

# UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT  
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Nancy L. Lancaster, Managing Editor

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

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

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

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

Office of Administrative Rules, Salt Lake City 84114

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## NOTICES OF PROPOSED RULES

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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 September 04, 2024, 12:00 a.m., and September 16, 2024, 11:59 p.m. are included in this, the October 01, 2024, 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 October 31, 2024. 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 January 29, 2025, 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.

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**The Proposed Rules Begin on the Following Page**

**NOTICE OF SUBSTANTIVE CHANGE**

**TYPE OF FILING:** Amendment

**Rule or Section Number:**

**R82-1**

**Filing ID: 56796**

**Agency Information**

<b>1. Title catchline:</b>	Alcoholic Beverage Services, Administration	
<b>Building:</b>	Administration	
<b>Street address:</b>	1625 S 900 W	
<b>City, state:</b>	Salt Lake City, UT	
<b>Mailing address:</b>	PO Box 30408	
<b>City, state and zip:</b>	Salt Lake City, UT 84130-0408	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Vickie Ashby	801-977-6800	vickieashby@utah.gov
<b>Please address questions regarding information on this notice to the persons listed above.</b>		

**General Information**

<b>2. Rule or section catchline:</b>
R82-1. General
<b>3. Purpose of the new rule or reason for the change:</b>
This rule change is made to comply with recent statutory changes and to clean-up terminology inconsistent with statute and other rules.
<b>4. Summary of the new rule or change:</b>
This rule change details factors the Department of Alcoholic Beverage Services (Department) may consider when evaluating certain malted beverage labels in accordance with recent statutory changes, removes definitions no longer needed due to recent statutory changes, and cleans up terminology and cross references inconsistent with statute and other rules.

**Fiscal Information**

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
This rule is not expected to have a fiscal impact on the state budget because the rule change is technical in nature or consistent with current and previous Department practice.
<b>B) Local governments:</b>
This rule is not expected to have a fiscal impact on local governments' revenues or expenditures because the rule change is technical in nature or consistent with current and previous Department practice.
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):
This rule is not expected to have a fiscal impact on small businesses because the rule change is technical in nature or consistent with current and previous Department practice.
<b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):
This rule is not expected to have a fiscal impact on non-small businesses because the 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 is not expected to have a fiscal impact on persons other than small business, non-small businesses or state or local government entities because the 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 the 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	FY2025	FY2026	FY2027
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
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
Fiscal Benefits	FY2025	FY2026	FY2027
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
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**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-2-202	Section 32B-1-102	Section 32B-1-607
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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.)

<b>A) Comments will be accepted until:</b>	10/31/2024
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<b>9. This rule change MAY become effective on:</b>	11/07/2024
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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**

<b>Agency head or designee and title:</b>	Tiffany Clason, Executive Director	<b>Date:</b>	09/12/2024
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**R82. Alcoholic Beverage Services, Administration.**

**R82-1. General.**

**R82-1-102. Definitions.**

(1) Authority. This rule is made pursuant to Sections 32B-1-102 and 32B-2-202.

(2) 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.

(3) As used in Title R82:

~~(1)~~(a) "Act" means the Title 32B, Alcoholic Beverage Control Act~~[, Title 32B]~~.

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

~~(3)~~(c)(i) "Controlled g[G]roup of m[M]anufacturers" 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;

(ii) [- Additionally,]"Controlled group of manufacturers" includes 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)~~(d) "Department " or "DABS" means the Utah Department of Alcoholic Beverage Services.

~~(5)~~(e) "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)~~(f) "Guest [R]oom" means a space normally utilized by [a natural person]an individual for occupancy, usually a traveler who lodges at an inn, hotel, or resort.

~~(8)~~(g) "Manager" means, depending on the context~~[-a]~~:

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

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

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

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

~~(10)~~(i) "Point of s[S]ale" means that portion:

(i) 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[-]; or

(ii) [It also means that portion-]of an establishment that sells beer for [off-premises]off-premise consumption where the beer is displayed or offered for sale.

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

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

~~(13)~~(l) "S[s]ubpart" refers to [subparagraphs-]subsections of this rule.

~~(14)~~(m) "Utah ~~[Alcoholic Beverage Control Laws]alcoholic beverage control laws" means any Utah [statutes, Commission rules and]statute, Commission rule, or municipal [and-]or county ~~[ordinances-]ordinance~~ relating to the manufacture, possession, transportation, distribution, sale, supply, wholesale, warehousing, ~~[and-]or~~ furnishing of alcoholic beverages.~~

~~(15)~~(n) "Warning s[S]ign" 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 and Human Services at INSERT MOST CURRENT TOLL-FREE NUMBER with questions or for more information" and "Warning: Driving under the influence of alcohol or drugs is a serious crime that is prosecuted aggressively in Utah." The two warning messages shall be in the same font size but different font styles that are no smaller than 36 point bold. The font size for the health department contact information shall be no smaller than 20 point bold.

**R82-1-103. General Provisions.**

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

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

(3) Definitions. ~~[For purposes of]~~As used in 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]~~pursuant to Title 15, Contracts and Obligations in General, for any debt or obligation owed to the Department by a licensee, permittee, package agent, or any other person.

(5) The Department shall[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)(a) Receipt of a check payable to the Department [~~which~~ that] is returned by the bank for any of the reasons listed in Subsection (5)(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 plus the \$20 charge described in Subsection (5) is received [~~at the Department offices, 1625 S. 900 West, Salt Lake City, Utah, plus the \$20 returned check charge.~~] by the Department.

(b) 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)(a) In addition to the remedies listed in Subsection (4)(b), (6), the Department may require that the licensee, permittee, or package agent transact business with the Department on a cash-only basis.

(b) 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~~] is at the discretion of the Department and [~~shall be~~] based on the following factors:

(i) [~~(a)~~] the dollar amount of the returned check;

(ii) [~~(b)~~] the number of returned checks;

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

(iv) [~~(d)~~] the time necessary to collect the returned check; and

(v) [~~(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~~] beer event 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~~] event requiring a permit [~~the Commission~~] under Title 32B, Chapter 9, Event Permit Act.

(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.~~]

(10) [~~(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~~] costs incurred by the Department 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.~~]

(11) [~~(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~~] described in 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.

### **R82-1-105. Label Approvals.**

(1) Authority. [~~]~~ This rule is made pursuant to Section 32B-1-607, [~~which~~] gives the Commission the authority to adopt rules necessary to implement Title 32B, Chapter 6, [~~the~~] Malted Beverage Act.

(2) Purpose.

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

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

(c) This rule:

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

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

(iii) establishes the format of certain words and phrases required on the [~~containers~~] label and packaging of certain malted beverages as required by 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.~~]

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

(a)(i) Except as provided in [~~subpart (4)(a)(iii)~~] Subsection (3)(a)(iii) a complete set of original labels for each size of container must accompany each application for label and packaging approval, including all band, strip, front and back labels appearing on any individual container.

(ii) The Department may not accept [~~Original containers will not be accepted~~] an original container under Subsection (3)(a)(i).

(iii) If original labels cannot be obtained, the following [~~will be accepted~~] may be accepted as part of the application:

(A) color reproductions that are exact size; or

(B) if printed in color, 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 or packaging [~~]~~.

NOTICES OF PROPOSED RULES

~~\_\_\_\_\_ (ii) An application for approval is required for], including a revision to a label or 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)(i) Pursuant to 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)-(c) The statement "alcoholic beverage" or "contains alcohol" and the statement of alcohol content as a percentage of alcohol by volume or weight included on a malted beverage under Section 32B-1-606 shall [The words in the statements described in subparts (4)(e)(i) and (ii) must] appear:~~

- (A) in capital letters and bold type;
- (B) in a solid contrasting background;
- (C) on the front of the container and packaging;
- (D) in a format that is readily legible; and
- (E) separate and apart from any descriptive or explanatory information.

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

~~\_\_\_\_\_ (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.]~~

~~\_\_\_\_\_ (d) The Department may consider the following elements of the label or packaging of a malted beverage when determining whether the label or packaging must be rejected under Subsection 32B-1-606(3)(b):~~

- ~~\_\_\_\_\_ (i) color palette;~~
- ~~\_\_\_\_\_ (ii) font size and type;~~
- ~~\_\_\_\_\_ (iii) imagery;~~
- ~~\_\_\_\_\_ (iv) placement of words, images, or descriptions;~~
- ~~\_\_\_\_\_ (v) references to alcohol content that are not statutorily required; and~~
- ~~\_\_\_\_\_ (vi) container type or shape.~~

**KEY: alcoholic beverages**

**Date of Last Change: 2024[December 22, 2023]**

**Authorizing, and Implemented or Interpreted Law: 32B-1-102; 32B-2-202; 32B-1-206; 32B-1-606; 32B-1-607**

**NOTICE OF SUBSTANTIVE CHANGE**

**TYPE OF FILING:** Amendment

**Rule or Section Number:**

**R82-2-308**

**Filing ID: 56797**

**Agency Information**

<b>1. Title catchline:</b>	Alcoholic Beverage Services, Administration	
<b>Building:</b>	Administration	
<b>Street address:</b>	1625 S 900 W	
<b>City, state:</b>	Salt Lake City, UT	
<b>Mailing address:</b>	PO Box 30408	
<b>City, state and zip:</b>	Salt Lake City, UT 84130-0408	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Vickie Ashby	801-977-6800	vickieashby@utah.gov
<b>Please address questions regarding information on this notice to the persons listed above.</b>		

**General Information**

**2. Rule or section catchline:**

R82-2-308. Consignment Inventory Package Agencies

<b>3. Purpose of the new rule or reason for the change:</b>
This rule change is made in response to an internal audit finding regarding type 2 and 3 package agency invoicing procedures.
<b>4. Summary of the new rule or change:</b>
This rule change modifies the timing within which the Department of Alcoholic Beverage Services (Department) is required to issue a statement to type 2 and 3 package agencies concerning consignment debts and credits and makes other clarifying changes.

**Fiscal Information**

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
This rule is not expected to have a fiscal impact on the state budget because the rule change is technical in nature or consistent with current and previous Department practice.
<b>B) Local governments:</b>
This rule is not expected to have a fiscal impact on local governments' revenues or expenditures because the rule change is technical in nature or consistent with current and previous Department practice.
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):
This rule is not expected to have a fiscal impact on small businesses because the rule change is technical in nature or consistent with current and previous Department practice.
<b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):
This rule is not expected to have a fiscal impact on non-small businesses because the rule change is technical in nature or consistent with current and previous Department practice
<b>E) Persons other than small businesses, non-small businesses, state, or local government entities</b> ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <b>agency</b> ):
This rule is not expected to have a fiscal impact on persons other than small business, non-small businesses or state or local government entities because the rule change is technical in nature or consistent with current and previous Department practice.
<b>F) Compliance costs for affected persons</b> (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 the 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.)

<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2025</b>	<b>FY2026</b>	<b>FY2027</b>
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
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>	<b>FY2025</b>	<b>FY2026</b>	<b>FY2027</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0

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Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**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-2-202	Section 32B-2-605	
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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:** 10/31/2024

**9. This rule change MAY become effective on:** 11/07/2024  
 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**

<b>Agency head or designee and title:</b>	Tiffany Clason, Executive Director	<b>Date:</b>	09/12/2024
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**R82. Alcoholic Beverage Services, Administration.**

**R82-2. Administration.**

**R82-2-308. Consignment Inventory Package Agencies.**

(1) Authority. This rule is made pursuant to ~~[Section]~~Sections 32B-2-202 and 32B-2-605, which ~~[authorizes]~~authorize the Commission to make rules governing package agencies.

(2) Purpose. ~~This rule provides the procedures for consignment sales of liquor to [At the discretion of the Department, liquor may be provided by the Department to a Type 2 and Type 3 Package Agency.]~~ a type 2 or type 3 package agency at the discretion of the Department. ~~[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 Department shall:

(A) establish the initial amount of consignment inventory furnished to ~~[the Package Agency shall]~~ a package agency ~~[be established by the Department].~~

~~[(ii) The]~~ (B) post the package agency's 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) (C) make any adjustment [Any adjustment] to the consignment inventory amount [shall be done] through [using] a transfer, shipment, or payment of money[-]; and~~

(D) include a ~~[A]~~ copy of the transfer or ~~[adjusting shipment[-] or evidence of payment [shall be included]~~ in the ~~[P]~~ package agency's file.

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

(B) In the event the package agency's 12-month average sales are lower than the ~~[Package Agency's]~~ package agency's current consignment amount, the Department may lower the consignment amount.

(C) If the consignment amount is ~~[to be]~~ reduced, the ~~[Package Agency]~~ package agency must pay for the difference through cash payment or returned inventory to the Department. ~~[Any adjustment to the consignment amount will be handled through a contract amendment or a new contract.]~~

~~[(iii) (A) The package agency's contract with the Department shall state the package agency's consignment inventory amount.~~

(B) Any adjustment to the package agency's consignment inventory amount shall be made through a contract amendment or a new contract.

