to him

pursuant to section 63G-2-603. The request should be made to the appropriate official specified in subpart (3) of this rule.

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

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

(1) Authority and Purpose.

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

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

(2) Definitions.

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

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

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

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

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

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

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

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

(3) Filing of Complaints.

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

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

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

(d) Each complaint shall:

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

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

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

(iv) describe the action and accommodation desired; and

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

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

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

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

(4) Investigation of Complaints.

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

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

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

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

(ii) require facility modifications; or

(iii) require reassignment to a different position.

(5) Recommendation and Decision.

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

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

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

(6) Appeals.

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

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

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

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

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

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

(ii) require facility modifications; or

(iii) require reassignment to a different position.

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

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

(7) Record Classification.

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

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

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

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

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

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

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

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

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

(2) Application of Rule.

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

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

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

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

R82-2-107. Criminal History Background Checks.

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

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

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

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

(d) Section 32B-1-102, which authorizes the Commission to define [terms]"crime involving moral turpitude."[-]

(2)(a) As used in this rule, [a-]"crime involving moral turpitude" means [a-crime]a crime that:

(i) [means a crime that-]involves actions done knowingly contrary to justice, honesty, or good morals[-.It is also described as-];

(ii) [a-crime that is "malum in se" as opposed to "malum prohibitum"-]actions that are immoral in themselves[is immoral in itself regardless of whether the crime is-]being punishable by law; and [as opposed to actions that are wrong only since they are prohibited by statute. A crime of moral turpitude ordinarily-]involves an element of falsification or fraud or of harm or injury directed to another person or another person's property.

(b) "Crime of moral turpitude" includes a crime[For purposes of this rule, crimes of moral turpitude may include crimes] involving controlled substances, illegal drugs, [and]or narcotics.

(3) Purpose. This rule:

(a) establishes the circumstances under which a person identified in the statutory sections enumerated in [Subparagraph]Subsection (1)(b), must submit to a background check to show the person meets the qualifications of those statutory sections as a condition of employment with the Department, or as a condition of the Commission granting a license, permit, or package agency to an applicant for a license, permit, or package agency; and

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

(4) Application[-of Rule].

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

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

(iii) An applicant for an event permit under Title 32B, Chapter 9, Event Permit Act, is not[shall not be-] required to submit to a background check if the applicant attests that the persons identified in [Subparagraph]Subsection (1)(b) have not been convicted of any disqualifying criminal offense.

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

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

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

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

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

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

(c) The Commission may issue a license, permit, or package agency to an applicant that has met the requirements of ~~[Subparagraph (3)]~~Subsection (4)(b), and the license, permit, or package agency shall be valid during the period the B.C.I. and F.B.I. is processing the criminal history report(s).

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

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

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

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

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

(e) In the case of a license or permit, if the statutory deadline for renewing the license or permit occurs before receipt of criminal history background report~~(s)~~, the licensee or permittee may file for renewal of the license or permit subject to meeting ~~[all of]~~the requirements in ~~[Subparagraphs (3)(b) through (e)]~~this Subsection (4).

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

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

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

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

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

R82-2-108. Duties of Commission Subcommittees.

(1) Authority. This rule is made pursuant to ~~[s]~~Section 32B-2-201.5 and shall govern the duties of the two Commission

subcommittees, the Compliance Licensing and Enforcement Subcommittee and the Operations and Procurement Subcommittee.

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

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

(3) Subsection (2) does not prohibit:

(a) the Compliance Licensing and Enforcement Subcommittee from reviewing, discussing, or making recommendations to the full Commission on items related to operations or procurement; or

(b) the Operations and Procurement Subcommittee from reviewing, discussing, or making recommendations on items related to compliance, licensing, or enforcement.

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

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

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

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

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

(2) Application of Rule.

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

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

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

(iii) No refunds shall be given for wines returned due to spoilage such as corkiness, oxidation, and secondary fermentation, or due to the customer's unfamiliarity with the characteristics of the product. Such wines may only be exchanged for another bottle of the same product. Wine will not be accepted for refund or exchange if the return is a result of improper extraction of the cork.

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

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

(ii) Returns should be made within a reasonable amount of time from the date of purchase, and all returned merchandise must be in good condition. Returns of \$50 or more shall not be accepted without a receipt. Therefore, it is necessary for cashiers to print a

receipt for all purchases of \$50 or more. Signs should be posted at each cash register informing customers of this requirement. Merchandise shall be refunded at the price paid by the customer, or the current price, whichever is lower.

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

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

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

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

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

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

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

(iv) Merchandise purchased by catering services.

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

R82-2-202.1. Late License Renewals.

(1) Authority. This rule is ~~adopted~~ made pursuant to Section 32B-2-202, which authorizes the Commission to make rules permitting and establishing the parameters of late license renewals.

(2) Definitions. For purposes of this rule, "late renewal" means the Department's receipt, after the date of the statutory renewal deadline related to the license at issue, of the requisite documents and payment to renew a license.

(3) Application~~[-]~~.

(a) The Department may not accept a late renewal ~~[application]~~ for a license ~~[received at the Department's Administrative Office by 5 p.m.]~~ after the 10th day of the month that follows the statutory renewal deadline for that license type. If the 10th of the month falls on a Saturday, Sunday, or state or federal holiday, the Department shall consider a completed renewal application that is received ~~[by 5 p.m.]~~ on the next business day following the ~~[weekend]~~ Saturday, Sunday, or holiday.

(b) ~~[Licensees who fail]~~ A licensee who fails to meet the deadline established in this rule must apply for a new license.

(c) The licensee seeking late renewal shall submit to the Department:

(i) ~~[E]~~ each document required for renewal for the specific license type;

(ii) ~~[F]~~ the statutory renewal fee for that license; and

(iii) ~~[A]~~ a late fee either prescribed in Section 32B-2-202 or adopted in accordance with Section 63J-1-504.

R82-2-202. Payment for Liquor.

(1) Accepting Licensee Payments: Pursuant to subsection 32B-5-303(1)(c), this rule requires that payments collected by the

Department from licensees for the purchase of liquor come from the licensee and authorizes the Department to make internal Department policies in accordance with subsections 32B-2-206(1), (2) and (5) for the acceptance of payments for liquor.

R82-2-203. State Store Hours.

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

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

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

(a) the locality of the store;

(b) tourist traffic;

(c) demographics;

(d) population to be served;

(e) customer demand in the area;

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

(g) budgetary constraints.

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

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

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

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

R82-2-205. Store Site Selection.

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

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

(a) determine the feasibility of a new site;

(b) weigh options;

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

(d) make its recommendation to the Commission.

R82-2-301. Types of Package Agencies.

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

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

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

(b) Type 2 - A package agency under contract with the Department which is in conjunction with another business where the

primary source of income to the operator is not from the sale of liquor.

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) a Type 5 package agency, as described in Section R82-2-301, may provide a price list of the code, number, brand, size, and price of each liquor item it carries for sale at the Type 5 package agency as follows:

(i) on the premises of the winery, distillery, brewery, or authorized tasting room;

(ii) at the entrance of the Type 5 package agency;

(iii) over the phone; or

(iv) on the internet.

R82-2-303. Non-Consignment Inventory.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) Type 2 and 3 package agencies shall:

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

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

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

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

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

R82-2-306. Operational Matters.

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

(2) Hours of Operation.

(a) Type 1 and 2 package agencies may operate from 10 a.m. until midnight, Monday through Saturday. However, the actual operating hours may be less in the discretion of the package agent with the approval of the Department. Type 2 agencies shall be open for business at least seven hours a day, five days a week, except where closure is otherwise required by law.

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

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

(d) Type 5 package agencies may operate from 10 a.m. until midnight, Monday through Sunday. However, the actual operating hours may be less in the discretion of the package agent with the approval of the Department. Type 5 package agencies may, at the discretion of the package agent, be open as early as 8 a.m. for sales to licensees with the approval of the Department. Type 5 package agencies may also be open on Sundays and state and federal holidays if the package agency is located at a manufacturing facility licensed by the Commission and only sells alcoholic products produced at the manufacturing facility.

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

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

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

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

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

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

(4) Inventory Size. Type 2 and 3 package agencies must maintain at least 50 code numbers of inventory at a retail value of at least five thousand dollars and must maintain a representative inventory by brand, code, and size.

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

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

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

R82-2-307. Type 5 Package Agencies.

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

(a) [s]Section 32B-2-202, which authorizes the Commission to make rules governing package agencies~~]; and~~

(b) Sections ~~[as well as sections]~~ 32B-2-504, 32B-2-605, and 32B-5-303.

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

~~[(3)]~~ Authority.

~~[(4)]~~(3) Application~~[of Rule]~~.

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

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

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

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

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

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

~~[(4)]~~(f) Direct deliveries to licensees are prohibited. Products must be purchased and picked up by the licensees or their staff at the Type 5 package agency. Sales to the manufacturer's retail licenses may be transported from the manufacturer's storage area directly to the retail licensed premise provided that a record is maintained showing a sale from the ~~[t]~~Type 5 package agency to the retail licensee at the retail price.

~~[(4)]~~(g) The ~~[t]~~Type 5 package agency shall sell products at a price fixed by the Commission and follow the same laws, rules, policies, and procedures applicable to other package agencies as to the retail price of products.

~~[(4)]~~(h) The days and hours of sale of the ~~[t]~~Type 5 package agency shall be in accordance with ~~[s]~~Section 32B-2-605 and R82-2-306.

R82-2-308. Consignment Inventory Package Agencies.

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

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

(3) Application of the rule.

(a) Consignment Inventory.

(i) The initial amount of consignment inventory furnished to the Package Agency shall be established by the Department.

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

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

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

(v) The consignment inventory amount may be adjusted from time to time based on the Package Agency's monthly average sales. Any adjustment shall be made by a properly executed amendment to the Department's contract with the Package Agency. In the event 12-month average sales are lower than the Package Agency's current consignment amount the Department may lower the consignment amount. If the consignment amount is to be reduced the Package Agency must pay for the difference through cash payment or returned inventory. Any adjustment to the consignment amount will be handled through a contract amendment or a new contract.

(b) Payments.

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

(ii) Statements showing unpaid debts and applied credits will be generated and emailed to the agencies on each Thursday after credit card payments have been posted that Wednesday to reflect credit card payments received. Ordered liquor inventory will reflect 30 days to pay from the order date, instead of being due upon order. This generated weekly statement will reflect payments received against the oldest outstanding invoices first. Payments received over those previous statement balances will be credited chronologically against ordered inventory due after previous statements. It is the agent's responsibility to review the statement and contact the Department with any discrepancies before the payment date.

(iii) Agents may, in advance of the Department drawing payments via ACH, remit payment to the Department on balances due from outstanding invoices which have not received enough credit card payments or other payments to cover those outstanding balances. Payment will be for the statement total. If no other payment has been received by the due date, payment will be automatically drawn through the ACH process on the due date unless prior arrangements have been made between the agent and the Department.

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

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

(c) Transfers.

(i) Transfers, up or down, shall be adjusted to the Package Agency's payment due the Department.

(ii) Transfers in to the Package Agency will add to the amount owed to the Department.

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

(d) Credit and Debit Card Credits.

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

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

(e) Audits.

(i) The Department shall audit the Package Agency at least once each fiscal year, but may conduct additional audits if deemed necessary.

(ii) The Package Agency is subject to a Department audit at any time.

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

(1)~~[(a)]~~ Authority. This rule is made pursuant to the Commission's powers and duties under Section 32B-2-202 to adopt and issue policies, rules, and procedures.

~~_____~~ (2) ~~[and]~~ Purpose.

~~_____~~ (a) Pursuant to ~~[s]~~Section 32B-2-303, the Department may not purchase or stock ~~[alcoholic beverages]~~spirituous liquor in containers smaller than 200 milliliters, except as ~~[otherwise allowed by the Commission]~~described in Section 32B-2-303.

(b) ~~[The]~~Subject to subpart (2)(a) and the conditions described in subpart (3), the Commission ~~[hereby]~~allows the limited use of ~~[50 milliliter "mini bottles" of distilled spirits and]~~187 milliliter bottles of wine as one form of room service sales by Type 4 package agencies located in hotels and resorts.

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

(2) Application~~[-of Rule]~~.

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

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

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

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

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

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

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

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

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

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

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

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

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

KEY: alcoholic beverages

Date of Last Change: ~~December 1, 2022~~ 2023

Authorizing, and Implemented or Interpreted Law: ~~32B-1-102; 32B-2-202; [32B-1-206]~~ 32B-1-301 through 32B-1-307; 32B-2-504; 32B-2-605; 32B-5-303

NOTICE OF PROPOSED RULE

TYPE OF FILING: Amendment

Rule or Section Number:	R82-3	Filing ID: 55835
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Agency Information

1. Department:	Alcoholic Beverage Services	
Agency:	Administration	
Street address:	1625 S 900 W	
City, state and zip:	Salt Lake City, UT 84104	
Mailing address:	PO Box 30408	
City, state and zip:	Salt Lake City, UT 84130-0408	
Contact persons:		
Name:	Phone:	Email:
Vickie Ashby	801-977-6801	vickieashby@utah.gov
Ericka Evans	801-977-6800	eaevans@utah.gov

Please address questions regarding information on this notice to the persons listed above.

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

R82-3. Disciplinary Actions and Enforcement

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

This rule amendment changes cross references changed during the 2023 General Session and corrects other technical issues found during annual agency rules review.

4. Summary of the new rule or change:

This rule amendment changes cross references and makes other technical changes.

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 a fiscal impact on the state budget because this rule change is technical in nature.

B) Local governments:

This rule change is not expected to have a fiscal impact on local governments' revenues or expenditures because this rule change is technical in nature.

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

This rule change is not expected to have a fiscal impact on small businesses because this rule change is technical in nature.

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

This rule change is not expected to have a fiscal impact on non-small businesses because this rule change is technical in nature.

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**):

This rule change is not expected to have a fiscal impact on persons other than small businesses, non-small businesses or state or local government entities because this rule change is technical in nature.

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 is not expected to have a compliance cost because this rule change is technical in nature.

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

Regulatory Impact Table

Fiscal Cost	FY2024	FY2025	FY2026
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	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head comments on fiscal impact and approval of regulatory impact analysis:

The Executive Director of the Department of Alcoholic Beverage Services, Tiffany Clason, has reviewed and approved this regulatory impact analysis.

Citation Information

6. 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 32B-1-103 | Section 32B-2-202 |

Public Notice Information

8. 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: 12/01/2023

9. This rule change MAY become effective on: 12/08/2023

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

Agency Authorization Information

Agency head or designee and title:	Tiffany Clason, Executive Director	Date:	10/02/2023
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R82. Alcoholic Beverage Services, Administration.

R82-3. Disciplinary Actions and Enforcement.

R82-3-101. Definitions.

As used in this part:

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

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

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

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

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

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

R82-3-102. Violation Schedule.

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

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

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

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

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

(2) General Purpose. This rule establishes a schedule setting forth a range of penalties which may be imposed by the Commission for violations of the alcoholic beverage laws. It shall be used by Department decision officers in processing violations, and by hearing officers in charging violations, in assisting parties in settlement negotiations, and in recommending penalties for violations. The schedule shall be used by the Commission in rendering its final decisions as to appropriate penalties for violations.

(3) Application of Rule.

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

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

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

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

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

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

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

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

(e) When the Commission imposes a fine or administrative costs, it shall establish a date on which the payment is due. Failure of a licensee or permittee or its officer, employee, or agent to make

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

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

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

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

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

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

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

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

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

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

to revocation of the license or permit or up to a \$25,000 fine and a combination of penalties.

(i) First occurrence involving a moderate violation: a written investigation report from law enforcement or Department compliance officer shall be forwarded to the Department. The penalty shall range from a letter of admonishment to a \$1,000 fine for the licensee or permittee, and a letter of admonishment to a \$50 fine for the officer, employee, or agent.

(ii) Second occurrence of the same type of moderate violation: a three to ten-day suspension of the license or permit and a three to ten-day suspension of the employment of the officer, employee, or agent; or a \$500 to \$1,000 fine for the licensee or permittee and up to a \$75 fine for the officer, employee, or agent; or both.

(iii) Third occurrence of the same type of moderate violation: a 10 to 20-day suspension of the license or permit and a 10 to 20-day suspension of the employment of the officer, employee, or agent; or a \$1,000 to \$2,000 fine for the licensee or permittee and up to a \$100 fine for the officer, employee, or agent; or both.

(iv) More than three occurrences of the same type of moderate violation: a 15-day suspension to revocation of the license or permit and a 15 to 30-day suspension of the employment of the officer, employee, or agent; or a \$2,000 to \$25,000 fine for the licensee or permittee and up to a \$150 fine for the officer, employee, or agent; or both.

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

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

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

(i) First occurrence involving a serious violation: written investigation report from law enforcement or Department compliance officer shall be forwarded to the Department. The penalty shall range from a five to 30-day suspension of the license or permit and a five to 30-day suspension of the employment of the officer, employee, or agent; or a \$500 to \$3,000 fine for the licensee or permittee and up to a \$300 fine for the officer, employee, or agent; or both.

(ii) Second occurrence of the same type of serious violation: a 10 to 90-day suspension of the license or permit and a 10 to 90-day suspension of the employment of the officer, employee, or agent; or a \$1,000 to \$9,000 fine for the licensee or permittee and up to a \$350 fine for the officer, employee, or agent; or both.

(iii) More than two occurrences of the same type of serious violation: a 15-day suspension to revocation of the license or permit and a 15 to 120-day suspension of the employment of the officer, employee, or agent; or a \$9,000 to \$25,000 fine for the licensee or permittee and up to a \$700 fine for the officer, employee, or agent; or both.

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

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

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

(i) First occurrence involving a grave violation: written investigation report from law enforcement or Department compliance officer shall be forwarded to the Department. The penalty shall range from a ten-day suspension to revocation of the license or permit and a 10 to 120-day suspension of the employment of the officer, employee, or agent; or a \$1,000 to \$25,000 fine to the licensee or permittee and up to a \$300 fine for the officer, employee, or agent, or both.

(ii) More than one occurrence of the same type of grave violation: a 15-day suspension to revocation of the license or permit, and a 15 to 180-day suspension of the employment of the officer, employee or agent or a \$3,000 to \$25,000 fine for the licensee or permittee and up to a \$500 fine for the officer, employee, or agent, or both suspension and fine.

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

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

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

TABLE 1

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

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

TABLE 2

Violation Degree and Frequency	Warning Verbal or Written	Fine \$ Amount	Suspension No. of Days
Minor			
1st	X	X	
2nd		X	to 25
3rd		to 50	1 to 5
Over 3		to 75	6 to 10
Moderate			
1st	X	to 50	
2nd		to 75	3 to 10
3rd		to 100	10 to 20
Over 3		to 150	15 to 30
Serious			
1st		to 300	5 to 30
2nd		to 350	10 to 90
Over 2		to 700	15 to 120
Grave			
1st		to 300	10 to 120
Over 1		to 500	15 to 180

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

(a) Mitigating circumstances include:

- (i) no prior violation history;
- (ii) good faith effort to prevent a violation;
- (iii) existence of written policies governing employee conduct;
- (iv) extraordinary cooperation in the violation investigation that shows the licensee or permittee and the officer, employee or agent of the licensee or permittee accepts responsibility; and

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

(b) Aggravating circumstances include:

- (i) prior warnings about compliance problems;
- (ii) prior violation history;
- (iii) lack of written policies governing employee conduct;
- (iv) multiple violations during the course of the investigation;
- (v) efforts to conceal a violation;
- (vi) intentional nature of the violation;
- (vii) the violation involved more than one patron or employee;
- (viii) the violation involved a minor and, if so, the age of the minor; and
- (ix) whether the violation resulted in injury or death.

(6) Violation Grid. Any proposed substantive change to the violation grid that would establish or adjust the degree of seriousness of a violation shall require rulemaking in compliance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act. The 2021 version of the violation grid describing each violation of the alcoholic beverage control laws, the statutory and rule reference, and the degree of seriousness of each violation is available for public

inspection on the Department's website and is incorporated by reference as part of this rule.

R82-3-103. Disciplinary Hearings.

(1) General Provisions.

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

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

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

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

(e) Penalties.

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

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

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

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

(g) Service. Service of any document shall be satisfied by service personally or by certified mail upon any respondent, or upon any officer or manager of a corporate or limited liability company respondent, or upon an attorney for a respondent, or by service personally or by certified mail to the last known address of the respondent or any of the following:

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

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

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

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

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

(j) Hearing Officers.

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

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

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

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

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

(A) encourage settlement;

(B) clarify issues;

(C) simplify the evidence;

(D) expedite the proceedings; or

(E) facilitate discovery, if a formal proceeding.

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

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

(m) Default.

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

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

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

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

(2) Pre-adjudication Proceedings.

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

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

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

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

(A) The case number assigned to the action;

(B) The name of the respondent;

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

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

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

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

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

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

(A) the case number assigned to the action;

(B) the name of the respondent; and

(C) any facts in defense or mitigation of the alleged violation, and a brief summary of any attached evidence. The rebuttal

may be accompanied by supporting documents, exhibits, or signed statements.

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

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

(c) Commencement of Adjudicative Proceedings.

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

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

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

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

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

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

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

(3) The Informal Process.

(a) Notice of agency action.

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

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

(B) The Department's case number;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) The Prehearing Conference.

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

(ii) All or part of any adjudicative proceeding may be stayed at any time by a written settlement agreement signed by the Department and respondent or their authorized attorney or representative, and by the hearing officer. The stay shall take effect immediately upon the signing of the settlement agreement, and shall remain in effect until the settlement agreement is approved or rejected by the Commission. No further action shall be required with respect to any action or issue so stayed until the Commission has acted on the settlement agreement.

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

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

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

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

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

(c) The Informal Hearing.

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

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

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

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

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

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

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

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

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

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

(iv) All testimony shall be under oath.

(v) Discovery is prohibited.

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

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

(viii) Intervention is prohibited.

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

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

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

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

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

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

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

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

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

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

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

(d) Disposition.

(i) Hearing officer's Order; Objections.

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

(I) the decision;

(II) the reasons for the decision;

(III) findings of fact;

(IV) conclusions of law;

(V) recommendations for final Commission action; and

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

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

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

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

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

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

(ii) Commission Action.

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

(B) The Commission shall be deemed a substitute hearing officer for this final stage of the informal adjudicative proceeding

pursuant to section 63G-4-103. This stage is not considered a "review of an order by an agency or a superior agency" under sections 63G-4-301 and -302.

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

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

(I) the decision;

(II) the reasons for the decision;

(III) findings of fact;

(IV) conclusions of law;

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

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

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

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

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

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

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

(e) Judicial Review.

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

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

(4) The Formal Adjudicative Process.

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

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

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

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

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

(A) the case number assigned to the action;

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

(C) the name of the respondent;

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

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

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

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

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

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

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

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

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

(b) Intervention.

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

(A) the Department's case number;

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

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

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

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

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

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

(iv) Order Requirements.

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

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

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

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

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

(c) Discovery and Subpoenas.

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

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

(d) The Formal Hearing.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(xii) Failure to appear. Inexcusable failure of the respondent to appear at a scheduled evidentiary hearing after receiving proper notice constitutes an admission of the charged violation. The validity of any hearing is not affected by the failure of

any person to attend or remain in attendance pursuant to subsections 32B-3-203(3)(b) and (c).

(e) Disposition.

(i) Hearing officer's Order; Objections.

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

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

(II) conclusions of law;

(III) the decision;

(IV) the reasons for the decision;

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

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

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

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

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

(ii) Commission Action.

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

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

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

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

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

3-103(4)(a)(iii), then the findings of fact shall adopt the allegations in the notice of agency action and the respondent is considered in default;

(II) conclusions of law;

(III) the decision;

(IV) the reasons for the decision;

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

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

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

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

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

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

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

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

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

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

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

(f) Judicial Review.

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

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

R82-3-104. Orders to Show Cause.

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

(b) A failure to maintain fundamental, minimum qualifications includes but is not limited to a failure to maintain

insurance or a bond, a failure to notify the Department regarding a change of ownership as described in section 32B-18-202, a failure to maintain records showing the appropriate amount of food sales for the license type, or a conviction for a criminal offense that disqualifies the licensee or permittee from holding the license or permit.

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

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

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

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

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

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

(a) cancel the hearing;

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

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

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

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

R82-3-105. Consent Calendar Procedures.

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

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

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

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

(3) Application of the Rule.

(a) A consent calendar may be utilized by the Commission at their meetings to expedite the handling of letters of admonishment and settlement agreements that meet the criteria of subpart (2) of this rule.

(b) Consent calendar items shall be briefly summarized by Department staff or the assistant attorney general assigned to the

Department. The summary shall describe the nature of the violations and the penalties sought.

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

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

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

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

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

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

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

R82-3-106. Commission Declaratory Orders.

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

(2) Petition Procedure.

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

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

(3) Petition Form. The petition shall:

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

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

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

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

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

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

(g) be signed by the petitioner.

(4) Petition Review and Disposition.

(a) The Commission shall:

(i) review and consider the petition;

(ii) prepare a declaratory order stating:

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

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

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

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

(b) The Commission may:

(i) interview the petitioner;

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

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

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

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

R82-3-107. Responsible Alcohol Service Plan.

(1) Authority. This rule is made pursuant to the Commission's powers and duties under ~~[s]Sections [32B-1-402,]32B-1-103 and 32B-2-202[, 32B-5-201 and 202]~~ to act as a general policymaking body on the subject of alcoholic beverage control~~[s]~~, set policy by written rules that establish criteria and procedures for suspending or revoking licenses~~[s]~~, and prescribe the conduct and management of any premises upon which alcoholic beverages may be sold, consumed, served, or stored.

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

(3) Definitions.

(a) "Intoxication" and "intoxicated" ~~[are as defined in section]~~mean the same as those terms are defined in Section 32B-1-102~~[(48)]~~.

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

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

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

(i) over-serving alcoholic beverages to customers;

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

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

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

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

(4) Application~~[of Rule]~~.

(a)(i) The Commission may direct that a licensed business that has been found by the Commission to have violated any provision of the Title 32B, Alcoholic Beverage Control Act, relating to the sale, service, or furnishing of alcoholic beverages to an intoxicated person, or to a person under the age of 21, submit to the Department a Responsible Alcohol Service Plan.

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

(b) Any [RASP]Responsible Alcohol Service Plan at a minimum shall:

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

(A) prevent over-service of alcohol;

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

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

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

(E) deal with hostile customers;

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

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

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

(v) require periodic training sessions on the house policies and procedures in the Plan, and on the techniques of responsible service of alcohol taught in the Alcohol Training and Education Seminar [required by 62A-15-401]described in Section 26B-5-205, such as:

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

(B) identifying persons under the age of 21;

(C) discussing the legal definition of intoxication;

(D) identifying behavioral signs of intoxication;

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

(1) drink counting;

(2) slowing down alcohol service;

(3) offering food or nonalcoholic beverages; and

(4) cutting off alcohol service;

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

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

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

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

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

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

KEY: alcoholic beverages

Date of Last Change: ~~[April 28]~~, 2023

Authorizing, and Implemented or Interpreted Law: 32B-1-103; 32B-2-202

NOTICE OF PROPOSED RULE

TYPE OF FILING: Amendment

Rule or Section Number:	R82-6	Filing ID: 55836
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Agency Information

1. Department:	Alcoholic Beverage Services	
Agency:	Administration	
Street address:	1625 S 900 W	
City, state and zip:	Salt Lake City, UT 84104	
Mailing address:	PO Box 30408	
City, state and zip:	Salt Lake City, UT 84130-0408	
Contact persons:		
Name:	Phone:	Email:
Vickie Ashby	801-977-6801	vickieashby@utah.gov
Ericka Evans	801-977-6800	eaevans@utah.gov

Please address questions regarding information on this notice to the persons listed above.

General Information

2. Rule or section catchline:

R82-6. Specific Retail Provisions

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

This rule change is made to conform this rule with statutory changes made in S.B. 173 passed during the 2023 General Session.

4. Summary of the new rule or change:

This rule change prohibits sale of spirituous liquor in containers smaller than 200 milliliters except as provided in Section 32B-2-303, clarifies statutory authority for the remainder of the current rule, and makes other technical changes.

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 a fiscal impact on the state budget because this rule change is consistent with current and previous Department of Alcoholic Beverage Services (Department) practice.

B) Local governments:

This rule change is not expected to have a fiscal impact on local governments' revenues or expenditures because this rule change is consistent with current and previous Department practice.

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

This rule change is not expected to have a fiscal impact on small businesses because this rule change is consistent with current and previous Department practice.

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

This rule change is not expected to have a fiscal impact on non-small businesses because this rule change is consistent with current and previous Department practice.

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 a fiscal impact on persons other than small businesses, non-small businesses, state, or local government entities because this rule change is consistent with current and previous Department practice.

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 is not expected to have a compliance cost because this rule change is consistent with current and previous Department practice.

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

this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table

Fiscal Cost	FY2024	FY2025	FY2026
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	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head comments on fiscal impact and approval of regulatory impact analysis:

The Executive Director of the Department of Alcoholic Beverage Services, Tiffany Clason, has reviewed and approved this regulatory impact analysis.

Citation Information**6. 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 32B-2-303 | Section 32B-2-202 |

Public Notice Information**8. 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: 12/01/2023

9. This rule change MAY become effective on:	12/08/2023
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.	

Agency Authorization Information

Agency head or designee and title:	Tiffany Clason, Executive Director	Date:	10/02/2023
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R82. Alcoholic Beverage Services, Administration.

R82-6. Specific Retail Provisions.

R82-6-101. General Provisions.

Reserved.

R82-6-201. Restaurants -- Grandfathered Bar Structures.

(1) Authority. This rule is made pursuant to the general authority described in section 32B-1-102; the authority to make rules regarding full restaurants in sections 32B-6-202 and 32B-6-205; the authority to make rules regarding limited restaurants in sections 32B-6-302 and 32B-6-305; and the authority to make rules regarding for beer only restaurants found in section 32B-6-905.

(2) The purpose of this rule is to define terms for full service, limited, and beer only restaurant licenses as required by Title 32B, Chapter 6.

(3) Definitions.

(a) "Actively engaged in the construction of the restaurant" means that:

(i) a building permit has been obtained to build the restaurant; and

(ii) a construction contract has been executed and the contract includes an estimated date that the restaurant will be completed; or

(iii) work has commenced by the applicant on the construction of the restaurant and a good faith effort is made to complete the construction in a timely manner.

(b) "Remodels the grandfathered bar structure" means that:

(i) the grandfathered bar structure has been altered or reconfigured to:

(A) extend the length of the existing structure to increase its seating capacity; or

(B) increase the visibility of the storage or dispensing area to restaurant patrons.

(c) "Remodels the grandfathered bar structure" does not:

(i) preclude making cosmetic changes or enhancements to the existing structure such as painting, staining, tiling, or otherwise refinishing the bar structure;

(ii) preclude locating coolers, sinks, plumbing, cooling or electrical equipment to an existing structure; or

(iii) preclude utilizing existing space at the existing bar structure to add additional seating.

(d) Pursuant to subsection 32B-5-303(3), the licensee must first apply for and receive approval from the Department for a change of location where alcohol is stored, served, and sold other than what was originally designated in the licensee's application for the license. Thus, any modification of the alcoholic beverage storage and dispensing area at a "grandfathered bar structure" must first be reviewed and approved by the Department to determine whether it is:

(i) an acceptable use of an existing bar structure; or

(ii) a remodel of a "grandfathered bar structure".

(e) "remodels the grandfathered bar structure or dining area" for purposes of subsection 32B-6-205.3(4)(a)(ii) means that:

(i) the grandfathered bar structure or dining area has been altered or reconfigured to:

(A) extend the length of the existing bar structure to increase its seating capacity; or

(B) increase the visibility of the storage or dispensing area to restaurant patrons from the dining area.

(f) "remodels the grandfathered bar structure or dining area" does not:

(i) preclude making cosmetic changes or enhancements to the existing bar structure such as painting, staining, tiling, or otherwise refinishing the bar structure;

(ii) preclude locating coolers, sinks, plumbing, cooling or electrical equipment to an existing structure; or

(iii) preclude utilizing existing space at the existing bar structure to add additional seating.

(g) Pursuant to subsection 32B-5-303(3), the licensee must first apply for and receive approval from the Department for a change of location where alcohol is stored, served, and sold other than what was originally designated in the licensee's application for the license. Thus, any modification of the alcoholic beverage storage, dispensing, or consumption area must first be reviewed and approved by the Department to determine whether it is:

(i) an acceptable use of an existing bar structure or dining area; or

(ii) a remodel of a "grandfathered bar structure or dining area".

R82-6-202. Restaurants -- Alcoholic Flavorings.

(1) Authority. This rule is made pursuant to the authority described in section 32B-1-102 and the authority to make rules regarding full restaurants in sections 32B-6-202 and 32B-6-205; the express authority to make rules regarding limited restaurants in sections 32B-6-302 and 32B-6-305; and the express authority to make rules regarding for beer only restaurants found in section 32B-6-905.

(2) Purpose. The purpose of this rule is to clarify the use of alcoholic products in food production.

(3) Restaurant licensees may use alcoholic products as in beverages only during the authorized selling hours under the restaurant liquor license.

(4) Alcoholic product flavoring may be used in the preparation of food items at any time if plainly and conspicuously labeled "cooking flavoring."

(5) No licensee employee under the age of 21 years may handle alcoholic product flavorings except when engaged in food preparation.

(6) Nothing in this rule authorizes a finished food product to contain alcohol in excess of 0.5% alcohol by volume, which would render it an alcoholic product subject to Title 32B.

R82-6-301. Reserved.

Reserved.

R82-6-401. Bars -- Bar Licensing.

(1)(a) At the time the Commission grants a bar establishment license the Commission must designate whether the bar establishment qualifies to operate as an equity, fraternal, or bar based on criteria in sections 32B-6-404 and 405.

(b) After any bar establishment license is granted, a bar establishment may request that the Commission approve a change in

the bar establishment's classification in writing supported by evidence to establish that the bar establishment qualifies to operate under the new class designation based on the criteria in sections 32B-6-404 and 405.

(c) The Department shall conduct an investigation for the purpose of gathering information and making a recommendation to the Commission as to whether or not the request should be granted. The information shall be forwarded to the Commission to aid in its determination.

(d) If the Commission determines that the bar establishment has provided credible evidence to establish that it meets the statutory criteria to operate under the new class designation, the Commission shall approve the request.

R82-6-402. Bars -- Membership Fees and Monthly Dues.

(1) Authority. This rule is pursuant to the Commission's powers and duties under section 32B-2-202 general licensing procedures and section 32B-6-405 for issuing an equity or fraternal bar establishment licenses, which authorizes the Commission to refuse to issue a license if the bylaws are not reasonable and consistent with the purpose of the type of license.

(2) Purpose. This rule furthers the intent of section 32B-6-407 that equity and fraternal clubs operate in a manner that preserves the concept that they are private and not open to the general public.

(3) Application of Rule.

(a) Each equity and fraternal club shall establish in its bylaws membership application fees and monthly membership dues in amounts determined by the club.

(b) An equity or fraternal club, its employees, agents, or members, or any person under a contract or agreement with the club, may not, as part of an advertising or promotional scheme, offer to pay or pay for membership application fees or membership dues in full or in part for a member of the general public.

R82-6-403. Bars -- Minors in Lounge or Bar Areas.

(1) Pursuant to subsection 32B-6-406(5), a minor may not be admitted into, use, or be on the premises of any lounge or bar area of an equity, or fraternal bar establishment. A minor may not be on the premises of a bar license except to the extent allowed under section 32B-6-406.1, and may not be admitted into, use, or be on the premises of any lounge or bar area of a bar license.

(2) "Lounge or bar area" includes:

(a) the bar structure as defined in section 32B-1-102(7);

(b) any area in the immediate vicinity of the bar structure where the sale, service, display, and advertising of alcoholic beverages is emphasized; or

(c) any area that is in the nature of or has the ambience or atmosphere of a bar, parlor, lounge, cabaret or night club.