(b) Payments.

(i) ~~[Agencies]~~A package agency that receives ~~[receiving]~~ shipments or transfers of liquor shall ~~[are required to]~~ have an Automated Clearing House (ACH) payment system set up with the Department.

(ii) ~~[Statements]~~The Department shall email a package agency a statement that shows ~~[showing]~~ the package agency's unpaid debts and applied credits ~~[will be generated and emailed to the agencies on each Thursday]~~ before the end of each week. ~~[after credit card payments have been posted that Wednesday to reflect credit card payments received.]~~

~~(iii) [Ordered liquor inventory]~~The weekly statement will reflect:

~~(A) 30 days [to pay] from the order date to pay for ordered liquor inventory[-, instead of being due upon order.];~~

~~(B) [This generated weekly statement will reflect.]~~payments received against the oldest outstanding invoices first; ~~[-] and~~

~~(C) [P]~~payments received over ~~[those]~~ previous statement balances ~~[will be]~~ credited chronologically against ordered liquor inventory due after previous statements.

~~(iv) The package agent [It is the agent's responsibility to review.]~~is responsible for reviewing the statement and ~~[contact]~~ contacting the Department with any discrepancies before the payment due date.

~~(iii)~~(v)(A) A package agent ~~[Agents]~~ may, in advance of the Department drawing payments via Automated Clearing House (ACH), remit payment for the statement total to the Department on balances due from outstanding invoices that [which] have not received enough credit card payments or other payments to cover those outstanding balances.

~~(B) [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 Automated Clearing House (ACH) ~~[ACH]~~ process on the due date unless prior arrangements have been made between the package agent and the Department.

~~(iv)~~(vi)(A) The Department shall consider ~~[Insufficient]~~insufficient funds, returned checks, and unpaid balances from a previous statement ~~[are]~~ past due.

~~(B) The Department may assess the legal rate of interest on the amount owed by a package agency and [the Package Agency]the package agency may be referred to the Commission for possible termination of the package agency contract and closure.~~

~~(v)~~(vii)(A) The Department and the package agency shall resolve any ~~[Any]~~ delivery discrepancies ~~[shall be resolved]~~ using the LQ9 form or another form provided by the Department.

~~(B) [Debits or credits shall be issued based.]~~The Department shall issue a debit or credit after ~~[on]~~ proper completion and submission of the LQ9 or other form ~~[form]~~ to the Department.

~~(C) The Package agency shall pay [Payment shall be made.]~~in accordance with the ~~[Package Agency's]~~package agency's statement by the due date ~~[whether or not]~~ regardless of whether any discrepancies have been resolved.

(c) Transfers.

(i) The Department shall adjust ~~[±]~~ transfers, up or down, ~~[shall be adjusted]~~ to the ~~[Package Agency's]~~package agency's payment due the Department.

(ii) Transfers ~~[in]~~ to the ~~[Package Agency]~~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]~~package agency will be posted to the ~~[Package Agency's]~~package agency's statement.

(ii) ~~[It is the agent's responsibility to mail in their.]~~The package agent is responsible for sending the package agency's settlement report and individual receipts to the Department to receive credit.

(e) Audits.

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

(ii) The ~~[Package Agency]~~package agency is subject to a Department audit at any time.

**KEY: alcoholic beverages**

**Date of Last Change: 2024[December 22, 2023]**

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

**NOTICE OF SUBSTANTIVE CHANGE**

**TYPE OF FILING:** Amendment

**Rule or Section Number:**

**R82-3**

**Filing ID: 56798**

**Agency Information**

<b>1. Title catchline:</b>	Alcoholic Beverage Services, Administration
<b>Building:</b>	Administration
<b>Street address:</b>	1625 S. 900 W.

NOTICES OF PROPOSED RULES

<b>City, state:</b>	Salt Lake City, UT	
<b>Mailing address:</b>	PO Box 30408	
<b>City, state and zip:</b>	Salt Lake City, UT 84130-0408	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Vickie Ashby	801-977-6800	vickieashby@utah.gov
<b>Please address questions regarding information on this notice to the persons listed above.</b>		

**General Information**

<b>2. Rule or section catchline:</b>
R82-3. Disciplinary Actions and Enforcement
<b>3. Purpose of the new rule or reason for the change:</b>
This rule change is made for consistency with statute and between sections concerning the Department of Alcoholic Beverage Services (Department) disciplinary proceedings.
<b>4. Summary of the new rule or change:</b>
This rule change clarifies the actions the commission may take against a licensee or permittee who fails to maintain minimum qualifications to hold a license or permit, removes the requirement that certain mailings be certified in accordance with statute, and makes other technical changes.

**Fiscal Information**

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
This rule is expected to have a minor fiscal savings on the state budget because the rule change removes the requirement that certain mailings be sent certified.
<b>B) Local governments:</b>
This rule is not expected to have a fiscal impact on local governments' revenues or expenditures because the rule change is specific to Department practice.
<b>C) Small businesses ("small business" means a business employing 1-49 persons):</b>
This rule is not expected to have a fiscal impact on small businesses because the rule change is specific to Department practice.
<b>D) Non-small businesses ("non-small business" means a business employing 50 or more persons):</b>
This rule is not expected to have a fiscal impact on non-small businesses because the rule change is specific to Department practice.
<b>E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <i>agency</i>):</b>
This rule is not expected to have a fiscal impact on persons other than small business, non-small businesses or state or local government entities because the rule change is specific to Department practice.
<b>F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):</b>
This rule is not expected to have a compliance cost because the rule change is consistent with Department practice.
<b>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.)</b>

Regulatory Impact Table			
Fiscal Cost	FY2025	FY2026	FY2027
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
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
Fiscal Benefits	FY2025	FY2026	FY2027
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
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>H) Department head comments on fiscal impact and approval of regulatory impact analysis:</b>			
The Executive Director of the Department of Alcoholic Beverage Services, Tiffany Clason, has reviewed and approved this regulatory impact analysis.			

**Citation Information**

<b>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:</b>		
Section 32B-2-202	Section 32B-3-205	Section 32B-3-202

**Public Notice Information**

<b>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.)</b>	
<b>A) Comments will be accepted until:</b>	10/31/2024

<b>9. This rule change MAY become effective on:</b>	11/07/2024
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**

<b>Agency head or designee and title:</b>	Tiffany Clason, Executive Director	<b>Date:</b>	09/12/2024
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**R82. Alcoholic Beverage Services, Administration.**

**R82-3. Disciplinary Actions and Enforcement.**

**R82-3-102. Violation Schedule.**

(1) Authority. This rule is made 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] a licensee, permittee, or [permittees as well as their officers, employees, and agents]~~ an officer, employee, or agent of a licensee or permittee ~~[who violate]~~ who violates statutes and Commission rules relating to alcoholic beverages.

(2) Purpose.

(a) This rule establishes a schedule setting forth a range of penalties that may be imposed by the Commission for violations of Utah alcoholic beverage control laws.

(b) A Department decision officer shall use this rule in processing a violation.

(c) A hearing officer shall use this rule in:

(i) charging a violation;

(ii) assisting parties in settlement negotiations; and

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~~(iii) recommending a penalty for a violation.~~

~~(d) The Commission shall use the schedule in this rule in rendering the Commission's final decisions as to the appropriate penalty for a violation.~~

~~(e) This rule does not apply to a licensee or permittee that fails to maintain the fundamental, minimum qualifications provided by law for holding a license or permit as described in Section R82-3-104.~~

~~(b)(3) Definitions. As used in this rule:~~

~~(a) "Licensee" includes [For purposes of this rule, holders of certificates of approval are also considered licensees.] a holder of a certificate of approval.~~

~~(b) "Permit" does not include a single event permit issued under Title 32B, Chapter 9, Event Permit Act.~~

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

~~(a) The Commission may:~~

~~(i) revoke or suspend a license or permit;~~

~~(ii) impose a fine against a licensee or permittee in addition to or in lieu of a suspension; or~~

~~(iii) impose a fine against an officer, employee, or agent of a licensee or permittee.~~

~~(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.]~~

~~(b)(i)(e) 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] the licensee's or permittee's violation record shall be expunged for purposes of determining future penalties sought.~~

~~(ii) The expungement period shall run from the date the last offense was finally adjudicated by the Commission.~~

~~(c) 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] a 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] or~~

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

~~(d)(e)(i) When the Commission imposes a fine or administrative costs, the Commission [it] shall establish a date on which the payment is due.~~

~~(ii) Failure of a licensee, permittee, or an [or permittee or its] officer, employee, or agent of a licensee or permittee to pay [make payment] on or before [that date shall result] the date established by the Commission results 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.~~

~~(iii) Failure of a licensee or permittee to pay a fine or administrative costs within 30-days after [of] the [initial] date established by the Commission [shall result] results in the issuance of an order to show cause to be heard at the Commission's next regularly scheduled meeting as to 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)(5) 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: ~~[[t]he~~ 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[a]~~ written investigation report from ~~a~~ 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[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[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.

~~(vi)~~ If other minor violations are discovered during the same investigation, a verbal warning shall be given for each violation on a first occurrence.

~~(vii)~~ 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[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[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[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]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: ~~A~~ 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[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]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]~~ ~~the 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

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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: A 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]~~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]~~subsection of the rule for licensees and permittees.

TABLE 1				
Violation Degree And Frequency	Warning -- Verbal\ Or Written	Fine Amount	Suspension No. of Days	Revoke License
<u>Minor</u>				
<u>1st</u>	X \ X			
<u>2nd</u>		<u>100 to 500</u>		
<u>3rd</u>		<u>200 to 500</u>	<u>1 to 5</u>	
<u>Over 3</u>		<u>500 to 25,000</u>	<u>6 to</u>	<u>X</u>
<u>Moderate</u>				
<u>1st</u>	\ X	<u>To 1,000</u>		
<u>2nd</u>		<u>500 to 1,000</u>	<u>3 to 10</u>	
<u>3rd</u>		<u>1,000 to 2,000</u>	<u>10 to 20</u>	
<u>Over 3</u>		<u>2,000 to 25,000</u>	<u>15 to</u>	<u>X</u>
<u>Serious</u>				
<u>1st</u>		<u>500 to 3,000</u>	<u>5 to 30</u>	
<u>2nd</u>		<u>1,000 to 9,000</u>	<u>10 to 90</u>	
<u>Over 2</u>		<u>9,000 to 25,000</u>	<u>15 to</u>	<u>X</u>
<u>Grave</u>				
<u>1st</u>		<u>1,000 to 25,000</u>	<u>10 to</u>	<u>X</u>
<u>Over 1</u>		<u>3,000 to 25,000</u>	<u>15 to</u>	<u>X</u>

[TABLE 1

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

(f) The following table summarizes the penalty ranges contained in this ~~[subpart]~~subsection 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
<u>Minor</u>			
<u>1st</u>	X \ X		
<u>2nd</u>	\ X	To 25	
<u>3rd</u>		To 50	1 to 5
<u>Over 3</u>		To 75	6 to 10
<u>Moderate</u>			
<u>1st</u>	\ X	To 50	
<u>2nd</u>		To 75	3 to 10
<u>3rd</u>		To 100	10 to 20
<u>Over 3</u>		To 150	15 to 30
<u>Serious</u>			
<u>1st</u>		To 300	5 to 30
<u>2nd</u>		To 350	10 to 90
<u>Over 2</u>		To 700	15 to 180
<u>Grave</u>			
<u>1st</u>		To 300	10 to 120
<u>Over 1</u>		To 500	15 to 180

[TABLE 2

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

(6) 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)~~(7) Violation Schedule~~[Grid]~~. Any proposed substantive change to the violation ~~schedule~~~~[grid]~~ established in this rule that would establish or adjust the degree of seriousness of a violation ~~[shall require]~~requires rulemaking in ~~[compliance]~~accordance 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)~~ Authority.

~~(i)~~ This rule is ~~[promulgated]~~made pursuant to ~~S[s]~~ection 32B-2-202 and ~~[shall govern]~~governs the procedure for disciplinary actions under the jurisdiction of the Commission.

~~(ii)~~ Package agencies are expressly excluded from the provisions of this rule, and are governed by the terms of the package agency contract.

~~(b)~~ Definitions. The definitions found in Title 63G, Chapter 4, Utah Administrative Procedures Act, apply to this rule.

~~(b)~~~~(c)~~ Liberal Construction. This rule~~[-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. A proceeding~~[Proceedings]~~ under this rule shall be in accordance with Title 63G, Chapter 4, Utah Administrative Procedures Act (UAPA), and ~~[sections]~~Sections 32B-3-102 through 32B-3-207.