R82-6-404. Bars -- Sexually Oriented Entertainers and Stage Approvals.

(1) Authority. This rule is pursuant to sections 32B-1-501 through 32B-1-506, which prescribe the attire and conduct of sexually-oriented entertainers in premises regulated by the Commission and require them to appear or perform only in a tavern or bar and only upon a stage or in a designated area approved by the Commission.

(2) Purpose. This rule establishes guidelines used by the Commission to approve stages and designated performance areas in a tavern or bar where sexually oriented entertainers may appear or perform in a state of seminudity.

(3) Definitions.

(a) "Seminude", "seminudity, or "state of seminudity" means a state of dress as defined in section 32B-1-102.

(b) "Sexually-oriented entertainer" has the same meaning as that term is defined in section 32B-1-102.

(4) Application of Rule.

(a) A sexually oriented entertainer may appear or perform seminude only on the premises of a tavern or bar.

(b) A tavern or bar licensee, or an employee, independent contractor, or agent of the licensee shall not allow:

(i) a sexually oriented entertainer to appear or perform seminude except in compliance with the conditions and attire and conduct restrictions of sections 32B-1-502 through 32B-1-506;

(ii) a patron to be on the stage or in the performance area while a sexually oriented entertainer is appearing or performing on the stage or in the performance area; and

(iii) a sexually-oriented entertainer to appear or perform seminude except on a stage or in a designated performance area that has been approved by the Commission.

(c) Stage and designated performance area requirements.

(i) The following shall submit for Commission approval a floorplan containing the location of any stage or designated performance area where sexually-oriented entertainers appear or perform:

(A) an applicant for a tavern or bar license from the Commission who intends to have sexually-oriented entertainment on the premises;

(B) a current tavern or bar licensee of the Commission that did not have sexually-oriented entertainment on the premises when application was made for the license or permit, but now intends to have such entertainment on the premises; or

(C) a current tavern or bar licensee of the Commission that has sexually-oriented entertainment on the premises, but has not previously had the stage or performance area approved by the Commission.

(ii) The Commission may approve a stage or performance area where sexually-oriented entertainers may perform in a state of seminudity only if the stage or performance area:

(A) is horizontally separated from the portion of the premises on which patrons are allowed by a minimum of three (3) feet, which separation shall be delineated by a physical barrier or railing that is at least three (3) feet high from the floor;

(B) is configured so as to preclude a patron from:

(I) touching the sexually-oriented entertainer;

(II) placing any money or object on or within the costume or the person of any sexually-oriented entertainer;

(III) is configured so as to preclude a sexually-oriented entertainer from touching a patron; and

(IV) conforms to the requirements of any local ordinance of the jurisdiction where the premise is located relating to distance separation requirements between sexually-oriented entertainers and patrons that may be more restrictive than the requirements of subparts (4)(c)(i) and (ii) of this rule.

(iii) The person applying for approval of a stage or performance area shall submit with their application:

(A) a diagram, drawn to scale, of the premises of the business including the location of any stage or performance area where sexually-oriented entertainers will appear or perform;

(B) a copy of any applicable local ordinance relating to distance separation requirements between sexually-oriented entertainers and patrons; and

(C) evidence of compliance with any such applicable local ordinance.

R82-6-501. Airport Lounge -- Reserved.

Reserved.

R82-6-601. ~~[On-Premise Banquet]~~ [On-Premise Banquet License Room Service -- ~~[Mini Bottle]~~ 187 ml Wine Sales.

(1) Authority. This rule is made pursuant to the Commission's powers and duties under Section 32B-2-202 to adopt and issue policies, rules, and procedures.

(2) Purpose.

(a) Pursuant to ~~[s]~~Section 32B-2-303, the Department may not purchase or stock spirituous liquor in containers smaller than 200 milliliters, except as ~~[otherwise allowed by the Commission]~~described in Section 32B-2-303.

(b) Subject to Subsection (2)(a) and the conditions described in Subsection (3), the ~~[The]~~ Commission ~~[hereby]~~ allows the limited use of ~~[50 milliliter "mini bottles" of distilled spirits and]~~ 187 milliliter bottles of wine as one form of room service sales by on-premise banquet licensees located in hotels and resorts.

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

~~[(2)]~~(3) Application~~[of Rule]~~.

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

(b) The on-premise banquet licensee must order in full case lots and all sales are final.

(c) Sale and use of ~~[alcohol]~~ wine in the smaller bottle sizes is restricted to providing one form of room service to guests in sleeping rooms in the hotel or resort, and may not be used for other banquet catering services, kept in a minibar, or be sold to the general public.

(d) Failure of the on-premise banquet licensee to strictly adhere to the provisions of this rule is grounds for the Department to take disciplinary action against the on-premise banquet licensee.

R82-6-602. On Premise Banquet -- Reporting Requirement for Banquet Licensees.

(1) The authority for this rule is Subsections 32B-6-605(3)(a) and 32B-6-605(4)(a).

(2) This rule establishes:

(a) the notice that an on-premise banquet licensee or sublicensee must give to the Department in advance of a scheduled banquet event so that the Commission, the Department, or law enforcement officers may conduct a random inspection of a banquet to monitor compliance with the alcoholic beverage control laws; and

(b) the records to be maintained by an on-premise banquet licensee and sublicensee.

(3) An on-premise banquet licensee and an on-premise banquet sublicensee shall provide the Department advance notice of scheduled banquets in an electronic format at least fourteen days prior to the scheduled event or immediately upon booking events with less than fourteen days until the scheduled event. The electronic advance notice must include the following information for each event:

- (a) the name of the host;
- (b) the specific location;
- (c) the dates;

(d) the beginning and ending times;

(e) the number of attendees expected to attend;

(f) the designation as either a private event or a privately sponsored event, including the specific type of event; and

(g) for banquet events with an anticipated attendance of over 500 people, the control measures that will be implemented to prevent:

(i) minors from obtaining alcohol;

(ii) overconsumption of alcohol;

(iii) the general public or an uninvited guest from entering a private event; and

(iv) a person who has not paid an admission fee from entering a privately sponsored event.

(4) The licensee or sublicensee shall provide electronic notice of banquet event cancellations or modifications at the time the event is canceled or modified.

(5) The Department shall provide access to documents listing scheduled banquet events upon request, to a commissioner, authorized representative of the Department, and any law enforcement officer for use in a purpose stated in Subsection (2).

(6) The Department shall retain a copy of any documents pertaining to scheduled banquet events for up to fourteen days after the conclusion of the banquet event.

(7) The Department shall classify the documents containing the details of scheduled banquet events as protected under Section 63G-2-305 of the Government Records Management Act if, upon review, the Department determines that:

(a) the documents contain commercial information, the disclosure of which could reasonably be expected to result in unfair competitive injury to the licensee or sublicensee submitting the information, and the licensee or sublicensee submitting the information has a greater interest in prohibiting access than the public in obtaining access to the information; and

(b) the licensee or sublicensee claims business confidentiality and requests that the documents be classified as protected pursuant to Sections 63G-2-305 and 63G-2-309.

~~[(8)]~~ (8) The Department and law enforcement may use the scheduled banquet event documents only for the purposes stated in this rule.

(9) On-premise banquet licensees and sublicensees must maintain a record of the following:

(a) the name and type of each event;

(b) the date and time of each event;

(c) the name of the third-party host of each event;

(d) the contract between the licensee or sublicensee and the host of each event;

(e) the percentage of ownership interest, if any, the host has in the banquet facility;

(f) the total number of guests attending each event;

(g) the total sales of spirituous liquor, wine, beer, heavy beer, and flavored malt beverages sold, served, or provided at each event;

(h) the price charged to the guests for each type of alcoholic product served at each event;

(i) the total sales of food served at each event;

(j) the purchase receipts for spirituous liquor, wine, heavy beer, beer, and flavored malt beverages; and

(k) the annual ratio of food sales to sales of spirituous liquor, wine, heavy beer, beer, and flavored malt beverages.

(10) Failure of an on-premise banquet licensee or sublicensee to timely file advance notice of scheduled banquet events or to retain the records as noted in this rule may result in disciplinary

action pursuant to Sections 32B-3-201 to 32B-3-207, and Section R82-3-102 and R82-3-103.

R82-6-701. On-Premise Beer Retailer -- Commission-Approved Activity.

(1) This rule is adopted pursuant to Section 32B-6-702, which authorizes the commission to define by rule "commission-approved activity" related to an on-premise beer retailer license that is not a tavern.

(2) A "commission-approved activity," for which the commission may grant an on-premise beer retailer license that is not a tavern, includes the following leisure activities that do not involve the use of a dangerous weapon:

(a) A virtual version of any sport or activity enumerated in Subsection 32B-6-702(2)(a);

(b) A video arcade;

(c) Trail bike park involving off-road trails;

(d) Historic and Scenic Railway;

(e) Recreational climbing facility;

(f) Pickleball;

(g) Badminton;

(h) Bocce ball;

(i) An activity similar to the foregoing activities or similar to those specifically enumerated in Subsection 32B-6-702(2)(a); and

(j) Any other activity that the commission deems recreational.

R82-6-801. Reception Center -- Reporting Requirement for Reception Center Licensees.

(1) Authority. This rule is pursuant to the Commission's powers and duties under section 32B-2-202 to act as a general policymaking body on the subject of alcoholic beverage control and to set policy by written rules that prescribe the conduct and management of any premises upon which alcoholic beverages may be sold, consumed, served, or stored, and pursuant to section 32B-6-805.

(2) Purpose. This rule implements the requirement of section 32B-6-805 which requires the Commission to provide by rule procedures for reception center licensees to report scheduled events to the Department to allow random inspections of events by authorized representatives of the Commission, the Department, or by law enforcement officers to monitor compliance with the alcoholic beverage control laws.

(3) Application of the Rule.

(a) A reception center licensee licensed under section 32B-6-805 shall file with the Department at the beginning of each quarter a report containing advance notice of events that have been scheduled as of the reporting date for that quarter.

(b)(i) The quarterly reports are due on or before January 1, April 1, July 1, and October 1 of each year and may be hand-delivered, submitted by mail, or submitted electronically.

(ii) If the licensee adds an event for a quarter after the licensee has already turned in the report, as described in subpart (3)(b)(i) of this rule, the licensee shall promptly contract the licensee's compliance officer to supplement the report.

(c) Each report shall include the name and specific location of each event and the name of the third-party host of the event.

(d) The Department shall make copies of the reports available to a commissioner, authorized representative of the Department, and any law enforcement officer upon request to be used for the purpose stated in subpart (2) of this rule.

(e) The Department shall retain a copy of each report until the end of each reporting quarter.

(f) Because any report filed under this rule contains commercial information, the disclosure of which could reasonably be expected to result in unfair competitive injury to the licensee or sublicensee submitting the information, and the licensee or sublicensee submitting the information has a greater interest in prohibiting access than the public in obtaining access to the report:

(i) any report filed shall be deemed to include a claim of business confidentiality, and a request that the report be classified as protected pursuant to sections 63G-2-305 and -309;

(ii) any report filed shall be classified by the Department as protected pursuant to section 63G-2-305; and

(iii) any report filed shall be used by the Department and law enforcement only for the purposes stated in this rule.

(g) Failure of an on-premise banquet licensee or sublicensee to timely file a quarterly report may result in disciplinary action pursuant to sections 32B-3-201 through 32B-3-207, and R82-3-102 and 103.

R82-6-802. Reception Center -- Agreement For Alcoholic Beverage Service and Table Service.

(1) Authority. This rule is pursuant to the Commission's powers and duties under section 32B-2-202 to act as a general policymaking body on the subject of alcoholic beverage control and to set policy by written rules that prescribe the conduct and management of any premises upon which alcoholic beverages may be sold, consumed, served, or stored, and pursuant to section 32B-6-805

(2) Definitions. "Third Party Host" is a party that contracts with the reception center licensee to provide alcoholic beverage service at an event to be held on a specific date and time for a pre-arranged, guaranteed number of attendees at a negotiated price.

(a) With the exception of a nonprofit organization holding an event as described in section 32B-6-805, the reception center licensee may not contract with a third party host to hold an event that is open to the public where an alcoholic product is sold or offered for sale.

(b) With the exception of a nonprofit organization holding an event as described in section 32B-6-805, a third-party host may not collect a cover charge or entry fee for admission to the private event.

(c) With the exception of a nonprofit organization holding an event as described in section 32B-6-805, a third-party host may not receive any proceeds from the sale of alcoholic product from the event.

(d) A Reception Center Licensee may host an event for an immediate family member provided that the event is not an event that is open to the public where an alcoholic product is sold or offered for sale, and the Reception Center Licensee does not collect a cover charge or entry fee to the event.

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

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

(5) A patron's table may be located in waiting, patio, garden and dining areas that are on the premises of the reception center, previously approved by the Department.

R82-6-901. Reserved.

Reserved.

R82-6-1005. Hospitality Amenity Licensee Notice and Records.

(1) This rule is adopted under the authority of Subsections 32B-6-1005(6)(b) and 32B-6-1005(13).

(2) The purpose of this rule is to specify:

(a) the notice requirements for providing alcoholic products free of charge or at a reduced rate for a reoccurring event or multiple events;

(b) the records a hospitality amenity must use or maintain; and

(c) the period the records must be retained.

(3) Before holding reoccurring or multiple events where alcoholic products are furnished free of charge or at a reduced rate, a hospitality amenity licensee must provide notice:

(a) at least 14 days in advance of each event; and

(b) that notice for each event includes:

(i) the days, dates, and operating hours; and

(ii) the types of alcoholic products that will be furnished free of charge or at a reduced rate.

(4) A hospitality amenity licensee must create a daily record with the following information:

(a) The name of each hospitality guest over 21 years old and to whom the licensee:

(i) provides lodging for compensation, including money, hotel points, or other means; and

(ii) sells or furnishes an alcoholic product while the person is a guest.

(b) The total number of hospitality guests.

(c) The room number of each hospitality guest.

(d) The arrival and departure dates of each hospitality guest.

(e) The amount of alcohol, wine, or heavy beer sold, served, or furnished to each hospitality guest.

(5) The licensee must maintain the records at the licensed premises for three years to ensure compliance with the hospitality amenity license.

(6) The licensee may keep the record in written or electronic form.

(7) The licensee must make the record available to DABC or law enforcement for inspection.

KEY: alcoholic beverages

Date of Last Change: ~~December 1, 2022~~ 2023

Authorizing, and Implemented or Interpreted Law: 32B-2-202; 32B-2-303

NOTICE OF PROPOSED RULE

TYPE OF FILING: Amendment

Rule or Section Number:	R82-9	Filing ID: 55837
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Agency Information

1. Department:	Alcoholic Beverage Services
Agency:	Administration
Street address:	1625 S 900 W
City, state and zip:	Salt Lake City, UT 84104
Mailing address:	PO Box 30408

City, state and zip:	Salt Lake City, UT 84130-0408	
Contact persons:		
Name:	Phone:	Email:
Vickie Ashby	801-977-6801	vickieashby@utah.gov
Ericka Evans	801-977-6800	eaevans@utah.gov
Please address questions regarding information on this notice to the persons listed above.		

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

R82-9. Event Permits

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

This rule amendment changes cross references changed during the 2023 General Session and corrects other technical issues found during annual agency rules review.

4. Summary of the new rule or change:

This rule amendment modifies cross references, provides that an event permittee is subject to disciplinary action if the permittee does not comply with the control measures upon which the director decides to issue a permit, and makes other technical changes.

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 a fiscal impact on the state budget because it is technical in nature or consistent with current and previous Department of Alcoholic Beverage Services (Department) practice.

B) Local governments:

This rule change is not expected to have a fiscal impact on local governments' revenues or expenditures because this rule change is technical in nature or consistent with current and previous Department practice.

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

This rule change is not expected to have a fiscal impact on small businesses because this rule change is technical in nature or consistent with current and previous Department practice.

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

This rule change is not expected to have a fiscal impact on non-small businesses because this rule change is technical in nature or consistent with current and previous Department practice.

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 a fiscal impact on persons other than small businesses, non-small businesses or state or local government entities because this rule change is technical in nature or consistent with current and previous Department practice.

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

This rule is not expected to have a compliance cost because this rule change is technical in nature or consistent with current and previous Department practice.

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

Regulatory Impact Table

Fiscal Cost	FY2024	FY2025	FY2026
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	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0

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

H) Department head comments on fiscal impact and approval of regulatory impact analysis:

The Executive Director of the Department of Alcoholic Beverage Services, Tiffany Clason, has reviewed and approved this regulatory impact analysis.

Citation Information

6. 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 32B-9-204	Section 32B-2-202	
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Public Notice Information

8. 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: 12/01/2023

9. This rule change MAY become effective on: 12/08/2023

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

Agency Authorization Information

Agency head or designee and title:	Tiffany Clason, Executive Director	Date:	10/02/2023
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R82. Alcoholic Beverage Services, Administration.

R82-9. Event Permits.

R82-9-101. Authority and Purpose.

(1) Pursuant to Subsections 32B-2-202(1)(c)(i) and 32B-2-202(1)(n), and 32B-9-201(1), this rule establishes procedures and criteria for issuing and denying event permits in accordance with Title 32B, Chapter 9, Event Permit Act.

R82-9-102. Definitions.

(1) For purposes of Subsection 32B-9-303(2)(a), "Conducting" means managing, controlling, hosting, or directing an event. An applicant may be deemed to be conducting the event if there is a contract in which the applicant has been designated as the agent for the event's alcoholic beverage service.

R82-9-201. Application Requirements.

(1) The director will not consider an event permit application until the requirements of Sections 32B-1-304, 32B-9-201-203, 32B-9-304 and 32B-9-405 have been met, including:

(a) A complete application including all documents and supplemental materials listed on the department's application checklist has been submitted to the department within the time periods delineated in this section; and

(b) the department has conducted an investigation in compliance with Subsection 32B-9-202(1)(a).

(2) Filing timelines:

(a) Subject to Subsection R82-9-201(2)(b), applications shall be submitted 30 days before the event to allow sufficient time for processing and approval.

(b) A late application may be accepted if the director determines that public safety will not be compromised and sufficient time exists to ensure compliance with the notice requirements mandated in Section 32B-9-202. A late application will be reviewed as time allows and is not subject to the provisions in Subsections R82-9-201.1(1)(ii) and R82-9-201.1(1)(iii).

(3) For purposes of Subsection 32B-9-201(2), a substantial change in an event application means a modification that seeks to alter the number of attendees, location, control measures, or any other substantive detail beyond changing the date of the event.

R82-9-201.1. Guidelines for Issuing Permits.

(1) Once submitted to the director, the application will be considered in accordance with Sections 32B-9-202, 32B-9-303, and 32B-9-403, including consideration of Section R82-9-202.

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

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

(iii) An applicant may submit a request for review by the commission within the time limits of Subsections 32B-9-202(3)(b) and 32B-9-202(3)(c) related to the three business day review period and regularly scheduled commission meetings. If at least three commissioners request review of the denial in compliance with Subsections 32B-9-202(3)(b) and 32B-9-202(3)(c), the commission shall review the request at its next regularly scheduled commission meeting.

(2) In accordance with Subsection 32B-9-202(2)(d), the director may authorize multiple sales outlets on different properties under one single event permit, provided that each site conforms to location requirements of Subsection 32B-9-201(1).

(3) Any approval, notification, request for a meeting, or requirement to inform under Section 32B-9-202 shall be done electronically.

R82-9-202. Additional Consideration for Event Permits.

(1)(a) In accordance with ~~[Subsection 32B-9-303(2)]~~Section 32B-9-303, a single event permit is issued to entities in existence for a year or more conducting a convention, civic, or community enterprise.

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

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

~~[(c)](d)~~ Notwithstanding ~~[Subsection (1)]~~Subsections (1)(a) through (c), an event permit may not be issued if, based on the

totality of the circumstances, it is determined that the permit is being used to circumvent other applicable requirements of Title 32B, Chapter 9, Event Permit Act.

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

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

~~[(a)](b)~~ The director may not issue an event permit unless the applicant demonstrates the following control measures will be implemented at the event:

(i) the event will have at least one location where an individual must show proof of age prior to purchasing an alcoholic beverage;

(ii) each individual assigned to check proof of age will have completed the alcohol server training seminar outlined in Section ~~[62A-15-401]~~26B-5-205 within the last three years prior to the date of the event;

(iii) one or more individuals who have completed the alcohol server training seminar outlined in Section ~~[62A-15-401]~~26B-5-205 within the last three years will be required to supervise each location where an alcoholic beverage is sold or dispensed;

(iv) the event will be secured and delineated by a physical structure such as by a fence, wall, or gate, and secured entryways and exits; and

(v) security will be provided by one or more individuals for every 50 individuals estimated to be in the consumption area at one time, which may be provided by a police officer, hired security guard, organization staff member, or security volunteer.

~~[(b)](c)~~ In accordance with ~~[Subsection 32B-9-202(2)(e)]~~Section 32B-9-202, the director may not issue an event permit unless the applicant demonstrates the following additional control measures will be implemented at an outdoor public event or a large-scale public event where minors are present:

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

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

(iii) a location where an individual must show proof of age prior to purchasing an alcoholic beverage shall be separate from an alcoholic beverage sales and dispensing location; and

(iv) an individual assigned to check proof of age at an event will either issue a hand stamp or non-transferable wristband to an individual authorized to purchase alcoholic beverages at the event.

~~[(c)](d)~~ The director, after reviewing the facts and circumstances of a particular event, may modify any of the control measures outlined in ~~[Subsection (a) and (b)]~~Subsections (3)(b) or (c) to be more or less stringent as a condition of issuing an event permit provided that the director has first reasonably determined that such

modification will not increase the likelihood of minors being sold or furnished alcohol or adults being over-served alcohol at the event.

(4) In accordance with Section 32B-9-204, failure of the event permittee to adhere to the control measures described in Subsections (3)(b) and (c) at the event is grounds for the Department to take disciplinary action against the event permittee.

KEY: alcoholic beverages, event permits

Date of Last Change: ~~December 1, 2022~~ 2023

Authorizing, and Implemented or Interpreted Law: 32B-2-202; 32B-9-101 through 32B-9-406

NOTICE OF PROPOSED RULE

TYPE OF FILING: Amendment

Rule or Section Number:	R152-21	Filing ID: 55843
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Agency Information

1. Department:	Commerce	
Agency:	Consumer Protection	
Building:	Heber Wells Bldg	
Street address:	160 E 300 S	
City, state and zip:	Salt Lake City, UT 84111	
Mailing address:	160 E 300 S	
City, state and zip:	Salt Lake City, UT 84111	
Contact persons:		
Name:	Phone:	Email:
Daniel Larsen	801-530-6601	dcprules@utah.gov

Please address questions regarding information on this notice to the persons listed above.

General Information

2. Rule or section catchline:
R152-21. Credit Services Organizations Act Rule
3. Purpose of the new rule or reason for the change:
This proposed amendment is being submitted as a result of the Division of Consumer Protection's (Division) review completed in accordance with Section 63G-3-305, and in accordance with Executive Order No. 2021-12.
4. Summary of the new rule or change:
This amendment conforms this rule's structure to other Division rules and to the Rulewriting Manual for Utah.
The amendment removes current Sections R152-21-3 and R152-21-4 because those sections duplicate statutory provisions.

The amendment also modernizes and streamlines the definitions that appear in proposed Section R152-21-3.

Fiscal Information

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

A) State budget:

This amendment is anticipated to have no fiscal impact on the state budget.

This amendment is expected to result in a de minimis, inestimable fiscal benefit to the state budget due to streamlined definitions that are simpler to understand and apply. The benefit is inestimable because employee pay and the amount of time saved will vary, and the frequency with which the definitions are reviewed and applied is not readily available.

The cost to further research the issue would be unreasonably high relative to the expected fiscal benefit.

B) Local governments:

This amendment is not expected to have any fiscal impact on local governments because it does not impose requirements upon local governments.

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

The Division anticipates that the amendment may result in a minor, inestimable reduction of regulatory burden on small businesses due to the streamlined requirements of the proposed rule change. The reduction is inestimable because the number of impacted small businesses is not readily available due to inconsistent classification in NAICS data, and because the amount of burden relieved depends on the method each impacted small business uses to maintain its records.

The cost to further research the issue would be unreasonably high.

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

The Division anticipates that the amendment may result in a minor, inestimable reduction of regulatory burden on non-small businesses due to the streamlined requirements of the proposed rule change. The reduction is inestimable because the number of impacted non-small businesses is not readily available due to inconsistent classification in NAICS data, and because the amount of burden relieved depends on the method each impacted non-small business uses to maintain its records.

The cost to further research the issue would be unreasonably high.

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 amendment is not expected to have any fiscal impact on persons other than small businesses, non-small businesses, state, or local government entities.

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

This amendment does not impose compliance costs for affected persons.

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

Regulatory Impact Table

Fiscal Cost	FY2024	FY2025	FY2026
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	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head comments on fiscal impact and approval of regulatory impact analysis:

The Executive Director of the Department of Commerce, Margaret Busse, has reviewed and approved this regulatory impact analysis.

Citation Information

6. 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 13-2-5(1)		
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Public Notice Information

8. 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:	12/01/2023
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9. This rule change MAY become effective on:	12/08/2023
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NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

Agency Authorization Information

Agency head or designee and title:	Daniel Larsen, Managing Analyst	Date:	09/27/2023
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R152. Commerce, Consumer Protection.

R152-21. Credit Services Organizations Act Rule.

R152-21-1. Purpose.

The purpose of this rule is to ~~[clarify the legal mandates and prohibitions of Section 13-21-3]~~aid the division's administration and enforcement of Title 13, Chapter 21, Credit Services Organizations Act.

R152-21-2. Authority.

~~This rule is promulgated in accordance with Subsection 13-2-5(1).~~

R152-21-2]3. Definitions.

~~[The definitions set forth in Section 13-21-2, as well as the following supplementary definitions, shall be used in construing the meaning of this rule.]~~

(1) "Challenge" means any act performed by a credit services organization ~~[for the purpose of facilitating the dispute, by any person, or]~~to dispute an entry appearing on the buyer's credit report.

(2) "Credit report" means any document prepared by a credit reporting agency ~~[showing the]~~used to demonstrate a buyer's credit-worthiness, credit standing, or credit capacity~~[of the buyer].~~

(3) "Inaccurate information" means data ~~[affected by]~~that includes a typographical error[s] ~~[and other]~~or similar

~~[inadvertent] clerical or technical fault[s] [which] that creates [a] reasonable doubt about the data's reliability [of such data].~~

(4) "Material error" means false or misleading information on a buyer's credit report that could reasonably affect a decision to extend or deny credit to the buyer. ~~["Accurate" information contains no material errors.]~~

(5) "Material omission" means ~~[missing]~~ information that:

(a) ~~should appear on a buyer's credit report but does not;~~
and

(b) could reasonably affect a decision to extend or deny credit to the buyer. ~~["Complete" information contains no material omissions.]~~

(6) "Outdated information" means information that, in accordance with state or federal law, should not appear on the buyer's credit report because of its age. ~~[How long a given entry may remain on a credit report is determined by applicable state and federal law. Information which is not outdated is "timely."]~~

(7) "Unverifiable information" means an entry on a credit report ~~[lacking sufficient]~~ that lacks supporting evidence sufficient to convince a reasonable person that ~~[#]the entry~~ is proper. ~~[Information which is not unverifiable is "verifiable."]~~

R152-21-3. Factual Basis for Credit Report Challenges.

(1) A credit services organization shall not challenge an entry made on the buyer's credit report without first having a factual basis for believing that the entry contains a material error or omission, or outdated, inaccurate, or unverifiable information.

(2) A credit services organization has a factual basis for challenging an entry on the buyer's credit report only when it:

(a) has received a written statement from the buyer identifying any entry on his credit report that he believes contains a material error or omission, or outdated, inaccurate, or unverifiable information;

(b) has conducted an investigation to determine if the information in the buyer's written statement is correct; and

(c) has concluded in good faith, based upon the results of its investigation, that the buyer's credit report contains one or more material errors or omissions, or outdated, inaccurate, or unverifiable information.

(3) In connection with any investigation undertaken pursuant to this rule, a credit services organization shall:

(a) contact the person who provided the information in question to the credit reporting agency and give him a reasonable opportunity to demonstrate the accuracy, completeness, timeliness, and verifiability of such information;

(b) memorialize, in writing and in detail, the results of the investigation; and

(c) retain the investigative report for not less two years after it is completed.

R152-21-4. Fraudulent Practices.

It shall be a violation of Section 13-21-3 for a credit services organization to do any of the following:

(1) to state or imply that it can permanently remove from a buyer's credit report an accurate, complete, timely, and verifiable entry;

(2) to challenge an entry on a buyer's credit report without a factual basis for believing the entry contains a material error or omission, or outdated, inaccurate, or unverifiable information; or

(3) to challenge an entry on a credit report for the purpose of temporarily denying accurate, complete, timely, and verifiable

information to any person about the credit worthiness, credit standing, or credit capacity of the buyer.]

KEY: credit services, consumer, protection

Date of Last Change: ~~[1994]~~2023

Notice of Continuation: October 16, 2018

Authorizing, and Implemented or Interpreted Law: 13-2-5(1)

NOTICE OF PROPOSED RULE

TYPE OF FILING: Amendment

Rule or Section Number:	R156-46a	Filing ID: 55847
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Agency Information

1. Department:	Commerce	
Agency:	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 persons:		
Name:	Phone:	Email:
Tracy Taylor	801-530-6621	trtaylor@utah.gov

Please address questions regarding information on this notice to the persons listed above.

General Information

2. Rule or section catchline:

R156-46a. Hearing Instrument Specialist Licensing Act Rule

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

The proposed amendments update this rule in accordance with statutory changes made by S.B. 12 passed in the 2023 General Session.

4. Summary of the new rule or change:

In accordance with statutory changes made by S.B. 12 (2023), Sections R156-46a-302a and R156-46a-302b are removed in their entirety and replaced by Sections R156-46a-302 and R156-46a-302.5 to remove the requirement to take the International Hearing Society's licensing examination (ILE), to clarify internship supervision provisions, and to align this rule with the statutory changes.

Additionally, Subsection R156-46a-303(2)(b) is updated to provide that a hearing instrument intern license may be renewed for a term of three years if the hearing instrument intern presents evidence satisfactory to the Division of Professional Licensing (Division) and board that the intern is on a course reasonably expected to lead to licensure, and a circumstance of hardship arose beyond the licensee's control to prevent the completion of the licensure process.

Formatting changes are also made throughout this rule consistent with the Rulewriting Manual for Utah and to update citation references.

The Division also notes the suggestion of the Office of Administrative Rules staff that the "Table" in Section R156-46a-502d be created as a Word "table". However, the Division will be keeping this Table as it is since it is a document template to be used by licensees in their practice. The wording is not conducive to a formatted type table.

Public Hearing Information

The Division will hold a public hearing on 11/17/2023 at 9 AM at 160 E 300 S, Conference Room 474 (4th Floor), Salt Lake City, Utah.

Or via Google Meet
Google Meet Meeting link: meet.google.com/ngx-fsph-bwc

Or join by phone
(US) +1 302-440-5055
PIN: 550866830

Fiscal Information

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

A) State budget:

The proposed amendments are not expected to have any fiscal impact on state government revenues or expenditures.

The proposed amendments merely update and clarify provisions and conform this rule to statutory changes.

B) Local governments:

The proposed amendments are not expected to have any fiscal impact on local governments' revenues or expenditures.

The proposed amendments merely update and clarify provisions and conform this rule to statutory changes.

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

The proposed amendments are not expected to have any fiscal impact on small businesses' revenues or expenditures.

The proposed amendments merely update and clarify provisions and conform this rule to statutory changes.

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

The proposed amendments are not expected to have any fiscal impact on non-small businesses' revenues or expenditures.

The proposed amendments merely update and clarify provisions and conform this rule to statutory changes.

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

The proposed amendments are not expected to have any fiscal impact on affected persons.

The proposed amendments merely update and clarify provisions and conform this rule to statutory changes.

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

The proposed amendments are not expected to impose any compliance costs on any affected persons.

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

Regulatory Impact Table

Fiscal Cost	FY2024	FY2025	FY2026
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	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head comments on fiscal impact and approval of regulatory impact analysis:

The Executive Director of the Department of Commerce, Margaret W. Busse, has reviewed and approved this fiscal analysis.

The Division proposes amendments to update Rule R156-46a, the Hearing Instrument Specialist Licensing Act Rule. The proposed amendments are required by S.B. 12 (2023).

Sections were removed to take out the requirement of the ILE.

Clarification has been for internship supervision provisions and to update the requirement of hearing instrument intern license, which may be renewed for a term of three years.

The Division has made formatting changes throughout this rule to conform to the Rulewriting Manual for Utah in accordance with Executive Orders No. 2021-1 and 2021-12.

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 the requirements of S.B. 12 (2023) and the Rulewriting Manual for Utah.

Regulatory Impact to Non-Small Businesses (50 or more employees):

These amendments 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.

Citation Information

6. 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 58-1-202(1)(a)	Section 58-46a-101
Section 58-46a-304		

Public Notice Information

8. 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: 12/01/2023

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

Date:	Time:	Place (physical address or URL):
11/17/2023	9:00 AM	See information in Box 4 above

9. This rule change MAY become effective on: 12/08/2023

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

Agency Authorization Information

Agency head or designee and title:	Mark B. Steinagel, Division Director	Date:	10/12/2023
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R156. Commerce, [Occupational and Professional Licensing. R156-46a. Hearing Instrument Specialist Licensing Act Rule. R156-46a-101. Title - Authority - Organization.

(1) This rule is known as the "Hearing Instrument Specialist Licensing Act Rule."

(2) 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 46a, Hearing Instrument Specialist Licensing Act.

(3) The organization of this rule and its relationship to Rule R156-1 is as described in Section R156-1-107.

R156-46a-102. Definitions.

In addition to the definitions [as used] in Title 58, Chapter 1, Division of [Occupational and Professional Licensing, and Title 58, Chapter 46a, Hearing Instrument Specialist Licensing Act, ~~or this rule,~~ under Subsection 58-1-203(1)(e) "unprofessional conduct[.]" is further defined in [Subsection 58-1-203(1)(e), in] Section R156-46a-502a.[

R156-46a-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 46a.

~~R156-46a-104. Organization Relationship to Rule R156-1.~~

~~The organization of this rule and its relationship to Rule R156-1 is as described in Section R156-1-107.~~

~~R156-46a-302a. Qualifications for Licensure Examination Requirements.~~

~~(1)(a) In accordance with Subsections 58-46a-302(1)(d) and 58-46a-302(2)(e), the requirements for the examination of a hearing instrument specialist and of a hearing instrument intern are defined to require a minimum score of 75% on the Utah Law and Rules Examination for Hearing Instrument Specialists.~~

~~(b) If an individual's license as a hearing instrument intern expires before the individual becomes licensed as a hearing instrument specialist, the individual shall retake and pass the Utah Law and Rules Examination before the individual may reapply for licensure as a hearing instrument intern.~~

~~(2)(a) In accordance with Subsection 58-46a-302.5(1)(a), a hearing instrument intern shall obtain a passing score on each section of the International Hearing Society (IHS) Practical Examination for Hearing Instrument Interns.~~

~~(b) If a hearing instrument intern receives a failing score on any section of the exam, the intern may retake that section within 60 days. If the intern does not pass each failed section within the 60-day period, the intern shall retake the entire exam.~~

~~(3)(a) In accordance with Subsection 58-46a-302.5(2)(b), an applicant for licensure as a hearing instrument specialist shall obtain a passing score on the International Hearing Society's (IHS) International Licensing Exam (ILE).~~

~~(b) If a hearing instrument intern fails the ILE three times:~~

~~(i) the intern shall request from the Division an authorization to test before each subsequent retake of the ILE; and~~

~~(ii) the Division shall require as a condition for approval of an authorization to test that the intern and the intern's supervisor submit to the Division a written plan of study that includes appropriate subject matter to assist the intern in passing the ILE.~~

~~R156-46a-302b. Qualifications for Licensure Internship Supervision Requirements.~~

~~In accordance with Subsection 58-46a-102(7), the requirements for supervision of a hearing instrument intern are defined as follows:~~

~~(1) A hearing instrument intern supervisor shall:~~

~~(a) supervise no more than one hearing instrument intern on direct supervision;~~

~~(b) supervise no more than two hearing instrument interns at one time;~~

~~(c) begin an internship program only after:~~

~~(i) the hearing instrument intern is properly licensed as a hearing instrument intern; and~~

~~(ii) the supervisor is approved by the Division; and~~

~~(d) notify the Division within ten working days if an internship program is terminated.~~

~~(2) If a supervised internship program is terminated, then within 60 days of termination, the hearing instrument intern shall:~~

~~(a) obtain a new supervisor and notify the Division of the new supervised internship program; or~~

~~(b) surrender their hearing instrument intern license.]~~

~~R156-46a-302. Qualifications for Licensure - Examination Requirements.~~

~~(1) Under Subsections 58-46a-302(1)(d) and 58-46a-302(2)(c), the minimum score required to pass the Utah Law and~~

~~Rules Examination for hearing instrument specialists and hearing instrument interns is 75%.~~

~~(2) If an individual's license as a hearing instrument intern expires before the individual becomes licensed as a hearing instrument specialist, the individual shall retake and pass the Utah Law and Rules Examination before the individual may reapply for licensure as a hearing instrument intern.~~

R156-46a-302.5. Internship Supervision Requirements.