~~(e)~~ Penalties.

~~(i)~~ This rule ~~[shall govern]~~governs 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 under this rule~~[-may]~~ include~~[-]~~:

~~(A)~~ a letter of admonishment~~[;]~~;

~~(B)~~ imposition of a fine~~[;]~~;

~~(C)~~ the suspension or revocation of a ~~[Commission]~~license, permit, or certificate of approval~~[;]~~;

~~(D)~~ the requirement that a licensee have a ~~[written]~~responsible alcohol service plan as provided in Section R82-3-107~~[;]~~~~[;]~~;

~~(E)~~ the assessment of costs of action~~[;]~~;

~~(F)~~ 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~~[;]~~;

~~(G)~~ the forfeiture of~~[-bonds]~~ a bond;

~~(H)~~ 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

~~(I)~~ 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 for a proceeding under this rule include~~[are]~~:

~~(A)~~ the hourly pay rate plus benefits of each Department employee involved in processing and conducting the adjudicative proceedings on the violation~~[;]~~;

~~(B)~~ an hourly charge for Department overhead costs~~[;]~~;

~~(C)~~ the amount billed to the Department by an independent contractor for services ~~[rendered]~~provided in conjunction with an adjudicative proceeding~~[, and]~~; and

~~(D)~~ any additional extraordinary or incidental costs incurred by the Department.

~~(iv)~~ The Commission may ~~[also]~~assess administrative ~~[additional]~~costs in addition to the costs described in Subsection (1)(e)(iii) if a respondent fails to appear before the Commission at the final stage of the adjudicative process.

~~(v)~~(A) ~~[Department overhead costs]~~The Department shall calculate overhead costs described in Subsection (1)(e)(iii) ~~[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.

~~(B)~~ The Department shall recalculate the overhead ~~[cost figure shall be recalculated]~~costs at the beginning of each fiscal year.

~~(f)~~ ~~[Perjured Statements]~~Witnesses.

~~(i)~~ A hearing officer, in the course of conducting a hearing, may swear in~~[-witnesses]~~ a witness.

~~(ii)~~ ~~A~~~~[Any]~~ person who makes any false or perjured statement in the course of a disciplinary action is subject to criminal prosecution under ~~[section]~~Section 32B-4-504.

~~(g)~~ Service.

~~(i)~~ Service of any document under this rule ~~[shall be]~~is satisfied by:

~~(A)~~ service personally or by ~~[certified]~~mail ~~[upon]~~upon the ~~[any]~~respondent~~[,]~~ upon an~~[-or upon any]~~ officer or manager of a corporate or limited liability company respondent~~[, or upon]~~ upon an attorney for ~~the~~~~[a]~~ respondent~~[, or by service personally or by certified mail]~~, to the last known address of the respondent~~[-or any of the following]~~; or

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

- ~~(ii) Posting of~~ (C) posting of the document or a notice of certified mail upon ~~the~~ a respondent's premises; ~~or~~
- ~~(iii)(ii) [Actual notice.]~~ Proof of service ~~shall be~~ under this rule is satisfied by:
- (A) a receipt of service signed by the person served;
- (B) ~~or by~~ a certificate of service signed by the person served; ~~or by~~
- (C) certificate of service signed by the server; ~~or~~
- (D) ~~by~~ verification of posting on the respondent's premises.
- (h) Filing of ~~P~~ pleadings or ~~D~~ documents. ~~Filing by a respondent~~ A respondent's filing of any pleading or document under this rule ~~shall be~~ is satisfied by time delivery to:
- (i) ~~timely delivery to~~ the Department office located at ~~1625 S. 900 West, Salt Lake City, Utah; or~~
- (ii) ~~or by timely delivery to~~ P. O. Box 30408, Salt Lake City, Utah 84130-0408.
- (i) Representation.
- (i) A respondent who is not a corporation or limited liability company may:
- (A) represent the respondent's self ~~himself~~ in any disciplinary action; ~~or may~~
- (B) be represented by an agent ~~duly~~ authorized by the respondent in writing; ~~or~~
- (C) be represented by an attorney.
- (ii) A corporate or limited liability company respondent may be represented by:
- (A) a member of the governing board of the corporation or manager of the limited liability company; ~~or~~
- (B) ~~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~~
- (C) an attorney.
- (j) Hearing ~~officers~~.
- (i) The Commission or the director may appoint ~~hearing officers~~ a hearing officer to:
- (A) receive evidence in ~~disciplinary proceedings~~ a disciplinary proceeding; ~~and~~ ~~to~~
- (B) 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 in this rule 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)~~ (k) Computation of ~~t~~ time. ~~The~~ In accordance with Section 68-3-7, the time within which any act shall be done under this rule is ~~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)~~ (l) 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 hearing officer shall:
- (A) include ~~order shall include~~ a statement of the grounds for default in the order for default; ~~and~~
- (B) ~~shall be mailed~~ mail the order of default to the respondent and the Department.
- (iii) A defaulted respondent may seek to have the ~~default order~~ order of default 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:
- (A) conduct any further proceedings necessary to complete the adjudicative proceeding without the participation of the respondent in default; ~~and~~ ~~shall~~
- (B) determine all issues in the adjudicative proceeding, including those affecting the defaulting respondent.
- (2) Pre-adjudication ~~P~~ proceedings.
- (a) Staff ~~s~~ screening. Upon receipt of a violation report, a decision officer of the Department shall:
- (i) review the report; ~~and~~
- (ii) review the alleged violator's violation history; ~~and~~
- (iii) in accordance with Section R82-3-102 ~~—~~, determine the range of penalties ~~which~~ that may be assessed should the alleged violator be found guilty of the alleged violation.

NOTICES OF PROPOSED RULES

(b) Letters of ~~a~~<sup>[A]</sup>dmomishment. ~~[-Because letters]~~<sup>[A letter]</sup> of admonishment ~~is~~<sup>[are]</sup> not a "state agency actions" ~~[under]~~<sup>[as described in Section</sup> ~~section]~~<sup>63G-4-102</sup> and ~~is subject to the~~ ~~[no adjudicative proceedings are required in processing them, and they shall be handled in accordance with the]~~ following procedures:

(i) ~~[#]~~<sup>[#]</sup>A letter of admonishment may be sent to the respondent if the decision officer of the Department determines that the alleged violation does not warrant:

- ~~(A)~~<sup>(A)</sup> an administrative fine~~[-];~~
- ~~(B)~~<sup>(B)</sup> ~~[-or]~~suspension or revocation of the license, permit, or certificate of approval; ~~or~~
- ~~(C)~~<sup>(C)</sup> ~~[-or]~~action against an officer, employee, or agent of a licensee, permittee, or certificate of approval holder, or ~~[against]~~<sup>[a]</sup> 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) ~~[#]~~<sup>[#]</sup>the case number assigned to the action;
- (B) ~~[#]~~<sup>[#]</sup>the name of the respondent;
- (C) ~~[#]~~<sup>[#]</sup>the alleged violation, together with sufficient facts to put ~~the~~<sup>[a]</sup> respondent on notice of the alleged violations and the name of the law enforcement agency or staff member making the report;
- (D) ~~[#]~~<sup>[#]</sup>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) ~~[#]~~<sup>[#]</sup>notice that a rebuttal is permitted under ~~[these rules]~~<sup>[this rule]</sup> within 10 ~~[days of service]~~<sup>days after the</sup>~~[-of the]~~ letter of admonishment ~~is served; and~~<sup>is served; and</sup>[-];

(F) ~~[#]~~<sup>[#]</sup>notice that the letter of admonishment is subject to the approval of the Commission.

(iii)~~(A)~~<sup>(A)</sup> A copy of the law enforcement agency or Department staff report shall accompany the letter of admonishment.

~~(B)~~<sup>(B)</sup> The decision officer shall delete from the report any information that might compromise the identity of a confidential informant or undercover agent.

(iv)~~(A)~~<sup>(A)</sup> A respondent may file a written rebuttal with the Department within 10 days ~~after~~<sup>after</sup> ~~[of service of]~~ the letter of admonishment ~~is served.~~

~~(B)~~<sup>(B)</sup> 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:

- ~~(I)~~<sup>(I)</sup> the case number assigned to the action;
- ~~(II)~~<sup>(II)</sup> the name of the respondent;~~[-and]~~
- ~~(III)~~<sup>(III)</sup> any facts in defense or mitigation of the alleged violation;~~[-]~~ and
- ~~(IV)~~<sup>(IV)</sup> a brief summary of any attached evidence.

~~(C)~~<sup>(C)</sup> The rebuttal may be accompanied by supporting documents, exhibits, or signed statements.

~~(D)~~<sup>(D)</sup> The respondent or the respondent's authorized agent or attorney shall sign the rebuttal.

(v)~~(A)~~<sup>(A)</sup> If the decision officer is satisfied, upon receipt of a rebuttal, that the letter of admonishment was not well taken, ~~the decision officer may withdraw the letter of admonishment.~~<sup>[it may be withdrawn.].</sup>

~~(B)~~<sup>(B)</sup> ~~[and]~~<sup>[and]</sup> If the decision officer withdraws the letter of admonishment, the letter of admonishment and rebuttal shall be expunged from the respondent's file ~~and the letter of admonishment may not be considered~~<sup>[Letters of admonishment so withdrawn shall not be considered]</sup> as a part of the respondent's violation history ~~in assessing appropriate penalties in future disciplinary actions against the respondent.~~

~~(C)~~<sup>(C)</sup> If no rebuttal is received, or if the decision officer determines after receiving a rebuttal that the letter of admonishment is justified, ~~the decision officer shall~~<sup>[matter shall be submitted]</sup> submit the matter to the Commission for final approval.

~~(D)~~<sup>(D)</sup> Upon Commission approval, ~~the Department shall place the~~ letter of admonishment, together with any written rebuttal, ~~[shall be placed]~~<sup>[shall be placed]</sup> in the respondent's ~~[Department]~~ file.

~~(E)~~<sup>(E)</sup> ~~[and]~~<sup>[and]</sup> A letter of admonishment may be considered as part of the respondent's violation history in assessing appropriate penalties in future disciplinary actions against the respondent.

~~(F)~~<sup>(F)</sup> If the Commission rejects the letter of admonishment, ~~the Commission~~<sup>[#]</sup> may ~~[either]~~<sup>[either]</sup> direct the decision officer to dismiss the matter or ~~[may]~~<sup>[may]</sup> 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, ~~the~~<sup>[a]</sup> respondent may request that the matter be processed under the adjudicative proceeding process.

(c) Commencement of ~~a~~<sup>[A]</sup>judicative ~~p~~<sup>[P]</sup>roceedings.

(i) ~~[Alleged violations]~~<sup>[An alleged violation]</sup> 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]~~<sup>[An]</sup> adjudicative ~~[proceedings shall commence as informal proceedings.]~~<sup>proceeding shall commence as an informal proceeding.</sup>

(iii) At any time after commencement of ~~an~~ informal adjudicative ~~[proceedings]~~<sup>proceeding</sup>, but before the ~~[commencement of a]~~ hearing, if the Department determines that ~~the Department~~<sup>[#]</sup> will seek administrative fines exceeding \$3,000, 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~~<sup>violation(s)</sup>, the hearing officer shall convert the matter to a formal adjudicative proceeding.

(iv) At any time before a final order is issued, ~~the~~<sup>a</sup> 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~~<sup>p</sup> process.

(a) Notice of agency action.

(i) Upon referral of a violation report from the decision officer for commencement of ~~an informal adjudicative proceedings~~<sup>proceeding</sup>, the hearing officer shall issue and sign a written ~~notice of agency action~~<sup>notice of agency action</sup> ~~which shall set~~<sup>that sets</sup> forth in clear and concise terms:

(A) ~~the~~<sup>the</sup> names and mailing addresses of all persons to whom notice is being given by the hearing officer; ~~and~~

~~(B)~~ (B) the name, title, and mailing address of ~~any~~<sup>an</sup> attorney or employee who has been designated to appear for the Department;

~~(C)~~ (C) ~~the~~<sup>the</sup> Department's case number;

~~(D)~~ (D) the name of the adjudicative proceeding, "Department of Alcoholic Beverage Services~~DABC~~ vs. (insert name of the respondent)";

~~(E)~~ (E) ~~the~~<sup>the</sup> date that the notice of agency action ~~is~~<sup>was</sup> mailed;

~~(F)~~ (F) ~~A~~<sup>A</sup> statement that the adjudicative proceeding is to be conducted informally according to ~~the provisions of~~<sup>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)(e)(iii) or (iv) of</sup> under this rule, in which event the proceeding will be conducted formally according to ~~the provisions of~~<sup>this rule and sections 63G-4-204 through 63G-4-209</sup> ~~to~~<sup>to</sup> 209];

(F) ~~the~~<sup>the</sup> date, time, and place of any prehearing conference with the hearing officer;

(G) ~~a~~<sup>a</sup> statement that a respondent may request a hearing ~~for the purpose of determining~~<sup>to determine</sup> whether the ~~violation~~<sup>violation</sup> alleged in the notice of agency action occurred, and if so, the ~~penalties~~<sup>penalty</sup> that should be imposed;

(H) ~~a~~<sup>a</sup> statement that a respondent who fails to attend or participate in any hearing may be held in default;

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

(J) ~~A~~<sup>A</sup> 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~~<sup>Section</sup> 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~~<sup>Any</sup> violation history of the respondent ~~which~~<sup>that</sup> may be considered in assessing an appropriate penalty should the respondent be found guilty of the alleged violation; and

(L) ~~the~~<sup>the</sup> name, title, mailing address, and telephone number of the hearing officer.