(1) Under Subsection 58-46a-302(2)(d) and Section 58-46a-302.5, the supervision requirements for practice as a hearing instrument intern are established in this section.

(2) A supervising hearing instrument specialist shall:

(a) begin supervising a hearing instrument intern only after:

(i) the hearing instrument intern is licensed as a hearing instrument intern; and

(ii) the supervisor is approved by the Division under Subsection 58-46a-102(6)(c);

(b) supervise no more than one hearing instrument intern on direct supervision;

(c) supervise no more than two hearing instrument interns at one time; and

(d) notify the Division within ten working days if an internship program is terminated.

(3) To practice under indirect supervision as allowed by Subsection 58-46a-302.5(2), the hearing instrument intern shall:

(a) under Subsection 58-46a-302.5(2)(a), have received a passing score on each section of the International Hearing Society (IHS) Practical Examination for Hearing Instrument Interns, subject to the following:

(i) if the hearing instrument intern receives a failing score on one or more exam sections, the intern may retake that section or those sections within 60 days; and

(ii) if the hearing instrument intern does not pass each failed section within the 60-day period, the hearing instrument intern shall retake the entire exam; and

(b) under Subsection 58-46a-302.5(2)(b), have successfully completed the International Hearing Society (IHS) distance Learning for Professionals in Hearing Health Sciences Course.

R156-46a-303. Renewal Cycle - Procedures.

(1) [In accordance with] Under Subsection 58-1-308(1), the renewal date for the two-year renewal cycle [applicable to] for licensees under Title 58, Chapter 46a, Hearing Instrument Specialist Licensing Act is established [by rule] in Section R156-1-308a.

(2) Renewal procedures shall be in accordance with Sections R156-1-308c through R156-1-308l.

(3) Under Subsection 58-46a-303(2)(b), a hearing instrument intern may be renewed for a term of three years if the hearing instrument intern presents evidence satisfactory to the Division and board that:

(a) the licensee is on a course reasonably expected to lead to licensure, such as making reasonable progress toward passing the qualifying examination and completing required hours of supervision; and

(b) a circumstance of hardship arose beyond the licensee's control to prevent the completion of the licensure process.

R156-46a-304. Continuing Education.

~~[In accordance with Section 58-46a-304, the continuing education requirement for renewal of licensure as a hearing instrument specialist is defined as follows:]~~

(1) ~~[A]~~Under Section 58-46a-304, a hearing instrument specialist shall complete continuing education requirements under this section for renewal of licensure.

(2) A hearing instrument specialist shall complete at least 16 hours of continuing education during each two-year renewal cycle.

(2) Continuing education courses shall be in one or more of the following topics:

- (a) acoustics;
- (b) nature of the ear such as normal ear, hearing process, disorders of hearing;
- (c) hearing measurement;
- (d) hearing aid technology;
- (e) selection of hearing aids;
- (f) marketing and customer relations;
- (g) client counseling;
- (h) ethical practice;
- (i) state laws and regulations regarding the dispensing of hearing aids; and

(j) other topics approved by the Division.

(3) Continuing education courses shall be approved by:
(a) the American Speech-Language-Hearing Association (ASHA);

(b) the American Academy of Audiology (AAA); or

(c) the International Hearing Society (IHS).

(4) A licensee may fulfill continuing education requirements by maintaining current National Board for Certification in Hearing Instrument Sciences (NBC-HIS) board certification.

(5) A licensee shall maintain documentation showing compliance with the requirements of this section, such as copies of transcripts or certificates of completion or of board certification, for two years from the end of the renewal period for which the continuing education is due.

R156-46a-502a. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) violating ~~a~~ state or federal law applicable to persons practicing as a hearing instrument specialist or hearing instrument intern;

(2) failing to perform the minimum components of an evaluation for a hearing aid ~~as set forth~~ in Section R156-46a-502b;

(3) dispensing a hearing aid without:

(a) the patient having received a medical evaluation as required by Subsection 58-46-502(5) within the six-month period ~~prior to~~ before the purchase of the hearing aid; or

(b) a document signed by the purchaser being a fully informed adult waiving the medical evaluation in accordance with Food and Drug Administration (FDA) required disclosures in CFR Title 21, Section 801.421-422, except a person under the age of 18 years may not waive the medical evaluation;

(4) engaging in unprofessional conduct specified in Subsection 58-1-501(2)(b)(viii), including:

(a) quoting prices of competitive hearing instruments or devices without disclosing that they are not the current prices;

(b) showing, demonstrating, or representing competitive models as being current when they are not; or

(c) using stalling tactics, excuses, arguing or attempting to dissuade the consumer, to prevent or delay the consumer from

exercising the 30-day right to cancel a hearing aid purchase pursuant to Subsection 58-46a-503(1); and

(5) failing to conform to the generally accepted and recognized standards and ethics of the profession including those established in the Code of Ethics of the International Hearing Society, adopted March 2009, which is ~~hereby~~ incorporated by reference.

R156-46a-502b. Minimum Components of an Evaluation for a Hearing Aid and Dispensing of a Hearing Aid.

(1) ~~The~~Under Subsection 58-46a-102(5), the minimum components of a hearing aid examination include:

(a) air conduction tests at frequencies of 250, 500, 1,000, 2,000, and 4,000 ~~Hertz~~ hertz;

(b) appropriate masking if the air conduction threshold at any one frequency differs from the bone conduction threshold of the contralateral or non-test ear by 40 decibels at the same frequency;

(c) bone conduction tests at 500, 1,000, and 2,000 ~~Hertz~~ hertz, with proper masking;

(d) speech audiometry by live voice or recorded voice, including speech discrimination testing, most comfortable loudness (MCL) measurements, and uncomfortable levels of loudness (UCL) measurements; and

(e) recording and interpretation of audiograms and speech audiometry and other appropriate tests for the sole purpose of determining proper selection and adaptation of a hearing aid.

(2) Only if the procedures in Subsection (1)(a) are clearly impractical, may the licensee select the best instrument to compensate for the loss by trial of one or more instruments.

(3) Tests performed by a physician specializing in diseases of the ear, a clinical audiologist, or another licensed hearing instrument specialist shall be accepted if they were performed within six months ~~prior to~~ before the dispensing of the hearing aid.

R156-46a-502c. Calibration of Technical Instruments.

The requirement in Subsection 58-46a-303(3)(b)(i)(b)(ii) for calibration of each appropriate technical instruments used in practice is defined as follows:

(1) each audiometer used in the fitting of hearing aids shall be calibrated when necessary, but not less than annually;

(2) the calibration shall include to ANSI standards calibration of frequency accuracy, acoustic output, attenuator linearity, and harmonic distortion; and

(3) calibration shall be accomplished by the manufacturer, or a properly trained person, or an institution of higher learning equipped with proper instruments for calibration of an audiometer.

R156-46a-502d. Form of Written Informed Consent.

~~In accordance with~~Under Subsection 58-46a-502(4)(c), an agreement to provide hearing instrument specialist goods and services shall include the patient's informed consent in substantially the following form.

TABLE

ACKNOWLEDGEMENT OF INFORMED CONSENT

As a consumer of hearing instrument specialist goods or services, you are required to be informed of certain information as provided in Utah Code Sections 58-46a-502 and 58-46a-503.

1. The list of goods and services to be provided to you include the following: (add additional lines as required)

Services: Charge:

Goods (circle as applicable: new, used, reconditioned): Charge:

These goods (circle as applicable: are, are not) covered by a warranty or guarantee. Additional information about any warranty or guarantee is attached.

2. The licensees providing these goods and services are:

(add additional lines as required)

hearing instrument specialist:

name: license number:

hearing instrument ~~specialist~~ intern

name: license number:

3. The expected results of the goods and services are:

4. If the goods to be provided include a hearing instrument:

(a) Additional information is attached about hearing instruments that work with assisted listening systems that are compliant with ADA Standards for Accessible Design adopted by the United States Department of Justice in accordance with the American with Disabilities Act, 42 U.S.C. Sec. 12101 et seq.

(b) You have the right to receive a written receipt or written contract, which includes notice to you that you have a 30-day right to cancel the purchase and obtain a refund if you find the hearing aid does not function adequately for you.

(i) The 30-day right to cancel shall ~~(commence)~~ start from either the date the hearing aid is originally delivered to you or the date the written receipt or contract is delivered to you, whichever is later. The 30-day period shall be tolled for any period during which the hearing aid seller, dealer, or fitter has possession or control of the hearing aid after its original delivery.

(ii) Upon exercise of the 30-day right to cancel a hearing aid purchase, the seller of the hearing aid is entitled to a cancellation fee not to exceed 15% of all fees charged to the consumer, including testing, fitting, counseling, and the purchase price of the hearing aid. The exact amount of the cancellation fee shall be stated in the written receipt or contract provided to the consumer.

5. If the goods and services provided do not substantially enhance your hearing as stated in the expected results, you are entitled to:

(a) necessary intervention to produce satisfactory recovery results consistent with the representations made above at no additional cost; or

(b) refund of the fees you paid for the hearing instrument within a reasonable period ~~(of time)~~ after finding that the hearing instrument does not substantially enhance your hearing. I hereby acknowledge being informed of the above and consent to receive the goods and services.

Patient's Signature and Date

KEY: licensing, hearing aids, hearing instrument specialist, hearing instrument intern

Date of Last Change: ~~[December 10, 2020]~~ 2023

Notice of Continuation: October 2, 2023

Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-202(1)(a); 58-46a-101; 58-46a-304

NOTICE OF PROPOSED RULE

TYPE OF FILING: Amendment

Rule or Section Number:	R156-69	Filing ID: 55846
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Agency Information

1. Department:	Commerce
Agency:	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 persons:		
Name:	Phone:	Email:
Larry Marx	801-530-6254	lmarx@utah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule or section catchline:

R156-69. Dentist and Dental Hygienist Practice Act Rule

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

The Division of Professional Licensing (Division) in collaboration with the Dentist and Dental Hygienist Licensing Board is filing these proposed amendments:

1) as required by S.B. 237 passed in the 2023 General Session, establish the notification requirement to DOPL for a dental hygienist who will engage in the practice of dental hygiene in a public health setting;

2) lessen the regulatory burden on dentists who perform moderate sedation by reducing the requirements for monitoring patient oxygenation to the use of an oximeter, and requiring only one individual to be in the operatory that is ACLS (or PALS) certified instead of two; and

3) lessen the regulatory burden on dentists who perform Deep Sedation or General Anesthesia by requiring only one individual to be in the operatory that is ACLS (or PALS) certified instead of two.

4. Summary of the new rule or change:

Subsection R156-69-302a(2)(c)(iii)(A) is amended to remove the requirement to use end-tidal capnography in addition to pulse oximetry during moderate sedation of a patient.

Subsection R156-69-302a(2)(c)(iii)(B) is amended to require only one ACLS (or PALS) certified person to be in the operatory during moderate sedation of a patient; this would be the licensee performing the treatment, thereby removing the requirement for an assistant to be ACLS (or PALS) trained.

Subsection R156-69-301a(2)(d)(iii)(B) is amended to require only one ACLS (or PALS) certified person to be present in the operatory for a dentist with a deep sedation and general anesthesia permit, which would be the licensee performing the treatment, thereby removing the requirement for an assistant to be ACLS (or PALS) trained.

Finally, in accordance with S.B. 237 (2023), new Section R156-69-801 is added to establish the required notification to the Division on a one-time basis by a dental hygienist who will engage in the independent practice of dental

hygiene in a public health setting, and Section R156-69-502 is correspondingly amended to add to the definition of "Unprofessional Conduct" violation of Subsection 58-69-801(5) or Section R156-69-801 by a dental hygienist who is working in a public health setting.

Public Hearing Information

The Division will hold a public hearing on 11/17/2023 at 9 AM at 160 E 300 S, Conference Room 474 (4th Floor), Salt Lake City, Utah.

Or via Google Meet

Google Meet Meeting link: meet.google.com/ngx-fsph-bwc

Or join by phone

(US) +1 302-440-5055

PIN: 550866830

Fiscal Information

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

A) State budget:

As described below for small businesses in Box 5C, the Division estimates that the proposed amendments to Section R156-69-302a may benefit state government agencies who provide dental services, but the exact savings cannot be estimated as each entity will provide different services and utilize differing equipment, and hire employees with differing qualifications.

The remainder of these proposed amendments are expected to have no measurable impact on state revenues or expenditures as they merely update the rule to implement S.B. 237 (2023) requirements.

B) Local governments:

As described below for small businesses in Box 5C, the Division estimates that the proposed amendments to Section R156-69-302a may benefit local government agencies who provide dental services, but the exact savings cannot be estimated as each entity will provide different services and utilize differing equipment, and hire employees with differing qualifications.

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

The proposed amendments to R156-69-302a will reduce the cost of equipment needed for moderate sedation and will also reduce the training costs for dental service providers who are treating patients utilizing moderate sedation or deep sedation/general anesthesia, therefore, the Division expects these amendments to benefit the estimated 2,156 small businesses in Utah engaged in providing dental services (Offices of Dentist (NAICS 621210) and All Other Outpatient Care Centers (NAICS 621498)).

However, the exact savings cannot be estimated as the relevant information is not available as each dental practice is unique, with each practitioner utilizing different equipment and hiring employees with differing qualifications.

New Section R156-69-801 that establishes the required notice to the Division for dental hygienists who will be practicing independently in a public health setting is not expected to have a measurable impact on businesses owned by or employing dental hygienists who choose to practice independently in a public health setting beyond the fiscal impact described in the fiscal note for S.B. 237 at <https://le.utah.gov/~2023/bills/static/SB0237.html>, as the amendment simply implements the mandate for notice under SB 237.

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

The proposed amendments to R156-69-302a will reduce the cost of equipment needed for moderate sedation and will also reduce the training costs for dental service providers who are treating patients utilizing moderate sedation or deep sedation/general anesthesia, therefore, the Division expects these amendments to benefit the estimated 21 non-small businesses in Utah engaged in providing dental services (Offices of Dentist (NAICS 621210) and All Other Outpatient Care Centers (NAICS 621498)).

However, the exact savings cannot be estimated as the relevant information is not available as each dental practice is unique, with each practitioner utilizing different equipment and hiring employees with differing qualifications.

New Section R156-69-801 that establishes the required notice to the Division for dental hygienists who will be practicing independently in a public health setting is not expected to have a measurable impact on non-small businesses owned by or employing dental hygienists who choose to practice independently in a public health setting beyond the fiscal impact described in the fiscal note for S.B. 237 at <https://le.utah.gov/~2023/bills/static/SB0237.html>, as the amendment simply implements the mandate for notice under S.B. 237.

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

There are approximately 4,325 licensed dentists in Utah, who primarily work in businesses as owners or partners. As described above in Box 5C for small businesses, the Division anticipates a savings for licensed dentists who choose to engage in the practice of providing moderate sedation or deep sedation/general anesthesia to their patients, but the exact cost savings cannot be estimated

as each practitioner is unique and utilizes differing equipment and hires employees with differing qualifications.

The proposed new Section R156-69-801 enacted pursuant to S.B. 237 (2023) that establishes the required notice to the Division by dental hygienists who will be practicing independently in a public health setting will impact dental hygienists who choose to practice independently in a public health setting, but the amendments are not expected to impact these persons beyond the fiscal impact described in the fiscal note for S.B. 237 at <https://le.utah.gov/~2023/bills/static/SB0237.html> because the amendment simply implements the notice mandate under S.B. 237.

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

As described in Box 5E, there are no compliance costs expected for affected persons.

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

Regulatory Impact Table

Fiscal Cost	FY2024	FY2025	FY2026
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	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0

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

H) Department head comments on fiscal impact and approval of regulatory impact analysis:

The Executive Director of the Department of Commerce, Margaret W. Busse, has reviewed and approved this fiscal analysis.

The Division proposes amendments to update Rule R156-69, the Dentist and Dental Hygienist Practice Act Rule.

The proposed amendments were required by S.B. 237 (2023). The essence of S.B. 237 is to decrease regulations on dentists who perform moderate sedation by reducing the requirements for monitoring patient oxygenation to the use of an oximeter, and requiring only one certified individual instead of two.

The proposed change is to also decrease regulation on dentists who perform deep sedation or general anesthesia by requiring only one certified individual to be in the operatory instead of two. The Division has made formatting changes throughout the rule to conform this rule to the Rulewriting Manual for Utah in accordance with Executive Orders No. 2021-1 and 2021-12.

Small Businesses (less than 50 employees):

The Division does not expect any foreseeable impact on small businesses.

The proposed amendments to R156-69 will reduce the cost of sedation equipment and reduce the training costs for dental service providers.

The Division foresees benefits to the estimated 2,156 small businesses in Utah engaged in providing dental services (NAICS 621210) and other similar outpatient care centers (NAICS 621498).

Regulatory Impact to Non-Small Businesses (50 or more employees)

There are approximately 21 non-small businesses in Utah engaged in providing dental services (NAICS 621210) and other similar outpatient care centers (NAICS 621498).

These amendments 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.

Citation Information

6. 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 58-69-101	Subsection 58-1-106(1)(a)	Subsection 58-1-202(1)(a)
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Public Notice Information

8. 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:		12/01/2023
B) A public hearing (optional) will be held:		
Date:	Time:	Place (physical address or URL):
11/17/2023	9:00 AM	See information in Box 4 above

9. This rule change MAY become effective on:	12/08/2023
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.	

Agency Authorization Information

Agency head or designee and title:	Mark B. Steinagel, Division Director	Date:	10/04/2023
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R156. Commerce, Professional Licensing.**R156-69. Dentist and Dental Hygienist Practice Act Rule.****R156-69-102. Definitions.**

~~[The following definitions supplement the definitions]~~ Terms used in this rule are defined in Title 58, Chapter 1, Division of Professional Licensing Act, and Title 58, Chapter 69, Dentist and Dental Hygienist Practice Act. In addition:

(1) "AAOMS standards" means the following American Association of Oral and Maxillofacial Surgeons (AAOMS) standards, which are incorporated by reference:

(a) Office Anesthesia Evaluation Manual, 2018 9th edition; and

(b) Parameters of Care, 2017 6th edition.

(2) "AAPD" means the American Academy of Pediatric Dentistry.

(3) "ACLS" means Advanced Cardiac Life Support.

(4) "ADA" means the American Dental Association.

(5) "ADA CERP" means American Dental Association Continuing Education Recognition Program.

(6) "ADA Sedation and General Anesthesia Policy Statement" means the ADA Policy Statement: The Use of Sedation and General Anesthesia by Dentists, 2007 edition, which is incorporated by reference.

(7) "ADA Teaching Guidelines" means the Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students published by the American Dental Association, as adopted by the ADA House of Delegates, October 2016, which is incorporated by reference.

(8) "ADA Use Guidelines" means the Guidelines for the Use of Sedation and General Anesthesia by Dentists published by the

American Dental Association, as adopted by the ADA House of Delegates, October 2016, which is incorporated by reference.

(9) "ADEX" means American Board of Dental Examiners.

(10) "ADHA" means the American Dental Hygienists' Association.

(11) "Advertising or otherwise holding oneself out to the public as a dentist" means representing or promoting oneself as a dentist through any of the following or similar methods:

(a) business names;

(b) business signs;

(c) door or window lettering;

(d) business cards;

(e) letterhead;

(f) business announcements;

(g) flyers;

(h) mailers;

(i) promotions;

(j) advertisements;

(k) radio or television commercials;

(l) listings in printed or online telephone directories; or

(m) any other type of advertisement or promotional communication.

(12) "Analgesia" means the same as defined in the ADA Use Guidelines.

(13) "Anesthesiology" means the science of administration of anesthetics and the condition of the patient while under anesthesia.

(14) "ASA standards" means the following American Society of Anesthesiologists (ASA) standards, which are incorporated by reference:

(a) Basic Standards for Preanesthesia Care, 2020 edition;

(b) Standards for Basic Anesthetic Monitoring, 2020 edition; and

(c) Standards for Postanesthesia Care, 2019 edition;

(15) "BCLS" means Basic Cardiac Life Support.

(16) "BLS" means Basic Life Support.

(17) "CDCA" means Commission on Dental Competency Assessments.

(18) "CDEL" means the Council on Dental Education and Licensure.

(19) "CITA" means Council of Interstate Testing Agencies, Inc.

(20) "CODA" means the Commission on Dental Accreditation of the American Dental Association (ADA).

(21) "Competency" means displaying special skill or knowledge derived from training and experience.

(22) "CPR" means cardiopulmonary resuscitation.

(23) "CRDTS" means the Central Regional Dental Testing Service, Inc.

(24) "DANB" means the Dental Assisting National Board, Inc.

(25) "Deep sedation" as defined in Subsection 58-1-510(1)(b) is further defined in the standards in Subsection R156-69-301b(3).

(26) "Deep sedation and general anesthesia permit" means the dentist deep sedation and general anesthesia permit classification and scope of practice established in Section R156-69-301b under Subsection 58-69-301(4).

(27) "Dental hygienist with local anesthesia permit" means the dental hygienist local anesthesia permit classification and scope of practice established in Section R156-69-301c under Subsection 58-69-301(4).

(28) "Discharge criteria" means the minimum requirements for a patient to be safely discharged from the care of a dentist.

(29) "General anesthesia" as defined in Subsection 58-1-510(1)(c) is further defined in the standards in Subsection R156-69-301b(3).

(30) "Local anesthesia" means the same as defined in the standards in Subsection R156-69-301b(3).

(31) "Local anesthesia permit" means the dentist local sedation permit classification and scope of practice established in Section R156-69-301b under Subsection 58-69-301(4).

(32) "Maximum recommended dose (MRD)" is the maximum FDA recommended dose of a drug, as printed in FDA approved labeling for unmonitored home use.

(33) "Minimal sedation" as defined in Subsection 58-1-501(1)(e) is further defined in the standards in Subsection R156-69-301b(3).

(34) "Minimal sedation permit" means the dentist minimal sedation permit classification and scope of practice established in Section R156-69-301b under Subsection 58-69-301(4).

(35) "Moderate sedation" as defined in Subsection 58-1-510(1)(f) is further defined in the standards in Subsection R156-69-301b(3).

(36) "Moderate sedation permit" means the dentist moderate sedation permit classification and scope of practice established in Section R156-69-301b under Subsection 58-69-301(4).

(37) "PALS" means Pediatric Advanced Life Support.

(38) "Pediatric dentistry" means the age-defined dental specialty that provides both primary and comprehensive preventive and therapeutic oral health care for infants and children through adolescence, including those with special health care needs.

(39) "Pediatric Sedation Guidelines" means the guidelines established in Cote CJ, Wilson S. American Academy of Pediatric Dentistry, American Academy of Pediatrics Guidelines for Monitoring and Management of Pediatric Patients Before, During, and After Sedation for Diagnostic and Therapeutic Procedures, Pediatric Dent 2019; 41(4):E-26-E-52, which is incorporated by reference.

(40) "Practice of dental hygiene" under Subsection 58-69-102(7)(a)(ix) includes performing:

- (a) laser bleaching; and
- (b) laser periodontal debridement.

(41) "Prominent disclaimer" in Subsection 58-69-502(2)(b) means a disclaimer that:

- (a) is in the same size of lettering as the largest lettering contained in the advertisement, publication, or other communication in which the disclaimer appears; or
- (b) is in the same volume and speed as the slowest speed and highest volume included in the advertisement, commercial, or other communication in which the disclaimer appears.

(42) "Route of administration" means the technique of administering agents, and includes the following, as defined in the ADA Use Guidelines:

- (a) enteral;
- (b) parenteral;
- (c) transdermal;
- (d) transmucosal; and
- (e) inhalation.

(43) "Specialty area" or "dental specialty" means an area of dentistry in which the dentist has successfully completed at least

two full-time years in a specialty postdoctoral program accredited by CODA.

(44) "SRTA" means Southern Regional Testing Agency, Inc.

(45) "UDA" means Utah Dental Association.

(46) "UDHA" means Utah Dental Hygienists' Association.

(47) "Unprofessional conduct" is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-69-502.

(48) "WREB" means the Western Regional Examining Board.

R156-69-301a. Dentist Anesthesia and Analgesia - Permit Classifications and Scopes of Practice.

(1) Under Section 58-1-510 and Subsection 58-69-301(4)(b), the classification of dentist anesthesia and analgesia permits are as follows:

- (a) local anesthesia permit;
- (b) minimal sedation permit;
- (c) moderate sedation permit; and
- (d) deep sedation and general anesthesia permit.

(2) Under Subsections 58-1-510(2) through (4) and Subsection 58-69-301(4)(a), the scope of practice for each dentist anesthesia and analgesia permit is established as follows:

(a) a dentist with a local anesthesia permit may administer local anesthesia and nitrous oxide and supervise the administration of local anesthesia and nitrous oxide in compliance with the standards in Subsection (3);

(b) a dentist with a minimal sedation permit may:

- (i) exercise the privileges of a local anesthesia permit; and
- (ii) administer and supervise the administration of minimal sedation via nitrous oxide-oxygen, with or without the administration of enteral medications, in compliance with the standards in Subsection (3);

(c) a dentist with a moderate sedation permit may:

- (i) exercise the privileges of a minimal sedation permit;
- (ii) administer and supervise the administration of moderate sedation in compliance with the standards in Subsection (3); and

(iii) when engaging in the administration of moderate sedation shall:

(A) use pulse oximetry[and end tidal CO2 monitoring with capnography]; and

(B) have at least one ACLS or PALS trained [assistant]individual present in-operatory during sedation; and

(d) a dentist with a deep sedation and general anesthesia permit may:

- (i) exercise the privileges of a moderate sedation permit;
- (ii) administer or supervise the administration of deep sedation or general anesthesia in compliance with the standards in Subsection (3); and

(iii) when engaging in the administration of deep sedation or general anesthesia, shall:

(A) use pulse oximetry and end tidal CO2 monitoring with capnography; and

(B) have at least one ACLS or PALS trained [assistant]individual present in-operatory during sedation.

(3) Under Subsections 58-1-510(3) and (4) and 58-69-102(8) and Section 58-69-802:

(a) a dentist shall possess the knowledge, skills, education, and training required by and shall comply with the following standards, as applicable to the dentist's permitted scope of practice:

(i) the ADA Use Guidelines;
(ii) the Pediatric Sedation Guidelines;
(iii) the ADA Sedation and General Anesthesia Policy Statement;
(iv) the AAOMS standards;
(v) the ASA standards; and
(vi) Section 58-1-510; and
(b) a dentist who practices facial cosmetic dentistry using the neurotoxin clostridium botulinum or an injectable dermal filler shall demonstrate competency by having successfully completed a minimum of eight hours of training that:
(i) is taught by properly trained and licensed individuals teaching within their scope of practice;
(ii) includes a hands-on component; and
(iii) includes the following topics:
(A) treatment for temporomandibular joint dysfunction;
(B) infection control; and
(C) risk factors for administration of neurotoxin clostridium botulinum and dermal fillers.

R156-69-502. Unprofessional Conduct.

"Unprofessional Conduct" includes the following:

- (1) for any patient under any level of sedation, including nitrous oxide:
 - (a) failing to provide continuous in-operatory observation by a trained dental patient care staff member until the patient continuously and independently maintains their airway and may be safely discharged; or
 - (b) failing to record the discharge time and the person discharging the patient in the patient's records;
- (2) under Subsections 58-69-502(1)(b) and (2), advertising or otherwise holding oneself out to the public as a dentist or dental group that practices in a specialty area, if:
 - (a) the dentist, or each dentist in the dental group, has not successfully completed an advanced educational program accredited by CODA;
 - (b) as specified in Subsection 58-69-502(2)(b), the advertisement or other method of holding oneself out to the public as a dentist or dental group does not include a prominent disclaimer under Subsection R156-69-102(41) that the dentist or dentists performing services are licensed as general dentists or that the specialty services:
 - (i) is or are licensed as general dentists or that the specialty services will be provided by a general dentist; or
 - (ii) is or are specialists, but not qualified as a specialist in the specialty area being advertised;
 - (3) advertising in any form that is misleading, deceptive, or false, including the display of any credential, education, or training that is inaccurate, or making any unsubstantiated claim of superiority in education, certification, training, skill, experience, or any other quantifiable aspect;
 - (4) prescribing treatments and medications outside the scope of dentistry;
 - (5) prescribing for oneself any Schedule II or III controlled substance;
 - (6) engaging in practice as a dentist or dental hygienist without prominently displaying a copy of the current Utah license;
 - (7)(a) failing to personally maintain current CPR, BCLS-BLS, ACLS, or PALS certification as required by the licensee's anesthesia permit; or

- (b) employing patient care staff who fail to maintain current CPR or BCLS-BLS certification;
- (8) providing consulting or other dental services under anonymity;
- (9) engaging in unethical or illegal billing practices or fraud, including:
 - (a) reporting an incorrect treatment date for obtaining payment;
 - (b) reporting charges for services not provided;
 - (c) incorrectly reporting services provided for obtaining payment; or
 - (d) generally representing a charge to a third party that is different from that charged to the patient;
- (10) failing to establish and maintain appropriate dental records;
- (11) failing to maintain patient records for seven years;
- (12) failing to provide copies of x-rays, reports or records to a patient or the patient's designee upon written request and payment of a nominal fee for copies, regardless of the payment status of the services in the record;
- (13) failing to discuss the risks of using an opiate with a patient or the patient's guardian before issuing an initial opiate prescription in accordance with Section 58-37-19;
- (14) violating Section R156-69-301a or R156-69-301b;[
or]
- (15) for a dental hygienist working in a public health setting, violating Subsection 58-69-801(4) or 58-69-801(5) or Section R156-69-801.

R156-69-801. Dental Hygienist Notification to Division of Practice in Public Health Setting.

- (1)(a) Under Subsection 58-69-801(5), a dental hygienist who will engage in the practice of dental hygiene in a public health setting without general supervision and without a collaborative practice agreement with a dentist, shall notify the Division on a one-time basis under Subsections 58-69-801(5)(b) and 58-1-308(3) by submitting to the Division the Public Health Setting Practice Notification form that is available on the Division's website at <https://dopl.utah.gov/dentistry>.
- (b) The dental hygienist shall submit a completed Public Health Setting Practice Notification form:
 - (i) before the day the dental hygienist first engages in the practice of dental hygiene in a public health setting; and
 - (ii) thereafter, on each day that the dental hygienist applies to renew or reinstate the dental hygienist's license.
- (2) If a dental hygienist will cease to engage in the practice of dental hygiene in a public health setting under Subsection 58-69-801(5), the dental hygienist shall notify the Division by submitting to the Division the Public Health Setting Practice Notification form.
- (3) A dental hygienist shall maintain a copy of the dental hygienist's submitted Public Health Setting Practice Notification form for two years after the end of the license cycle during which the dental hygienist submitted the form, and make a copy available for inspection by the Division upon request.

KEY: licensing, dentists, dental hygienists

Date of Last Change: ~~March 27,~~ 2023

Notice of Continuation: January 7, 2021

Authorizing, and Implemented or Interpreted Law: 58-69-101; 58-1-106(1)(a); 58-1-202(1)(a)

NOTICE OF PROPOSED RULE		
TYPE OF FILING: Amendment		
Rule or Section Number:	R270-1	Filing ID: 55794

Agency Information

1. Department:	Crime Victim Reparations	
Agency:	Administration	
Room number:	200	
Street address:	350 E 500 S, Suite 200	
City, state and zip:	Salt Lake City, UT 84111	
Contact persons:		
Name:	Phone:	Email:
Melanie Scarlet	801-238-2360	mscarlet@utah.gov
Gary Scheller	801-238-2360	garys@utah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule or section catchline:
R270-1. Award and Reparation Standards
3. Purpose of the new rule or reason for the change:
<p>The purpose of this rule change is to keep up with the increased cost to victims in the areas of relocation, funeral, and outpatient mental health services benefit categories. These benefits have not seen an increase in many years and have not kept up with inflation.</p> <p>According to apartments.com, the average cost for a 1-bedroom apartment in Salt Lake City is \$1,700 per month, much more than Utah Office for Victims of Crime's (UOVC) \$1,000 benefit.</p> <p>UOVC regularly sees funeral and burial expenses following a homicide that are much higher than the \$7,000 that is currently available to survivors.</p> <p>Lastly, UOVC victims are having a difficult time finding a provider that will accept the current pay structure for mental health services. Because of this, victims often must pay out of pocket for the upfront costs and then seek reimbursement from UOVC. Unfortunately, UOVC's reimbursements are only a fraction of what the victim paid.</p> <p>This rule change is intended to alleviate the financial burden on victims of crime.</p>

4. Summary of the new rule or change:
<p>This rule change will increase the following benefits: relocation benefit from \$1,000 to \$2,000, funeral benefit from \$7,000 to \$14,000, and change how UOVC will pay the mental health benefit.</p> <p>Instead of paying capped rates of \$70, \$90, and \$130, UOVC would be paying the PEHP rate for those services.</p>

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
A) State budget:
<p>There will be a fiscal impact to the state budget. However, this funding is already available in the restricted revenue account as defined in Section 63M-7-526.</p> <p>To get the numbers for this estimate, UOVC looked at what was spent between FY18 - FY22. UOVC is not able to say that there will be an increase each year as what the UOVC pays out in each category fluctuates depending on victim needs for that particular year.</p>
B) Local governments:
<p>This rule change is not expected to have a fiscal impact on local governments' revenues or expenditures.</p> <p>This rule change only impacts UOVC expenses.</p>
C) Small businesses ("small business" means a business employing 1-49 persons):
<p>This rule change will have a positive impact on small businesses' revenue. UOVC pays directly to funeral homes, storage facilities, moving companies, therapists who are self-employed or work for small businesses.</p> <p>UOVC arrived at the numbers below by multiplying the total expected increase by the average percentage paid to small business over a five-year period (FY18 - FY22). The average percentage paid to small businesses during that time frame was 55% which equates to \$354,678.51 of the expected increase.</p> <p>UOVC is not adding an expected increase for FY25 and FY26 as the numbers in the table below were determined based on a five-year average of total benefits paid. These numbers fluctuate from year to year depending on victims' needs for that particular year.</p>
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):
<p>This rule change will have a positive impact on non-small businesses' revenue. UOVC pays for therapy provided by non-small businesses such as Primary Childrens Safe and Healthy Families program.</p>

UOVC arrived at the numbers below by multiplying the total expected increase by the average percentage paid to non-small businesses over a five-year period (FY18 - FY22). The average percentage paid to non-small businesses during that time frame was 29%, which equates to \$187,012.31.

Score.org reports that non-small businesses make up less than 1% of business in Utah, and yet they receive an average of 29% of UOVC's gross yearly benefit payout. These payouts are paid at a significantly lower rate than victims would pay if they paid the provider directly, as UOVC is currently paying at a rate of 50% of the billed amount which makes this rule change an additional benefit to persons (and not just non-small businesses) that is difficult to quantify.

UOVC is not adding an expected increase for FY25 and FY26 as the numbers in the table below were determined based on a five-year average of total benefits paid. These numbers fluctuate from year to year depending on victims' needs for that particular year.

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 will positively benefit persons who are victims of crime and are clients of UOVC. It will increase the amount that UOVC is able to reimburse victims of crime for their out-of-pocket expenses.

UOVC arrived at the numbers below by multiplying the total expected increase by the average percentage paid to persons (victims of crime) over a five-year period (FY18 - FY22). The average percentage paid to persons during that time frame was 16% which equates to \$103,179.21.

UOVC is not adding an expected increase for FY25 and FY26 as the numbers in the table below were determined based on a five-year average of total benefits paid. These numbers fluctuate from year to year depending on victims' needs for that particular year.

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.

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

Regulatory Impact Table

Fiscal Cost	FY2024	FY2025	FY2026
State Government	\$644,870.03	\$644,870.03	\$644,870.03

Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$644,870.03	\$644,870.03	\$644,870.03
Fiscal Benefits	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$503,045.72	\$503,045.72	\$503,045.72
Non-Small Businesses	\$18,899.33	\$18,899.33	\$18,899.33
Other Persons	\$103,179.21	\$103,179.21	\$103,179.21
Total Fiscal Benefits	\$644,870.03	\$644,870.03	\$644,870.03
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head comments on fiscal impact and approval of regulatory impact analysis:

The Director of the Utah Office for Victims of Crime, Gary Scheller, has reviewed and approved this regulatory impact analysis.

Citation Information

6. 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 63M-7-5		
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Public Notice Information

8. 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: 12/01/2023

9. This rule change MAY become effective on: 12/08/2023

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

Agency Authorization Information

Agency head or designee and title:	Gary Scheller, Director	Date:	10/11/2023
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R270. Crime Victim Reparations, Administration.

R270-1. Award and Reparation Standards.

R270-1-1. Authority and Purpose.

As provided in Subsection 63M-7-506(1)(c), the purpose of this rule is to provide interpretation and standards for the administration of crime victim reparations.

R270-1-2. Definitions.

(1) Terms used in this rule are found in Section 63M-7-502.

(2) In addition:

(a) ~~["APRN" means Advanced Practice Registered Nurse;~~

~~(b) "DOPL" means Utah Department of Commerce, Division of Professional and Occupational Licensing;~~

~~(c) "medical forensic sexual assault examination" means a medical and forensic examination of a victim to provide medical care and collect forensic evidence in a sexual assault investigation or prosecution;~~

~~(d)(1)(b) "medical services" means medical treatment or services, described in Subsection 63M-7-511(4)(b), [-]performed at an inpatient or outpatient medical facility by a licensed medical provider;~~

~~(d)(2)(i) medical services include dental services;~~

~~(d)(3)(ii) medical services do not include sexual assault forensic examinations or mental health therapy;~~

~~(e)(c) "PEHP" means the Public Employees' Benefit and Insurance Program created in Section 49-20-103;~~

~~(f)(d) "primary victim" means a victim who has been directly injured by criminally injurious conduct;~~

~~(g)(e) "program" means the Victim Services Grant Program, authorized under Subsection 63M-7-506(1)(i), which allocates money for other victim services once a sufficient reserve has been established for reparations claims;[-and]~~

~~(f) "qualified mental health professional" means a licensed:~~

~~(i) advanced practice registered nurse specializing in psychiatric mental health nursing;~~

~~(ii) master's level therapist;~~

~~(iii) psychiatrist;~~

~~(iv) psychologist; or~~

~~(v) student intern;~~

~~(h)(g)(i) "secondary victim" means a victim who is not a primary victim but who has a relationship with the victim and was traumatically affected by the criminally injurious conduct that occurred to the victim;[-including an]~~

~~(ii) "secondary victim" includes an immediate family member of a victim such as a spouse, parent[father, mother], stepparent[s], grandparent[s], child, sibling[brother, sister], stepchild, stepsibling[brother, stepsister], [or] legal guardian, or other person who the reparations officer reasonably determines bears an equally significant relationship to the primary victim[-]; and~~

~~(h) "student intern" means a student:~~

~~(i) who is enrolled in a recognized psychiatric mental health training program;~~

~~(ii) whose activities are supervised by qualified faculty;~~

~~(iii) whose educational activities are a defined part of the training program; and~~

~~(iv) whose supervisor has signed the form created by the office attesting that the supervisor has overseen the student's work.~~

[R270-1-3. Funeral and Burial Reparations Award.]

~~(1) Pursuant to Subsection 63M-7-511(4)(f), a reparations award for funeral and burial expenses may not exceed \$7,000 for any reasonable and necessary charges incurred directly relating to the funeral and burial of a victim. This amount includes transportation of the deceased. Allowable expenses in this category may include the emergency acquisition of a burial plot for victims who did not previously possess or have available to them a plot for burial.~~

~~(2) Transportation of secondary victims to attend a funeral and burial service shall be considered as an allowable expense in addition to the \$7,000.~~

~~(3) Loss of earnings for secondary victims to attend a funeral and burial service shall be allowed as follows:~~

~~(a) Three days in state~~

~~(b) Five days out of state~~

~~(4) When a victim dies leaving no identifying information, reparations claims made by a provider cannot be considered.]~~

R270-1-3. Awards for Funeral and Burial Expenses.

(1) Pursuant to Subsection 63M-7-511(4)(f), the office may pay:

(a) up to \$14,000 for any reasonable and necessary expense related to the funeral and burial of a victim;

(b) up to \$1,000 for a secondary victim's travel to the funeral and burial;

(c) 66 2/3% of a secondary victim's lost earnings that are related to the funeral and burial for up to:

(i) three days if the secondary victim lives in the same state as the funeral and burial; or

(ii) five days if the secondary victim lives in a different state.

(2) The office may not approve a claim made by a medical provider if a victim dies without any identifying information.

R270-1-4. Reparations Claims Involving Negligent Homicide and Hit and Run.

~~(1) [N]For the purpose of awarding reparations, the office shall consider negligent homicide, [shall be considered criminally injurious conduct] as defined in Subsection 63M-7-502(9), to be criminally injurious conduct.~~

~~(2) Pursuant to Subsection [63M-7-502(7)]63M-7-502(9), criminally injurious conduct may not include a hit and run.~~

[R270-1-5. Counseling Awards.]

~~(1) Pursuant to Subsections 63M-7-502(19) and 63M-7-511(4)(c), reparations awards for outpatient mental health counseling are subject to limitations as follows:~~

~~(a) The reparation officer shall approve a standardized treatment plan.~~

~~(b) The cost of initial evaluation and testing may not exceed \$300 and shall be part of the maximum allowed for counseling. For purposes herein, an evaluation shall be defined as diagnostic interview examination including history, mental status, or disposition, to determine a plan of mental health treatment.~~

~~(c)(i) Primary victims of a crime shall be eligible for the lesser of 25 aggregate individual or group counseling sessions or \$2,500 maximum mental health counseling award.~~

~~(ii) Parents, children, spouses and siblings of homicide victims shall be considered at the same rate as primary victims for inpatient and outpatient counseling.~~

~~(d) Secondary victims of a crime shall be eligible for the lesser of 15 aggregate individual or group counseling sessions or \$1,250 maximum mental health counseling award.~~

~~(e) Extenuating circumstances warranting consideration of counseling beyond the maximum may be submitted by the mental health provider when it appears likely that the maximum award will be reached.~~

~~(f) Counseling costs will not be paid in advance but will be paid on an ongoing basis as victim is being billed.~~

~~(2) Inpatient hospitalization shall only be considered for primary victims when the treatment has been recommended by a licensed therapist in life threatening situations. Acute inpatient hospitalization shall not exceed \$600 per day, which includes ancillary expenses, and will be considered payment in full to the provider. Inpatient psychiatric visits will be limited to one visit per day with payment for the visit made to the institution at the highest rate of the individuals providing therapy as set by rule. Reimbursement for testing costs may also be allowed. Parents, children, spouses and siblings of homicide victims shall be considered at the same rate as primary victims for inpatient hospitalization. Secondary victims of other crime types are excluded.~~

~~(3) Residential and day treatment shall only be considered for primary victims when the treatment has been recommended by a licensed therapist to stabilize the victim's behavior and symptoms. Only facilities with 24-hour nursing care or 24-hour on-call nursing care will be compensated for residential and day treatment. Residential and day treatment shall not be used for extended care of dysfunctional families and containment placements. Residential treatment shall not exceed \$300 per day and will be considered payment in full to the provider. Residential treatment shall be limited to 30 days, unless there are extenuating circumstances requiring extended care. Residential clients shall receive routine assessments from a psychiatrist or APRN at least once a week for medication management. Day treatment shall not exceed \$200 per day and will be capped at \$10,000. These charges will be considered payment in full to the provider. Parents, children, spouses and siblings of homicide victims shall be considered at the same rate as primary victims for residential and day treatment. Secondary victims of other crime types are excluded.~~

~~(4) Wilderness programs shall not be covered as an appropriate treatment modality when considering inpatient hospitalization, residential or day treatment.~~

~~(5) The office shall not pay for treatment for an offender related to the perpetration of the criminally injurious conduct. Reparations officers shall establish a reasonable percentage regarding victimization treatment for outpatient, inpatient, residential and day treatment on a case by case basis upon review of the mental health treatment plan and treatment records.~~

~~(6) Payment for mental health counseling shall only be made to licensed therapists; or to individuals working towards a license that provide certified verification of satisfactory completion of an education and earned degree as required by the DOPL, working under the supervision of a supervisor approved by the DOPL. Student interns otherwise eligible under Subsection 58-1-307(1)(b) Exceptions from licensure, or the institution, facility or agency responsible for the supervision of the student, shall not be eligible for payment under this rule for counseling services provided by the student.~~

~~(7) Payment of hypnotherapy shall only be considered when treatment is performed by a licensed mental health therapist based upon an approved Treatment Plan.~~

~~(8) The following maximum amounts shall be payable for mental health counseling:~~

~~(a) up to \$130 per hour for individual and family therapy performed by licensed psychiatrists, and up to \$65 per hour for group therapy;~~

~~(b) up to \$90 per hour for individual and family therapy performed by licensed psychologists and up to \$45 per hour for group therapy;~~

~~(c) up to \$70 per hour for individual and family therapy performed by a licensed master's level therapist or an APRN, and up to \$35 per hour for group therapy. These rates shall also apply to therapists working towards a license and supervised by a licensed therapist;~~

~~(d) The rates established in this section shall apply to individuals performing treatment, and not those supervising treatment.~~

~~(9) Chemical dependency specific treatment will not be compensated unless the reparations officer determines that it is directly related to the crime. The board may review extenuating circumstance cases.]~~

R270-1-5. Mental Health Services.

(1)(a) Pursuant to Subsection 63M-7-511(4)(c), the office may pay for outpatient mental health counseling provided by a qualified mental health professional as follows:

(i) a primary victim of a crime is eligible for a total of 25 outpatient mental health counseling sessions, including either individual or group counseling session;

(ii) a parent, child, spouse, or sibling of a homicide victim is eligible for a total of 25 outpatient mental health counseling sessions, including either individual or group counseling sessions;

(iii) any other secondary victim of a crime is eligible for a total of 15 outpatient mental health counseling sessions, including either individual or group counseling sessions.

(b) Before the office may pay for any outpatient mental health counseling:

(i) a qualified mental health professional who intends to provide outpatient mental health counseling to a victim shall submit a Mental Health Treatment Plan to the office; and

(ii) the assigned reparations officer shall approve the Mental Health Treatment Plan.

(c) The amount paid for each outpatient mental health counseling session shall be the rate established by the PEHP fee schedule.

(d) Outpatient mental health counseling costs may not be paid in advance but will be paid on an ongoing basis as treatment is provided.

(e) The reparations officer may authorize additional outpatient mental health counseling beyond the limits described in Subsection R270-1-5(1)(a) if:

(i) a qualified mental health professional submits sufficient documentation to justify the need for additional outpatient mental health counseling; and

(ii) the assigned reparations officer determines that extenuating circumstances warrant additional outpatient mental health counseling.

(2)(a) The office may pay for inpatient mental health treatment for:

(i) a primary victim; and

(ii) a parent, child, spouse, or a sibling of a homicide victim.

(b) The office may not pay for inpatient mental health treatment for a secondary victim.

(c) The office may only pay for inpatient mental health treatment when the treatment has been recommended by a qualified mental health professional as a result of a life-threatening situation.

(d) The office may pay an inpatient mental health treatment facility:

(i) up to \$600 a day for facility fees, which includes any ancillary expense; and

(ii) the PEHP rate for one visit a day by a mental health professional.

(e) The office may pay the PEHP rate for diagnostic testing administered in an inpatient facility.

(3)(a) The office may pay for mental health-related residential or day treatment for:

(i) a primary victim; and

(ii) a parent, child, spouse, or sibling of a homicide victim.

(b) The office may not pay for residential or day treatment for a secondary victim.

(c) The office may only pay for residential or day treatment when the treatment has been recommended by a qualified mental health professional to stabilize the victim's behavior and symptoms.

(d) Payment for residential treatment:

(i) may not exceed \$300 a day; and

(ii) shall be limited to 30 days.

(e) Payment for day treatment:

(i) may not exceed \$200 a day; and

(ii) shall be capped at \$10,000.

(f) The office may not pay for residential or day treatment unless the facility has either 24-hour nursing care or 24-hour on-call nursing care.

(g) The office may pay the PEHP rate for one routine medication management assessment a week when conducted in an inpatient mental health facility by a qualified mental health professional.

(4) Reparations officers shall establish a reasonable percentage regarding victimization treatment for outpatient, inpatient, residential and day treatment on a case-by-case basis upon review of the Mental Health Treatment Plan and treatment records.

(5) The office may not pay for wilderness programs.

(6) The office may not pay for mental health services for an offender related to the perpetration of the criminally injurious conduct.

(7) The office may pay for hypnotherapy only when treatment is performed by a qualified mental health professional based upon an approved Mental Health Treatment Plan.

(8)(a) The office may not pay for treatment for chemical dependency unless the reparations officer determines that it is directly related to the crime.

(b) The board may review requests for reimbursement for chemical dependency treatment where extenuating circumstances are present.

R270-1-6. Attorney Fees.

(1) Pursuant to Subsection 63M-7-524(2), the office shall award attorney fees [shall be made] within the reparation award and not in addition to the award.

(2)(a) If the office pays an award [is paid] in a lump sum, the attorney's fee [shall] may not exceed 15% of the total award[+]

(b) If payments are awarded on an ongoing basis, the office shall pay attorney fees [will be paid] when warrants are generated but not to exceed 15%.

(3) When award denials are overturned, attorney fees shall be calculated only on the appealed reparation issue.

R270-1-7. Reparations Awards.

(1) Pursuant to Section 63M-7-503, the office may award reparations [awards can be made] to victims of violent crime where the court has ordered restitution [has been ordered by the court but] and it appears unlikely the restitution can be paid within a reasonable time[period].

(2) [However,] The office will send notification of the reparations award [will be sent] to the courts, prosecuting attorneys, Board of Pardons, or probation and parole counselors indicating any restitution monies collected up to the amount of the reparations award will be forwarded to the fund.

R270-1-8. Abortion.

[E] As part of a reparations award, the office shall pay expenses for an abortion that is permitted pursuant to Title 76, Chapter 7, Part 3[. Abortion shall be eligible for a reparation award as long as all] if the requirements of Section 63M-7-511 have been met.

R270-1-9. Emergency Reparations Awards.

(1)(a) Pursuant to Section 63M-7-522, [F] the office may make emergency reparations awards up to \$1,000.

(b) No time limit is required for filing an emergency reparations claim.

(2) Processing of emergency reparations claims is three to five days.

R270-1-10. Loss of Earnings.

(1) Pursuant to Subsection 63M-7-511(4)(d), the 66-2/3% of [the] a person's weekly salary or wages is calculated on gross earnings.

(2)(a) [E] The office may reimburse victims for a loss of earnings [for primary and secondary victims may be reimbursed] for up to a maximum of 12 weeks work loss, at an amount not to exceed the maximum allowed per week by Worker's Compensation guidelines in effect at the time of work loss.

(b) The board may review extenuating circumstances on reparations claims involving loss of earnings for consideration and authorization of extensions beyond set limits.

[R270-1-11. Moving, Transportation Expenses.

(1) Pursuant to Subsection 63M-7-511(4)(a), victims of violent crime who suffer a traumatic experience or threat of bodily harm are allowed moving expenses up to \$1,000. Board approval is needed where extenuating circumstances exist.

(2) Transportation expenses up to \$1,000 are allowed for crime-related travel including, participation in court hearings and parole hearings as well as medical or mental health visits for primary and secondary victims. The board may approve travel expenses in excess of \$1,000 where extenuating circumstances exist.]

R270-1-11. Relocation Expenses.

(1)(a) Pursuant to Subsection 63M-7-511(4)(a), the office may pay up to \$2,000 for any reasonable and necessary cost for a victim to secure a safe living situation after a crime has occurred.

(b) Relocation expenses include:

(i) moving to a new location;

(ii) maintaining or assuming responsibility for rent at a current residence;

(iii) moving or shipping the victim's personal property;

(iv) storing the victim's belonging; and

(v) any other reasonable expense.

(2) The board may approve relocation expenses more than \$2,000 where extenuating circumstances exist.

R270-1-12. Transportation Expenses.

(1) Pursuant to Subsection 63M-7-511(4)(a), the office may pay up to \$1,000 for the reasonable and necessary costs for a victim to travel to and from:

- (a) court and parole hearings;
- (b) meetings with law enforcement or prosecution; or
- (c) medical, mental health or other crime related appointments.

(2) The board may approve transportation expenses more than \$1,000 where extenuating circumstances exist.

[R270-1-12.]R270-1-13. Collateral Source.

[(1)] Money from the fund shall be used before State Social Services contract monies when considering out-of-pocket expenses in child sexual abuse cases if the individuals qualify as victims. If the victim qualifies for Medicaid, the contract monies should be used first.

[(2)] Money from the fund shall be used before money from the Utah Medical Assistance Program, established in Section 26-18-10, when considering allowable benefits for victims of violent crime.

[R270-1-13.]R270-1-14. Record Retention.

[(1)] Retention of the UOVC annual report and crime victim case files shall be as follows:

[(2)]1. [A]The office shall retain annual reports and other statistical information [shall be retained] in office for a period of three years and then transfer [red] them to [State Archives]the Utah Department of Government Operations, Division of Archives and Records Service.

[(3)]2(a) [C]The office shall retain crime victim case files [shall be retained] in the office as needed for administrative use.

(b) After closure or denial of a case file, the office shall retain case files [shall be retained] in the office for one year and then transfer [red] them to the Utah Department of Government Operations[Administrative Services], Division of Archives and Records Service.

(c) [C]The State Records Center shall retain case files [will be retained in the State Records Center] for 99 years and then [destroyed]destroy them.

[R270-1-14.]R270-1-15. Reparations Awards.

(1)(a) Pursuant to Section 63M-7-521, when billing from the providers exceeds the maximum allowed, the reparations officer shall pay the bills by the date of service.

(b) The reparations officer shall solicit input from the victim when making this determination.

(c) When the services and the billings have occurred at the same time, the reparations officer shall determine payment on a percentage basis.

(2) Reparations awards may only be granted for costs the reparations officer determines are directly related to or resulting from criminally injurious conduct.

[R270-1-15.]R270-1-16. Essential Personal Property.

(1) Pursuant to Subsection 63M-7-511(4)(h), essential personal property covers [all]any personal article[s] necessary and essential for the health and safety of the victim.

(2)(a) The reparations officer may allow up to \$5,000 for medically necessary items such as eyeglasses, hearing aids, and wheelchairs.

(b) The board may approve expenses for medically necessary items [in excess of]more than \$5,000 where extenuating circumstances exist.

(3)(a) The reparations officer may allow up to \$1,500 for other essential personal property such as burglar alarms, door locks, crime scene cleanup, repair of walls and broken windows.

(b) The board may approve expenses for essential personal property [in excess of]more than \$1,500 where extenuating circumstances exist.

[R270-1-16.]R270-1-17. Subrogation.

(1) Pursuant to Section 63M-7-519, money collected through subrogation will be placed in the fund and will not be credited toward a particular victim or claimant award amount.

(2)(a) Pursuant to Subsection 63M-7-519(2), in such instances where a settlement against a [a]collateral source appears imminent, the director may reduce by up to 33% the lesser of [-(a)]:

- (i) the amount paid by the [state]office; or [(b)]
- (ii) the amount of the settlement.

(b) Reductions [in excess of]of more than 33% shall be determined by the board with the concurrence of the director.

[R270-1-17.]R270-1-18. Unjust Enrichment.

Pursuant to Subsection 63M-7-510(1)(d), the office shall use the following criteria [shall be used]when considering reparations claims involving possible unjust enrichment of an offender:

(1) [U]Reparations officers shall not base unjust enrichment determinations [shall not be based]solely on the presence of the offender in the household at the time of the award.

(2) Reparations officers shall not deny reparations awards [shall not be denied]on the basis that the offender would be unjustly enriched, if the victim cooperates with investigation and prosecution of the crime and does what is possible to prevent access by the offender to substantial compensation.

(3) [P]The office shall issue payment directly to third party providers [shall be made]to prevent monies intended for victim expenses from being used by or on behalf of the offender.

(4)(a) [C]Reparation officers shall examine collateral resources such as court-ordered restitution and medical insurance that are available to the victim from the offender[shall be examined].

(b) [However,]The office shall not penalize the victim [shall not be penalized]for an offender's failure [of an offender]to meet legal obligations to pay for the cost of the victim's recovery.

(5)(a) [Factors to be considered:]In determining whether enrichment is substantial or inconsequential, [include]the reparations officer shall consider the amount of the award and whether a substantial portion of the compensation award will be used directly by or on behalf of the offender.

(b) If the offender has direct access to a cash award or if a substantial portion of it will be used to pay for the offender's living expenses, the office may reduce or deny that portion of the award that will substantially benefit the offender[may be reduced or denied].

(c) When enrichment is inconsequential or minimal, the award shall not be reduced or denied.

R270-1-18. R270-1-19. Prescription or Over-the-Counter Medications.

(1) ~~[R]~~The office shall only consider reimbursement of prescription or over-the-counter medications or medication management services used in conjunction with mental health therapy ~~[shall be considered only for the duration of]~~while an approved Mental Health Treatment Plan is in effect.

(2) ~~[R]~~The office shall only consider reimbursement of prescription or over-the-counter medications used in conjunction with medical treatment ~~[shall be considered only during the course of treatment]~~while the victim is being treated by the physician.

(3) ~~[M]~~The office shall limit payments for medication management rates ~~[shall be limited]~~to a maximum of \$62.50 per 30 minute session.

(4)(a) The office shall pay the amount that would be paid by PEHP for prescription medications dispensed by a pharmacy, not including those included in ~~[R270-1-23]~~Section R270-1-24.

(b) If PEHP does not have a fee schedule, the office will pay the amount the victim is obligated to pay that is not reimbursed by insurance.

R270-1-19. R270-1-20. Peer Review Committee.

(1) ~~[A volunteer Peer Review Committee may be established]~~The board may establish a volunteer Peer Review Committee to review issues or provide input to office staff on reparations claims involving outpatient mental health counseling.

(2) The board shall define the composition, duties, and responsibilities of ~~[this]~~the Peer Review Committee ~~[shall be defined by the board]~~by written internal policy and procedure.

R270-1-20. R270-1-21. Medical Services.

Pursuant to Subsection 63M-7-511(4), if the victim does not have any collateral source to pay for medical services the office may pay:

(1) the rate established by the PEHP fee schedule for medical services; or

(2) 50% of the billed charges for medical services if PEHP does not have a fee schedule established for a medical service.

R270-1-21. R270-1-22. Misconduct.

(1) Pursuant to Subsections 63M-7-502(~~[20]~~23) and 63M-7-512(1)(b), the office shall consider misconduct ~~[shall be considered]~~to be:

(a) conduct which contributed to the victim's injury or death; or

(b) conduct which the victim could have reasonably foreseen could lead to injury or death.

(2) In determining whether the victim engaged in misconduct, the reparations officers shall consider any behavior of the victim that may have directly or indirectly contributed to the victim's injury or death including:

(a) consent[;];

(b) provocation[;];

(c) verbal utterance[;];

(d) gesture[;];

(e) incitement[;];

(f) prior conduct of the victim; or

(g) the victim's ability ~~[of the victim]~~to have reasonably avoided the incident upon which the reparations claim is based.

(3) ~~[R]~~When determining whether the victim engaged in misconduct, reparations officers shall not consider:

(a) any behavior or action of any victim that is committed by the victim while under the duress or experience of threat, exploitation, coercion or any circumstance absent the victim's own willful desire to participate; or

(b) any behavior or action committed or perceived to have been committed by the victim of any sex crime~~[when determining whether the victim engaged in misconduct]~~.

R270-1-22. R270-1-23. Three Year Limitation.

(1) Pursuant to Subsections 63M-7-506(1)(c) and 63M-7-525(2), a reparations claim for benefits expires and the office will make no further payments ~~[will be made]~~with regard to the reparations claim after three years have elapsed from the date of application with the office.

(2) Reparations officers may extend reparations claims that have been closed because of the Three Year Limitation ~~[rule]~~if extenuating circumstances exist.

R270-1-23. R270-1-24. Sexual Assault Forensic Examinations.

(1) The office may pay a medical service provider who performs a medical forensic sexual assault examination:

(a) up to \$1,250 for a complete medical forensic sexual assault examination with photo documentation; and

(b) the full cost of any medications the medical service provider gives directly to a victim during a medical forensic sexual assault examination such as:

(i) the morning after pill or high dose oral contraceptives for the prevention of pregnancy; and

(ii) medication for the treatment and prevention of sexually transmitted diseases.

(2) The office may pay a medical facility where a medical forensic sexual assault examination is performed:

(a) 50% of the fee for the use of an examination room to perform a medical forensic sexual assault examination up to a maximum payment of \$350; and

(b) the PEHP rate if one has been established or 50% of the fee for:

(i) a history and physical;

(ii) the collection of specimens and wet mount for sperm;

(iii) testing for gonorrhea, chlamydia, trichomonas, and other sexually transmitted diseases;

(iv) a serum blood test for pregnancy; and

(v) the testing and treatment of sexually transmitted diseases.

(3) To be eligible for reimbursement of a medical forensic sexual assault examination, the medical service provider who performed the sexual assault forensic examination shall:

(a) report the medical forensic sexual assault examination to law enforcement; and

(b) only collect evidence with the permission of the victim or the legal guardian of the victim.

(4) A request for reimbursement of medical forensic sexual assault examination shall include:

(a) the victim's name, date of birth, or facility patient number;

(b) a description of what services were provided;

(c) an itemization of the services provided; and

(d) either:

(i) the signature of a law enforcement officer, victim advocate or service provider; or

(ii) the law enforcement case number.

(5) ~~The request for reimbursement shall be submitted~~ The applicant or medical service provider shall submit the request for reimbursement to the office within one year from the date the medical forensic sexual assault examination was performed.

(6) A victim may not be:

(a) charged for a medical forensic sexual assault examination; or

(b) required to participate in the criminal justice system or cooperate with law enforcement or prosecuting attorneys as a condition of being provided a medical forensic sexual assault examination.

(7) ~~(a)~~ The office may not provide any reimbursement for any costs associated with an ~~over-the-counter~~ over-the-counter sexual assault evidence kit ~~which is made~~ that is available to the public for at home collection of evidence, including the cost of the kit and the cost of any testing performed on the kit.

~~(b) This subsection prohibits reimbursement for the cost of the kit and the cost of any testing performed on the kit.~~

R270-1-24, R270-1-25. Loss of Support.

(1) Pursuant to Subsection 63M-7-511(4)(g), the office shall only cover reparations awards for loss of support ~~shall only be covered~~ on reparations claims involving death.

(2) ~~(a)~~ Except as provided in ~~R270-1-24(3)~~ Subsection R270-1-25(3), the office shall approve reparations awards for loss of support ~~are available~~ only to minor children of the deceased victim.

~~(b) [P]~~ The office may issue payment of the award ~~may be made~~ to the parent or guardian of the minor child on behalf of the minor child.

(3) The board may approve reparations awards for loss of support to persons who are not minor children, but were physically and financially dependent on the deceased victim.

R270-1-25, R270-1-26. Victim Services.

(1) Pursuant to Subsection 63M-7-506(1)(i), the board may authorize the program when there is a surplus of money in the fund in addition to what is necessary to pay reparations awards and associated administrative costs for the upcoming year.

(2) When the program is authorized, the board shall determine the amount available for the program for that year and may:

(a)(i) announce the availability of program funds through a request for proposals or other similar competitive process approved by the board; and

(ii) establish funding priorities and shall include any priorities in the announcement of funds; or

(b) make an award to a victim services program managed by the office.

(3) ~~[R]~~ Applicants shall submit requests for funding ~~shall be submitted~~ on a form approved by the board.

(4) ~~(a)~~ The board shall establish a process to review requests for funding and shall make final decisions regarding the approval, modification, or denial of requests for funding.

~~(b)~~ The board may award less than the amount determined in Subsection ~~R270-1-25(2)(a)~~ R270-1-26(2)(a).

~~(c)~~ The decisions of the board may not be appealed.

(5) ~~(a)~~ An award by the board shall not constitute a commitment for funding in future years.

~~(b)~~ The board may limit funding for ongoing projects.

(6) ~~(a)~~ Award recipients shall submit quarterly reports to the board on forms established by the director.

~~(b)~~ The office staff shall monitor -victim services grants and provide regular reports to the board.

R270-1-26, R270-1-27. Cultural Services.

(1) Cultural services ~~rendered~~ provided in accordance with recognized spiritual or religious methods of healing, legally available in Utah, may be considered for payment. The claimant shall submit a written itemized description of each procedure, function and activity performed~~is~~, which shall include:

~~(a)~~ the benefit to the victim;

~~(b)~~ the location and time involved to perform such services; and

~~(c)~~ the qualifications and experience which allows the service provider to perform the services.

~~(2)~~ Services shall be reimbursed in lieu of traditional treatment methods.

~~(3)~~ Reparations awards for cultural services shall be deducted from the claimant's allowed limits.

~~(4)~~ The fund will not pay for intoxicating or psychotropic substances unless prescribed by a medical practitioner licensed to do so.

R270-1-27, R270-1-28. Requirements for Payment.

(1) ~~Payments made by the office shall be~~ The office shall only pay for expenses that are directly related to the victimization.

(2) ~~Services paid by the office shall be rendered~~ The office shall only pay for services provided and billed in the usual and customary course of business.

(3) The office reserves the right to audit the records of medical facilities and medical service providers who request reimbursement from the office.

(4) The office may not pay:

(a) interest, finance, or collection fees; or

(b) any costs associated with the collection and testing of evidence unless the collection is performed by a medical service provider and tested at a licensed medical facility.

(5) ~~(a)~~ If a victim has medical insurance or another collateral source to pay for services, the office may only pay up to the remaining portion of the bill that the victim is obligated to pay after ~~each~~ each other collateral source ~~have~~ has paid.

(b) A reparations officer may waive the requirement in Subsection (5)(a) if:

(i) it appears likely that compliance would compromise a victim's;

(A) safety;

(B) quality or continuation of care; or

(C) access to services due to distance, lack of transportation or other relevant circumstances; or

(ii) there are financial or practical circumstances which constitute a reasonable basis for a waiver.

KEY: victim compensation, victims of crimes

Date of Last Change: 2023 ~~May 23, 2023~~

Notice of Continuation: March 16, 2021

Authorizing, and Implemented or Interpreted Law: Title 63M, Chapter 7, Part 5

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NOTICE OF PROPOSED RULE		
TYPE OF FILING: Amendment		
Rule or Section Number:	R277-113	Filing ID: 55852

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 persons:		
Name:	Phone:	Email:
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule or section catchline:
R277-113. LEA Fiscal and Auditing Policies
3. Purpose of the new rule or reason for the change:
This rule is being amended due to passage of H.B. 2 in the 2023 General Session, which amended Section 53F-2-209 and authorized Local Education Agencies (LEAs) to transfer funds from state restricted programs in response to changing student needs.
In these rule amendments, the Utah State Board of Education (USBE) created the necessary requirements to implement this provision.
4. Summary of the new rule or change:
These amendments specifically remove the definition of and references to the Financial Accounting Standards Board (FASB). This rule also adds requirements for LEA recordkeeping for flexible use of restricted funds.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
A) State budget:
This rule change is not expected to have fiscal impact on state government revenues or expenditures.

The fiscal note to H.B. 2 (2023) captured any impacts to state budgets. The changes do not affect USBE budgets.

B) Local governments:

This rule change is not expected to have fiscal impact on local governments' revenues or expenditures. LEAs are allowed to transfer state restricted funding.

This rule change provides necessary guidance for LEAs on recordkeeping, and any impacts were captured in the fiscal note to H.B. 2 (2023). The removal of FASB language does not impact LEA budgets as charters moved from FASB reporting guidelines to Governmental Accounting Standards Board (GASB) reporting in 2021.

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

This rule change is not expected to have fiscal impact on small businesses' revenues or expenditures.

This only affects LEAs and 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.

This only affects LEAs and 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.

There are no costs to comply with the recordkeeping requirements for LEAs. LEAs already keep accounting records in their general ledger.

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

Regulatory Impact Table

Fiscal Cost	FY2024	FY2025	FY2026
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	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head comments on fiscal impact and 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

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

Article X, Section 3	Subsection 53E-3-401(4)	Subsection 53E-3-501(1)(e)
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Public Notice Information

8. 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: 12/01/2023

9. This rule change MAY become effective on: 12/08/2023

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

Agency Authorization Information

Agency head or designee and title:	Angie Stallings, Deputy Superintendent of Policy	Date:	10/16/2023
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R277. Education, Administration.

R277-113. LEA Fiscal and Auditing Policies.

R277-113-1. Authority and Purpose.

(1) This rule is authorized by:

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

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

(c) Subsection 53E-3-501(1)(e)(i), which directs the Board to establish rules and minimum standards for school productivity and cost effectiveness measures;

(d) Subsection 53E-3-501(1)(e)(iv), which allows the Board to adopt rules regarding financial, statistical, and student accounting requirements;

(e) Section 53E-3-602, which allows the Board to approve auditing standards for LEA governing boards;

(f) Section 53E-3-603, which requires the Board to verify accounting procedures of LEA governing boards for ~~the purpose of~~ determining the allocation of Uniform School Funds;

(g) Section 53E-5-202, which directs the Board to adopt rules to implement a statewide accountability system;

(h) Subsection 53G-5-404(4), which requires charter schools to make the same annual reports required of other public schools, including an annual financial audit report; ~~and~~

(i) Subsection 53F-2-209(2), which requires the Board to make rules for flexible use of restricted funds; and

(i)j) ESSA, which requires states to revise and redesign school accountability systems.

(2) The purpose of this rule is to:

(a) require LEAs to formally adopt and implement policies regarding the management and use of public funds;

(b) provide minimum standards, procedures, and definitions for LEA policies;

(c) direct that LEAs make policies, procedures, and training materials available to the public and readily accessible on LEA or public school websites, to the extent of resources available;

(d) require LEAs to train employees in:

(i) appropriate financial practices;

(ii) necessary accounting procedures; and

(iii) ethical financial practices;

(e) specify uniform budgeting, accounting, and auditing procedures for LEAs consistent with GAAP, GAAS, and GAGAS; and

(f) establish reporting and accounting requirements for LEAs to enable the Board to comply with ESSA.

R277-113-2. Definitions.

(1) "Accrual basis of accounting" means a basis of accounting that records:

(a) revenue when earned and expenses when incurred; and

(b) transactions irrespective of the dates on which any associated cash flows occur.