(ii)(A) A copy of the law enforcement agency or staff report shall accompany the notice of agency action.

~~(B)~~ (B) The hearing officer shall delete from the report any information that might compromise the identity of a confidential informant or undercover agent.

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

(iv) The Department shall:

(A) ~~serve the~~<sup>serve the</sup> notice of agency action ~~shall be mailed to each respondent~~<sup>on the respondent</sup>; and

~~(B)~~ (B) ~~send the notice of agency action to~~<sup>send the notice of agency action to</sup> any attorney representing the Department ~~and, if applicable,~~<sup>and</sup> any law enforcement agency that referred the alleged violation to the Department.

(v)(A) The hearing officer may permit or require pleadings in addition to the notice of agency action.

~~(B)~~ (B) ~~A~~<sup>A</sup> party shall file additional pleadings ~~shall be filed~~<sup>with the hearing officer and send copies by</sup> ~~with copies sent by~~<sup>with copies sent by</sup> mail to each respondent and ~~to~~<sup>to</sup> the Department.

(vi) Amendment to Pleading.

~~(A)~~ (A) 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.

~~(B)~~ (B) The hearing officer shall disregard a ~~Defects which do~~<sup>defect in a pleading that does not substantially prejudice the</sup> ~~respondent or the~~<sup>respondent or the</sup> Department ~~shall be disregarded~~<sup>shall be disregarded</sup>.

(vii) Signing of Pleading.

~~(A)~~ (A) ~~The~~<sup>The</sup> ~~Pleadings shall be signed by the~~<sup>Pleadings shall be signed by the</sup> Department or respondent, or ~~the Department's or respondent's~~<sup>the Department's or respondent's</sup> ~~their~~<sup>their</sup> authorized attorney or representative, ~~and~~<sup>and</sup> shall sign a pleading.

(B) ~~The~~<sup>The</sup> pleading shall show the signer's address and telephone number.

~~(C)~~ (C) The signature ~~shall be~~<sup>is</sup> deemed to be a certification by the signer that ~~he or she~~<sup>the signer</sup> has read the pleading and ~~that he or she has~~<sup>that he or she has</sup> taken reasonable measures to ~~ensure~~<sup>ensure</sup> ~~its~~<sup>its</sup> truth.

(b) The ~~prehearing~~<sup>prehearing</sup> ~~conference~~<sup>conference</sup>.

(i) The hearing officer may hold a prehearing conference with the respondent and the Department to:

(A) encourage settlement;

(B) ~~clarify~~<sup>clarify</sup> issues; ~~or~~

(C) simplify the evidence; ~~or~~

(D) expedite the proceedings.

(ii)(A) All or part of ~~any~~<sup>an</sup> adjudicative proceeding may be stayed at any time by a written settlement agreement signed by the Department and respondent or ~~their~~<sup>the Department's or respondent's</sup> authorized attorney or representative, and ~~by~~<sup>by</sup> the hearing officer.

NOTICES OF PROPOSED RULES

~~\_\_\_\_\_~~ (B) The stay ~~[shall take]~~takes effect immediately upon the signing of the settlement agreement ~~and~~ ~~[, and shall]~~ remain in effect until the settlement agreement is approved or rejected by the Commission.

~~\_\_\_\_\_~~ (C) No further action ~~[shall be]~~is required with respect to any stayed action or issue ~~[so stayed]~~ until the Commission ~~[has acted]~~acts on the settlement agreement.

~~\_\_\_\_\_~~ (iii)(A) A settlement agreement approved by the Commission ~~[shall constitute]~~constitutes a final resolution of all issues agreed upon in the settlement.

~~\_\_\_\_\_~~ (B) After the Commission approves a settlement agreement, ~~[No]~~no further proceedings ~~[shall be]~~are required for any issue settled.

~~\_\_\_\_\_~~ (C) The approved settlement ~~[shall take]~~takes effect by its own terms and ~~[shall be binding upon]~~binds the respondent and the Department.

~~\_\_\_\_\_~~ (D) ~~[Any]~~A breach of a settlement agreement by ~~the~~a respondent may be treated as a separate violation and ~~[shall be]~~is grounds for further disciplinary action.

~~\_\_\_\_\_~~ (E) ~~[Additional sanctions]~~Sanctions stipulated ~~to~~ in the settlement agreement may ~~[also]~~be imposed against the respondent.

~~\_\_\_\_\_~~ (iv) If the settlement agreement is rejected by the Commission, the action shall proceed in the same ~~[posture]~~manner as if the settlement agreement had not been reached, except that all time limits ~~[shall have been]~~are 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 ~~the Department~~it will seek administrative fines exceeding \$3,000, 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)]~~violation.

~~\_\_\_\_\_~~ (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)]~~a remedy described in Subsection (2)(b)(v), any hearing on the matter shall be adjudicated informally.

~~\_\_\_\_\_~~ (vii)(A) 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)]~~seeks a remedy described in Subsection (2)(b)(v), the hearing officer shall convert the matter to a formal adjudicative proceeding, and any hearing on the matter shall be adjudicated formally.

~~\_\_\_\_\_~~ (B) ~~[The]~~In a matter that is converted to a ~~[Department may waive the]~~ formal adjudicative proceeding under Subsection (2)(b)(vii)(A), the Department may waive the requirement that the respondent file a written response to the notice of agency action.

~~\_\_\_\_\_~~ (c) The ~~i~~h informal ~~h~~hearing.

~~\_\_\_\_\_~~ (i)(A) Notice. The hearing officer shall notify the respondent and Department in writing of the date, time, and place of an informal ~~[the]~~hearing at least 10 days ~~[in advance of]~~before the hearing. ~~[Continuances of scheduled hearings are not favored, but may be granted by the hearing officer for good cause shown.]~~

~~\_\_\_\_\_~~ (B) ~~[Failure by a respondent]~~The respondent's failure to appear at the hearing after notice has been given ~~[shall be]~~is grounds for default and ~~[shall waive both the]~~waives the respondent's right to contest the allegations~~[, and the right to]~~ and to the hearing.

~~\_\_\_\_\_~~ (C) If the respondent fails to appear, ~~[The]~~the hearing officer shall ~~[proceed to]~~prepare and serve on the respondent an order ~~[pursuant to R82-3-103]~~in accordance with this rule.

~~\_\_\_\_\_~~ (ii) Hearing officer. ~~[All hearings]~~An informal hearing is ~~[shall be]~~

~~\_\_\_\_\_~~ (iii) Rules of evidence.

~~\_\_\_\_\_~~ (A) The respondent named in the notice of agency action and the Department ~~[shall be]~~are permitted to testify, present evidence, and comment on the issues at an informal hearing.

~~\_\_\_\_\_~~ (B) ~~[Formal]~~Except as provided in Subsection (2)(c)(v), formal rules of evidence do not apply to an informal hearing ~~[shall not apply, however, the].~~

~~\_\_\_\_\_~~ (C) In an informal hearing, the hearing officer:

~~\_\_\_\_\_~~ ~~(A)~~(I) may exclude evidence that is irrelevant, immaterial, or unduly repetitious;

~~\_\_\_\_\_~~ ~~(II)~~(B) shall exclude evidence privileged in the courts of Utah;

~~\_\_\_\_\_~~ ~~(III)~~(C) shall recognize presumptions and inferences recognized by law;

~~\_\_\_\_\_~~ ~~(IV)~~(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;

~~\_\_\_\_\_~~ ~~(V)~~(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;

~~\_\_\_\_\_~~ ~~(VI)~~(F) may not exclude evidence solely because it is hearsay; and

~~\_\_\_\_\_~~ ~~(VII)~~(G) may use ~~[his or her]~~the hearing officer's experience, technical competence, and specialized knowledge to evaluate the evidence.

~~\_\_\_\_\_~~ (iv) Oath. All testimony at an informal hearing shall be under oath.

~~\_\_\_\_\_~~ (v) Discovery and subpoenas.

~~\_\_\_\_\_~~ (A) Discovery is prohibited at an informal hearing.

~~\_\_\_\_\_~~ ~~(vi)~~(B) The hearing officer shall issue ~~[Subpoenas and]~~subpoenas or orders to secure the attendance of witnesses or the production of evidence ~~[shall be issued by the hearing officer]~~ when requested by ~~the~~a respondent or ~~the~~ Department, or ~~[may be issued by the hearing officer on his or her own motion]~~upon the hearing officer's own motion.

~~\_\_\_\_\_~~ ~~(vii)~~(C) ~~[A]~~The 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)~~(vi) Intervention.

~~\_\_\_\_\_~~ (A) Intervention is prohibited at an informal hearing.



~~(ix)~~(B) ~~[The hearing shall be]~~Except as provided in Subsections (2)(c)(vi)(C) and (D), the hearing is open to the public.~~[-provided ]~~

(C) ~~[that the]~~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.

(D) The hearing officer may take appropriate measures necessary to preserve the integrity of the hearing.

~~(x)~~(vii) Record of ~~h[H]~~earing.

(A) 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, if the Department chooses not to employ a reporter, by a party desiring to employ a certified shorthand reporter at ~~the party's~~~~[its own]~~ ~~[cost in the event that the Department chooses not to employ a reporter]~~expense.

(B) If a party employs a certified shorthand reporter, the original transcript of the hearing shall be filed with the Department and a person who desires a ~~[- Those desiring a]~~ copy of the certified shorthand reporter's transcript may purchase ~~the copy~~~~[it]~~ from the reporter.

(C) ~~[Any]~~A respondent, at ~~[his or her own]~~respondent's 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.

(D) ~~[Whenever a]~~The Department shall make 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)~~(E) 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)~~(viii) Order of presentation. Unless otherwise directed by the hearing officer at the informal hearing, the order of procedure and presentation of evidence ~~will be~~~~[is]~~ as follows:

(A) ~~[-(1)]~~ the Department;

~~[-(2)]~~(B) the respondent; and

~~[-(3)]~~(C) the rebuttal by the Department.

~~(xiii)~~(ix) Time limits. The hearing officer may set reasonable time limits for the presentations described ~~[above.]~~in Subsection (2)(c)(viii).

(x) ~~[(xiv)]~~Continuances of the informal hearing.

(A) The hearing officer may grant continuances or recesses as necessary or upon the hearing officer's own motion when in the public interest.

(B) If the hearing is continued~~[-Any hearing may be continued]~~ to a time and date certain announced at the hearing, ~~[which shall not]~~a new notification of the hearing is not required.~~[-require any new notification.]~~

(C) A continuance of a hearing is not favored, but the hearing officer may grant a continuance~~[The continuance of the hearing may be made]~~ upon motion of ~~the~~~~[a]~~ respondent or ~~the~~~~]~~Department indicating good cause as to 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.]~~

~~(xi)~~~~(xv)~~ Oral ~~a~~~~[A]~~rgument and ~~b~~~~[B]~~riefs. Upon the conclusion of the taking of evidence, the hearing officer may, in ~~[his or her]~~~~the~~ hearing officer's discretion, permit ~~the~~~~[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 designates.

(d) Disposition.

(i) Hearing officer's ~~Order; Objections;~~ order.

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

(I) the decision;

(II) the reasons for the decision;

(III) findings of facts;

(IV) conclusions of law;

(V) recommendations for final Commission action; and

(VI) notice that a respondent or the Department having objections to the hearing officer's order may file written objections with the hearing officer within 10 days ~~[of service of the order]~~after the order is served, 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]~~hearing officer shall base the order on the facts appearing in the Department's files and ~~[on the facts]~~ presented in evidence at the informal hearing.

(C) Any contested finding of fact that ~~[was contested]~~ may not be based solely on hearsay evidence.

(D) The hearing officer shall base findings of fact ~~[shall be based]~~ upon a preponderance of the evidence.

(E) The hearing officer's order may~~[shall]~~ not recommend a penalty more severe than that sought in the notice of agency action, ~~[and in no event may it recommend]~~nor administrative fines exceeding \$3,000, 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)~~(F) A ~~copy of the hearing officer's order shall be]~~The hearing officer shall promptly ~~[mailed]~~mail the order to the respondent and the Department.