(2) "Administration" means:

(a) an LEA superintendent or director;

(b) a deputy or associate superintendent or director;

(c) a business administrator or manager; or

(d) another LEA educational administrator, designated staff, or a designated educational service provider.

(3) "Arm's length transaction" means a transaction between two unrelated, independent, and unaffiliated parties or a transaction between two parties acting in their own self interest that is conducted as if the parties were strangers so that no conflict of interest exists.

(4) "Exclusive contract or arrangement" means an agreement requiring a buyer to purchase or exchange all needed goods or services from one seller.

~~(5) "FASB" means the Financial Accounting Standards Board whose purpose is to establish GAAP for nongovernmental entities within the United States.]~~

(6) "GAAP" means Generally Accepted Accounting Principles or a common framework of accounting rules and standards for financial reporting promulgated by ~~[either FASB or]~~ GASB ~~[as applicable to the reporting entity]~~.

(7) "GAAS" means Generally Accepted Auditing Standards or a set of auditing standards and guidelines promulgated by the Auditing Standards Board of the American Institute of Certified Public Accountants.

(8) "GAGAS" means Generally Accepted Government Auditing Standards or a set of auditing standards and guidelines promulgated by the Government Accountability Office.

(9) "GASB" means the Governmental Accounting Standards Board whose purpose is to establish GAAP for state and local governments within the United States.

(10) "Internal controls" means a process, implemented by an entity's governing body, administration, or other personnel, designed to:

(a) provide reasonable assurance regarding the achievement of objectives in the following categories:

(i) effectiveness and efficiency of operations;

(ii) reliability of reporting for internal and external use; and

(iii) compliance with applicable laws and regulations;

(b) provide reasonable assurance regarding the achievement of the following objectives over state and federal awards:

(i) proper recording and accounting for transactions, in order to:

(A) permit the preparation of reliable financial statements and state and federal reports;

(B) maintain accountability over assets; and

(C) demonstrate compliance with state and federal statutes, regulations, and the terms and conditions of state and federal awards; and

(ii) execution of transactions in compliance with:

(A) all state and federal statutes and regulations; and

(B) the terms and conditions of state or federal awards; and

(c) safeguard funds, property, and other against loss from unauthorized use or disposition.

(11) "Modified accrual basis of accounting" means a basis of accounting, commonly used by government agencies, that recognizes revenues when they become available and measurable and recognizes expenditures when liabilities are incurred.

(12) "Non-operating LEA" means an LEA that has not received minimum school program funds or federal funds and is not providing educational services during a fiscal year, such as an LEA in a start-up period.

(13) "N-size" means the minimum size necessary to disclose or display data to ensure maximum student group visibility while protecting student privacy.

(14) "Operating LEA" means an LEA that has received state minimum school program funds or federal funds and is providing educational services during a fiscal year.

(15)(a) "Provided, sponsored, or supported by a school" has the same meaning as defined in Section R277-407-2.

(b) "Provided, sponsored, or supported by a school" does not apply to non-curricular clubs specifically authorized and meeting all criteria of Sections 53G-7-704 through 53G-7-707.

(16) "Public funds" has the same meaning as that terms is defined in Subsection 51-7-3(26).

(17) "Title IX" refers to that portion of the United States Education Amendments of 1972 codified as 20 U.S.C. 1681 through 20 U.S.C. 1688.

(18) "Utah Public Officers' and Employees' Ethics Act," means Title 67, Chapter 16, which provides standards of conduct for officers and employees of the state of Utah and its political subdivisions in areas where there are actual or potential conflicts of interest between public duties and private interests.

R277-113-3. Superintendent Responsibilities.

(1) The Superintendent shall provide training, informational materials, and model policies for use by LEAs in developing LEA and public school-specific financial policies.

(2) The Superintendent shall provide online training and resources for LEAs regarding the use and management of public funds and ethical practices for licensed Utah educators who manage, control, participate in fundraising, or expend public funds.

(3) The Superintendent shall provide training and informational materials for use by LEA governing boards in establishing their audit committees and internal audit programs in compliance with Section 53G-7-402.

(4) The Superintendent shall provide and establish a cycle for state review of LEA fiscal policies and standards.

(5) The Superintendent shall work with and provide information upon request to the Utah State Auditor's Office, the Legislative Fiscal Auditors, and other state agencies with the right to information from the Board.

R277-113-4. LEA Audit Responsibilities.

(1) The presiding officer of an LEA governing board shall ensure that the members of the governing board and audit committee are provided with training on the requirements of Title 53G, Chapter 7, Part 4, Internal Audits, and this Section R277-113-4 as part of the member on-boarding process.

(2) The training described in Subsection (1) shall:

(a) comply with Title 63G, Chapter 22, State Training and Certification Requirements; and

(b) use the online training and informational materials provided by the Superintendent in accordance with Subsection R277-113-3(3).

(3) An LEA governing board shall:

(a) designate board members to serve on an audit committee, consistent with Subsection 53G-7-401(1); and

(b) maintain the following information on the LEA's website:

(i) names of the governing board members who serve on the audit committee; and

(ii) if required by Subsection 53G-7-402(2);

(A) the name and contact information of the internal audit director; and

(B) a copy of the LEA's annual audit plan.

(4) An LEA audit committee shall:

(a) ensure the LEA obtains all audits, agreed-upon procedures, engagements, and financial reports required by Section 51-2a-201 and Subsection 53G-5-404(4);

(b) provide an independent forum for internal auditors, internal audit contractors, and other regulatory bodies to report findings of fraud, waste, abuse, non-compliance, or control weaknesses, particularly if LEA administration is involved;

(c) ensure that corrective action on findings, concerns, issues and exceptions reported by independent external auditors, internal auditors, or other regulatory bodies are resolved in a timely manner by LEA administration;

(d) present, as appropriate, information and reports from the audit committee's meetings to the LEA board; and

(e) receive, as appropriate, reports of reviews, monitoring, or investigations conducted by LEA administration and ensure appropriate corrective action is taken in a timely manner.

(5) With regards to engagements completed by an independent external auditor, an LEA audit committee shall:

(a) manage the audit procurement and quality process in compliance with Title 63G, Chapter 6a, State Procurement Code and Rule R123-5;

(b) ensure that the independent external auditor has access to directly communicate with the audit committee;

(c) review disagreements between independent external auditors and LEA administration;

(d) consider LEA responses to audits or agreed-upon procedures; and

(e) determine the scope and objectives of other non-audit services, as necessary.

(6) An LEA audit committee shall if required by Section 53G-7-402:

(a) establish an internal audit program that provides internal audit services for the programs administered by the LEA;

(b) advise the LEA board in the appointment of an audit director or in contracting for internal audit services in accordance with Subsection 53G-7-402(3);

(c) conduct or advise the LEA board in an annual evaluation of the internal audit director or contractors providing internal audit services;

(d) prioritize the internal audit plan based on risk;

(e) receive regular updates on the internal audit plan and internal audit project progress; and

(f) receive final internal audit reports from internal auditors or contractors providing internal audit services.

R277-113-5. LEA Fiscal Responsibilities and Required Fiscal Policies.

(1) An LEA shall review the LEA's fiscal policies and procedures regularly.

(2) An LEA shall develop a plan for annual training of LEA and public school employees on policies and procedures enacted by the LEA specific to job function.

(3) LEA fiscal policies and procedures shall be available at each LEA main office, at individual public schools, and be publicly available on the LEA's website.

(4) LEA fiscal policies, procedures, and training may have different components, specificity, and levels of complexity for public elementary and secondary schools.

(5) An LEA may have one or more policies to satisfy the minimum requirements of this Rule R277-113.

(6) An LEA fiscal policy may reference specific training manuals or other resources that provide detailed descriptions of business practices which are too lengthy or detailed to include in the LEA policy.

(7) A public education foundation established by an LEA shall follow the requirements set forth in Section 53E-3-403.

(8)(a) An LEA shall ensure that the LEA's written fiscal policies and procedures address all applicable state and federal statutes and regulations.

(b) The requirements set forth in this Section R277-113-5 are minimum requirements.

(c) An LEA may include other related items, provide LEA specific policy and guidance, and set policies that are more restrictive and inclusive than the minimum provisions established by Board rule.

(9) LEA fiscal policies shall include the following:

(a) a program accounting policy that establishes internal controls and procedures to record program revenues and expenditures in accordance with:

(i) GAAP; and

(ii) the school fee provisions in Section R277-407-13;

(b) a program accounting policy that:

(i) accurately reflects the use of funds for allowable costs and activities;

(ii) requires that transactions be recorded when they occur;

(iii) allows adjusting journal entries during the year and at the end of the year, in accordance with GAAP; and

(iv) requires that initial transactions, and adjusting entries if applicable, be recorded in the proper program, utilizing the following codes as established by the Board approved chart of accounts:

(A) fund;

(B) function;

(C) program;

(D) location; and

(E) object or revenue code, as applicable;

(c) a cash handling policy, which shall address cash receipts, including cash, checks, credit cards, and other items, collected at the LEA and individual public schools and shall include:

(i) establishment of internal controls and procedures over the collection, deposit, and reconciliation of cash receipts received; and

(ii) compliance with Subsection 51-4-2(2) regarding deposits.

(d) an expenditure policy, which shall address all expenditures made by the LEA and individual public schools and shall include:

(i) establishment of internal controls and procedures over the initiation, approval and monitoring of expenditures, including:

- (A) credit, debit, or purchase card transactions;
- (B) employee reimbursements;
- (C) travel; and
- (D) payroll;

(ii) directives regarding the appropriate use of the LEA's tax exempt status number;

(iii) compliance with Section 63G-6a-1204 regarding length of multi-year contracts;

(iv) compliance with:

- (A) Title 63G, Chapter 6a, Utah Procurement Code.
- (B) Board rule regarding construction and improvements;

and

(C) federal Title IX requirements, found in 20 U.S.C. 1681, et seq.

(v) requirements for LEA contracts, including:

- (A) inclusion of specific scope of work language;
- (B) inclusion of federal requirements;
- (C) inclusion of language regarding data privacy and use, where appropriate; and
- (D) legal review prior to LEA approval; and
- (vi) procedures and documentation maintained by the LEA if the LEA chooses to enter into exclusive contracts or arrangements consistent with state procurement law and the LEA procurement policy; and
- (vii) procedures for determining allowability of costs in accordance with relevant regulations and terms and conditions of awards;

(e) a fundraising policy that:

- (i) establishes procedures for LEA and public school fundraising in general;
- (ii) establishes an approval process for fundraising activities for school sponsored activities;
- (iii) provides for compliance with school fee and fee waiver provisions outlined in Rule R277-407; and
- (iv) includes:
 - (A) specific designation of employees by title or job description who are authorized to approve fundraising, school sponsored activities, and grant fee waivers with appropriate attention to student and family confidentiality;
 - (B) establishment of internal controls and procedures over the approval of fundraising and school sponsored activities and compliance with associated cash handling and expenditure policies;
 - (C) directives regarding the appropriate use of the LEA's tax exempt status number and issuance of charitable donation written disclosure in accordance with IRS regulations;
 - (D) procedures governing LEA or public school employee interaction with parents, donors, and organizations doing fundraisers not provided, supported, or sponsored, by a school or LEA;
 - (E) disclosure requirements for LEA and public school employees approving, managing, or overseeing fundraising activities, who also have a financial or controlling interest or access to bank accounts in the fundraising organization or company;
 - (F) ~~provisions~~ provisions establishing compliance with:
 - (I) Utah Constitution, Article X, Section 2, establishing a free public education system;
 - (II) Rule R277-407; and
 - (III) federal Title IX requirements, found in 20 U.S.C. 1681, et seq.

(v) may include procedures governing:

- (A) student participation and incentives offered to students;
- (B) allowable types of individual or group fundraising activities; and
- (C) participation in school sponsored activities by volunteer or outside organizations;
- (f) an LEA donation and gift policy that includes:
 - (i) an acceptance and approval process for:
 - (A) monetary donations;
 - (B) donations and gifts with donor restrictions;
 - (C) donations of gifts, goods, materials, or equipment; and
 - (D) donation of funds or items designated for construction or improvements of facilities;
 - (ii) establishment of internal controls and procedures over the acceptance and approval of donations and gifts and compliance with associated cash handling and expenditure policies;
 - (iii) directives regarding the appropriate use of the LEA's tax exempt status number, and issuance of charitable donation written disclosure in accordance with IRS regulations;
 - (iv) procedures regarding the objective valuation of donations or gifts if advertising or other services are offered to the donor in exchange for a donation or gift;
 - (v) procedures governing LEA or public school employee conduct with parents, donors, and nonschool sponsored organizations;
 - (vi) procedures establishing provisions for direct donations or gifts to the LEA or LEA programs, individual public school or public school programs;
 - (vii) provisions restricting donations from being directed at specific LEA employees, individual students, vendors, or brand name goods or services;
 - (viii) compliance with:
 - (A) Title 63G, Chapter 6a, Utah Procurement Code.
 - (B) state law and Board rule regarding construction and improvements;
 - (C) IRS regulations and tax deductible directives; and
 - (D) Title IX;
 - (ix) procedures for:
 - (A) accepting donations and gifts through an LEA's legally organized foundation, if applicable;
 - (B) recognition of donors; or
 - (C) granting naming rights; and
 - (g) an LEA Financial Reporting policy, which shall include the following:
 - (i) a requirement that the LEA shall ensure external audits of LEA financial reporting, compliance, and performance, in accordance with GAAS and GAGAS;
 - (ii)(A) a requirement that the LEA shall provide financial reporting in a manner consistent with the basis of accounting as required by GAAP, as applicable to the entity; and
 - (B) ~~[for state fiscal year 2020, if an LEA follows FASB standards, a requirement that the LEA shall provide reconciliation between the accrual basis of accounting and modified accrual basis of accounting; and~~
 - ~~(C) beginning with state fiscal year 2021,]~~ a requirement that the basis of accounting will be GASB; and
 - (iii) a requirement that the LEA shall provide data and information consistent with budgeting, accounting, including the uniform chart of accounts for LEAs, and auditing standards for Utah LEAs provided online annually by the Superintendent.

(10) The Superintendent shall maintain a School Finance website with applicable Utah statutes, Board rules, and uniform rules for:

- (a) budgeting;
- (b) financial accounting, including a chart of accounts required for an LEA;
- (c) student membership and attendance accounting;
- (d) indirect costs and proration;
- (e) financial audits;
- (f) statistical audits; and
- (g) compliance and performance audits.

R277-113-6. LEA Governing Board Fiscal Responsibilities.

(1) An LEA governing board shall have the following responsibilities:

(a) approve written fiscal policies and procedures required by Section R277-113-5;

(b) ensure, considering guidance in "Standards for Internal Control in the Federal Government," issued by the Comptroller General of the United States or the "Internal Control Integrated Framework," issued by the Committee of Sponsoring Organizations of the Treadway Commission, that LEA administration establish, document, and maintain an effective internal control system for the LEA;

(c) develop a process to regularly discuss and review LEA: (i) budget and financial reporting practices;

(ii) financial statements and annual financial and program reports;

(iii) financial position;

(iv) expenditure of restricted funds to ensure administration is complying with applicable laws, regulations, and award terms and conditions; and

(v) systems and software applications for compliance with financial and student privacy laws;

(d) receive the results of required annual audits from the external auditor in accordance with Section R123-5-5;

(e) oversee procurement processes in compliance with Title 63G, Chapter 6a, Utah Procurement Code, and Rule R277-115, including:

(i) reviewing the scope and objectives of LEA contracts or subawards with entities that provide business or educational services; and

(ii) receiving reports regarding the compliance and performance of entities with contracts or subawards;

(f) ensure the procurement process for an external auditor is in compliance with Section R123-5-4;

(g) ensure LEA administration implements sufficient internal controls over the functions of entities with contracts or subawards to perform services on behalf of the LEA;

(2) An LEA governing board shall:

(a)(i) provide a hotline independent from administration for stakeholders to report concerns of fraud, waste, abuse, or non-compliance; and

(ii) post on the school's website in a readily accessible location:

(A) a hotline phone number;

(B) a hotline email; or

(C) an online complaint form; or

(b) post a link on the school's website in a readily accessible location with contact information for the Board's hotline.

R277-113-7. Reporting of School Level Expenditures.

(1) In accordance with ESSA, the Superintendent shall make public the per pupil expenditures of federal, state, and local funds, for each LEA and each school in the state.

(a) The Superintendent shall exclude expenditures that:

- (i) are non-current;
- (ii) do not reflect the day-to-day operations of an LEA or school;

- (iii) do not contribute to k-12 education; or

- (iv) are significant, unique expenditures that may skew data in certain years and thwart year-to-year comparison.

(b) The Superintendent shall publish and make available a comprehensive list of expenditures that are excluded from per pupil expenditure information.

(2) The Superintendent's school level report for each school shall include:

(a) average daily membership for the fiscal year covered by the report;

(b) an indicator if the school is:

- (i) a Title I School; or

- (ii) a Necessarily Existent Small School;

- (c) grade levels served by each school;

- (d) student demographics;

- (e) expenditures recorded at the school level and central expenditures allocated to each school by:

- (i) federal program expenditures; and

- (ii) state and local combined expenditures;

- (f) calculated per pupil expenditures; and

- (g) average teacher salary.

(3) The Superintendent may not report expenditure data for a school with an n-size of less than 10.

R277-113-8. LEA Accounting Requirements.

(1) Each LEA shall:

(a) record revenues and expenditures in compliance with the Board approved chart of accounts;

(b) record expenditures using school location codes that can be mapped to official school location codes used in the Board system of record;

(c) record expenditures using approved district and school codes in the Board system of record;

(d) submit expenditures using location codes in the Utah Public Education Financial System;

(e) perform program accounting in accordance with GAAP and this rule; and

(f) beginning with the fiscal year that begins on July 1, 2021, accrue school fees, and fee waivers and use contra-revenue accounts to record fee waivers in the LEA's accounting system.

(2) Each LEA shall record and report the following expenditures for each school annually:

- (a) salaries;

- (b) benefits;

- (c) supplies;

- (d) contracted services; and

- (e) equipment.

(3) If an LEA pays for contracted services that occur at the school level, the LEA shall record the payments to the contractors in the appropriate function and object codes established under Subsection (2) at the school level.

(4)(a) An LEA shall record centralized administrative costs to the administrative location code.

(b) The Superintendent shall allocate such costs to each school based on school enrollment.

(5) The Superintendent shall present one expenditure report for a school receiving more than one report card under Subsection R277-497-4(8).

(6) If an LEA reports expenditures in programs, the LEA shall report the expenditures to one or more schools.

R277-113-9. LEA Recordkeeping for Flexible Use of Restricted Funds.

(1) An LEA may reallocate funds for flexible uses as described in Section 53F-2-209.

(2) An LEA that makes flexible adjustments as described in Subsection (1) shall:

(a) report accounting transactions and adjust entries utilizing the Board approved chart of accounts, including:

(i) a dedicated program code;

(ii) a dedicated other financing uses code for fund or program transfers from state restricted funds; and

(iii) expenditure details accurately describing transactions in response to changing circumstances and student needs; and

(b) refund to the state restricted program from which the original transfer originated any remaining funds transferred under Subsection (1) not completely and or materially expended at the end of each fiscal year.

(3) An LEA that makes flexible adjustments under this section shall ensure that the LEA continues to meet:

(a) federal maintenance of effort requirements; and

(b) other state or federal requirements on restricted funding, including requirements for program-specific effort, matching, and equity.

(4) The Superintendent shall publish online a list of eligible state restricted programs meeting requirements of Section 53F-2-209 no later than May 30 of each year.

R277-113-[9]10. Activities Provided, Sponsored, or Supported by a School.

(1) An LEA or school shall comply with this Section R277-113-9 for all activities provided, sponsored, or supported by a school.

(2) An LEA shall ensure that revenues raised from or during activities provided, sponsored, or supported by a school are classified, recorded, and deposited as public funds in compliance with LEA cash handling, program accounting, and expenditure of funds policies as required by Section R277-113-5.

(3) An LEA shall:

(a) maintain records in sufficient detail to:

(i) track individual contributions and expenditures;

(ii) track overall financial outcomes; and

(iii) verify compliance with relevant regulations; and

(b) make records of activities available to parents, students, and donors, except as restricted by state or federal law;

(4) An LEA may establish LEA-specific rules or policies:

(a) designating categories of activities or groups as provided, sponsored, or supported by the school; and

(b) regarding use of facilities or LEA resources.

(5) An LEA shall document their annual review of fundraising activities that support or subsidize LEA or public school-authorized clubs, activities, sports, classes, or programs to determine if the activities are provided, sponsored, or supported by a school.

(6)(a) An LEA may enter into contractual agreements to allow for fundraising and use of LEA facilities.

(b) An agreement under Subsection (6)(a) shall take into consideration the LEA's fiduciary responsibility for the management and use of public funds, resources, and assets.

(c) An LEA shall review an agreement under Subsection (6)(a) with the LEA's insurer or legal counsel to consider risk to the LEA.

(7) An LEA shall comply with this Subsection (7) for any activity not provided, sponsored, or supported by a school:

(a) An LEA shall conduct all transactions at arm's length;

(b) An LEA may not co-mingle revenue and expenditures with public funds; and

(c) A public school employee may only manage or hold funds consistent with Rule R277-107.

R277-113-[10]11. LEA Policies and Compliance with State and Federal Law.

(1) An LEA is responsible to ensure that its policies comply with the following:

(a) Utah Constitution Article X, Section 3;

(b) Title 63G, Chapter 6a, Utah Procurement Code;

(c) Title 51, Chapter 4, Deposit of Funds Due State;

(d) Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act;

(e) Family Educational Rights and Privacy Act, 20 U.S.C. 1232g;

(f) Title 63G, Chapter 2, Government Records Access and Management Act;

(g) Title 53G, Chapter 7, Part 5, Student [<https://le.utah.gov/xcode/Title53G/Chapter7/53G-7.html?v=C53G-7-2018012420180124>] Fees;

(h) Title 53G, Chapter [6]7, Part 6, Textbook Fees;

(i) Section 53E-3-403, Establishment of Public Education Foundations;

(j) Title 53G, Chapter 7, Part 7, Student Clubs Act;

(k) Title 51, Chapter 2a, Accounting Reports from Political Subdivisions, Interlocal Organizations, and Other Local Entities Act;

(l) Additional state legal compliance guides for operating LEAs and non-operating LEAs as published by the office of the state Auditor;

(m) Subsection 51-7-3(26), Definition of Public Funds;

(n) Title 53G, Chapter 7, Part 4, Internal Audits;

(o) Rule R277-407, School Fees;

(p) Rule R277-107, Educational Services Outside of Educator's Regular Employment;

(q) Rule R277-217, Utah Educator Standards;

(r) Rule R277-605, Coaching Standards and Athletic Clinics;

(s) Rule R123-5, Audit Requirements for Audits of Political Subdivisions and Governmental Nonprofit Corporations; and

(t) 2 C.F.R. 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

(2) An LEA shall include the following requirements of Title IX in LEA policies:

(a) Fundraising shall equitably benefit males and females;

(b) Males and females shall have reasonably equal access to facilities, fields, and equipment;

(c) School sponsored activities shall be reasonably equal for males and females.

R277-113-[44]12. Applicability to the Utah Schools for the Deaf and the Blind.

The Utah Schools for the Deaf and the Blind shall comply with:

- (1) Subsection R277-113-5(9)(f);
- (2) Section R277-113-[9]10; and
- (3) Section R277-113-[10]11.

KEY: school sponsored activities, public funds, fiscal policies and procedures, audit committee

Date of Last Change: ~~2023~~**November 8, 2021**

Notice of Continuation: September 9, 2021

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

NOTICE OF PROPOSED RULE

TYPE OF FILING: Amendment

Rule or Section Number:	R277-326	Filing ID: 55853
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Agency Information

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

General Information

2. Rule or section catchline:
R277-326. Early Learning
3. Purpose of the new rule or reason for the change:
This rule is being amended to exempt educators who primarily teach students who are deaf from statutory early literacy professional learning requirements consistent with the Utah State Board of Education's (USBE) authority under Subsection 53F-5-214(6)(b)(ii)(E).
4. Summary of the new rule or change:
These amendments specifically add requirements for an early literacy professional learning opportunity.

Fiscal Information**5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:****A) State budget:**

This rule change is not expected to have fiscal impact on state government revenues or expenditures. There are no costs to the USBE associated with exempting educators who teach students who are deaf from training requirements.

The educators are still allowed to participate in trainings related to early literacy but have flexibility to pursue trainings that are more suited to deaf students.

B) Local governments:

This rule change is not expected to have fiscal impact on local governments' revenues or expenditures.

There are no costs to Local Education Agencies (LEAs) associated with exempting educators who teach students who are deaf from training requirements.

The educators are still allowed to participate in trainings related to early literacy, but have flexibility to pursue trainings that are more suited to deaf students.

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 only affects educators.

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.

This only affects educators.

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.

There are no compliance costs for educators associated with educators for students who are deaf being exempted from early literacy training requirements.

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

Regulatory Impact Table

Fiscal Cost	FY2024	FY2025	FY2026
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	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head comments on fiscal impact and 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

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

Article X, Section 3	Subsection 53E-3-401(4)	Section 53F-5-214
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Public Notice Information

8. 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: 12/01/2023

9. This rule change MAY become effective on: 12/08/2023

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

Agency Authorization Information

Agency head or designee and title:	Angie Stallings, Deputy Superintendent of Policy	Date:	10/16/2023
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R277. Education, Administration.

R277-326. Early Learning.

R277-326-1. Authority and Purpose.

(1) This rule is authorized by:

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

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

(c) Section 53F-5-214, which directs the Board to make rules regarding the required elements of the Early Learning Professional Learning Grant and a formula to determine an LEA's grant amount; and

(d) Subsection 53E-3-1002(2), which directs the Board to make rules to allocate funding for early literacy coaches.

(2) The purpose of this rule is to:

(a)(i) provide the required elements for the Early Learning Professional Learning Grant program including eligibility criteria; and

(ii) establish a formula for the grant distribution; and

(b) establish criteria for assignment of early literacy coaches in accordance with Section 53E-3-1002.

R277-326-2. Definitions.

(1) "Early literacy coach" means a coach provided by the Board to assist LEAs with early literacy in accordance with Section 53E-3-1002.

(2) "Evidence-based" means the same as the term is defined in Subsection R277-406-2(3).

(3) "Focused" means professional learning that is targeted to strategies that align with an LEA's plan and goals that would best support improving outcomes.

(4) "Job-embedded" means learning that is during the workday and designed to enhance instructional practices with the intent of improving student learning outcomes.

(5) "Professional learning" means the same as the term is defined in ~~[Subsection]~~Section 53G-11-303~~(4)~~.

(6) "Sustained" means multiple professional learning sessions with ongoing support for implementation of professional learning for long-term change.

R277-326-3. Eligibility and Application.

(1) All LEAs are eligible to apply for the Early Learning Professional Learning Grant.

(2) To receive grants funds, an LEA shall submit an application to the Superintendent, including the LEA's plan:

(a) for the types of professional learning opportunities~~[-]~~ the LEA plans to utilize including:

(i) comprehensive professional learning opportunities as described in Subsection 53G-11-303(2); and

(ii) job-embedded coaching~~[-]~~;

(b) ~~for~~ how the LEA intends to connect professional learning to the LEA's Early Learning Plan goals; and

(c) ~~for~~ how the LEA intends to increase benchmark assessment scores and related outcomes through professional learning opportunities.

(3) An LEA shall only use sustained professional learning opportunities that are evidence-based and focused.

R277-326-4. Distribution and Use of Funds.

(1) The Superintendent may allocate funds annually to one or more Regional Education Service Agencies to provide job-embedded-coaching.

(2) Subject to legislative appropriations, the Superintendent shall distribute the balance of Early Learning Professional Learning Grant funds as follows:

(a) a per teacher allotment shall be calculated by dividing the total amount of grant funds by the total number of preschool through grade 3 teachers of all applicants;

(b) an LEA shall receive a grant amount equal to the product of the per teacher allotment described in Subsection (a) and the total number of preschool through grade 3 teachers in the LEA; and

(c) if an LEA's Early Learning Plan is denied or an LEA chooses to forgo any grant funds, the grant funds may be reallocated to all other eligible LEAs receiving grant funds as described in Subsections (1)(a) and (b).

(3) For purposes of calculating a grant amount in Subsection (1), an LEA shall determine the LEA's total number of preschool through grade 3 teachers by using employee data from the previous school year of the application school year.

(4) An LEA may use the grant funds for the following purposes:

(a) teacher stipends to attend trainings;

(b) presenter fees;

(c) coaching supports;

(d) substitute teachers;

(e) to hire a coach or specialist; and

(f) supplies and materials for teacher professional learning.

(5) An LEA may not use grant funds for:

(a) the purchase of:

(i) property;

(ii) equipment;

(iii) other services; or

(iv) student materials and supplies; or

(b) travel related expenses.

(6) An LEA shall use the grant funds by the end of the fiscal year in which the funds are received.

(7) The Superintendent may reduce grant funds to an LEA in an amount equal to the LEA's unused prior year program funds.

R277-326-5. Early Literacy Professional Learning Opportunity.

(1) An LEA receiving funding from the Early Literacy Professional Learning Grant shall provide training as required in Subsection 53F-5-214(6).

(2) Pursuant to Subsection 53F-5-214(6)(b)(ii)(E), an educator whose primary assignment is teaching students who are deaf is exempt from the requirement of an early literacy professional learning opportunity.

~~R277-326-5~~6. Early Literacy Coaches.

(1)(a) The Superintendent shall provide, train, and assign early literacy coaches in accordance with Section 53E-3-1002.

(b) An early literacy coach shall meet minimum qualifications established by the Superintendent.

(c) An early literacy coach may perform responsibilities as directed by the Superintendent including those identified in Subsections 53E-3-1002(2)(c)(i) through (viii).

(d) An early literacy coach may not undertake duties unrelated to literacy coaches, as outlined in Subsection 53E-3-1002(2)(d).

(2) An LEA receiving funds for early literacy coaches may not charge indirect costs.

(3)(a) The Superintendent will determine which schools qualify for assistance from early literacy coaches taking into account the previous year's end-of year assessment data from:

(i) KEEP Exit: Literacy;

(ii) Acadience Reading (benchmark and growth); and

(iii) RISE (English Language Arts proficiency).

(b) The Superintendent shall exclude data:

(i) for students who were not enrolled a full academic year; and

(ii) for schools scheduled to close the following year.

(4)(a) The Superintendent shall prioritize services under this program for schools identified in Subsections 53E-3-1002(a)(i) and (ii).

(b) The Superintendent may prioritize services under this program to schools who do not receive support from the Center for Strategic Improvement.

KEY: professional learning, prek-3, early learning, teacher development

Date of Last Change: ~~2023~~October 11, 2022]

Authorizing, and Implemented, or Interpreted Law: Art X Sec 3; 53E-3-401(4); 53F-5-214

NOTICE OF PROPOSED RULE		
TYPE OF FILING: Amendment		
Rule or Section Number:	R277-495	Filing ID: 55854

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 persons:	
Name:	Phone: Email:
Angie Stallings	801-538-7830 angie.stallings@schools.utah.gov
Please address questions regarding information on this notice to the persons listed above.	

General Information

2. Rule or section catchline:
R277-495. Electronic Devices in Public Schools
3. Purpose of the new rule or reason for the change:
This rule is being amended to clarify the requirements related to the Local Education Agency (LEA) electronic device policy.
4. Summary of the new rule or change:
These amendments add a requirement clarifying that an LEA policy must include a prohibition on the use of electronic devices that "significantly impair academic excellence".
There is also an additional technical correction made to a code reference.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
A) State budget:
This rule change is not expected to have fiscal impact on state government revenues or expenditures.
The requirement is for LEAs to update their policies and does not impact the Utah State Board of Education (USBE) budgets.

B) Local governments:
This rule change is not expected to have fiscal impact on local governments' revenues or expenditures.
LEAs will be required to update their electronic device policy. While there are nominal costs associated with these changes, LEAs regularly review and updated their policies and USBE is unable to provide an estimated cost.
There is not a quantifiable fiscal impact to LEAs associated with updating their electronic device policy.
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 only affects LEAs.
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):
There are no non-small businesses in the industry in question, Elementary and Secondary Schools (North American Industry Classification System (NAICS) 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. This proposed rule change is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses, and it does not require any expenditures of, or generate revenue for non-small businesses.
E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency):
This rule change is not expected to have fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities.
This only affects LEAs.
F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):
There are no compliance costs for affected persons.
There are no quantifiable costs for LEAs or other entities.
G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table			
Fiscal Cost	FY2024	FY2025	FY2026
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	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0
H) Department head comments on fiscal impact and 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

6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:		
Article X, Section 3	Subsection 53E-3-401(4)	Subsection 53G-8202(2)(c)(i)

Public Notice Information

8. 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:	12/01/2023

9. This rule change MAY become effective on:	12/08/2023
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.	

Agency Authorization Information

Agency head or designee and title:	Angie Stallings, Deputy Superintendent of Policy	Date:	10/16/2023
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R277. Education, Administration.**R277-495. Electronic Devices in Public Schools.****R277-495-1. Authority and Purpose.**

(1) This rule is authorized by:

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

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

(c) Subsection 53G-8-202(2)(c)(i), which directs the Superintendent to develop a conduct and discipline policy model for elementary and secondary public schools; and

(d) 47 CFR, Part 54, Children's Internet Protection Act, which requires schools and libraries that have computers with internet access to certify they have internet safety policies and technology protection measures in place to receive discounted internet access and services.

(2) The purpose of this rule is to direct all LEAs and public schools to adopt policies, individually or collectively as school districts or consortia of charter schools, governing the possession and use of electronic devices including:

(a) both LEA-owned and privately-owned, while on public school premises or during participation in school activities; and

(b) for LEA-owned devices, wherever the LEA-owned devices are used.

R277-495-2. Definitions.(1) "Acceptable use policy" means a document stipulating constraints and practices that a user shall accept ~~[prior to]~~ before a user accessing an LEA's, or any school within an LEA's, network or the [4]internet.

(2) "Electronic device" means a device that is used for audio, video, or text communication or any other type of computer or computer-like instrument including:

(a) a smart phone;

(b) a smart or electronic watch;

(c) a tablet; or

(d) a virtual reality device.

(3) "Guest" means an individual:

(a) who is not a student, employee, or designated volunteer of a public school; and

(b) who is on school property or at the site of a school-sponsored activity or event.

(4) "Inappropriate matter" means pornographic or indecent material as defined in Subsection 76-10-12[53]35(1)(a) and Section 53G-10-103.

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

(6) "LEA-owned electronic device" means a device that is used for audio, video, text communication, or other type of computer or computer-like instrument that is identified as being owned, provided, issued or lent by the LEA to a student or employee.

(7) "Policy" means an electronic device use policy as required by this rule that contains:

(a) permissible uses of an electronic device under certain circumstances; or

(b) restricted uses of an electronic devices under certain circumstances.

(8) "Privately-owned electronic device" means a device, including an electronic device that is used for audio, video, text communication, or other type of computer or computer-like instrument that is not owned or issued by the LEA to a student, or employee.

(9) "Public school" means a school or public school program, grades kindergarten through 12, that is part of the Utah public school system, including a school with a distance learning program or alternative program.

(10) "Student," for purposes of this rule, means an individual enrolled as a student at an LEA regardless of the part-time nature of the enrollment or the age of the individual.

(11)(a) "The Children's Internet Protection Act (CIPA)" means federal regulations enacted by the Federal Communications Commission (FCC) and administrated by the Schools and Libraries Division of the FCC.

(b) CIPA and companion laws, the Neighborhood Children's Internet Protection Act (NCIPA) and the Protecting Children in the 21st Century Act, require recipients of federal technology funds to comply with certain [4]internet filtering and policy requirements.

(12) "Utah Education Telehealth Network or UETN" means the Utah Education and Telehealth Network created in Section 53B-17-105.

R277-495-3. Requirement of Electronic Device Use Policy, Creation, and Access.

(1) An LEA shall require all schools under the LEA's supervision to have a policy or policies for students, employees and, where appropriate, for guests, governing the use of electronic devices on school premises and at school-sponsored activities.

(2) An LEA shall review and approve policies regularly.

(3) An LEA shall encourage schools to involve teachers, parents, students, school employees, school community councils, and community members in developing the local policies.

(4) An LEA shall provide copies of the LEA's policies or clear electronic links to policies at LEA offices, in schools and on the LEA's website in the same location as the LEA's data governance plan required in Rule R277-487.

(5) An LEA and all schools within the LEA shall cooperate to ensure that all policies within a school or school district are consistent and accessible to parents and community members.

(6) An LEA shall provide reasonable public notice and at least one public hearing or meeting to address a proposed or revised acceptable use policy.

(7) An LEA shall retain documentation of the policy review and adoption actions.

R277-495-4. LEA Electronic Device Policy Requirements.

(1) An LEA's policy shall include at least the following:

(a) definitions of electronic devices covered by policy;

(b) prohibitions on the use of electronic devices in ways that:

(i) significantly impair academic excellence;

(ii) bully, humiliate, harass, or intimidate school-related individuals, including students, employees, and guests, consistent with Rules R277-609 and R277-613; or

~~[(ii)]~~(iii) violate local, state, or federal laws;

(c) the prohibition of access by students, LEA employees and guests to inappropriate matter on the internet and world wide web while using LEA equipment, services, or connectivity whether on or off school property;

(e) directives on the safety and security of students when using social media and other forms of electronic communications;

(f) directives on unauthorized access, including hacking and other unlawful activities by a user of an LEA electronic device; and

(g) directives on unauthorized disclosure, use and dissemination of personal student information under Rule R277-487 and the Family Educational Rights and Privacy Act (FERPA)34 CFR, Part 99.

(2) In addition to the requirements of Subsection (1), an LEA's policies for student use of electronic devices shall include directives regarding the following:

(a) the use of privately-owned electronic devices during standardized assessments;

(b) administrative penalties for misuse of electronic devices during school hours or at a school-sponsored activity, program, or event;

(c) violations of an LEA's acceptable use policies that may result in confiscation of LEA-owned electronic devices or restricted access on the LEA's;

(d) a student's personal responsibility for devices assigned or provided to a student by the LEA, both for loss or damage of electronic devices and use of electronic devices consistent with the LEA's directives;

(e) use of electronic devices in violation of an LEA's or teacher's instructional policies may result in the confiscation of privately-owned electronic devices for a designated period and may result in the school contacting a parent to address the alleged violation; and

(f) uses of privately-owned electronic devices to bully or harass other students or employees during school hours or at school-sponsored activities that may result in the student being subject to LEA disciplinary action.

(3) In addition to ~~the provisions of~~ Subsections (1) and (2), directives for employee use of electronic devices shall include:

(a) notice that use of electronic devices to access inappropriate matter on LEA-owned electronic devices or privately-owned electronic devices on school property, at school-sponsored events or using school connectivity may have criminal, employment or student disciplinary consequences, and if appropriate, may be reported to law enforcement;

(b) notice that an employee is responsible for LEA-issued electronic devices at all times and misuse of an electronic device may have employment consequences, regardless of the user; and

(c) required staff responsibilities in educating minors on appropriate online activities, as required by Section 53G-7-1202, and in supervising such activities.

(4) An LEA's policies shall also include the following:

(a) prohibitions or restrictions on unauthorized use that would cause invasions of reasonable expectations of student and employee privacy;

(b) procedures to report the misuse of electronic devices; and

(c) potential disciplinary actions toward students or employees for violation of local policies regarding the use of electronic devices; and

(d) exceptions to the policy for special circumstances, health-related reasons and emergencies, if any.

(5) An LEA shall certify annually through UETN, and as required by the FCC, that the LEA has a CIPA-compliant acceptable use policy.

R277-495-5. Required School Level Training.

(1) A school shall provide, within the first 45 days of each school year, a school-wide or in-classroom training to employees and students that covers:

(a) the contents of the school's policy;

(b) the importance of digital citizenship;

(c) the LEA's conduct and discipline related consequences as related to a violation of the school's policy;

(d) the LEA's general conduct and discipline policies as described in Section 53G-8-202; and

(e) the benefits of connecting to the [F]internet and utilizing the school's [F]internet filters, while on school premises.

(2) A school that adopts a permissible use policy shall:

(a) within the first 45 days of each school-year, provide school-wide or in-classroom training to employees and students that covers:

(i) the elements described in Subsections (1)(a) through (e); and

(ii) specific rules governing the permissible and restricted uses of personal electronic devices while in a classroom; and

(b) require that each educator who allows the use of a personal electronic device in the classroom clearly communicates to parents and students the conditions under which the use of a personal electronic device is allowed.

R277-495-6. Resources and Required Assurances.

(1) The Superintendent may provide resources, upon request, for an LEA regarding electronic device policies, including:

(a) sample acceptable use policies;

(b) general best practices for electronic device use as outlined in Rule R277-922; and

(c) materials for digital citizenship as outlined in Section 53G-7-1202.

(2) An LEA shall post the LEA's electronic device use policy on the LEA's website and provide a link to the Board through the annual assurances document described in Rule R277-108.

R277-495-7. LEA Requirement to Notify Parents of Filtering Options.

An LEA shall provide an annual notice to all parents of the location of information for in-home network filtering options as provided for in Section 76-10-1231.

KEY: electronic devices, policy

Date of Last Change: 2023[April 8, 2019]

Notice of Continuation: December 7, 2018

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-401(4); 53G-8-202(2)(c)(i)

NOTICE OF PROPOSED RULE

TYPE OF FILING: Amendment

Rule or Section Number: R277-553

Filing ID: 55855

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 persons:		
Name:	Phone:	Email:
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov

Please address questions regarding information on this notice to the persons listed above.

General Information

2. Rule or section catchline:

R277-553. Charter School Oversight, Monitoring and Appeals

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

This rule is being amended to update requirements for remediation and probation.

4. Summary of the new rule or change:

The amendments specifically add a timeframe for an authorizer's comprehensive review of governing board performance, review and update of the charter agreement, and regular monitoring of its charter schools.

The amendments also remove the specific timeframe that an authorizer review and update the charter agreement, and the date associated with an authorizer's requirement to submit a remediation policy to the Board for approval.

Fiscal Information

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

A) State budget:

This rule change is not expected to have fiscal impact on state government revenues or expenditures.

The changes apply to charter school authorizers, which includes the State Charter School Board (SCSB). However, the language clarifies charter authorizer duties and does not add any quantifiable costs for the Utah State Board of Education (USBE), the SCSB, or other authorizers.

B) Local governments:

This rule change is not expected to have fiscal impact on local governments' revenues or expenditures.

Charter schools will continue to be monitored and reviewed, with no fiscal impact due to the clarifications for charter school authorizers.

There is no impact to Local Education Agency (LEA) budgets.

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 only affects USBE, SCSB, and LEAs.

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

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

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

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

This only affects charter school authorizers.

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.

There are no compliance costs for charter school authorizers associated with clarifying their duties and timelines.

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

Regulatory Impact Table			
Fiscal Cost	FY2024	FY2025	FY2026
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	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head comments on fiscal impact and 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

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

Article X, Section 3	Section 53E-3-401	
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Public Notice Information

8. 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: 12/01/2023

9. This rule change MAY become effective on: 12/08/2023

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

Agency Authorization Information

Agency head or designee and title:	Angie Stallings, Deputy Superintendent of Policy	Date:	10/16/2023
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R277. Education, Administration.**R277-553. Charter School Oversight, Monitoring, and Appeals.****R277-553-1. Authority and Purpose.**

(1) This rule is authorized under:

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

(b) Subsection 53E-3-401(4), which allows the Board to adopt rules in accordance with its responsibilities;

(c) Subsection 53G-5-205(5), which requires the Board to establish minimum standards that a charter school authorizer is required to apply when evaluating a charter school application and monitoring charter school compliance; and

(d) Subsection 53G-[-]5-501(5), which directs the Board to adopt rules specifying the timeline for remedying deficiencies and ensuring the compliance of a charter school with its charter.

(2) The purpose of this rule is to establish minimum standards that an authorizer is required to apply when monitoring charter school compliance.

R277-553-2. Authorizer Review of Charter Schools.

(1) An authorizer shall review ~~[and evaluate]~~ annually the performance of charter schools for which it is the authorizer, including requiring all charter schools to:

(a) comply with their charter agreements; and

(b) comply with statute and board rule.

(2) An authorizer shall:

(a) visit a charter school at least once during its first year of operation ~~[in order]~~ to ensure adherence to an implementation of the approved charter and to finalize a review process;

(b) visit a charter school as determined in the review process;

(c) provide written reports to a charter school after the visits that set forth:

(i) strengths;

(ii) deficiencies; and

(iii) proposed corrective actions;

(d) notify the Superintendent of a claim of fraud or misuse of public assets or funds by a charter school; and

(e) coordinate the investigation of claims identified in Subsection (d) with the Superintendent.

(3) An authorizer shall annually review, and document matters specific to effective charter school operations, including:

(a) financial performance;

(b) academic performance;

(c) enrollment; and

(d) governing board performance.

(4) Every five years, [A]an authorizer shall:

(a) conduct and document a comprehensive review of governing board performance; and

(b) review and update the charter agreement~~[-at least once every five years]~~.

(5) An authorizer shall coordinate with the Superintendent to regularly ~~[review]~~monitor its charter schools as described in Subsection 53G-5-205(2).

R277-553-3. Remediation and Probation.

(1)(a) An authorizer shall develop a written policy documenting the process and for remediation of any deficiencies identified through the processes outlined in Section R277-553-2.

(b) An authorizer shall submit a copy of their remediation policy to the Board for approval along with their policy for approving new charters under Section R277-552-3.

(c) Notwithstanding Subsection (b), each authorizer shall submit a remediation policy to the Board for approval~~[-by January 1, 2020]~~.

(2) If a school fails to remedy deficiencies through the remediation process, an authorizer may place the school on probation for no longer than one calendar year.

(3) Upon placing a school on probation, an authorizer shall set forth a written plan outlining those provisions in the charter agreement, applicable laws, rules, and regulations with which the school is not in compliance.

(4) The written plan required by Subsection (3) shall:

(a) set forth the terms, conditions, and timeline that the school shall follow ~~[in order]~~ to be removed from probation; and

(b) a plan for further remedial action if the school fails to comply with probationary terms.

(5) If a school complies with the terms of the written plan within the timeline prescribed, the authorizer shall remove the school from probation.

(6) A school may request a single extension of no more than six months from an authorizer to comply with the terms of the written plan.

(7) If a school fails to satisfy the terms of the written plan within the established timeline, the authorizer shall propose to terminate the school's charter.

(8) While a school is on probation, the school may seek technical assistance from the authorizer to remedy any deficiencies.

(9) An authorizer may, for good cause, or if the health, safety, or welfare of the students at the school is threatened at any time during the probationary period, terminate the charter immediately.

(10) An authorizer shall notify the Superintendent in writing within 30 days of any probationary terms imposed under this ~~[Section R277-553-3]~~section.

(11) An authorizer shall comply with the notification requirements in Section 53G-5-504 if the authorizer approves a motion to terminate a charter.

R277-553-4. Charter School Governing Board Compliance with Law.

(1) A charter school governing board may amend the charter school's charter agreement by receiving approval from its authorizer consistent with Section 53G-5-303.

(2) A charter school governing board shall comply with the charter school's authorizer's processes and timelines for all reviews, amendments, expansion requests, and satellite applications.

(3) A charter school shall notify the Superintendent and charter school's authorizer of lawsuits filed against the charter school within 30 days of the school being served with the complaint.

R277-553-5. Charter School Financial Practices and Training.

(1)(a) A charter school shall hire or contract with a business administrator to perform the duties described in Section 53G-4-303.

(b) A charter school business administrator shall attend business meetings required by the Superintendent or the school's authorizer.

(2) A charter school board shall:

(a) regularly monitor the charter school's business administrator described under Subsection (1); and

(b) ensure the business administrator fulfills the duties outlined in Section 53G-4-303.

(3) The Board may impose corrective action against a charter school for failure to provide financial and statistical information required by law or Board rules in accordance with Rule R277-114.

(4) A charter school shall comply with the Utah State Procurement Code, Title 63G, Chapter 6a.

(5) A charter school may not receive necessarily existent small schools funding under Subsection 53F-2-304(2) and Rule R277-445.

R277-553-6. Remedying Charter School Deficiencies.

(1) Upon receiving credible information of charter school financial mismanagement or fraud, or a threat to the health, safety, or welfare of students, in coordination with the Superintendent an authorizer shall direct an independent review or monitoring, as appropriate.

(2) An authorizer may direct a charter school governing board or the charter school administration to take reasonable action to protect students or state or federal funds consistent with Section 53G-5-503.

(3) Upon receipt of findings documenting a threat to the health, welfare, or safety of a school under Subsection (1), an authorizer may:

(a) recommend that the Superintendent impose corrective action against the school in accordance with Rule R277-114;

(b) take immediate or subsequent corrective action with charter school governing board members or employees who are responsible for deficiencies consistent with Section 53G-5-501;

(c) identify a remediation team to work with the school; or

(d) immediately terminate the school's charter in accordance with Subsection 53G-5-503(5).

(4) Upon receipt of findings documenting financial mismanagement or fraud by a charter school, an authorizer shall coordinate appropriate corrective action with the Superintendent.

(5) An authorizer may exercise flexibility for good cause in making a recommendation regarding an identified deficiency.

(6) The Superintendent may impose the following corrective action against a charter school with an identified deficiency:

(a) place state appropriations in a reimbursable status pending the outcome of an appeal;

(b) suspend state appropriations pending the outcome of an appeal;

(c) direct fiscal monitoring visits for both state and federal programs ahead of other scheduled visits to the charter school; or

(d) take other action at the direction of the Board consistent with state and federal law.

R277-553-7. Appeals to the Board.

(1) An operating charter school may appeal an authorizer's decision to terminate the school's charter to the Board.

(2) Upon terminating a charter, an authorizer shall:

(a) provide written notice to the charter school;

(b) provide written notice of appeal rights and timelines to the charter school governing board chair or authorized agent; and

(c) post information about the appeals process on its website and provide training to charter school governing board members and authorized agents regarding the appeals procedure.

(3) If a charter school appeals an authorizer's decision to terminate a charter, the charter school governing board chair shall submit a written appeal to the Superintendent within 14 calendar days of the authorizer's action.

(4)(a) Upon receipt of an appeal under this section, Board leadership may:

(i) set a hearing before a standing committee to make a recommendation to the Board for consideration at its next regularly scheduled meeting;

(ii) designate three to five Board members and a hearing officer, who is not a Board member, to act as an objective hearing panel to conduct a hearing and provide a recommendation to the Board for consideration at its next regularly scheduled meeting; or

(iii) set a hearing before the full Board.

(b) A hearing under Subsection (4)(a) shall be held no more than 45 days following receipt of the written appeal.

(5) The Board ~~shall~~ may:

(a) uphold the authorizer's decision; or

(b) remand the matter to the authorizer with identified deficiencies in the authorizer's decision and suggested remedies.

(6) The recommendation of the chartering entity shall be in place pending the conclusion of the appeals process, unless the Superintendent in the Superintendent's sole discretion, determines that the authorizer's decision or failure to act presents a serious threat to students or an imminent threat to public property or resources.

(7) The Board's acceptance or rejection of the hearing report is the final administrative action on the issue.

KEY: charter schools, oversight, monitoring, appeals

Date of Last Change: 2023[May 26, 2020]

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

NOTICE OF PROPOSED RULE		
TYPE OF FILING: Amendment		
Rule or Section Number:	R277-604	Filing ID: 55856

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 persons:		
Name:	Phone:	Email:
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule or section catchline:
R277-604. Private School, Home School, and Bureau of Indian Education (BIE) Student Participation in Public School Achievement Tests
3. Purpose of the new rule or reason for the change:
This rule is being amended due to the passage of H.B. 215 during the 2023 General Session.
4. Summary of the new rule or change:
These amendments specifically add Utah Fits All and Special Needs Opportunity Scholarship Program "scholarship" students to several references in the rule, creating the opportunity for scholarship students to participate in statewide assessments through Local Education Agencies (LEAs).
The amendments also add a definition for "Eligible school", "Qualifying school", in addition to making updates to the definition of "Scholarship student".

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
A) State budget:
This rule change is not expected to have fiscal impact on state government revenues or expenditures.
There are no impacts to the Utah State Board Education (USB E) or other state entity budgets outside the fiscal notes to H.B. 215 (2023).

B) Local governments:

This rule change is not expected to have fiscal impact on local governments' revenues or expenditures.

Provisions for scholarship students to take statewide assessments do not add costs for LEAs as they are already required to accommodate home and private school students wishing to take statewide assessments at a convenient LEA.

This rule change does not add any costs beyond any identified by the fiscal note to H.B. 215 (2023).

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 only affects USB E and LEAs.

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

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

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

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

This only affects USB E and LEAs.

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

There are no compliance costs for affected persons.

There are no compliance costs outside those already identified in the fiscal note to H.B. 215 (2023).

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

this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table

Fiscal Cost	FY2024	FY2025	FY2026
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	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head comments on fiscal impact and 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

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

Article X, Section 3	Section 53E-3-401	Subsection 53E-4-302(1)(a)
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Public Notice Information

8. 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:	12/01/2023
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9. This rule change MAY become effective on:	12/08/2023
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NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

Agency Authorization Information

Agency head or designee and title:	Angie Stallings, Deputy Superintendent of Policy	Date:	10/16/2023
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R277. Education, Administration.

R277-604. Private School, Home School, Scholarship, and Bureau of Indian Education (BIE) Student Participation in Public School Achievement Tests.

R277-604-1. Authority and Purpose.

(1) This rule is authorized by:

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

(b) Section 53E-3-401, 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-4-302, which directs the Board to require LEAs to administer statewide assessments to uniformly measure student performance.

(2) The purpose of this rule is:

(a) to provide opportunities for Utah private school students and home school students who are Utah residents, scholarships students, and Utah students attending Bureau of Indian Education or "BIE" schools to participate in statewide assessments;

(b) to maintain the integrity and security of statewide assessments and Utah's accountability system;

(c) to provide an orderly and manageable administrative process for public schools to include Utah private school students and home school students who are Utah residents, scholarships students, and Utah students attending BIE schools to participate in statewide assessments if they so desire; and

(d) to protect the public investment in statewide assessments and Utah's accountability system by making assessments available to students who are not funded by the public education system or through certain state funded scholarship programs through fair, reasonable, and consistent practices.

R277-604-2. Definitions.

(1) "Eligible school" means an eligible school that Utah Fits All Scholarship Program Manager approves in accordance with Section 53F-6-408.

~~(1)~~(2) "Home school student" means a student who has been excused from compulsory education and for whom documentation has been completed under Section 53G-6-204.

~~(2)~~(3) "Private school" means a school that is not a public school but:

(a) has a current business license through the Utah Department of Commerce;

(b) is accredited as described in Rule R277-410; and

(c) has and makes available a written policy for maintaining and securing student records.

(4) "Qualifying school" means a qualifying school participating in the Special Needs Opportunity Scholarship Program as defined in Section 53E-7-401.

(5) "Scholarship student" means the same as that term is defined in:

(a) Section 53F-6-401; or

(b) Section 53E-7-401.

~~[(3)]~~(6) "Statewide assessment" means:

~~[(a)]~~ (a) the summative adaptive assessment of a student in grades 3 through 8 in basic skills courses;

~~[(b)]~~ (b) the online writing assessment in grades 5 and 8;

~~[(c)]~~ (c) the summative high school assessment in grades 9 and 10;

(a) the same as that term is defined in Section 53E-4-301;

~~[(d)]~~(b) the statewide English Language proficiency assessment; and;

~~[(e)]~~ (e) the college readiness assessment; and;

~~[(f)]~~(c) the benchmark assessment of a student in grades 1 through 3 to measure competency.

R277-604-3. Private Schools, Eligible Schools and Qualifying Schools.

(1) Private school and scholarship students who are Utah residents, as defined under Section 53G-6-302, may participate in statewide assessments.

(2) Private school students who are not Utah residents may participate in statewide assessments only by payment in advance of the full cost of administering individual assessments to the LEA as determined by local school board policy.

(3)(a) If a private school, eligible school, or qualifying school is interested in participating in statewide assessments, an LEA may allow the private school, eligible school, or qualifying school to participate with the LEA's students.

(b) An LEA may determine at which public schools within the LEA private school or scholarship students may take statewide assessments.

(c) A private school, eligible school, or qualifying school may request the following from the LEA with whom the private school, eligible school, or qualifying school is testing its students:

(i) an annual schedule of statewide assessment dates;

(ii) the locations at which private school students may be tested; and

(iii) ~~[written]~~ policies for private school student participation.

(4) An LEA shall develop a policy regarding private school and scholarship student participation in statewide assessments, which shall include:

(a) reasonable costs for the participation of Utah private school or scholarship students in statewide assessments to be paid in advance by either the student or the student's private school, eligible school, or qualifying school;

(b) an explanation of reasonable costs including costs for administration materials, scoring, and reporting of assessment results;

(c) notice to private school, eligible school, or qualifying school administrators of any required private school, eligible school, or qualifying school administrator participation in monitoring or proctoring of tests;~~and~~

(d) reasonable ~~[time lines]~~ timelines for private school requests for participation and LEA response~~[-]; and~~

~~[(e)]~~ (e) except as provided in Subsection (5), shall prohibit the release or sharing of student results to any entity other than the private school, eligible school, qualifying school, program manager, the scholarship student, or the scholarship student's parent.

(5) If a private school student or scholarship student is partially enrolled in a public school, the public school may also receive the student results described in Subsection (4)(e).

R277-604-4. Home School Students.

(1) A home school student who is a Utah resident, as defined under Section 53G-6-302, may participate in statewide assessments as provided in this rule.

(2) A home school student may participate in statewide assessments only if the student has satisfied the home schooling requirements of Section 53G-6-204.

(3) A home school student who desires to participate in statewide assessments may participate in an LEA convenient to the student's circumstances.

(4) A home school student or parent may request the following from the LEA in which the home school student is participating in statewide assessments:

(a) an annual schedule of statewide assessments dates;

(b) the locations at which home school students may be tested; and

(c) ~~[written]~~ policies for home school student participation.

(5) An LEA shall develop a policy regarding home school student participation in statewide assessments, which:

(a) may not require a home school student to pay a fee that is not charged to traditional students;

(b) shall include notice to home school students or parents of any required parent or adult participation; and

(c) shall include reasonable ~~[time lines]~~ timelines for home school requests for participation and LEA response.

R277-604-5. Bureau of Indian Education (BIE) Students.

(1) BIE schools may participate in all statewide assessments required for all Utah students.

(2) Materials and training shall be provided to BIE schools from the LEA in which the school is located on the schedule that applies to Utah school districts.

R277-604-6. Scholarship Students Not Enrolled in an Eligible School or Qualifying School.

(1) A scholarship student not enrolled in an eligible school, a qualifying school, or part time in an LEA, may participate in all statewide assessments required for all Utah students.

(2) A scholarship student who is not enrolled in an eligible school or qualifying school and desires to participate in statewide assessments may participate in an LEA convenient to the student's circumstances.

(3) A scholarship student who is not enrolled in an eligible school or qualifying school or the scholarship student's parent may request the following from the LEA in which the scholarship student is participating in statewide assessments:

(a) an annual schedule of statewide assessments dates;

(b) the locations at which scholarship students may be tested; and

(c) policies for scholarship student participation.

(4) An LEA shall develop a policy regarding participation in statewide assessments for scholarship students who are not enrolled in an eligible school or qualifying school, which:

(a) shall include notice of any required parent or adult participation;

(b) shall include reasonable timelines for scholarship student requests for participation and LEA response; and

(c) except as provided in Subsection (5), shall prohibit the release or sharing of student results to any entity other than the program manager, the scholarship student, or the scholarship student's parent.

(5) If a scholarship student who is not enrolled in an eligible school or qualifying school is partially enrolled in a public school, the public school may also receive the student results described in Subsection (4)(c).

R277-604-[6]7. LEA Responsibilities.

An LEA shall comply with the following when administering statewide assessments to a private, home school, scholarship, or Bureau of Indian Education's student:

(1) Rule R277-404; and

(2) the Standard Test Administration and Testing Ethics Policy described in Section R277-404-3.

KEY: home school, private school, participation, achievement tests

Date of Last Change: 2023[May 26, 2020]

Notice of Continuation: April 21, 2021

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-401; 53E-4-302(1)(a)

NOTICE OF PROPOSED RULE

TYPE OF FILING: New

Rule or Section Number:	R402-2	Filing ID: 55859
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Agency Information

1. Department:	Health and Human Services		
Agency:	Family Health, Early Childhood		
Room number:	3032		
Building:	Multi-Agency State Office Building (MASOB)		
Street address:	195 N 1950 W		
City, state and zip:	Salt Lake City, UT 84116		
Mailing address:	PO Box 144610		
City, state and zip:	Salt Lake City, UT 84114-4610		
Contact persons:			
Name:	Phone:	Email:	
Jennifer Floyd	385-377-0941	jfloyd@utah.gov	

Alexis Weight	801-273-2956	abweight@utah.gov
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Please address questions regarding information on this notice to the persons listed above.

General Information

2. Rule or section catchline:

R402-2. Early Childhood Utah Advisory Council Membership, Duties and Procedures

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

Following the consolidation and recodification of the Department of Health and Human Services' (Department) statute, this rule is being proposed under Title R402, and is simultaneously being repealed from Title R433.

4. Summary of the new rule or change:

This filing takes the language from Rule R433-2, Early Childhood Utah Advisory Council Membership, Duties and Procedures, which is simultaneously being proposed for repeal, and creates a new rule under Title R402 as Rule R402-2, Early Childhood Utah Advisory Council Membership, Duties and Procedures.

Additionally, this filing amends language that existed in Rule R433-2 to reflect the recent recodification of the Department's statute.

(EDITOR'S NOTE: The proposed repeal of Rule R433-2 is under ID 55860 in this issue, November 1, 2023, of the Bulletin.)

Fiscal Information

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

A) State budget:

There is no impact to the state budget as there are only minor changes and technical updates.

B) Local governments:

There is no impact on local governments as there are only minor changes and technical updates.

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

There is no impact on small businesses as there are only minor changes and technical updates.

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

There is no impact on non-small businesses as there are only minor changes and technical updates.

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 to other persons or entities as there are only minor changes and technical updates.

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 to a single person or entity as there are only minor changes and technical updates.

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

Regulatory Impact Table

Fiscal Cost	FY2024	FY2025	FY2026
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	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head comments on fiscal impact and approval of regulatory impact analysis:

The Executive Director of the Department of Health and Human Services, Tracy S. Gruber, has reviewed and approved this regulatory impact analysis.

Citation Information

6. 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 26B-1-422

Public Notice Information

8. 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: 12/01/2023

9. This rule change MAY become effective on: 12/08/2023

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

Agency Authorization Information

Agency head or designee and title:	Tracy S. Gruber, Executive Director	Date:	10/15/2023
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R402. Health and Human Services, Family Health, Early Childhood.

R402-2. Early Childhood Utah Advisory Council Membership, Duties and Procedures.

R402-2-1. Authority and Purpose.

Pursuant to Section 26B-1-422, this rule establishes the membership, duties, and procedures of the Early Childhood Utah Advisory Council.

R402-2-2. Definitions.

Terms used in this rule are defined in Section 26B-1-422.

R402-2-3. Council Membership and Terms.

(1) One representative from each of the following entities serves continuously as a voting member:

(a) the Governor's Office;

(b) the Utah Department of Health and Human Services, this includes:

(i) Title V -- Office of Maternal and Child Health;

(ii) Early Intervention Program for Infants and Toddlers with Disabilities-Part C;

(iii) Early Childhood Integrated Data Systems Program;

(iv) Maternal, Infant, and Early Childhood Home Visiting Program (MIECHV);

(v) Women, Infants and Children Program (WIC);

(vi) Oral Health Program;

(vii) Division of Child and Family Services;

(viii) Office of Substance Use and Mental Health; and

(vii) any other Department of Health and Human Services agency as determined by the Early Childhood Utah Council, Executive Committee;

(c) the Utah Department of Workforce Services, this includes:

(i) Office of Child Care Administrator; and
(ii) State Director of Head Start Collaboration;
(d) the Utah State Board of Education, this includes:
(i) Program for Children with Disabilities Part B; and
(ii) McKinney-Vento Homeless Assistance Act; and
(e) up to two representatives from Head Start agencies located in the State, this includes:
(i) migrant and seasonal Head Start programs; and
(ii) Indian Head Start programs;
(2) One representative chosen by the executive committee from each of the following groups shall serve as a voting member for a period of 3 years, unless otherwise indicated:
(a) up to two public or private primary health care industry representatives;
(b) up to two providers from the mental health service community;
(c) each subcommittee chair;
(d) local education agency;
(e) institution of higher education;
(f) local health department;
(g) local provider of early childhood education and development services, such as a child care provider, pre-school provider, or similar provider;
(h) family engagement stakeholder;
(i) parent with at least one child between the ages 0-8; and
(j) specialized services provider or related organizations, such as organizations that provide specialized services for children.
(3) Each subcommittee chair shall serve a term of one year as a voting member of the council.
(4) Members shall actively participate to address the purpose of the council.
(5) The council expects members to attend all council meetings. If any voting member misses three or more scheduled council meetings in a year, the chair and chair elect may remove the individual for replacement by the assigning entity.
(6) The executive committee expects the members to attend all executive committee meetings. If any voting member misses three or more scheduled meetings in a year, the executive committee may remove the voting member from their position with a majority vote.
(7) Participants from organizations, agencies, and the public that are not voting members may attend the meetings, provide input, and participate in subcommittees. Other participants may vote in subcommittee meetings but may not vote in general council meetings.

R402-2-4. Council Leadership, Staff, and Subcommittee Requirements.

(1)(a) Two voting members of the council shall serve as chair and chair elect.
(b) Chair and chair elect shall serve for a period of two years and rotate off in alternating years to ensure continuity.
(c) One chair shall rotate from either the Department of Health and Human Services, Department of Workforce Services, and the Utah State Board of Education, or the Governor's Office.
(d) The second chair shall be elected from the body at large and cannot be from one of the agencies listed or staff of the Early Childhood Utah Program.
(e) Chair and chair elect shall conduct meetings of the council.

(2) The executive committee is composed of chairs and chairs elect of each subcommittee and the chair and chair elect of the council. The executive committee shall:

(a) provide guidance to subcommittees and perspectives needed to inform that subcommittee's priorities;
(b) ensure formalized recommendations to the overseeing Departments regarding policy or budgetary impacts that include feedback collected from state agencies and programs and partners potentially affected by the recommendation;
(c) review priority areas of the subcommittees to ensure their work includes those tasks required by federal and state early childhood guidelines and regulations;
(d) review proposals and recommendations submitted by the individual subcommittees, vote on recommendations and send recommendations back to subcommittees, as needed; and
(e) execute additional tasks and responsibilities as assigned by the council.
(3)(a) The council shall establish and review subcommittees during the first quarterly meeting of the state fiscal year.
(b) Each voting member of the council shall serve on at least one standing committee, based on the committee member's area of expertise.
(c) Each subcommittee shall have one chair and one chair elect. The voting subcommittee elects chairs by a simple majority vote.
(4) The Department of Health and Human Services, Early Childhood Utah Program, shall serve as staff to the council.

R402-2-5. Meeting Procedures.

(1) The council shall meet at least four times each year or more frequently as determined by the executive committee. Notice of the intended meeting schedule shall be provided to voting members no later than the first meeting of each calendar year.
(2) The executive committee shall meet monthly or as frequently as needed as determined by the chair and chair elect to facilitate executive committee work.
(3) Subcommittees shall meet monthly or as frequently as needed as determined by the council chair and chair elect.
(4) Meetings shall have an electronic meeting option. Council members attending electronically will be counted as present at the meeting for quorum, participation, and voting requirements.
(5) Meetings of the council shall be conducted in accordance with the Utah Open and Public Meetings Act, Title 52, Chapter 4.

R402-2-6. Voting.

(1) A simple majority of the voting members constitutes a quorum.
(2) A simple majority of participants at a subcommittee meeting conduct the transaction of business.
(3) All council votes must be taken in public. No telephone or email votes may be taken between meetings.
(4) If a council member cannot attend the council meeting, council subcommittee meeting or the council executive committee meeting, that individual may designate a proxy to attend the meeting. The proxy is granted all rights and privileges inherent to the position, including voting privileges, for that meeting whether attending in person or electronically.

R402-2-7. Conflict of Interest.

(1) Each voting member of the council shall be responsible for declaring a conflict of interest when one exists. A conflict of interest may include any matter that may provide direct personal financial benefit for that member.

(2) When a conflict of interest exists, the member shall refrain from the voting process.

(3) If a council member is aware of another council member's undeclared conflict of interest, the council member may ask the council member with the conflict of interest to refrain from voting on the issue in question.

(4) In the event of a disagreement over whether a conflict of interest exists, the members of the participating meeting shall decide the matter by a simple majority vote.

KEY: early childhood Utah

Date of Last Change: 2023

Authorizing, and Implemented or Interpreted Law: 26B-1-422

NOTICE OF PROPOSED RULE

TYPE OF FILING: Repeal

Rule or Section Number:	R433-2	Filing ID: 55860
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Agency Information

1. Department:	Health and Human Services	
Agency:	Family Health and Preparedness, Maternal and Child Health	
Room number:	3032	
Building:	Multi-Agency State Office Building (MASOB)	
Street address:	195 N 1950 W	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 144610	
City, state and zip:	Salt Lake City, UT 84114-4610	
Contact persons:		
Name:	Phone:	Email:
Jennifer Floyd	385-377-0941	jffloyd@utah.gov
Alexis Weight	801-273-2956	abweight@utah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule or section catchline:
R433-2. Early Childhood Utah Advisory Council Membership, Duties and Procedures

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

Following the consolidation and recodification of the Department of Health and Human Services' (Department) statute, this rule is being repealed from Title R433, and is simultaneously being proposed under Title R402.

4. Summary of the new rule or change:

This filing repeals Rule R433-2, Early Childhood Utah Advisory Council Membership, Duties and Procedures, in its entirety and the language is simultaneously being proposed under Title R402 as Rule R402-2, Early Childhood Utah Advisory Council Membership, Duties and Procedures, due to the consolidation and recodification of the Department's statute.

(EDITOR'S NOTE: The proposed new Rule R402-2 is under ID 55859 in this issue, November 1, 2023, of the Bulletin.)

Fiscal Information**5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:****A) State budget:**

There is no anticipated impact on the state budget as this repeal only moves Rule R433-2 to Title R402 as Rule R402-2.

B) Local governments:

There is no anticipated impact on local governments as this repeal only moves Rule R433-2 to Title R402 as Rule R402-2.

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

There is no anticipated impact on small businesses as this repeal only moves Rule R433-2 to Title R402 as Rule R402-2.

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

There is no anticipated impact on non-small businesses as this repeal only moves Rule R433-2 to Title R402 as Rule R402-2.

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 other persons or entities as this repeal only moves Rule R433-2 to Title R402 as Rule R402-2.

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 to a single person or entity as this repeal only moves Rule R433-2.

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

Regulatory Impact Table

Fiscal Cost	FY2024	FY2025	FY2026
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	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head comments on fiscal impact and approval of regulatory impact analysis:

The Executive Director of the Department of Health and Human Services, Tracy S. Gruber, has reviewed and approved this regulatory impact analysis.

Citation Information

6. 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 26-66-101

Public Notice Information

8. 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: 12/01/2023

9. This rule change MAY become effective on: 12/08/2023

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

Agency Authorization Information

Agency head or designee and title: Tracy S. Gruber, Executive Director **Date:** 10/16/2023

R433. Health, Family Health and Preparedness, Maternal and Child Health.