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~~(D)~~(G) The hearing officer shall wait 10 days after the order is served ~~[from service of his or her order]~~ for written objections, if any.

(H) Upon receipt of objections, the ~~The~~ hearing officer may ~~then~~ amend or supplement ~~his or her~~ the hearing officer's findings of fact, conclusions of law, ~~or~~ and recommendations to reflect ~~those~~ the objections ~~which~~ that have merit or ~~which~~ are not disputed.

~~(E)~~(I) Upon expiration of ~~the time for~~ 10-day period for filing written objections, the hearing officer shall submit the order ~~of the hearing officer~~ and any written objections timely filed ~~shall be submitted~~ to the Commission for final consideration.

~~(F)~~(J) 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~~ 10-day period for filing written objections to the hearing officer's order under Subsection (2)(d)(i), the Commission shall place the order ~~shall be placed~~ on the next available agenda of a regular Commission meeting for consideration by the Commission.

(B) ~~Copies of the order, together with any objections filed shall be forwarded to the Commission, and the~~ The Commission shall finally decide the matter on the basis of the order and any objections submitted.

(C) No additional evidence shall be presented to the Commission when considering the order and objections.

(D) The Commission may, in the Commission's discretion, permit the respondent and the Department to present oral presentations at the Commission meeting.

~~(B)~~(E) The Commission ~~shall be~~ is deemed a substitute hearing officer ~~for this final stage of the informal adjudicative proceeding pursuant to~~ under ~~section~~ Section 63G-4-103 when deciding the matter.

(F) The Commission's review and decision ~~This stage~~ is not considered a "review of an order by an agency or a superior agency" under ~~sections~~ Sections 63G-4-301 and 63G-4-302 ~~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.~~

(G)~~(D)~~ After the Commission has reached a final decision, the Commission ~~it~~ shall issue or cause to be issued a signed, written order pursuant to ~~section~~ Sections 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) the 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 the order is ~~of its issuance~~ in the district court in accordance with ~~sections~~ Sections 63G-4-401, 402, 404, and 405 through 63G-4-405 and 32B-3-207.

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

~~(F)~~(I) The Commission shall base the Commission's 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)~~(J) The Commission order may not ~~order shall not~~ impose a penalty more severe than that sought in the notice of agency action, ~~and in no event may it impose~~ nor administrative fines exceeding \$3,000, 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.

(K) Upon issuance, a copy of the Commission's order shall be promptly mailed to the parties.

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

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

(e) Judicial ~~R~~ 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) An appeal of Appeals from~~ informal adjudicative proceedings ~~shall be~~ may be filed with ~~to~~ the district court in accordance with ~~sections~~ Sections 63G-4-402, 63G-4-404, and 63G-4-405 through 63G-4-405 ~~;~~ and 32B-3-207.

(4) The ~~f~~ formal ~~a~~ adjudicative ~~p~~ process.

(a) Conversion ~~p~~ procedures.

~~(i) If a hearing officer converts an informal adjudicative proceeding to a formal adjudicative proceeding pursuant to subparts (2)(e)(iii) or (iv) of this rule~~ under this rule:

~~(i)~~(A) 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 ~~sections~~ 63G-4-204 through 63G-4-209 ~~to 209~~;

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

~~(C)~~ ~~(iii)~~ the respondent ~~shall be required to~~ shall file a written response to the original notice of agency action within 30 days ~~of the notice~~ after the notice of the conversion of the adjudicative proceeding to a formal proceeding is served, unless this requirement is waived by the Department.

~~(ii)~~(A) An ~~Extensions~~ extension of time to file a response is ~~are~~ not favored, but may be granted by the hearing officer for good cause shown.

(B) The respondent's failure ~~Failure~~ to file a timely response ~~shall waive~~ waives 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~~ the hearing officer's final order ~~pursuant to~~ in accordance with Subsection ~~subpart~~ (4)(e).

(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)~~)(I) the case number assigned to the action;
- (~~(II)~~)(B) the name of the adjudicative proceeding, "Department of Alcoholic Beverage Services[DABC] vs. (insert name of respondent)";
- (~~(III)~~)(C) the name of the respondent;
- (~~(IV)~~)(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~~]is deemed denied;
- (~~(E)~~)(V) any facts in defense or mitigation of the alleged violation or possible penalty;
- (~~(VI)~~)(F) a brief summary of any attached evidence[~~—Any~~, including supporting documents, exhibits, signed statements, or transcripts[~~—etc., to be considered as evidence shall accompany the response~~];
- (~~(VII)~~)(G) a statement of the relief the respondent[~~—seeks~~] requests; and
- (~~(VIII)~~)(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[~~—the~~] hearing officer may:
- (A) permit or require pleadings in addition to the notice of agency action and the response to be[~~—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~~]a party made at or before the hearing, allow any pleading to be amended or corrected.
- (v) The hearing officer shall disregard a [~~Defects~~]defect in a pleading that does[~~—which do~~] not substantially prejudice any of the parties[~~—shall be disregarded~~].
- (vi)(A) [~~Pleadings shall be signed by the~~]A party or the party's attorney shall sign a pleading.
- (B) A pleading [~~and~~]shall include[~~show~~] the signer's address and telephone number.
- (C) The signature [~~shall be~~]on a pleading is deemed to be a certification by the signer that [~~he~~]the signer has read the pleading and [~~that he has~~]taken reasonable measures to [~~assure~~]ensure its truth.[~~—~~]
- (b) Intervention.
- (i) [~~Any~~]Petition. A person who is 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.~~]
- (ii) 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[~~—~~].
- (iii) The person who wishes to intervene shall mail a copy of the petition to each party
- (~~(iv)~~)(iv)(A) Response to p[P]etition. [~~Any~~]A party to a proceeding into which intervention is sought may make an oral or written response to the petition for intervention.
- (B) The response shall state the basis for opposition to intervention and may suggest limitations to be placed upon the intervenor if intervention is granted.
- (C) The party shall present or file [~~The~~]the response [~~must be presented or filed~~]at or before the hearing.
- (~~(v)~~)(v) Granting of p[P]etition. 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.
- (~~(vi)~~)(vi) Order r[R]equirements.
- (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.
- (F) [~~Where~~]If 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 s[S]ubpoenas.
- (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[~~The hearing officer shall issue~~ and]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~~]or upon the hearing officer's own motion.
- (d) The f[F]ormal h[H]earing.
- (i)[~~Notice~~](A) Notice and continuances. The hearing officer shall notify the parties in writing of the date, time, and place of the formal hearing at least 10 days [~~in advance of~~]before the hearing.
- (B) The hearing officer's name, title, mailing address, and telephone number shall be provided to the parties.

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~~\_\_\_\_\_~~ (C) ~~[Continuances of scheduled hearings are]~~ A continuance of a hearing is not favored, but may be granted by the hearing officer for good cause shown.

~~\_\_\_\_\_~~ (D) ~~[Failure]~~ The respondent's failure to appear at the hearing after notice has been given [shall be]is grounds for default and [shall waive]waives [both] the respondent's right to contest the allegations[; and the respondent's right] and to the hearing.

~~\_\_\_\_\_~~ (E) If the respondent fails to appear, the[The] hearing officer shall [proceed to]prepare and serve on the respondent [his or her order pursuant to R82-3-103(4)(e).]an order in accordance with this rule.

~~\_\_\_\_\_~~ (ii) ~~[Public Hearing. The]~~ (A) Public hearing. Except as provided in Subsection (4)(d)(ii)(B), a formal hearing [shall be open to all parties. It shall also be open to]is open to the public.

~~\_\_\_\_\_~~ (B) ~~[, provided that the]~~ 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.

~~\_\_\_\_\_~~ (C) The hearing officer may take appropriate measures necessary to preserve the integrity of the formal hearing.

~~\_\_\_\_\_~~ (iii) Rights of p[Parties]. The hearing officer;

~~\_\_\_\_\_~~ (A) shall regulate the course of the formal hearing [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]~~ (B) may give persons not a party to the adjudicative proceeding the opportunity to present oral or written statements at the formal hearing.

~~\_\_\_\_\_~~ (v) ~~[Rules of Evidence.]~~ (iv)(A) Rules of evidence. Technical rules of evidence [shall not]do not apply to a formal hearing.

~~\_\_\_\_\_~~ (B) ~~[Any reliable]~~ Except as provided in Subsection (4)(d)(iv)(C), the hearing officer may admit reliable evidence [may be admitted]at the hearing.[subject to the following guidelines.]

~~\_\_\_\_\_~~ (C) The hearing officer:

~~\_\_\_\_\_~~ (I) ~~(A)~~ (I) may exclude evidence that is irrelevant, immaterial or unduly repetitious;

~~\_\_\_\_\_~~ (II) ~~(B)~~ (II) shall exclude evidence privileged in the courts of Utah;

~~\_\_\_\_\_~~ (III) ~~(C)~~ (III) shall recognize presumptions and inferences recognized by law;

~~\_\_\_\_\_~~ (IV) ~~(D)~~ (IV) 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;[-]

~~\_\_\_\_\_~~ (V) ~~(E)~~ (V) 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;

~~\_\_\_\_\_~~ (VI) ~~(F)~~ (VI) may not exclude evidence solely because it is hearsay; and

~~\_\_\_\_\_~~ (VII) ~~(G)~~ (VII) may use [his or her]the hearing officer's experience, technical competence, and specialized knowledge to evaluate the evidence.

~~\_\_\_\_\_~~ (viii) (v) 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.

~~\_\_\_\_\_~~ (ix) (vi) Order of presentation. Unless otherwise directed by the hearing officer at the hearing, the order of procedure and presentation of evidence [will be]is as follows:

~~\_\_\_\_\_~~ (A) ~~(1)~~ (1) the [agency]Department;

~~\_\_\_\_\_~~ (B) ~~(2)~~ (2) the respondent;

~~\_\_\_\_\_~~ (C) ~~(3)~~ (3) the intervenors[-(if any)]; and

~~\_\_\_\_\_~~ (D) ~~(4)~~ (4) the rebuttal by the Department[agency].

~~\_\_\_\_\_~~ (x) ~~(vii)~~ (vii) [Time limits.]The hearing officer may set reasonable time limits for the presentations described [above]in Subsection (2)(d)(vi).

~~\_\_\_\_\_~~ (xi) ~~(viii)~~ (viii) Continuances of the formal hearing.

~~\_\_\_\_\_~~ (A) ~~[Any hearing may be continued to a time and date certain announced at the hearing, which shall not require any new notification.]The hearing officer may grant a continuance [The continuance of the]of the formal [hearing may be made]upon motion of a party indicating good cause as to why a continuance is necessary[. The continuance of the hearing may also be made]or upon the motion of the hearing officer when in the public interest.~~

~~\_\_\_\_\_~~ (B) ~~If the hearing is continued to a time and date certain announced at the hearing, a new notification of the hearing is not required.~~

~~\_\_\_\_\_~~ (ix) (ix) Oral a[Argument] and b[B]riefs. Upon the conclusion of the taking of evidence, the hearing officer may, in [his or her]the hearing officer's discretion, permit the parties to make oral arguments or submit additional briefs or memoranda upon a schedule [to be designated by the]the hearing officer designates.

~~\_\_\_\_\_~~ (x) (x) Record of h[earing].

~~\_\_\_\_\_~~ (A) The hearing officer shall cause an official record of the hearing to be made, at the [agency's]Department'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, if the Department chooses not to employ a reporter, by a party desiring to employ a certified shorthand reporter at the party's[its] [own cost in the event that the Department chooses not to employ a reporter]expense.~~

~~\_\_\_\_\_~~ (B) If a party employs a certified shorthand reporter, the original transcript of the hearing shall be filed with the Department and a person who desires a[- Those desiring a] copy of the certified shorthand reporter's transcript may purchase [it]the copy from the reporter.

~~\_\_\_\_\_~~ (C) ~~[Any]A respondent, at [his or her own]the respondent's expense, may have a person approved by the Department prepare a transcript of the hearing, subject to any restrictions that the [agency]Department is permitted by statute to impose to protect confidential information disclosed at the hearing.~~

~~\_\_\_\_\_~~ (D) The Department shall make a [- 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.

~~(E)~~~~(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.

~~(xiii)~~~~(xii)~~ Failure to appear.

~~(A)~~ Inexcusable failure of the respondent to appear at a scheduled evidentiary hearing after receiving proper notice constitutes an admission of the charged violation.

~~(B)~~ The validity of any hearing is not affected by the failure of any person to attend or remain in attendance pursuant to ~~Subsections~~~~[subsections]~~ 32B-3-203(3)(b) and (c).

~~(e)~~ Disposition.

~~(i)~~ Hearing officer's ~~o~~~~[O]~~rders~~[-Objections]~~.