~~[R433-2. Early Childhood Utah Advisory Council Membership, Duties and Procedures.~~

~~R433-2-100. Authority and Purpose.~~

~~(1) Pursuant to Section 26-66-101, this rule establishes the membership, duties, and procedures of the Early Childhood Utah Advisory Council.~~

~~R433-2-200. Definitions.~~

~~(1) The term Commission is defined in Section 26-66-102(1).~~

~~(2) The term Council is defined in Section 26-66-102(2).~~

~~R433-2-300. Council Membership and Terms.~~

~~(1) Agency Representation. One representative from each of the following Agency entities serves as a voting member:~~

- ~~(a) Governor's Early Childhood Commission;~~
- ~~(b) Utah Department of Health;~~
- ~~(i) Bureau of Maternal and Child Health Title V;~~
- ~~(ii) Bureau of Children with Special Health Care Needs Program for Infants and Toddlers with Disabilities Part C;~~
- ~~(iii) Integrated Early Childhood Data Systems Program;~~
- ~~(iv) Maternal, Infant, and Early Childhood Home Visiting Program (MIECHV);~~
- ~~(v) Women, Infants and Children Program (WIC);~~
- ~~(vi) Oral Health Program;~~
- ~~(vii) Other Department of Health as determined by the Early Childhood Utah Council, Executive Committee;~~
- ~~(e) Utah Department of Workforce Services;~~
- ~~(i) Office of Child Care Administrator;~~
- ~~(ii) Head Start Collaboration Office, Director;~~
- ~~(d) Utah Department of Human Services;~~
- ~~(i) Division of Child and Family Services;~~
- ~~(ii) Division of Mental Health and Substance Abuse;~~
- ~~(e) Utah State Board of Education;~~
- ~~(i) Program for Infants and Toddlers with Disabilities Part B;~~
- ~~(ii) McKinney Vento Homeless Assistance Act;~~

~~(f) Utah Head Start Association, representing;~~
~~(i) Migrant and Seasonal Head Start; and~~
~~(ii) American Indian and Alaska Native Head Start.~~
~~(2) Non Agency Representation. One representative from each of the following Non Agency entities shall serve as a voting member, unless otherwise indicated:~~
~~(a) Up to two public or private primary health care industry representatives;~~
~~(b) Up to two providers from the mental health service community;~~
~~(c) Early Child Place Based Community grantees, one from each of the three grantees;~~
~~(d) Local Education Agency;~~
~~(e) Institution of Higher Education;~~
~~(f) Local provider of early childhood education and development services, such as a daycare provider, pre school provider, or similar provider;~~
~~(g) Family engagement stakeholder;~~
~~(h) Parent with at least one child between the ages 0-8; and~~
~~(j) Specialized services provider or related organizations, examples include organizations that provide specialized serves for children.~~
~~(3) Agency Member Terms. Agency Member Terms are ongoing and do not expire.~~
~~(4) Non Agency Member Terms. The term of the non agency members is three years. The term is renewable for one additional term for a total of six years.~~
~~(5) Vacancies. Each Agency shall fill a vacancy. Non agency vacancies are determined by the Executive Committee.~~
~~(6) Participation. Members shall actively participate to address the purpose of the Council.~~
~~(7) Other Participants. Participants from organizations, agencies and the public that are not currently voting members may attend the meetings, provide input, and participate in subcommittees. Other participants may vote in subcommittee meetings but may not vote in general Council meetings.~~

~~R433-2-400. Council Leadership, Staff and Subcommittee Requirements.~~

~~(1) Leadership.~~
~~(a) Council Chair requirements are as follows.~~
~~(i) Two voting members of the Council shall serve as co-chairs.~~
~~(ii) Co chairs shall serve for a period of two years and rotate off in alternating years to ensure continuity.~~
~~(iii) One co chair shall rotate from either the Department of Health, Department of Workforce Services, Department of Human Services and the State Superintendent of Public Instruction, or the Governor's Representative, excluding staff from the Governor's Early Childhood Commission.~~
~~(iv) The second co chair shall be elected from the body at large and cannot be from one of the agencies listed or a representative of the Governor's office, or staff of the Governor's Early Childhood Commission.~~
~~(v) Co chairs shall conduct meetings of the Council.~~
~~(b) The Executive Committee shall represent broad perspectives of the early childhood system at Executive Committee meetings where key decisions regarding ECU administrative functions and future recommendations to the Commissions are made. The Executive Committee shall:~~

~~(i) provide guidance to standing subcommittees on which community members are needed and should be serving on the different subcommittees;~~
~~(ii) utilize the Early Childhood statewide needs assessment, and the Early Childhood Systems strategic plan to develop policy recommendations;~~
~~(iii) review legislative proposals designed to address the needs of children, ages 0-8 years old to determine whether they are data driven and evidence based, leading to improved outcomes for children;~~
~~(iv) evaluate the annual budget presented by the Governor and the Legislature to determine whether it effectively meets the needs of Utah's young children and their families;~~
~~(v) ensure formalized recommendations to the Commission regarding policy or budgetary impacts. Recommendations include feedback collected from state agencies and programs and partners potentially affected by the recommendation;~~
~~(vi) review priority areas of the subcommittees to ensure their work includes those tasks required by federal and state early childhood guidelines and regulations; and~~
~~(vii) review proposals and recommendations submitted by the individual subcommittees, votes on recommendations and sends recommendations back to subcommittees, as needed.~~
~~(2) Subcommittees.~~
~~(a) Expectations and Procedures are as follows:~~
~~(i) Each voting member of the Council shall serve on at least one standing committee, based on the committee member's area of expertise.~~
~~(ii) Each subcommittee submits subcommittee meeting notes to Executive Committee with proposals and recommendations in writing at least two weeks prior to Executive Committee meeting.~~
~~(iii) Each subcommittee shall have one chair or two co-chairs. The chairs are elected by a simple majority vote of the voting Council members during an ECU meeting which voting occurs and serve as chair for a term of two years. A subcommittee chair may fill additional consecutive terms as chair, if approved by a majority of the voting membership of ECU.~~
~~(iv) Each subcommittee may appoint additional non-voting members to their subcommittee as needed based on area of expertise or for specific projects.~~
~~(b) Subcommittee Definitions are as follows:~~
~~(i) Promoting Health and Access to Medical Homes. This subcommittee ensures access to health and dental health care services and support for medical homes for young children in the state.~~
~~(ii) Early Care and Education. This subcommittee ensures access to quality programs and services that support the early learning and development of young children in the state. This includes both in home and out of home services.~~
~~(iii) Social Emotional and Mental Health. This subcommittee ensures access to services to promote healthy social-emotional development in young children in the state, and services to address the needs of children who have or are at risk for developing mental health concerns or challenging behaviors.~~
~~(iv) Parent Engagement, Support and Education. This subcommittee ensures access to family centered, culturally appropriate parenting education and family support services for parents of young children in the state, to promote the ability of parents and families to nurture and support the healthy development of their children.~~

~~(v) Data and Research. This subcommittee develops an annual needs assessment that evaluates the needs of children birth through five and their families; assists in obtaining relevant data and research to support members of the Council, evaluates research in the early childhood development field to support the Executive Committee in the development of evidence-based strategies that address the needs of Utah's early childhood population; and identifies data gaps regionally, racially and economically in Utah's early childhood system.~~

~~(vi) Ad Hoc Committees. Time limited ad hoc committees may be formed to work on specific projects requiring expertise or representation beyond the voting membership of the Council.~~

~~(3) Staff. The Early Childhood Utah Program, Utah Department of Health shall serve as staff to the Council.~~

R433-2-500 Meeting Procedures.

~~(1) The Council and subcommittees shall adhere to the following procedures:~~

~~(a) Meeting Frequency is as follows:~~

~~(i) The Council shall meet at least four times each year or more frequently as determined by the Executive Committee. Notice of the meeting schedule shall be provided to voting members at the first meeting of each calendar year.~~

~~(ii) The Executive Committee shall meet at least four times each year or more frequently as needed to facilitate Executive Committee work.~~

~~(iii) Subcommittees shall meet at least four times each year. Each subcommittee chair shall call and coordinate committee meetings as needed to facilitate individual subcommittee work.~~

~~(b) Electronic Attendance. Meetings shall have an electronic meeting option.~~

~~(c) Public Meetings. The four quarterly meetings of the Council shall be conducted in accordance with the Utah Open and Public Meetings Act (Utah Code, Title 52, Chapter 4).~~

~~(d) Voting is as follows:~~

~~(i) A simple majority of the voting members of the Council constitute a quorum.~~

~~(ii) A simple majority of participants at a meeting conduct the transaction of business.~~

~~(iii) Decisions, changes, or actions to the strategic plan, scope of work, or bylaws of the Council require a simple majority vote of the members participating at the meeting during which the voting occurs.~~

~~(iv) Email and telephone votes may be taken between meetings in accordance with the electronic meetings act.~~

~~(e) Proxy. In the event that a Council member cannot attend the Council meeting, Council subcommittee meeting or the Council Executive Committee meeting, that individual may designate a proxy to attend the meeting. The proxy is granted all rights and privileges inherent to the position, including voting privileges, for that meeting.~~

~~(f) Record Keeping. Staff to Early Childhood Utah Program shall produce minutes of each Council meeting. Reports, records, and meeting minutes shall be open to the public and follow the Open and Public Meeting Act.~~

R433-2-600. Conflict of Interest.

~~(1) Pursuant to Utah Code Title 67, Chapter 16, the Committee shall comply with Conflict of Interest laws as follows:~~

~~(a) Each voting member of the Council shall be responsible for declaring a conflict of interest when one exists. A conflict of~~

~~interest may include any matter that may provide direct personal financial benefit for that member.~~

~~(b) When a conflict of interest exists, the member refrains from the voting process.~~

~~(c) Where a conflict of interest is known to exist but is not declared by an individual, one or more members of the Council may ask the individual to refrain from voting on the issue in question.~~

~~(d) In the event of a disagreement over whether a conflict of interest exists, the matter is decided by a simple majority vote of the members participating at the meeting.~~

R433-2-700. Amendments to the Bylaws

~~(1) The Council shall follow a process when making amendments to the Council bylaws as follows:~~

~~(a) Proposed amendments are distributed to voting members of the Council at least one week prior to the next regularly scheduled meeting.~~

~~(b) Bylaws may be amended or repealed by a simple majority of the voting members participating at any regularly scheduled Council meeting.~~

KEY: early childhood Utah

Date of Last Change: June 22, 2020

Authorizing, and Implemented or Interpreted Law: 26-66]

NOTICE OF PROPOSED RULE

TYPE OF FILING: Amendment

Rule or Section Number:

R590-230

Filing ID:
55861

Agency Information

1. Department:	Insurance	
Agency:	Administration	
Room number:	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 persons:		
Name:	Phone:	Email:
Steve Gooch	801-957-9322	sgooch@utah.gov

Please address questions regarding information on this notice to the persons listed above.

General Information

2. Rule or section catchline:

R590-230. Suitability in Annuity Transactions

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

This rule is being updated to comply with the federal Dodd-Frank Act. These updates are required to prevent the federal government from preempting the states' regulation of annuities.

These standards have been developed by the states and must be adopted as written.

4. Summary of the new rule or change:

The changes clarify that all recommendations by agents and insurers must be in the best interest of the consumer and that agents and carriers may not place their financial interest ahead of the consumers' interest in making a recommendation.

They also require agents and carriers to act with "reasonable diligence, care and skill" in making recommendations, and include enhancements to the current rule's supervision system to assist in compliance.

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 do not require any extra or reduced work on the part of the state.

B) Local governments:

There is no anticipated cost or savings to local governments.

This rule governs the relationship between the Department of Insurance and its licensees, and does not affect local governments in any way.

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

Producers will have to take an updated continuing education (CE) course as a result of these changes, but the hours count toward the CE that they're already required to take.

There may be a cost for such a course, but this updated CE course would take the place of another course that they would pay for anyway.

Effectively, there will be a net-zero cost to producers, including insurance agencies that pay the costs of their agents' CE courses.

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

The only non-small businesses that will be impacted by these changes are insurers.

However, Utah is the 44th state to adopt the standards. All insurers who write annuities are already complying with the standards in other states.

There should be no additional impact.

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**):

Producers will have to take an updated CE course as a result of these changes, but the hours count toward the CE that they're already required to take.

There may be a cost for such a course, but this updated CE course will take the place of another course that they would pay for anyway.

Effectively, there will be a net-zero cost to producers.

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.

As stated above, insurers that must comply with this rule are already complying in 43 other states, so complying in Utah will not require any additional cost; producers will be required to take an updated CE course, but this course will replace another required course.

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

Fiscal Cost	FY2024	FY2025	FY2026
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	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0

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

H) Department head comments on fiscal impact and approval of regulatory impact analysis:

The Commissioner of the Department of Insurance, Jonathan T. Pike, has reviewed and approved this regulatory impact analysis.

Citation Information

6. 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	
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Public Notice Information

8. 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:	12/01/2023
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9. This rule change MAY become effective on:	12/08/2023
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NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

Agency Authorization Information

Agency head or designee and title:	Steve Gooch, Public Information Officer	Date:	10/16/2023
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R590. Insurance, Administration.

R590-230. Suitability in Annuity Transactions.

R590-230-1. Authority.

This rule is promulgated by the commissioner pursuant to Sections 31A-2-201 and 31A-22-425[wherein the commissioner is to make rules to establish standards for recommendations and Subsection 31A-2-201(3)(a) wherein the commissioner may make rules to implement the provisions of Title 31A].

R590-230-2. Purpose and Scope.

(1) The purpose of this rule is to:

(a) ~~[set forth standards and procedures for recommendations to consumers that result in a transaction involving annuity products so that the insurance needs and financial objectives of consumers at the time of the transaction are appropriately addressed]~~require a producer to act in the best interest of the consumer when making a recommendation of an annuity; and

(b) require ~~[insurers]~~an insurer to establish and maintain a system to supervise recommendations so the insurance needs and financial objectives of a consumer at the time of the transaction are effectively addressed.

(2) Nothing herein shall be construed to:

(a) create or imply a private cause of action for a violation of this rule; or

(b) subject a producer to civil liability under the best interest standard of care under Section R590-230-4 or under standards governing the conduct of a fiduciary or a fiduciary relationship.

~~[~~R590-230-3. Scope.~~]~~

~~[(1)-(3)]~~(a) This rule ~~[shall apply]~~applies to any sale or recommendation ~~[to purchase, replace, or exchange]~~of an annuity ~~[made to a consumer by a producer, or an insurer where no producer is involved, that results in the recommended purchase or exchange].~~

~~[(2)]~~(b) Unless otherwise specifically included, this rule ~~[shall]~~does not apply to ~~[recommendations]~~a transaction involving:

~~[(a)-(i)]~~(i) a direct response solicitation[s] where there is no recommendation based on information collected from the consumer pursuant to this rule;~~and~~

~~[(b)-(ii)]~~(ii) a contract[s] used to fund:

~~[(+)]~~(A) an employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act ~~[(ERISA)]~~of 1974, as amended;

~~[(+)]~~(B) a plan described by ~~[Internal Revenue Code (IRC)]~~Sections ~~[Section]~~401(a), 401(k), 403(b), 408(k), or 408(p), ~~[Internal Revenue Code]~~, as amended, if established or maintained by an employer;

~~[(+)]~~(C) a government or church plan defined in ~~[IRC]~~Section 414, ~~[Internal Revenue Code]~~, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under ~~[IRC]~~Section 457, ~~[Internal Revenue Code]~~; or

~~[(+)]~~(D) a nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

~~[(v)]~~(iii) a settlement[s] of or an assumption[s] of liabilities associated with personal injury litigation or any dispute or claim resolution process; or

~~[(+)]~~(iv) a formal prepaid funeral contract[s].

R590-230-4]3. Definitions.

~~[In addition to the definitions in Section 31A-1-301, the following definitions shall apply for the purpose of this rule]~~Terms used in this rule are defined in Section 31A-1-301 and Rule R590-93. Additional terms are defined as follows:

~~[—]~~(1) "Annuity" means:

~~[—]~~(a) an annuity as defined in Section 31A-1-301; and

~~[—]~~(b) a fixed annuity or variable annuity that is individually solicited, whether the product is classified as an individual or group annuity.

~~(2) "FINRA" means the Financial Industry Regulatory Authority or its successor.]~~

~~(1) "Annuity" means an insurance product under state law that is individually solicited, whether the product is classified as an individual or a group annuity.~~

~~(2) "Cash compensation" means a discount, concession, fee, service fee, commission, sales charge, loan, override, or cash benefit received by a producer in connection with the recommendation or sale of an annuity from an insurer, intermediary, or directly from the consumer.~~

~~(3) "Comparable standards" means:~~

~~(a) with respect to a broker-dealer and a registered representative of a broker-dealer, applicable Securities and Exchange Commission and Financial Industry Regulatory Authority rules pertaining to best interest obligations and supervision of annuity recommendations and sales including, but not limited to, Regulation Best Interest and any amendments or successor regulations;~~

~~(b) with respect to an investment adviser registered under federal or state securities laws or an investment adviser representative, the fiduciary duties and all other requirements imposed on an investment adviser or an investment adviser representative by contract or under the Investment Advisers Act of 1940 or applicable state securities law including, but not limited to, the Form ADV and interpretations; and~~

~~(c) with respect to a plan fiduciary or a fiduciary, the duties, obligations, prohibitions, and all other requirements attendant to such status under the Employee Retirement Income Security Act or the Internal Revenue Code and any amendments or successor statutes thereto.~~

~~(4) "Consumer profile information" means information that is reasonably appropriate to determine whether a recommendation addresses the consumer's financial situation, insurance needs, and financial objectives including, at a minimum, the following:~~

~~(a) age;~~

~~(b) annual income;~~

~~(c) existing assets or financial products, including investment, annuity, and insurance holdings;~~

~~(d) financial situation and needs, including debts and other obligations;~~

~~(e) financial experience;~~

~~(f) financial objectives;~~

~~(g) insurance needs;~~

~~(h) financial resources used to fund the annuity;~~

~~(i) financial time horizon;~~

~~(j) intended use of the annuity;~~

~~(k) liquidity needs;~~

~~(l) liquid net worth;~~

~~(m) risk tolerance, including willingness to accept non-guaranteed elements in the annuity; and~~

~~(n) tax status.~~

~~(5) "Financial professional" means a producer that is regulated and acting as:~~

~~(a) a broker-dealer registered under federal or state securities laws or a registered representative of a broker-dealer;~~

~~(b) an investment advisor registered under federal or state securities laws or an investment adviser representative associated with the federal or state registered investment adviser; or~~

~~(c) a plan fiduciary under Section 3(21), Employee Retirement Income Security Act, or fiduciary under Section 4975(e)(3), Internal Revenue Code, or any amendments or successor statutes thereto.~~

~~(6) "Intermediary" means an entity contracted directly with an insurer or with another entity contracted with an insurer to facilitate the sale of the insurer's annuities by producers.~~

~~(7)(a) "Material conflict of interest" means a financial interest of the producer in the sale of an annuity that a reasonable person would expect to influence the impartiality of a recommendation.~~

~~(b) "Material conflict of interest" does not include cash compensation or non-cash compensation.~~

~~(8) "Non-cash compensation" means any form of compensation that is not cash compensation including, but not limited to, health insurance, office rent, office support, and retirement benefits.~~

~~(9)(a) "Non-guaranteed element" means a premium, credited interest rate including any bonus, benefit, value, dividend, non-interest based credit, charge, or elements of formulas used to determine any of these, that are subject to company discretion and are not guaranteed at issue.~~

~~(b) An element is non-guaranteed if a non-guaranteed element is used in its calculation.~~

~~[(3)](10)(a) "Producer" [includes an individual producer or agency producer] means a person licensed in this state to sell, solicit, or negotiate insurance, including annuities.~~

~~(b) "Producer" includes an insurer where no producer is involved.~~

~~[(4)](11)(a) "Recommendation" means advice provided by a producer [or an insurer where no producer is involved,] to an individual consumer that results, or is intended to result, in a purchase, an exchange, or a replacement [or exchange-] of an annuity in accordance with that advice.~~

~~(b) "Recommendation" does not include general communication to the public, generalized customer service assistance or administrative support, general educational information and tools, prospectuses, or other product and sales material.~~

~~[(5)] "Replacement" is as defined in R590-93-3.~~

~~(6) "Suitability information" means information that is reasonably appropriate to determine the suitability of a recommendation, including the following:~~

~~(a) age;~~

~~(b) annual income;~~

~~(c) financial situation and needs, including the financial resources used for the funding of the annuity;~~

~~(d) financial experience;~~

~~(e) financial objectives;~~

~~(f) intended use of the annuity;~~

~~(g) financial time horizon;~~

~~(h) existing assets, including investment and life insurance holdings;~~

~~(i) liquidity needs;~~

~~(j) liquid net worth;~~

~~(k) risk tolerance; and~~

~~(l) tax status.]~~

R590-230-[5]4. Duties of Insurers and of Producers.

~~[(1) In recommending to a consumer the purchase of an annuity or the exchange of an annuity that results in another insurance transaction or series of insurance transactions, the producer, or the insurer where no producer is involved, shall have reasonable grounds for believing that the recommendation is suitable for the consumer on the basis of the facts disclosed by the consumer as to the consumer's investments and other insurance products and as to the consumer's financial situation and needs, including the consumer's~~

suitability information, and that there is a reasonable basis to believe all of the following:

~~(a) the consumer has been reasonably informed of various features of the annuity, such as the potential surrender period and surrender charge, potential tax penalty if the consumer sells, exchanges, surrenders or annuitizes the annuity, mortality and expense fees, investment advisory fees, potential charges for and features of riders, limitations on interest returns, insurance and investment components and market risk. These requirements are intended to supplement and not replace the disclosure requirements of R590-229;~~

~~(b) the consumer would benefit from certain features of the annuity, such as tax-deferred growth, annuitization, or death or living benefit;~~

~~(c) the particular annuity as a whole, the underlying subaccounts to which funds are allocated at the time of purchase, or exchange of the annuity, and riders and similar product enhancements, if any, are suitable, and in the case of an exchange or replacement that the transaction as a whole is suitable, for the particular consumer based on the consumer's suitability information; and~~

~~(d) in the case of an exchange or replacement of an annuity the exchange or replacement is suitable including taking into consideration whether:~~

~~(i) the consumer will incur a surrender charge, be subject to the commencement of a new surrender period, lose existing benefits, including death, living or other contractual benefits, or be subject to increased fees, investment advisory fee or charges for riders and similar product enhancements;~~

~~(ii) the consumer would benefit from product enhancements and improvements; and~~

~~(iii) the consumer has had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding 36 months.~~

~~(2) Prior to the execution of a purchase, replacement, or exchange of an annuity resulting from a recommendation, a producer, or an insurer where no producer is involved, shall make reasonable efforts to obtain the consumer's suitability information.~~

~~(3) Except as permitted under Subsection (4), an insurer shall not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity is suitable based on the consumer's suitability information.~~

~~(4)(a) Except as provided under Subsection (4)(b), neither a producer nor an insurer shall have any obligation to a consumer under Subsection (1) or (3) related to any annuity transaction if:~~

~~(i) no recommendation is made;~~

~~(ii) a recommendation was made and was later found to have been prepared based on materially inaccurate information provided by the consumer;~~

~~(iii) a consumer refuses to provide relevant suitability information and the annuity transaction is not recommended; or~~

~~(iv) a consumer decides to enter into an annuity transaction that is not based on a recommendation of the insurer or producer.~~

~~(b) An insurer's issuance of an annuity subject to Subsection (4)(a) shall be reasonable under all the circumstances actually known to the insurer at the time the annuity is issued.~~

~~(5) A producer or, where no producer is involved, the responsible insurer representative, shall at the time of sale:~~

~~(a) make a record of any recommendation subject to Subsection (1);~~

~~(b) obtain a customer signed statement documenting a customer's refusal to provide suitability information, if any; and~~

~~(c) obtain a customer signed statement acknowledging that an annuity transaction is not recommended if a customer decides to enter into an annuity transaction that is not based on the producer's or insurer's recommendation.~~

~~(6)(a) An insurer shall establish a supervision system that is reasonably designed to achieve the insurer's and its producers' compliance with this rule, including the following:~~

~~(i) the insurer shall maintain reasonable procedures to inform its producers of the requirements of this rule and shall incorporate the requirements of this rule into relevant producer training manuals;~~

~~(ii) the insurer shall establish standards for producer product training and shall maintain reasonable procedures to require its producers to comply with the requirements of Section R590-230-6;~~

~~(iii) the insurer shall provide product specific training and training materials that explain all material features of its annuity products to its producers;~~

~~(iv) the insurer shall maintain procedures for review of each recommendation prior to issuance of an annuity that are designed to ensure that there is a reasonable basis to determine that a recommendation is suitable. Such review procedures may apply a screening system for the purpose of identifying selected transactions for additional review and may be accomplished electronically or through other means including physical review. Such an electronic or other system may be designed to require additional review only of those transactions identified for additional review by the selection criteria;~~

~~(v) the insurer shall maintain reasonable procedures to detect recommendations that are not suitable. This may include confirmation of consumer suitability information, systematic customer surveys, interviews, confirmation letters and programs of internal monitoring. Nothing in this subsection prevents an insurer from complying with this subsection by applying sampling procedures, or by confirming suitability information after issuance or delivery of the annuity; and~~

~~(vi) the insurer shall annually provide a report to senior management, including to the senior manager responsible for audit functions, that details a review, with appropriate testing, reasonably designed to determine the effectiveness of the supervision system, the exceptions found, and corrective action taken or recommended, if any.~~

~~(b)(i) Nothing in this subsection restricts an insurer from contracting for performance of a function, including maintenance of procedures, required under Subsection (6)(a). An insurer is responsible for taking appropriate corrective action and may be subject to sanctions and penalties pursuant to Section R590-230-7 regardless of whether the insurer contracts for performance of a function and regardless of the insurer's compliance with Subsection (6)(b)(ii).~~

~~(ii) An insurer's supervision system under Subsection (6)(a) shall include supervision of contractual performance under this Subsection. This includes the following:~~

~~(A) monitoring and, as appropriate, conducting audits to assure that the contracted function is properly performed; and~~

~~(B) annually obtaining a certification from a senior manager, who has responsibility for the contracted functions that the manager has a reasonable basis to represent, and does represent, that the function is properly performed.~~

~~(iii) An insurer is not required to include in its system of supervision a producer's recommendations to consumers of products other than the annuities offered by the insurer.~~

~~(7) A producer shall not dissuade, or attempt to dissuade, a consumer from:~~

~~(a) truthfully responding to an insurer's request for confirmation of suitability information;~~

~~(b) filing a complaint; or~~

~~(c) cooperating with the investigation of a complaint.~~

~~(8)(a) Sales made in compliance with FINRA requirements pertaining to suitability and supervision of annuity transactions shall satisfy the requirements under this rule. This subsection applies to FINRA broker-dealer sales of variable annuities and fixed annuities if the suitability and supervision is similar to those applied to variable annuity sales. However, nothing in this subsection shall limit the commissioner's ability to enforce, including investigate, the provisions of this rule.~~

~~(b) For Subsection(8)(a) to apply, an insurer shall:~~

~~(i) monitor the FINRA member broker-dealer using information collected in the normal course of an insurer's business; and~~

~~(ii) provide to the FINRA member broker-dealer information and reports that are reasonably appropriate to assist the FINRA member broker-dealer to maintain its supervision system.]~~

(1) Best interest obligations. A producer, when making a recommendation of an annuity, shall act in the best interest of the consumer under the circumstances known at the time the recommendation is made, without placing the producer's or the insurer's financial interest ahead of the consumer's interest. A producer acts in the best interest of the consumer if they satisfy the obligations of this Subsection (1).

(a) Care obligation.

(i) The producer, in making a recommendation shall exercise reasonable diligence, care, and skill to:

(A) know the consumer's financial situation, insurance needs, and financial objectives;

(B) understand the available recommendation options after making a reasonable inquiry into options available to the producer;

(C) have a reasonable basis to believe the recommended option effectively addresses the consumer's financial situation, insurance needs, and financial objectives over the life of the product, as evaluated in light of the consumer profile information; and

(D) communicate the basis or bases of the recommendation.

(ii) The requirements of care obligation:

(A) include making reasonable efforts to obtain consumer profile information from the consumer prior to the recommendation of an annuity;

(B) require a producer to consider the types of products the producer is authorized and licensed to recommend or sell that address the consumer's financial situation, insurance needs, and financial objectives;

(C) include having a reasonable basis to believe the consumer would benefit from certain features of the annuity, such as annuitization, death or living benefit, or other insurance-related features; and

(D) only create a regulatory obligation as established in this rule.

(iii)(A) The requirements of care obligation do not:

(I) include analysis or consideration of any products outside the authority and license of the producer or other possible alternative products or strategies available in the market at the time of the recommendation;

(II) create a fiduciary obligation or relationship;

(III) mean the annuity with the lowest one-time or multiple occurrence compensation structure shall necessarily be recommended; and

(IV) mean the producer has ongoing monitoring obligations, although such an obligation may be separately owed under the terms of a fiduciary, consulting, investment advising, or financial planning agreement between the consumer and the producer.

(B) The producer shall be held to standards applicable to producers with similar authority and licensure.

(iv) The consumer profile information, characteristics of the insurer, and product costs, rates, benefits, and features are the factors relevant in making a determination whether an annuity effectively addresses the consumer's financial situation, insurance needs, and financial objectives, but the level of importance of each factor under care obligation may vary depending on the facts and circumstances of a particular case, but each factor may not be considered in isolation.

(v) The care obligation applies to the particular annuity as a whole and the underlying subaccounts to which funds are allocated at the time of purchase or exchange of an annuity, rider, and similar product enhancement, if any.

(vi) In the case of an exchange or replacement of an annuity, the producer shall consider the whole transaction, which includes taking into consideration whether:

(A) the consumer will incur a surrender charge, be subject to the commencement of a new surrender period, lose existing benefits, such as death, living, or other contractual benefits, or be subject to increased fees, investment advisory fees, or charges for riders and similar product enhancements;

(B) the replacing product would substantially benefit the consumer in comparison to the replaced product over the life of the product; and

(C) the consumer has had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding 60 months.

(vii) Nothing in this rule shall be construed to require a producer to obtain a license other than a producer license with the appropriate line of authority to sell, solicit, or negotiate insurance in this state, including any securities license, in order to fulfill the duties and obligations contained in this rule, if the producer does not give advice or provide services that are otherwise subject to securities laws or engage in another activity requiring other professional licenses.

(b) Disclosure obligation.

(i) Before the recommendation or sale of an annuity, the producer shall prominently disclose to the consumer on a form substantially similar to Appendix A of the NAIC Suitability in Annuity Transactions Model Regulation:

(A) a description of the scope and terms of the relationship with the consumer and the role of the producer in the transaction;

(B) an affirmative statement on whether the producer is licensed and authorized to sell the following products:

(I) fixed annuities;

(II) fixed indexed annuities;

(III) variable annuities;

(IV) life insurance;

(V) mutual funds;

(VI) stocks and bonds; and

(VII) certificates of deposit;

(C) an affirmative statement describing the insurers the producer is authorized, contracted, appointed, or otherwise able to sell an insurance product for, using the following descriptions:

(I) one insurer;

(II) from two or more insurers; or

(III) from two or more insurers although primarily contracted with one insurer;

(D) a description of each source and type of cash compensation and non-cash compensation to be received by the producer, including whether the producer is to be compensated for the sale of a recommended annuity by commission as part of the premium or other remuneration received from the insurer, intermediary, or other producer, or by a fee as a result of a contract for advice or consulting services; and

(E) a notice of the consumer's right to request additional information regarding cash compensation described in Subsection (1)(b)(ii).

(ii) Upon request of the consumer or the consumer's designated representative, the producer shall disclose:

(A) a reasonable estimate of the amount of cash compensation to be received by the producer, which may be stated as a range of amounts or percentages; and

(B) whether the cash compensation is a one-time or multiple occurrence amount, and if a multiple occurrence amount, the frequency and amount of the occurrence, which may be stated as a range of amounts or percentages.

(iii) Before or at the time of the recommendation or sale of an annuity, the producer shall have a reasonable basis to believe the consumer has been informed of various features of the annuity, such as the potential surrender period and surrender charge, potential tax penalty if the consumer sells, exchanges, surrenders, or annuitizes the annuity, mortality and expense fees, investment advisory fees, any annual fees, potential charges for and features of riders or other options of the annuity, limitations on interest returns, potential changes in non-guaranteed elements of the annuity, insurance, and investment components and market risk.

(iv) The requirements of the disclosure obligation shall supplement and not replace the disclosure requirements of Rule R590-229.

(c) Conflict of interest obligation. A producer shall identify and avoid or reasonably manage and disclose any material conflict of interest, including a material conflict of interest related to an ownership interest.

(d) Documentation obligation. A producer shall, at the time of recommendation or sale:

(i) make a written record of any recommendation and the basis for the recommendation subject to this rule;

(ii) obtain a consumer signed statement on a form substantially similar to Appendix B of the NAIC Suitability in Annuity Transactions Model Regulation documenting:

(A) a customer's refusal to provide the consumer profile information, if any; and

(B) a customer's understanding of the ramifications of not providing their consumer profile information or providing insufficient consumer profile information; and

(iii) obtain a consumer signed statement on a form substantially similar to Appendix C of the NAIC Suitability in Annuity Transactions Model Regulation acknowledging the annuity transaction is not recommended if a customer decides to enter into an annuity transaction that is not based on the producer's recommendation.

(e) Application of the best interest obligation. Any requirement applicable to a producer under this Subsection (1) shall apply to each producer who has exercised material control or influence in the making of a recommendation and has received direct compensation as a result of the recommendation or sale, regardless of whether the producer has had any direct contact with the consumer. Activities such as providing or delivering marketing or educational materials, product wholesaling or other back office product support, and general supervision of a producer do not, in and of themselves, constitute material control or influence.

(2) Transactions not based on a recommendation.

(a) Except as provided in Subsection (2)(b), a producer is not obligated to a consumer under Subsection (1)(a) related to any annuity transaction if:

(i) no recommendation is made;

(ii) a recommendation was made and was later found to have been prepared based on materially inaccurate information provided by the consumer;

(iii) a consumer refuses to provide relevant consumer profile information and the annuity transaction is not recommended; or

(iv) a consumer decides to enter into an annuity transaction that is not based on a recommendation of the producer.

(b) An insurer's issuance of an annuity subject to Subsection (2)(a) shall be reasonable under the circumstances known to the insurer at the time the annuity is issued.

(3) Supervision system.

(a) Except as permitted under Subsection (2), an insurer may not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity would effectively address the consumer's financial situation, insurance needs, and financial objectives based on the consumer profile information.

(b) An insurer shall establish and maintain a supervision system that is reasonably designed to achieve the insurer's and its producers' compliance with this rule. The supervision system shall include at a minimum the items in this Subsection (3)(b).

(i) The insurer shall establish and maintain reasonable procedures to inform its producers of the requirements of this rule and shall incorporate the requirements of this rule into relevant producer training manuals.

(ii) The insurer shall establish and maintain standards for producer product training and shall establish and maintain reasonable procedures to require its producers to comply with the requirements of Section R590-230-5.

(iii) The insurer shall provide product-specific training and training materials that explain all material features of its annuity products to its producers.

(vi)(A) The insurer shall establish and maintain procedures for the review of each recommendation prior to issuance of an annuity that are designed to ensure there is a reasonable basis to determine that the recommended annuity would effectively address the particular consumer's financial situation, insurance needs, and financial objectives.

(B) The review procedures may apply a screening system for the purpose of identifying selected transactions for additional review and may be accomplished electronically or through other means including, but not limited to, physical review.

(C) An electronic or other system may be designed to require additional review only of those transactions identified for additional review by the selection criteria.

(v)(A) The insurer shall establish and maintain reasonable procedures to detect recommendations that are not in compliance with Subsections (1), (2), (4), and (5) that may include confirmation of the consumer profile information, systematic customer surveys, producer and consumer interviews, confirmation letters, producer statements or attestations, and programs of internal monitoring.

(B) Nothing in this Subsection (3)(a)(v) prevents an insurer from complying with this Subsection (3)(a)(v) by applying sampling procedures, or by confirming the consumer profile information or other required information under this section after issuance or delivery of the annuity.

(vi) The insurer shall establish and maintain reasonable procedures to assess, prior to or upon issuance or delivery of an annuity, whether a producer has provided the consumer the information required under this section.

(vii) The insurer shall establish and maintain reasonable procedures to identify and address suspicious consumer refusals to provide consumer profile information.

(viii)(A) The insurer shall establish and maintain reasonable procedures to identify and eliminate any sales contests, sales quotas, bonuses, and non-cash compensation that are based on the sales of specific annuities within a limited period of time.

(B) The requirements of this Subsection (3)(b)(viii) are not intended to prohibit the receipt of health insurance, office rent, office support, retirement benefits, or other employee benefits by employees if those benefits are not based upon the volume of sales of a specific annuity within a limited period.

(ix) The insurer shall annually provide a written report to senior management, including to the senior manager responsible for audit functions, that details a review, with appropriate testing, reasonably designed to determine the effectiveness of the supervision system, the exceptions found, and corrective action taken or recommended, if any.

(c)(i) Nothing in Subsection (3) restricts an insurer from contracting for the performance of a function, including maintenance of procedures. An insurer is responsible for taking appropriate corrective action and may be subject to sanctions and penalties regardless of whether the insurer contracts for the performance of a function and regardless of the insurer's compliance with Subsection (3)(c)(ii).

(ii) An insurer's supervision system under this Subsection (3) shall include supervision of contractual performance that includes:

(A) monitoring and, as appropriate, conducting audits to assure that the contracted function is properly performed; and

(B) annually obtaining a certification from a senior manager who has responsibility for the contracted function that the manager has a reasonable basis to represent, and does represent, that the function is properly performed.

(d) An insurer is not required to include in its system of supervision:

(i) a producer's recommendations to consumers of products other than the annuities offered by the insurer; or

(ii) consideration of or comparison to options available to the producer or compensation relating to those options other than annuities or other products offered by the insurer.

(4) Prohibited practices. Neither a producer nor an insurer shall dissuade, or attempt to dissuade, a consumer from:

(a) truthfully responding to an insurer's request for confirmation of the consumer profile information;

(b) filing a complaint; or

(c) cooperating with the investigation of a complaint.

(5) Safe harbor.

(a)(i) Recommendations and sales of annuities made in compliance with comparable standards shall satisfy the requirements under this rule.

(ii) This Subsection (5) applies to all recommendations and sales of annuities made by financial professionals in compliance with business rules, controls, and procedures that satisfy a comparable standard even if such standard would not otherwise apply to the product or recommendation at issue.

(b) Nothing in Subsection (5)(a) limits the insurer's obligation to comply with Subsection R590-230-4(3), although the insurer may base its analysis on information received from either the financial professional or the entity supervising the financial professional.

(c) For Subsection (5)(a) to apply, an insurer shall:

(i) monitor the relevant conduct of the financial professional seeking to rely on Subsection (5)(a) or the entity responsible for supervising the financial professional, such as the financial professional's broker-dealer or an investment adviser registered under federal or state securities laws using information collected in the normal course of an insurer's business; and

(ii) provide to the entity responsible for supervising the financial professional seeking to rely on Subsection (5)(a), such as the financial professional's broker-dealer or investment adviser registered under federal or state securities laws, information and reports that are reasonably appropriate to assist such entity to maintain its supervision system.

R590-230-[6]5. Producer Training.

(1) A producer may not solicit the sale of an annuity product unless the producer has adequate knowledge of the product to recommend the annuity and the producer is in compliance with the insurer's standards for product training.

(2)(a)(i) A producer who engages in the sale of annuity products on or after July 1, 2024, shall complete a one-time approved four credit training course.

(ii) A producer who holds a life insurance line of authority before July 1, 2024, and who desires to sell an annuity shall complete the requirements of this subsection within 12 months after July 1, 2024.

(iii) A producer that obtains a life insurance line of authority on or after July 1, 2024, may not engage in the sale of an annuity until the required annuity training is completed.

(b) The minimum length of the training under this Subsection (2) shall be sufficient to qualify for at least four continuing education credits but may be longer.

(c) The training shall include information on the following topics:

(i) the types of annuities and various classifications of annuities;

(ii) identification of the parties to an annuity;

(iii) how product specific annuity contract features affect consumers;

(iv) the application of income taxation of qualified and non-qualified annuities;

(v) the primary uses of annuities; and

(vi) appropriate standards of conduct, sales practices, replacement, and disclosure requirements.

(d)(i) A provider of a course complying with this section shall cover all topics listed in the prescribed outline and shall not present any marketing information or provide training on sales

techniques or provide specific information about a particular insurer's products.

(ii) Additional topics may be offered in conjunction with and in addition to the required outline.

(e) A provider of an annuity course complying with this section shall register as a continuing education provider and comply with Section 31A-23a-202 and Rule R590-142.

(f) A producer who completed an annuity training course under the provisions of this rule before July 1, 2024, shall, by no later than July 1, 2025, complete either:

(i) a new four credit approved annuity training course on appropriate sales practices, replacement, and disclosure requirements under the amended provisions of this rule; or

(ii) an additional one-time single credit approved annuity training course on appropriate sales practices, replacement, and disclosure requirements under the amended provisions of this rule.

(g) An annuity training course may be conducted and completed by classroom or self-study methods.

(h) Satisfying the training requirements of another state that are substantially similar to the requirements of this subsection shall satisfy the training requirements.

(i) Satisfying the components of the training requirements of any course or courses with components substantially similar to the requirements of this subsection shall satisfy the training requirements.

(j)(i) An insurer shall verify that a producer has completed the required annuity training course before allowing the producer to sell an annuity product for that insurer.

(ii) An insurer may satisfy its responsibility under this Subsection (2)(j) by obtaining certificates of completion of the training course or obtaining reports provided by database systems or vendors, or from a reasonably reliable commercial database vendor that has a reporting arrangement with approved insurance education providers.

R590-230-[7]6. Compliance Mitigation[~~and~~], Penalties, and Enforcement.

(1) An insurer is responsible for compliance with this rule. If a violation occurs, either because of the action or inaction of the insurer or its producer, the commissioner may order:

(a) an insurer to take reasonably appropriate corrective action for any consumer harmed by a failure to comply with this rule by the insurer[~~'s~~], an entity contracted to perform the insurer's supervisory duties, or by [its producer's, violation of this rule]the producer;

(b) a general agency, independent agency, or a producer to take reasonably appropriate corrective action for any consumer harmed by the producer's violation of this rule; and

(c) appropriate penalties and sanctions.

(2) Any applicable penalty under Section 31A-2-308 for a violation of this rule may be reduced or eliminated if corrective action for the consumer [was]is taken promptly after a violation [was]is discovered or the violation [was]is not part of a pattern or practice.

R590-230-[8]7. Records.

[Insurers and producers.](1)(a) A licensee shall maintain [or be able to make available to the commissioner]records of the information collected from the consumer, disclosures made to the consumer, including summaries of oral disclosures, and other information used in making the recommendations that were the basis for insurance transactions for the current calendar year plus three years after the insurance transaction is completed by the insurer.

(b) An insurer [is permitted, but shall not be required, to]may maintain documentation on behalf of a producer.

(2) Records required to be maintained by this rule:

(a) shall be made available to the commissioner upon request; and

(b) may be maintained in paper, photographic, micro-process, magnetic, mechanical, electronic media, or by any process that accurately reproduces the actual document.

R590-230-[9]8. [Enforcement]Effective Date.

The [commissioner will begin enforcing the]revised provisions of this rule [60 days from the rule's effective date]are effective on July 1, 2024.

R590-230-10. Severability.

[If any provision of this rule or the application of it 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 by it.]If any provision of this rule, Rule R590-230, 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, annuity suitability

Date of Last Change: 2023[March 26, 2012]

Notice of Continuation: May 23, 2019

Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-22-425

NOTICE OF PROPOSED RULE

TYPE OF FILING: New

Rule or Section Number:	R653-12	Filing ID: 55842
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Agency Information

1. Department:	Natural Resources	
Agency:	Water Resources	
Room number:	310	
Building:	Natural Resources Building	
Street address:	1594 W North Temple	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	1594 W North Temple, Rm 310	
City, state and zip:	Salt Lake City, UT 84116	
Contact persons:		
Name:	Phone:	Email:
Carly Payne	801-538-7235	carlypayne@utah.gov
Joel Williams	801-538-7349	joelwilliams@utah.gov

Martin Bushman	801-538-7273	martinbushman@agutah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule or section catchline:
R653-12. 2023 Grant Money for Wasatch Front Aqueduct Resilience Projects
3. Purpose of the new rule or reason for the change:
The Utah Legislature appropriated \$50,000,000 in the 2023 General Session to the Department of Natural Resources, Division of Water Resources (Division) to help fund Wasatch Front aqueduct resilience projects through loans and grants, see S.B. 3, Item 543.
4. Summary of the new rule or change:
The purpose of this new rule is to describe the eligibility requirements, limitations, conditions, and application and approval process for water providers to receive grant money from the Division for improving the resilience of major aqueducts along the Wasatch Front to withstand a major earthquake.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
A) State budget:
The Legislature appropriated \$50,000,000 in one-time funding to the Division for "Wasatch Front Aqueduct Resilience" in S.B. 3, Item 543 in the 2023 General Session. The Legislature did not provide further specifics or direction on the distribution of the appropriated funds.
This rule is necessary under Subsection 63G-3-201(2) to guide the Division and ensure consistency in its distribution of \$50,000,000 in grants.
The grant program will be administered by existing staff at the Division. No new hires or overtime pay will be required.
B) Local governments:
The grant program will not fiscally impact local governments negatively.
The program simply makes funding available to eligible water providers for improving and protecting major Wasatch Front aqueducts from earthquake damage and disruption.
This rule does not require water providers to make aqueduct improvements, and participation in the grant program is completely voluntary under this rule. Those

that choose to participate and receive grant funding, however, will contribute at least 50% of the cost of a resilience project and at least 25% of a resilience study to receive grant funding for the remainder.

Aqueducts, once improved and secured, will provide significant benefits to the communities and citizens serviced by them, particularly in the event of an earthquake.

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

To the extent a water provider is not a local government and more closely related to a small business, it will be impacted similarly to that described in the local governments above.

A residual benefit of this rule and the grant program it implements to small businesses will be increased demand for the design, manufacture, and construction of hardened aqueduct systems.

In total, the grant program will infuse \$50,000,000 in grants in addition to water providers' cost share into the planning and construction of resilience projects and studies.

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

To the extent a water provider is not a local government and more closely related to a non-small business, it will be impacted similarly to that described in the local governments above.

A residual benefit of this rule and the grant program it implements to non-small businesses will be increased demand for the design, manufacture, and construction of hardened aqueduct systems.

In total, the grant program will infuse \$50,000,000 in grants in addition to water providers' cost share into the planning and construction of resilience projects and studies.

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 impacts to others different than to local governments, small businesses, and non-small business. See previous responses above.

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

This rule does not require water providers to improve or harden their existing aqueduct systems or to seek grant funds to do so.

Participation in the program is completely voluntary under this rule.

Those that choose to participate and receive grant funding, however, must contribute at least 50% of project costs and at least 25% of study costs to receive grant funding for the remainder.

The total out-of-pocket expense to a grant recipient will depend on the nature and size of the resilience project for which grant funding is sought.

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

Regulatory Impact Table

Fiscal Cost	FY2024	FY2025	FY2026
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	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head comments on fiscal impact and approval of regulatory impact analysis:

The Executive Director of the Department of Natural Resources, Joel Ferry, has reviewed and approved this regulatory impact analysis.

Citation Information

6. 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:

S.B. 3, Item 543, 2023 General Session	Subsection 63G-3-201(2)	
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Public Notice Information

8. 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:	12/01/2023
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9. This rule change MAY become effective on:	12/15/2023
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NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

Agency Authorization Information

Agency head or designee and title:	Candice Hasenyager, Division Director	Date:	10/02/2023
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R653. Natural Resources, Water Resources.

R653-12. 2023 Grant Money for Wasatch Front Aqueduct Resilience Projects.

R653-12-1. Purpose.

(1) The Legislature appropriated \$50,000,000 for aqueduct resilience projects located along the Wasatch Front.

(2) This rule sets forth the procedures and requirements for issuance and receipt of grant funds for aqueduct resilience projects.

R653-12-2. Definitions.

(1) As used in this rule:

(2) "Applicant" means a culinary water provider who owns or operates an aqueduct which crosses the Wasatch Fault Zone.

(3) "Aqueduct" means a closed pressurized pipeline carrying culinary water supply that is buried underground, although there may be short portions that are above ground.

(4) "Director" means the Director of the Department of Natural Resources.

(5) "Division" means the Division of Water Resources.

(6) "Project" means a plan to study, design, or construct seismic resiliency improvements to an aqueduct which crosses the Wasatch Fault Zone and which supplies culinary water to a minimum of 20,000 Utah residents.

(7) "Wasatch Fault Zone" means the geographic area of Utah described on the division's website at water.utah.gov.

R653-12-3. Grants for Wasatch Front Aqueduct Resilience Projects.

(1) The director may issue a grant to an applicant to fund a project for the study, design, or construction of seismic

resiliency improvements to aqueducts crossing the Wasatch Fault Zone.

(2) To be eligible for a grant award, a project must propose seismic improvements to an aqueduct which:

(a) crosses the Wasatch Fault Zone; and

(b) delivers culinary water to a minimum of 20,000 people.

(3) Subject to the other provisions of this rule, a grant may not exceed the following amounts for the costs associated with the project:

(a) 75% of the total study or design costs of a project; or

(b) 50% of the total construction costs of a project.

R653-12-4. Applications for Grants.

(1) To obtain a grant under this rule, an applicant shall submit an application to the division on or before the application deadline date established by the division.

(2) Each applicant shall apply to the division in writing upon forms available from the division.

(3) An application submitted to the division shall:

(a) be signed and dated by an authorized representative of the applicant; and

(b) include the following information:

(i) a detailed cost estimate of the proposed project study, design, or construction prepared by a licensed professional engineer;

(ii) a map showing the location of the proposed project;

(iii) an estimated timeline for the project, including the projected start date and expected completion date;

(iv) applicant's verification that the information provided in the application is accurate and any estimates or projections submitted are based on sound professional judgment and the best available data; and

(v) additional information required on the application.

R653-12-5. Application Review and Prioritization.

(1) The division shall:

(a) review and prioritize an application submitted under Section R653-12-4; and

(b) make recommendations to the director on which applicants should be awarded a grant under this rule.

(2) In reviewing and prioritizing applications submitted under Subsection (1), the division:

(a) may contact an applicant to:

(i) verify information in the application;

(ii) seek clarifications and supplemental information; and

(iii) address and correct anomalies and inconsistencies in the application; and

(b) shall review and evaluate the applications based on the following:

(i) the grant amount requested in comparison to the number of Utah residents served by the aqueduct;

(ii) the existence or lack of alternative culinary water sources or systems available to the Utah residents served by the aqueduct;

(iii) the degree of risk of seismic damage to the aqueduct and the resulting impacts to the culinary water supply;

(iv) the estimated timeline to complete needed studies for the proposed project;

(v) the estimated timeline for the design and construction of the proposed project;

(vi) the estimated risk reduction accomplished by the proposed project; and

(vii) the existence of other available funding sources to complete the project.

(3)(a) The division shall prioritize each application based on its evaluation of the criteria identified in Subsection (2)(b).

(b) The prioritization shall form the basis for the division's recommendation to the director.

R653-12-6. Grant Award and Agreement.

(1) As a condition to receiving a grant under this section, the applicant shall execute a contract with the division for use of the grant money.

(2) The contract with the division shall be executed no later than sixty days following the grant award.

KEY: Wasatch front aqueduct resilience funding

Date of Last Change: 2023

Authorizing, and Implemented or Interpreted Law: S.B. 3, Item 543, 2023 General Session

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

Rule Number:	R152-21	Filing ID: 50244
Effective Date:	10/04/2023	

Agency Information

1. Department:	Commerce	
Agency:	Consumer Protection	
Building:	Heber Wells Bldg	
Street address:	160 E 300 S	
City, state and zip:	Salt Lake City, UT 84111	
Mailing address:	PO Box 146704	
City, state and zip:	Salt Lake City, UT 84114-6704	
Contact persons:		
Name:	Phone:	Email:
Daniel Larsen	801-530-6601	dcprules@utah.gov

Please address questions regarding information on this notice to the persons listed above.

General Information

2. Rule catchline:
R152-21. Credit Services Organizations Act Rule
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

This rule is promulgated in accordance with Section 13-2-5, which authorizes the director of the Division of Consumer Protection (Division) to issue rules to administer and enforce enumerated laws, including Title 13, Chapter 21, Credit Services Organizations Act.

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 Division is unaware of any written comments regarding this rule.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule provides guidance to regulated persons and entities concerning the obligations imposed and conduct prohibited by Title 13, Chapter 21, Credit Services Organizations Act. Therefore, this rule should be continued.

The Division has proposed amendments to this rule. The amended rule includes definitions that supplement those in Section 13-21-2. These definitions clarify terms used but not defined by statute. The definitions assist regulated entities in their compliance efforts, and promote consistency in the Division's administration and enforcement efforts by reducing the need to repeatedly interpret undefined terms.

(EDITOR'S NOTE: The proposed amendments to Rule R152-21 are under ID 55843 in this issue, November 1, 2023, of the Bulletin.)

Agency Authorization Information

Agency head or designee and title:	Daniel Larsen, Managing Analyst	Date:	10/04/2023
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R277-495	Filing ID:	50452
Effective Date:	10/16/2023		

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 persons:		
Name:	Phone:	Email:
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule catchline:
R277-495. Electronic Devices in Public 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 pursuant to the Utah Constitution, Article X, Section 3, which vests general control and supervision over public education in the Utah State Board of Education (Board); Subsection 53E-3-401(4), which allows the Board to execute rules to carry out its duties and responsibilities under the Utah Constitution and state law; Subsection 53G-8-202(2)(c)(i), which directs the Superintendent to develop a conduct and discipline policy model for elementary and secondary public schools; and 47 CFR, Part 54, Children's Internet Protection Act, which requires schools and libraries that have computers with internet access to certify they have internet safety policies and technology protection measures in place to receive discounted internet access and services.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

There were no public 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 is necessary because it directs all local education agencies (LEAs) and public schools to adopt policies, individually or collectively as school districts or consortia of charter schools, governing the possession and use of electronic devices including both LEA-owned and privately-owned, while on public school premises or during participation in school activities; and for LEA-owned devices, wherever the LEA-owned devices are used. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	Angie Stallings, Deputy Superintendent of Policy	Date:	10/16/2023
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R277-551	Filing ID:	54899
Effective Date:	10/16/2023		

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 persons:		
Name:	Phone:	Email:
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule catchline:
R277-551. Charter Schools - General Provisions
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

This rule is authorized pursuant to the Utah Constitution, Article X, Section 3, which vests general control and supervision over public education in the Utah State Board of Education (Board); Section 53F-2-702, which directs the Board to distribute funds for charter school students directly to the charter school; Subsection 53E-3-401(4), which allows the Board to adopt rules in accordance with its responsibilities; and Subsection 53G-5-205(5), which requires the Board to make rules establishing minimum standards that a charter school authorizer is required to apply.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

There were no public 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 is necessary to provide operational requirements for charter schools. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	Angie Stallings, Deputy Superintendent of Policy	Date:	10/16/2023
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R277-553	Filing ID: 52570
Effective Date:	10/16/2023	

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 persons:		
Name:	Phone:	Email:
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule catchline:

R277-553. Charter School Oversight, Monitoring and Appeals

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

This rule is authorized pursuant to the Utah Constitution, Article X, Section 3, which vests general control and supervision over public education in the Utah State Board of Education (Board); Subsection 53E-3-401(4), which allows the Board to execute rules to carry out its duties and responsibilities under the Utah Constitution and state law; Subsection 53G-5-205(5), which requires the Board to establish minimum standards that a charter school authorizer is required to apply when evaluating a charter school application and monitoring charter school compliance; and Subsection 53G--5-501(5), which directs the Board to adopt rules specifying the timeline for remedying deficiencies and ensuring the compliance of a charter school with its charter.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

There were no public 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 is necessary establish minimum standards that an authorizer is required to apply when monitoring charter school compliance. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	Angie Stallings, Deputy Superintendent of Policy	Date:	10/16/2023
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R277-555	Filing ID: 50494
Effective Date:	10/16/2023	

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 persons:		
Name:	Phone:	Email:
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule catchline:
R277-555. Corrective Action Against Charter School Authorizers
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
This rule is authorized pursuant to the Utah Constitution, Article X, Section 3, which vests general control and supervision over public education in the Utah State Board of Education (Board); Subsection 53E-3-401(4), which allows the Board to execute rules to carry out its duties and responsibilities under the Utah Constitution and state law; Title 53G, Chapter 5, Charter Schools, which allows the Board to make rules governing aspects of operations of charter schools; and Subsection 53G-5-205(6), which authorizes the Board to establish reasonable consequences for a charter school authorizer that fails to comply with state statute or board rule.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
There were no public 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 is necessary to establish procedures for review and consequences for non-compliance by a charter school authorizer. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	Angie Stallings, Deputy Superintendent of Policy	Date:	10/16/2023
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Rule Number:	R331-25	Filing ID: 50806
Effective Date:	10/05/2023	

Agency Information

1. Department:	Financial Institutions	
Agency:	Administration	
Room number:	201	
Street address:	324 S State St	
City, state and zip:	Salt Lake City, UT 84111-2393	
Mailing address:	PO Box 146800	
City, state and zip:	Salt Lake City, UT 84114-6800	
Contact persons:		
Name:	Phone:	Email:
Paul Allred	801-538-8855	pallred@utah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule catchline:
R331-25. Rule Governing Debt Cancellation and Debt Suspension Agreements Issued by Depository Institutions, Who Are Under the Jurisdiction of the Department of Financial Institutions
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 7-1-324(2) authorizes any member of a class of depository institution, that is subject to the jurisdiction of the Department of Financial Institutions (Department), to issue a debt cancellation or a debt suspension agreement pursuant to a rule issued by the commissioner.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
No supporting or opposing written comments have been received by the agency concerning this rule.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule regulates depository institutions authorized to issue a debt cancellation or a debt suspension agreement. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	Darryle Rude, Commissioner	Date:	10/05/2023
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R357-22	Filing ID:	55412
Effective Date:	10/06/2023		

Agency Information

1. Department:	Governor		
Agency:	Economic Opportunity		
Building:	World Trade Center		
Street address:	60 E South Temple		
City, state and zip:	Salt Lake City, UT 84111		
Contact persons:			
Name:	Phone:	Email:	
Dane Ishihara	801-792-8764	dishihara@utah.gov	
Please address questions regarding information on this notice to the persons listed above.			

General Information

2. Rule catchline:
R357-22. Rural Employment Expansion 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:
Section 63N-4-403 requires the Office of Economic Opportunity to make rules describing the administration of the rural jobs act and documentation requirements for a business to receive a tax credit certificate.
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.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule is authorized by state law. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	Ryan Starks, Executive Director	Date:	10/06/2023
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R590-267	Filing ID:	54019
Effective Date:	10/13/2023		

Agency Information

1. Department:	Insurance	
Agency:	Administration	
Room number:	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 persons:		
Name:	Phone:	Email:
Steve Gooch	801-957-9322	sgooch@utah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule catchline:
R590-267. Personal Injury Protection Relative Value Study Rule
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Section 31A-2-201 authorizes the insurance commissioner to write rules to implement Title 31A, the Insurance Code.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
The Insurance Department (Department) received one comment in 2020 after the Division of Industrial Accidents filed a rule adding telehealth and telemedicine codes and reimbursement fees for workers' compensation claims. The commenter asked if the Department would be amending Rule R590-267 to account for telehealth and telemedicine as well.

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

While the Department agreed with the commenter, it determined that amending this rule was not the appropriate resolution. Instead, the Department issued Bulletin 2020-11 to give the industry direction on how to account for telehealth and telemedicine for a workers' compensation claim.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule is required by Subsection 31A-22-307(2). It is necessary because it gives the Department a mechanism by which to ensure that an injured person is treated equitably while receiving services covered by automobile personal injury protection coverage. This rule sets a reasonable value of services that acts as a baseline for such services. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	Steve Gooch, Public Information Officer	Date:	10/13/2023
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R623-3	Filing ID:	51515
Effective Date:	10/11/2023		

Agency Information

1. Department:	Lieutenant Governor	
Agency:	Elections	
Room number:	220	
Building:	Capitol	
Street address:	350 N State Street	
City, state and zip:	Salt Lake City, UT 84114	
Mailing address:	PO Box 142325	
City, state and zip:	Salt Lake City, UT 84114-2325	
Contact persons:		
Name:	Phone:	Email:
Ryan Cowley	801-538-1041	elections@utah.gov
Shelly Jackson	801-538-1041	elections@utah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule catchline:

R623-3. Utah State Plan on Election Reform

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 42 USC 15404; 42 USC 15403(e); Subsection 67-1a-2(2); and the Utah Constitution, Article VII, Sections 1, 5, and 14.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

No comments have been submitted in the last five years.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule enables the state of Utah to receive federal funds under the Help America Vote Act (HAVA). Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	Ryan Cowley, Director of Elections	Date:	10/10/2023
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R623-5	Filing ID:	51517
Effective Date:	10/10/2023		

Agency Information

1. Department:	Lieutenant Governor	
Agency:	Elections	
Room number:	220	
Building:	Capitol	
Street address:	350 N State Street	
City, state and zip:	Salt Lake City, UT 84114	
Mailing address:	PO Box 142325	
City, state and zip:	Salt Lake City, UT 84114-2325	
Contact persons:		
Name:	Phone:	Email:
Ryan Cowley	801-538-1041	elections@utah.gov

Shelly Jackson	801-538-1041	elections@utah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule catchline:
R623-5. Municipal Alternate Voting Methods Pilot Project
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 required by Title 63G, Chapter 4, the Utah Administrative Procedures Act, and is enacted under the authority of Title 63G, Chapter 3, the Utah Administrative Rulemaking Act.

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 comment has been received in the last five years.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule provides procedures for counting judges in the municipal alternative voting methods pilot project. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	Ryan Cowley, Director of Elections	Date:	10/10/2023
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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		
Rule Number:	R380-300	Filing ID: 50890
New Deadline Date:	02/19/2024	

Agency Information

1. Department:	Health and Human Services	
Agency:	Administration	
Building:	MASOB	
Street address:	195 N 1950 W	
City, state and zip:	Salt Lake City, UT 84116	
Contact persons:		
Name:	Phone:	Email:
Janice Weinman	385-321-5586	jweinman@utah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule catchline:
R380-300. Employee Background Screening
3. Reason for requesting the extension:
The Department of Health and Human Services has been advised by legal counsel to hold this five-year review until the current proposed rule is adopted and can be submitted as the five-year review document on or after 10/21/2023.

Agency Authorization Information

Agency head or designee and title:	Carmen Richins, Director, Division of Licensing and Background Checks	Date:	10/16/2023
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End of the Notices of Five-Year Review Extensions Section

NOTICES OF RULE EFFECTIVE DATES

State law provides for agencies to make their administrative rules effective and enforceable after publication in the *Utah State Bulletin*. In the case of **PROPOSED RULES** or **CHANGES IN PROPOSED RULES** with a designated comment period, the law permits an agency to make a rule effective no fewer than seven calendar days after the close of the public comment period, nor more than 120 days after the publication date. In the case of **CHANGES IN PROPOSED RULES** with no designated comment period, the law permits an agency to make a rule effective on any date including or after the thirtieth day after the rule's publication date, but not more than 120 days after the publication date. If an agency fails to file a **NOTICE OF EFFECTIVE DATE** within 120 days from the publication of a **PROPOSED RULE** or a related **CHANGE IN PROPOSED RULE** the rule lapses.

Agencies have notified the Office of Administrative Rules that the rules listed below have been made effective.

NOTICES OF EFFECTIVE DATE are governed by Subsection 63G-3-301(12), Section 63G-3-303, and Sections R15-4-5a and R15-4-5b.

Agriculture and Food

Plant Industry

No. 55653 (Amendment) R68-25: Industrial Hemp Program
- Cannabinoid Product Processors
Published: 09/01/2023
Effective: 10/17/2023

No. 55652 (Amendment) R68-26: Cannabinoid Product
Registration and Labeling
Published: 09/01/2023
Effective: 10/17/2023

Commerce

Professional Licensing

No. 55594 (Amendment) R156-28: Veterinary Practice Act
Rule
Published: 09/01/2023
Effective: 10/12/2023

Education

Administration

No. 55654 (Amendment) R277-303: Educator Preparation
Programs
Published: 09/01/2023
Effective: 10/11/2023

No. 55655 (New Rule) R277-330: Utah Effective Educator
Standards
Published: 09/01/2023
Effective: 10/11/2023

No. 55656 (Repeal) R277-433: Disposal of Textbooks in
the Public Schools
Published: 09/01/2023
Effective: 10/11/2023

No. 55657 (Amendment) R277-465: CPR in Schools
Published: 09/01/2023
Effective: 10/11/2023

No. 55658 (Amendment) R277-469: Instructional Materials
Commission Operating Procedures

Published: 09/01/2023
Effective: 10/11/2023

No. 55659 (Amendment) R277-494: Charter, Online,
Home, and Private School Student Participation in
Extracurricular or Co-curricular School Activities
Published: 09/01/2023
Effective: 10/11/2023

No. 55660 (Repeal) R277-530: Utah Effective Educator
Standards
Published: 09/01/2023
Effective: 10/11/2023

No. 55661 (Amendment) R277-550: Charter Schools -
Definitions
Published: 09/01/2023
Effective: 10/11/2023

No. 55662 (Amendment) R277-554: State Charter School
Board Grants and Mentoring Program
Published: 09/01/2023
Effective: 10/11/2023

Government Operations

Records Committee

No. 55612 (Amendment) R35-1: State Records Committee
Appeal Hearing Procedures
Published: 09/01/2023
Effective: 10/11/2023

Technology Services

No. 55541 (Amendment) R895-4: Sub-Domain Naming
Conventions for Executive Branch Agencies
Published: 08/15/2023
Effective: 10/04/2023

NOTICES OF RULE EFFECTIVE DATES

Health and Human Services

Center for Medical Cannabis

No. 55700 (Amendment) R383-1: Definitions

Published: 09/15/2023

Effective: 10/23/2023

No. 55717 (Amendment) R383-2: Electronic Verification System and Inventory Control System

Published: 09/15/2023

Effective: 10/23/2023

No. 55714 (Amendment) R383-4: Qualified Medical Providers

Published: 09/15/2023

Effective: 10/23/2023

No. 55694 (Amendment) R383-5: Dosing Guidelines

Published: 09/15/2023

Effective: 10/23/2023

No. 55695 (Amendment) R383-6: Pharmacy Medical Providers

Published: 09/15/2023

Effective: 10/23/2023

No. 55698 (Amendment) R383-7: Medical Cannabis Pharmacy

Published: 09/15/2023

Effective: 10/23/2023

No. 55699 (Amendment) R383-8: Medical Cannabis Pharmacy Agent

Published: 09/15/2023

Effective: 10/23/2023

No. 55697 (Amendment) R383-9: Home Delivery and Courier

Published: 09/15/2023

Effective: 10/23/2023

No. 55701 (Repeal) R383-11: Agreement With a Tribe

Published: 09/15/2023

Effective: 10/23/2023

No. 55710 (Repeal) R383-12: Administrative Hearing Procedures

Published: 09/15/2023

Effective: 10/23/2023

No. 55716 (Repeal and Reenact) R383-13: Compassionate Use Board

Published: 09/15/2023

Effective: 10/23/2023

No. 55711 (Amendment) R383-14: Administrative Penalties

Published: 09/15/2023

Effective: 10/23/2023

No. 55715 (New Rule) R383-15: Compassionate Use Board Administrative Hearing Procedure

Published: 09/15/2023

Effective: 10/23/2023

Health Care Financing, Coverage and Reimbursement Policy

No. 55496 (Amendment) R414-8: Electronic Personal

Medical Records for the Medicaid Program

Published: 07/01/2023

Effective: 10/26/2023

No. 55446 (Amendment) R414-19a: Coverage for Dialysis Services by an End Stage Renal Disease Facility

Published: 06/15/2023

Effective: 10/12/2023

No. 55503 (Amendment) R414-60: Medicaid Policy for Pharmacy Program

Published: 07/15/2023

Effective: 10/11/2023

No. 55616 (Amendment) R414-522: Electronic Visit Verification Requirements for Personal Care and Home Health Care Services

Published: 09/01/2023

Effective: 10/26/2023

Health Care Facility Licensing

No. 55504 (Amendment) R432-201: Mental Retardation

Facility: Supplement A to the Small Health Care Facility Rule

Published: 08/01/2023

Effective: 10/26/2023

Natural Resources

Outdoor Recreation

No. 55589 (New Rule) R650-302: Utah Outdoor Recreation

Infrastructure Grant

Published: 09/01/2023

Effective: 10/24/2023

No. 55590 (New Rule) R650-303: Restoration Recreation Infrastructure Grant Program

Published: 09/15/2023

Effective: 10/24/2023

No. 55673 (New Rule) R650-304: Utah Children's Outdoor Recreation and Education Grant Program

Published: 09/15/2023

Effective: 10/24/2023

State Parks

No. 55650 (Repeal) R651-102: Government Records Access Management Act

Published: 09/01/2023

Effective: 10/13/2023

No. 55649 (Repeal) R651-103: Electronic Meetings

Published: 09/01/2023

Effective: 10/13/2023

No. 55651 (Repeal) R651-607: Disorderly Conduct

Published: 09/01/2023

Effective: 10/13/2023

No. 55648 (Repeal) R651-632: Enforcement
Published: 09/01/2023
Effective: 10/12/2023

No. 55646 (Amendment) R651-633: Special Closures or Restrictions
Published: 09/01/2023
Effective: 10/12/2023

No. 55647 (Amendment) R651-700: Administrative Procedures for Real Property Management
Published: 09/15/2023
Effective: 10/24/2023

Wildlife Resources

No. 55534 (Repeal and Reenact) R657-4: Possession and Release of Pen-reared Gamebirds
Published: 08/15/2023
Effective: 10/05/2023

No. 55474 (Amendment) R657-20: Falconry
Published: 07/01/2023
Effective: 10/05/2023

No. 55475 (Repeal) R657-22: Commercial Hunting Areas
Published: 07/01/2023
Effective: 10/05/2023

No. 55479 (Repeal) R657-46: The Use of Game Birds in Dog Field Trials and Training
Published: 07/01/2023
Effective: 10/05/2023

Public Service Commission

Administration

No. 55689 (New Rule) R746-316: Electrical Power Delivery Quality Plans
Published: 09/15/2023
Effective: 10/26/2023

Tax Commission

Property Tax

No. 55713 (Amendment) R884-24P-29: Construction Work in Progress Pursuant to Utah Constitution Art. XIII, Section 2 and Utah Code Ann. Sections 59-2-201 and 59-2-301
Published: 09/15/2023
Effective: 10/27/2023

No. 55708 (Amendment) R884-24P-33: 2023 Personal Property Valuation Guides and Schedules Pursuant to Utah Code Ann. Section 59-2-107
Published: 09/15/2023
Effective: 10/27/2023

Transportation Commission

Administration

No. 55692 (Amendment) R940-3: State Infrastructure Bank Fund, Prioritization process, Procedures, and Standards for Making Loans or Providing Infrastructure Assistance
Published: 09/15/2023
Effective: 10/24/2023

Workforce Services

Housing and Community Development

No. 55712 (Amendment) R990-200: Private Activity Bonds
Published: 09/15/2023
Effective: 10/24/2023

End of the Notices of Rule Effective Dates Section