~~(A)~~ Within a reasonable time ~~after~~~~[of]~~ the close of the formal 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~~[-]~~; and ~~[The order shall not]~~ recommend a penalty more severe than the penalty ~~[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 ~~after the order is served~~~~[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 contested finding of fact may not be based solely on hearsay evidence.

~~(C)~~ The hearing officer shall base findings of fact upon

~~(D)~~ The hearing officer's order may not

~~(B)~~~~(E)~~ ~~[A copy of the hearing officer's order shall be promptly mailed to the parties.]~~ The hearing officer shall promptly mail the order to the parties.

~~(C)~~~~(F)~~ The hearing officer shall wait 10 days ~~[from service of his or her order]~~ after the order is served for written objections, if any.

~~(G)~~ Upon receipt of objections, ~~the~~~~[The]~~ hearing officer may ~~[then]~~ amend or supplement ~~[his or her]~~ the hearing officer's findings of fact, conclusions of law, ~~and~~ ~~or~~ recommendations to reflect ~~[those]~~ the objections ~~[which]~~ ~~[that]~~ have merit and ~~[which]~~ are not disputed.

~~(D)~~~~(H)~~ Upon expiration of the ~~[time for]~~ 10-day period for filing written objections, the hearing officer shall submit the order ~~[of the hearing officer]~~ and any written objections timely filed~~[-, shall be submitted]~~ to the Commission for final consideration.

~~(ii)~~ Commission ~~a~~~~[A]~~ction.

~~(A)~~ Upon expiration of ~~[the time for filing objections]~~ the 10-day period for filing objections under Subsection (4)(c)(i), the Commission shall place the ~~[order shall be placed]~~ on the next available agenda of a regular Commission meeting for consideration by the Commission.

~~(B)~~ ~~[Copies of the order, together with any objections filed by the respondent, shall be forwarded to the Commission, and the]~~ The Commission shall finally decide the matter on the basis of the order and any objections submitted.

~~(E)~~~~(B)~~ The Commission ~~[shall be]~~ is deemed a substitute hearing officer ~~[for this final stage of the formal adjudicative proceeding pursuant to subsections 63G-4-103(1)(b)(ii) and (iii)]~~ under Section 63G-4-103 when deciding the matter.

~~(F)~~ The Commission's review and decision ~~[This stage]~~ is not considered a "review of an order by an agency or a superior agency" under ~~[sections]~~ Sections 63G-4-301 and 63G-4-302.

~~(C)~~ No additional evidence shall be presented to the Commission when considering the order and objections.

~~(D)~~ The Commission may, in the Commission's~~[its]~~ discretion, permit the parties to present oral presentations at the Commission meeting.

~~(D)~~~~(G)~~ After the Commission ~~[has reached]~~ reaches a final decision, the Commission~~[it]~~ shall issue or cause to be issued a signed, written order pursuant to Sections 32B-3-204 and 63G-4-208 containing:~~[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)~~ the 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]~~ after the order is served;

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

~~(D)~~ A contested finding of fact may not be based solely on hearsay evidence.

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~~(E) The Commission shall base findings of fact upon a preponderance of the evidence, except if the respondent fails to respond, then the findings of fact shall adopt the allegations in the notice of agency action and the respondent is considered in default.~~

~~(F) The Commission's order may not impose a penalty more severe than the penalty sought in the notice of agency action.~~

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

~~(E)(L) The Commission may use the Commission's[its] experience, technical competence, and specialized knowledge to evaluate the evidence.~~

~~(J) Except as provided in Subsection (4)(e)(ii)(K), the Commission shall promptly mail a copy of the Commission's order to the parties.~~

~~(G)(K) The Commission, after it has [rendered]made 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.~~

~~(H)(iii) Reconsideration of Commission's order.~~

~~(A) A respondent having objections to the order of the Commission may file, within 10 days [of service of the order]after the order is served, 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.~~

~~(B) If the request is based upon newly discovered evidence, the [petition shall be]respondent shall include with the request for reconsideration[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.~~

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

~~(K)(D) Within 20 days [of the]after 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.~~

~~(E) If the Commission grants the request, the Commission shall [request is granted, it shall be limited]limit the request to the matter specified in the order.~~

~~(F) Upon reconsideration, the Commission may confirm the[its] former Commission order, [or]vacate, change, or modify the[~~same~~] former Commission order in any particular, or[~~may~~] remand the matter for further action.~~

~~(G) The final order on the request for reconsideration shall have the same force and effect as the Commission's original order.~~

~~(L)(H) If the Commission does not issue an order on the request for reconsideration within 20 days after the filing of the request, the request [for reconsideration shall be]is 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.] An appeal from formal adjudicative proceedings [shall be to]may be filed with the Utah Court of Appeals in accordance with [sections 63G-4-403, 404, 405 and]Sections 32B-3-207 and 63G-4-403 through 63G-5-405.~~

**R82-3-104. Orders to Show Cause.**

~~(1) Authority. This rule is made pursuant to Sections 32B-2-202 and 32B-3-202.~~

~~(1)(a)(2)(a) [When]If 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]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~~]:~~

~~(i) a failure to maintain insurance;~~

~~(ii) [~~or a~~] a failure to maintain a bond[~~, a failure to~~];~~

~~(iii) a failure to notify the Department regarding a change of ownership as described in [section-]Section 32B-18-202[~~];~~];~~

~~(iv) a failure to maintain records showing the appropriate amount of food sales for the license type[~~];~~]; or~~

~~(iv) receiving a conviction for a criminal offense that disqualifies the licensee or permittee from holding the license or permit.~~

~~(2)(3) The [Order to Show Cause]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]of the hearing on the order to show cause[~~; 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) require the licensee or permittee to provide the Commission with proof that the licensee or permittee maintains the fundamental, minimum qualifications to hold the license or permit.~~

~~(4)(e) The Department shall mail the order to show cause [be sent]to the address on file of the licensee or permittee [via certified mail]no later than ten[10] calendar days before the day on which the hearing described in Subsection (3)[(3)(a)] is scheduled to be held.~~

~~(4)(5) If a licensee or permittee provides the Department with proof that the licensee or permittee maintains the fundamental, 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]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 the fundamental, minimum qualifications.~~

~~(5)(6) If a licensee or permittee fails to provide the Commission with proof that the licensee or permittee maintains the fundamental, minimum qualifications to hold the license or permit at a scheduled hearing, the Commission shall:~~

~~(a) suspend, [~~or~~]revoke, or deem forfeited the license or permit; or~~

(b) hold the hearing on the order to show cause until the next Commission meeting.  
~~[(6)](7) [Orders to Show Cause]~~ An order to show cause issued pursuant to this rule are not required to comply with ~~the~~ Title 63G, Chapter 4, Administrative Procedures Act or Section R82-3-103.

**KEY:** alcoholic beverages  
**Date of Last Change:** ~~2024~~ December 22, 2023  
**Authorizing, and Implemented or Interpreted Law:** 32B-1-103; 32B-2-202; 32B-3-101 through 32B-3-207

<b>NOTICE OF SUBSTANTIVE CHANGE</b>		
<b>TYPE OF FILING:</b> Amendment		
<b>Rule or Section Number:</b>	<b>R82-5</b>	<b>Filing ID: 56808</b>

**Agency Information**

<b>1. Title catchline:</b>	Alcoholic Beverage Services, Administration	
<b>Building:</b>	Administration	
<b>Street address:</b>	1625 S 900 W	
<b>City, state:</b>	Salt Lake City, UT	
<b>Mailing address:</b>	PO Box 30408	
<b>City, state and zip:</b>	Salt Lake City, UT 84130-0408	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Vickie Ashby	801-977-6800	vickieashby@utah.gov
<b>Please address questions regarding information on this notice to the persons listed above.</b>		

**General Information**

<b>2. Rule or section catchline:</b>
R82-5. General Retail License Provisions
<b>3. Purpose of the new rule or reason for the change:</b>
This rule change is made to clean-up definitions inconsistent with other rules and to clarify that a retail licensee's menu may to be available electronically.
<b>4. Summary of the new rule or change:</b>
This rule deletes a definition inconsistent with other rules, allows a retail licensee's menu to be available electronically, and makes other technical changes.

**Fiscal Information**

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
This rule is not expected to have a fiscal impact on the state budget because the rule change is technical in nature or consistent with current and previous Department of Alcoholic Beverage Services (Department) practice.
<b>B) Local governments:</b>
This rule is not expected to have a fiscal impact local government revenues or expenditures because the rule change is technical in nature or consistent with current and previous Department practice.
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):
This rule is not expected to have a fiscal impact on small businesses because the 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 is not expected to have a fiscal impact on non-small businesses because the 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 is not expected to have a fiscal impact on persons other than small business, non-small businesses or state or local government entities because the 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 the 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**

<b>Fiscal Cost</b>	<b>FY2025</b>	<b>FY2026</b>	<b>FY2027</b>
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
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>	<b>FY2025</b>	<b>FY2026</b>	<b>FY2027</b>
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
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**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-2-202	Section 32B-5-301	Section 32B-5-304
Section 32B-6-406	Section 32B-1-102	

**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:** 10/31/2024

**9. This rule change MAY become effective on:** 11/07/2024



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

<b>Agency head or designee and title:</b>	Tiffany Clason, Executive Director	<b>Date:</b>	09/16/2024
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## R82. Alcoholic Beverage Services, Administration.

### R82-5. General Retail License Provisions.

#### R82-5-101. Definitions.

(1) Authority. This rule is ~~adopted~~ made pursuant to Sections 32B-1-102 and 32B-2-202.

(2) As used in this rule:

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

~~\_\_\_\_\_ (a) "Convention center" is a publicly or privately owned or operated facility:~~

~~\_\_\_\_\_ (i) the primary business or function of which is to host conventions, conferences, and food and beverage functions under a banquet contract;~~

~~\_\_\_\_\_ (ii) that has adequate kitchen or culinary facilities on the premises of the convention center to provide complete meals; and~~

~~\_\_\_\_\_ (iii) that is in total at least 30,000 square feet.~~

~~\_\_\_\_\_ (b) "Resort facility" is a publicly or privately owned or operated commercial recreational facility or area:~~

~~\_\_\_\_\_ (i) that is designed primarily to attract and accommodate people to a recreational or sporting environment;~~

~~\_\_\_\_\_ (ii) that is capable of hosting conventions, conferences, and food and beverage functions under a banquet contract;~~

~~\_\_\_\_\_ (iii) that has adequate kitchen or culinary facilities on the premises to provide complete meals; and~~

~~\_\_\_\_\_ (iv) that has at least 1,500 square feet of function space consisting of meeting or dining rooms that can be reserved for private use under a banquet contract that can accommodate a minimum of 100 people, provided that in cities of the third, fourth, or fifth class, unincorporated areas of a county, and towns, the Commission shall have the authority to waive the minimum function space size requirements.~~

~~\_\_\_\_\_ (c) "Sports center" is a publicly or privately owned or operated facility:~~

~~\_\_\_\_\_ (i) that is designed primarily to attract people to and accommodate people at sporting events;~~

~~\_\_\_\_\_ (ii) that has a fixed seating capacity for more than 2,000 persons;~~

~~\_\_\_\_\_ (iii) that is capable of hosting conventions, conferences, and food and beverage functions under a banquet contract;~~

~~\_\_\_\_\_ (iv) that has adequate kitchen or culinary facilities on the premises of the sports center to provide complete meals; and~~

~~\_\_\_\_\_ (v) that has at least 2,500 square feet of function space consisting of meeting or dining rooms that can be reserved for private use under a banquet contract that can accommodate a minimum of 100 people, provided that in cities of the third, fourth, or fifth class, unincorporated areas of a county, and towns, the Commission shall have the authority to waive the minimum function space size requirements.~~

~~\_\_\_\_\_ (d) "Convention center" is a publicly or privately owned or operated facility:~~

~~\_\_\_\_\_ (i) the primary business or function of which is to host conventions, conferences, and food and beverage functions under a banquet contract;~~

~~\_\_\_\_\_ (ii) that has adequate kitchen or culinary facilities on the premises of the convention center to provide complete meals; and~~

~~\_\_\_\_\_ (iii) that is in total at least 30,000 square feet.]~~

#### R82-5-104. Liquor Dispensing Systems.

(1) Authority. This rule is ~~adopted~~ made pursuant to Sections 32B-5-301 and 32B-5-304.

(2) Purpose. This rule describes:

(a) the minimum requirements for a liquor dispensing system required by Section 32B-5-304;

(b) how the Department approves a liquor dispensing system; and

(c) where a liquor dispensing system may be used and stored.

(3) Definitions. As used in this rule ~~section~~:

(a) "Dispensing area" means a fixed structure, area, counter, or surface where an alcoholic beverage is stored, prepared, and dispensed.

(b) "Dispensing ~~s~~ystem" means a device that measures alcohol and dispenses alcohol in the selected measured amount.

(4)(a) A licensee may not install or use any liquor dispensing system for the automated mixing or dispensing of spirituous liquor unless the liquor dispensing system has been approved by the Department.

(b) After the Department's approval, a licensee may only change ~~its~~ the licensee's liquor dispensing system with prior approval by the Department.

(5) The Department may approve a ~~A~~ liquor dispensing system ~~[may be approved by the Department if it]~~ if the liquor dispensing system: ~~[meets the following minimum requirements:]~~

(a) dispenses spirituous liquor in calibrated quantities not to exceed 1.5 ounces;

(b) has a meter which counts the number of pours dispensed; and

(c) the margin of error of the liquor dispensing system for a one ounce pour size ~~cannot~~ does not exceed 1/16 of an ounce or two milliliters.

(6) Liquor dispensing ~~Dispensing~~ systems may be of various types, including:

(a) gun;

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- (b) a stationary head;
- (c) a tower;
- (d) an insertable spout;
- (e) a ring activator; or
- (f) a ~~[similar method]~~ type similar to the types described in Subsections (6)(a) through (e).

~~(7)(a)~~ The licensee is responsible for verifying that a liquor dispensing~~[the]~~ system, when initially installed, meets the specifications ~~[in Subsection (1)]~~ described in this rule.

~~(b)~~ Once installed, the licensee shall maintain the liquor dispensing system to ensure that the liquor dispensing system~~[#]~~ continues to meet the approved specifications~~[,-]~~.

~~(c)~~ Failure to maintain the liquor dispensing system may be grounds for suspension or revocation of the licensee's ~~[liquor]~~ license.

~~(8)(a)~~ A liquor dispensing system must be calibrated to pour a quantity of spirituous liquor not to exceed 1.5 ounces.

~~(b)(i)~~ Voluntary consent is given that representatives of the Department, State Bureau of Investigation, or any law enforcement officer shall have access to any liquor dispensing system for inspection or testing purposes.

~~(ii)~~ A licensee shall furnish to the representatives, upon request, samples of the alcoholic products dispensed through any liquor dispensing system for verification and analysis.

~~(e)~~ Spirituous ~~(8)(a)~~ A licensee shall:

~~(i)~~ affix spirituous liquor bottles in use by a ~~[with a]~~ liquor dispensing system ~~in [at]~~ the dispensing area ~~[location]~~ ~~[must be affixed]~~ to the liquor dispensing system ~~[by the licensee]~~; ~~[-]~~

~~(ii)~~ lock spirituous liquor bottles in use with a remote storage alcoholic beverage dispensing system approved by the Department ~~[must be in a locked]~~ in a locked storage area identified on the licensee's floor plan; ~~and~~ ~~[-]~~

~~(iii)~~ lock or secure spirituous liquor bottles attached to a liquor dispensing system in a place and manner that precludes the dispensing of spirituous liquor at times when liquor sales are not authorized by law.

~~(b)~~ A licensee may not dispense or store a spirituous liquor bottle at a patron's table.

~~(c)~~ Any ~~[other]~~ primary spirituous liquor not in service through a liquor dispensing system must remain unopened. ~~[There shall be no opened primary spirituous liquor bottles at a dispensing location that are not affixed to an approved dispensing device.]~~

~~(9)(a)~~ A liquor dispensing system:

~~(f)~~ Liquor dispensing systems shall

~~(i)~~ may not be utilized at patron's table ~~[Liquor dispensing systems may]~~;

~~(ii)~~ may only be used at approved dispensing area ~~[structures]~~; ~~[-]~~

~~(g)~~ Spirituous liquor bottles shall not be dispensed or stored at a patron's table.

~~(h)~~ The liquor dispensing system and spirituous liquor bottles attached to the liquor dispensing system must be locked or secured in such a place and manner as to preclude the dispensing of spirituous liquor at times when liquor sales are not authorized by law.

~~(i)~~ Dispensing systems and devices must:

~~(iii)~~ shall avoid an in-series hookup that would permit the contents of spirituous liquor bottles to flow from bottle to bottle before reaching the dispensing spigot or nozzle;

~~(iv)~~ may not dispense from or utilize containers other than original spirituous liquor bottles; ~~and~~

~~(v)~~ shall prohibit the intermixing of different kinds of products or brands in the spirituous liquor bottles from which they are being dispensed; ~~and~~

~~(vi)~~ shall conform to federal, state, and local health and sanitation requirements. ~~[-]~~

~~(b)(i)~~ Pursuant to federal ~~[law]~~ law and Section 32B-4-420, liquor dispensed through a liquor dispensing system ~~[shall be]~~ must be from its original container, and ~~[there shall be no re-use or refilling of]~~ spirituous liquor bottles may not be reused or refilled with any substance.

~~(ii)~~ The Commission adopts federal regulations 27 CFR 31.201 and 26 USC Section 5301 and incorporates them by reference.

~~(10)(a)(i)~~ ~~[Each]~~ A licensee shall keep daily records for each liquor dispensing ~~[outlet]~~ system as follows:

~~(i)~~ a list of brands of spirituous liquor dispensed through the liquor dispensing system;

~~(ii)~~ the number of portions of spirituous liquor dispensed through the liquor dispensing system determined by the calculated difference between the beginning and ending meter readings or as electronically generated by the recording software of the dispensing system;

~~(iii)~~ the number of portions of spirituous liquor sold; and

~~(iv)~~ a comparison of the number of portions dispensed to the number of portions sold including an explanation of any variances.

~~(4)~~ ~~(b)(i)~~ Representatives of the Department, the State Bureau of Investigation, and any other law enforcement officer shall have access to a licensee's liquor dispensing system for inspection or testing purposes upon request.

~~(ii)~~ A licensee shall furnish to the representatives, upon request, samples of the alcoholic products dispensed through any liquor dispensing system for verification and analysis.

~~(iii)~~ A licensee shall make the ~~[The]~~ records described in Subsection (10)(a) ~~(8)(k) must be made~~ available for inspection and audit by the Department or law enforcement.

~~(m)~~ Licenses ~~(c)(i)~~ A licensee shall display in a prominent place on the licensed premises a list of the types and brand names of spirituous liquor being served through the licensee's liquor ~~[its]~~ dispensing system.

~~(ii)~~ A licensee meets the requirement under Subsection (10)(c)(i) by ~~[This requirement may be satisfied either by]~~ printing the list on an alcoholic beverage menu or by wall posting ~~[or both]~~.

~~(n)~~ Liquor dispensing systems and devices must conform to federal, state, and local health and sanitation requirements. ~~Where considered necessary, the~~ ~~(11)~~ The Department may:

~~(i)~~ require the alteration or removal of any liquor dispensing system; ~~or~~ ~~and~~

- (ii) require the licensee to clean, disinfect, or otherwise improve the sanitary conditions of any liquor dispensing system.

**R82-5-108. Menus and Price Lists.**

(1) Authority. This rule is made pursuant to S[sections] [~~32B-2-206,~~]32B-2-202[ ~~and 32B-5-305~~] and 32B-6-406.

(2) Purpose. The purpose of this rule is to provide consumers with information and prevent discounting of alcohol or unlawful promotions.

~~(2)~~(3) [~~Contents of Alcoholic Beverage Menu.~~]Application.

(a)(~~1~~) [~~Each~~]A licensee shall have readily available for the licensee's[its] patrons a printed or electronic alcoholic beverage price list[;] or menu containing:

(i) current prices of all liquor, mixed drinks, wine, beer, and heavy beer; ~~and~~[;]

(ii) [~~The list or menu described in subpart (2)(a)(i) of this rule shall include~~]any charges for the service of packaged wines or heavy beer, including charges for the supply of glasses or chilling.[;]

~~(b) A printed menu, master beverage price list, or other printed list is sufficient as long as the prices are current and it meets the requirements of this rule.~~

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

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

**KEY: alcoholic beverages**

**Date of Last Change: 2024**[April 28, 2023]

**Authorizing, and Implemented or Interpreted Law: 32B-1-102; 32B-2-202; 32B-5-304; 32B-6-406**

**NOTICE OF SUBSTANTIVE CHANGE**

**TYPE OF FILING:** Amendment

**Rule or Section Number:**

**R82-6**

**Filing ID: 56809**

**Agency Information**

<b>1. Title catchline:</b>	Alcoholic Beverage Services, Administration	
<b>Building:</b>	Administration	
<b>Street address:</b>	1625 S 900 W	
<b>City, state:</b>	Salt Lake City, UT	
<b>Mailing address:</b>	PO Box 30408	
<b>City, state and zip:</b>	Salt Lake City, UT 84130-0408	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Vickie Ashby	801-977-6800	vickieashby@utah.gov
<b>Please address questions regarding information on this notice to the persons listed above.</b>		

**General Information**

<b>2. Rule or section catchline:</b>
R82-6. Specific Retail Provisions
<b>3. Purpose of the new rule or reason for the change:</b>
This rule change is made to modify the time period for which the Department of Alcoholic Beverage Services (Department) may retain notice of certain events and to make other clarifying changes.
<b>4. Summary of the new rule or change:</b>
This rule change modifies the time period for which the Department may retain notice of a licensee's banquet or reception center event, clarifies that a hospitality amenity licensee is required to provide the Department notice of events, corrects incorrect cross references, and makes other clarifying 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 the rule change is technical in nature or consistent with current and previous Department practice.

**B) Local governments:**

This rule is not expected to have a fiscal impact local government revenues or expenditures because the 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 is not expected to have a fiscal impact on small businesses because the 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 is not expected to have a fiscal impact on non-small businesses because the 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 is not expected to have a fiscal impact on persons other than small business, non-small businesses or state or local government entities because the 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 the 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**

<b>Fiscal Cost</b>	<b>FY2025</b>	<b>FY2026</b>	<b>FY2027</b>
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
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>	<b>FY2025</b>	<b>FY2026</b>	<b>FY2027</b>
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
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**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**

<b>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:</b>		
Section 32B-2-202	Section 32B-6-605	Section 32B-6-805
Section 32B-6-1005		

**Public Notice Information**

<b>8. The public may submit written or oral comments to the agency identified in box 1.</b> (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.)	
<b>A) Comments will be accepted until:</b>	10/31/2024

<b>9. This rule change MAY become effective on:</b>	11/07/2024
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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**

<b>Agency head or designee and title:</b>	Tiffany Clason, Executive Director	<b>Date:</b>	09/16/2024
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**R82. Alcoholic Beverage Services, Administration.**

**R82-6. Specific Retail Provisions.**

**R82-6-403. Bars -- Minors in Lounge or Bar Areas of Equity or Fraternal Licensees.**

(1) Authority. This rule is made pursuant to Section 32B-2-202. ~~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) Purpose. The purpose of this rule is to clarify the meaning of "lounge or bar area" as used in Section 32B-6-406.

(3) Application. Under Section 32B-6-406, a minor may not be admitted into, use, or be in the lounge or bar area of an equity or fraternal licensee's licensed premises, which includes: ~~["Lounge or bar area" includes:]~~

- (a) the dispensing~~[bar]~~ structure as defined in Section~~[section]~~ 32B-1-102~~[(7)]~~;
- (b) any area in the immediate vicinity of the dispensing~~[bar]~~ structure where the sale, service, display, and advertising of alcoholic beverages is emphasized; and~~[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.

**R82-6-602. On-~~p~~[P]remise Banquet -- Reporting Requirement for Banquet Licensees.**

(1) Authority. ~~[The authority for this rule is]~~ This rule is made pursuant to ~~[Subsections]~~ Section 32B-6-605~~[(3)(a) and 32B-6-605(4)(a)]~~.

(2) Purpose. 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 a law enforcement ~~[officers]~~ officer may conduct a random inspection of a banquet to monitor compliance with alcohol ~~[the alcoholic beverage control]~~ laws; and
- (b) the records to be maintained by an on-premise banquet licensee and sublicensee.

(3) Application.

(a) An on-premise banquet licensee ~~[and]~~ or an on-premise banquet sublicensee shall provide the Department advance notice of scheduled banquets in an electronic format at least ~~[fourteen]~~ 14 days ~~[prior to]~~ before the scheduled event or immediately upon booking events with less than 14 ~~[fourteen]~~ days until the scheduled event.

(b) The electronic advance notice must include the following information for each event:

- (i) ~~[(a)]~~ the name of the host;
- (ii) ~~[(b)]~~ the specific location;
- (iii) ~~[(c)]~~ the dates;
- (iv) ~~[(d)]~~ the beginning and ending times;
- (v) ~~[(e)]~~ the number of attendees expected to attend;
- (vi) ~~[(f)]~~ the designation as either a private event or a privately sponsored event, including the specific type of event; and
- (vii) ~~[(g)]~~ for banquet events with an anticipated attendance of over 500 people, the control measures that will be implemented to

prevent:

- (A) ~~[(i)]~~ minors from obtaining alcohol;
- (B) ~~[(ii)]~~ overconsumption of alcohol;
- (C) ~~[(iii)]~~ the general public or an uninvited guest from entering a private event; and
- (D) ~~[(iv)]~~ a person who has not paid an admission fee from entering a privately sponsored event.

NOTICES OF PROPOSED RULES

(4) The licensee or sublicensee shall provide electronic notice of banquet event cancellations or modifications ~~[at the time]~~when the event is canceled or modified.

(5)~~[The]~~(a) Upon request, the Department shall provide access to documents listing scheduled banquet events ~~[upon request,]~~to a commissioner, authorized representative of the Department, ~~[and any]~~or law enforcement officer for use ~~[in a purpose stated in Subsection (2)]~~as described in Subsection (2).

~~(b) The Department and law enforcement may use the scheduled banquet event documents only for the purposes stated in this rule.~~

(6) The Department shall retain a copy of any documents pertaining to scheduled banquet events for up to ~~[fourteen days]~~one year 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) The Department and law enforcement may use the scheduled banquet event documents only for the purposes stated in this rule.]~~

(9) ~~[On-premise]~~An on-premise banquet ~~[licensees and sublicensees]~~licensee or sublicensee shall ~~[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]~~described in this rule may result in disciplinary action pursuant to Sections 32B-3-201 ~~through~~[to] 32B-3-207~~[,]~~ and ~~[Section]~~R82-3-102 and R82-3-103.

**R82-6-801. Reception Center -- Reporting Requirement for Reception Center Licensees.**

(1) Authority. ~~[This rule is made 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]~~Section 32B-6-805.

(2) Purpose. This rule implements the requirement of ~~[s]~~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 a ~~[by]~~law enforcement officer~~[s]~~ to monitor compliance with Utah alcoholic beverage control laws~~[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]~~The report shall include the name and specific location of each event and the name of the third-party host of the event.

(d)(i) ~~[The]~~Upon request, the Department shall ~~[make copies of the reports]~~provide access to the reports ~~[available]~~to a commissioner, authorized representative of the Department, ~~[and any]~~or law enforcement officer ~~[upon request to be used for the purpose stated in subpart (2) of this rule.]~~for use as described in Subsection (2).

~~[(iii) any report filed shall be used by the Department and law enforcement only for the purposes stated in this rule.]~~(ii) The Department and law enforcement may use the scheduled banquet event documents only for the purposes stated in this rule.

(e) The Department shall retain a copy of each report ~~[until the end of each reporting quarter.]~~for up to one year after submission of the report.

(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, the Department shall:

(i) ~~[any report filed shall be deemed]~~deem a filed report to include a claim of business confidentiality~~[,]~~ and a request that the report be classified as protected pursuant to ~~[sections]~~Sections 63G-2-305 and 63G-2-309; and

(ii) ~~[any report filed shall be classified by the Department]~~ classify a filed report as protected pursuant to ~~[section-]~~Section 63G-2-305~~[-and]~~

(g) Failure of an on-premise banquet licensee or sublicensee to timely file a quarterly report under this rule may result in disciplinary action pursuant to ~~[sections-]~~Sections 32B-3-201 through 32B-3-207~~[-]~~ and R82-3-102 and R82-3-103.

**R82-6-1005. Hospitality Amenity Licensee Notice and Records.**

(1) Authority. This rule is ~~[adopted under the authority of]~~made pursuant to ~~[Subsections 32B-6-1005(6)(b) and 32B-6-1005(43)-]~~Section 32B-6-1005.

(2) Purpose. The purpose of this rule is to specify:

(a) the notice requirements for a hospitality amenity licensee when~~[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 licensee must use or maintain; and

(c) the period the records must be retained.

(3)~~(a)~~ Before holding reoccurring or multiple events where alcoholic products are furnished free of charge or at a reduced rate, a hospitality amenity licensee shall~~[must provide notice]~~

~~(a) ] provide notice to the Department at least 14 days in advance of each event[-and].~~

~~(b) [that notice for each event includes:]~~The notice for each event shall include:

(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 shall~~[must]~~ create a daily record with the following information:

(a) ~~if~~[ ]he 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) ~~if~~[ ]he total number of hospitality guests~~[-]~~

(c) ~~if~~[ ]he room number of each hospitality guest~~[-]~~

(d) ~~if~~[ ]he arrival and departure dates of each hospitality guest~~[-]~~ and

(e) ~~if~~[ ]he amount of alcohol, wine, or heavy beer sold, served, or furnished to each hospitality guest.

(5) ~~A~~[The] hospitality amenity licensee shall:

~~(a) [must] maintain the records described in Subsection (4) at the licensed premises for three years[-to ensure compliance with the hospitality amenity licensee]; and[-]~~

~~[-(6) The licensee may keep the record in written or electronic form.~~

~~]~~ ~~[(7) The licensee must-]~~(b) upon request, make the ~~[record-]~~records described in Subsection (4) available to DABS ~~[DABC-]~~or law enforcement for inspection.

**KEY: alcoholic beverages**

**Date of Last Change: 2024**~~[December 22, 2023]~~

**Authorizing, and Implemented or Interpreted Law: 32B-1-102; 32B-2-202; 32B-2-303; 32B-6-605; 32B-6-805; 32B-6-1005**

**NOTICE OF SUBSTANTIVE CHANGE**

**TYPE OF FILING:** Amendment

**Rule or Section Number:**

**R82-8**

**Filing ID: 56810**

**Agency Information**

<b>1. Title catchline:</b>	Alcoholic Beverage Services, Administration	
<b>Building:</b>	Administration	
<b>Street address:</b>	1625 S 900 W	
<b>City, state:</b>	Salt Lake City, UT	
<b>Mailing address:</b>	PO Box 30408	
<b>City, state and zip:</b>	Salt Lake City, UT 84130-0408	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Vickie Ashby	801-977-6800	vickieashby@utah.gov
<b>Please address questions regarding information on this notice to the persons listed above.</b>		

**General Information**

<b>2. Rule or section catchline:</b>
R82-8. Resorts
<b>3. Purpose of the new rule or reason for the change:</b>
This rule change is made in response to recent statutory changes requiring rulemaking and to make other clarifying changes.
<b>4. Summary of the new rule or change:</b>
This rule change outlines requirements for signage indicating a designated conveyance area within a licensed hotel or resort, corrects incorrect cross references, and makes other clarifying changes.

**Fiscal Information**

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
This rule is not expected to have a fiscal impact on the state budget because the rule change is technical in nature or consistent with current and previous Department of Alcoholic Beverage Services (Department) practice.
<b>B) Local governments:</b>
This rule is not expected to have a fiscal impact the local governments' revenues or expenditures because the rule change is technical in nature or consistent with current and previous Department practice.
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):
This rule is not expected to have a fiscal impact on small businesses because the rule change is technical in nature or consistent with current and previous Department practice.
<b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):
This rule is not expected to have a fiscal impact on non-small businesses because the rule change is technical in nature or consistent with current and previous Department practice
<b>E) Persons other than small businesses, non-small businesses, state, or local government entities</b> ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <b>agency</b> ):
This rule is not expected to have a fiscal impact on persons other than small business, non-small businesses or state or local government entities because the rule change is technical in nature or consistent with current and previous Department practice.
<b>F) Compliance costs for affected persons</b> (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 the rule change is technical in nature or consistent with current and previous Department practice.
<b>G) Regulatory Impact Summary Table</b> (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**

<b>Fiscal Cost</b>	<b>FY2025</b>	<b>FY2026</b>	<b>FY2027</b>
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
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>



Fiscal Benefits	FY2025	FY2026	FY2027
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
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**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-8d-102	Section 32B-8-401
Section 32B-8b-301		

**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:** 10/31/2024

**9. This rule change MAY become effective on:** 11/07/2024

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**

<b>Agency head or designee and title:</b>	Tiffany Clason, Executive Director	<b>Date:</b>	09/16/2024
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**R82. Alcoholic Beverage Services, Administration.**

**R82-8. Resorts and Hotels.**

**R82-8-101. Definitions.**

(1) Authority. ~~This rule is made pursuant to [The Commission makes the following definitions, pursuant to section-]Sections 32B-1-102 and 32B-8d-102.~~

(2) Definitions.

(a) "Lounge or bar area" means:

(i) the ~~dispensing[bar]~~ structure as defined in [s]Section 32B-1-102;

(ii) any area in the immediate vicinity of the ~~dispensing[bar]~~ structure where the sale, service, display, and advertising of alcoholic beverages is emphasized; or

(iii) any area that is in the nature of or has the ambience or atmosphere of a bar, parlor, lounge, cabaret, or night club.

(b)[(+)] "Resort spa" means a facility within the boundary of a resort building that:

(i) provides professionally administered personal care treatments such as massages, facials, hair care, and nail care;[-]

(ii) ~~[Treatment providers who work at a resort spa must be-]employs treatment providers properly licensed under Title 58, [Division of Professional Licensing Act.]Occupations and Professions; and~~

(iii) ~~[The resort spa also must hold-]holds a license to conduct business as a spa or similar operation under local licensing laws.~~

**R82-8-104. Designated Conveyance Areas Signage.**

(1) Authority. This rule is made pursuant to Sections 32B-8-401 and 32B-8b-301.

(2) Purpose. The purpose of this rule is to establish designated conveyance area signage requirements for a person licensed as a resort under Title 32B, Chapter 8, Resort License Act, or as a hotel under Title 32B, Chapter 8b, Hotel License Act.

(3) To clearly identify each designated conveyance area, a resort licensee or hotel licensee shall display a sign as described in Subsection (4) that:

(a) measures 8.5 inches by 11 inches in size;

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- (b) includes a map of all designated conveyance areas within the resort licensee or hotel licensee premises; and
- (c) includes in large letters a statement that reads: "Alcoholic beverages may not be taken beyond a designated conveyance area."
- (4) A resort licensee or hotel licensee shall prominently display the sign described in Subsection (3):
- (a) at the beginning and ending of the designated conveyance area; and
- (b) in at least one other location within the designated conveyance area.

**KEY:** alcoholic beverages

Date of Last Change: 2024~~[April 28, 2023]~~

Authorizing, and Implemented or Interpreted Law: 32B-1-102; 32B-2-202; 32B-8d-102; 32B-8-301; 32B-8b-401

NOTICE OF SUBSTANTIVE CHANGE		
<b>TYPE OF FILING:</b> Amendment		
<b>Rule or Section Number:</b>	R82-9	<b>Filing ID:</b> 56811

**Agency Information**

<b>1. Title catchline:</b>	Alcoholic Beverage Services, Administration	
<b>Building:</b>	Administration	
<b>Street address:</b>	1625 S 900 W	
<b>City, state:</b>	Salt Lake City, UT	
<b>Mailing address:</b>	PO Box 30408	
<b>City, state and zip:</b>	Salt Lake City, UT 84130-0408	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Vickie Ashby	801-977-6800	vickieashby@utah.gov
<b>Please address questions regarding information on this notice to the persons listed above.</b>		

**General Information**

<b>2. Rule or section catchline:</b>
R82-9. Event Permits
<b>3. Purpose of the new rule or reason for the change:</b>
This rule change is made to clarify certain considerations by the Department of Alcoholic Beverage Services (Department) for event permits.
<b>4. Summary of the new rule or change:</b>
This rule clarifies the number of attendees necessary for a large scale event, clarifies the purpose of required security at events, and makes other clarifying changes.

**Fiscal Information**

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
This rule is not expected to have a fiscal impact on the state budget because the rule change is technical in nature or consistent with current and previous Department practice.
<b>B) Local governments:</b>
This rule is not expected to have a fiscal impact local government revenues or expenditures because the 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 is not expected to have a fiscal impact on small businesses because the 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 is not expected to have a fiscal impact on non-small businesses because the 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 is not expected to have a fiscal impact on persons other than small business, non-small businesses or state or local government entities because the 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 the 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	FY2025	FY2026	FY2027
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
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
Fiscal Benefits	FY2025	FY2026	FY2027
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
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**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-2-202	Section 32B-9-201	
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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.)

<b>A) Comments will be accepted until:</b>	10/31/2024
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<b>9. This rule change MAY become effective on:</b>	11/07/2024
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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**

<b>Agency head or designee and title:</b>	Tiffany Clason, Executive Director	<b>Date:</b>	09/16/2024
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**R82. Alcoholic Beverage Services, Administration.**

**R82-9. Event Permits.**

**R82-9-202. Additional Consideration for Event Permits.**

~~\_\_\_\_\_ (1)(a) In accordance with 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.~~

~~\_\_\_\_\_ (b) As part of written consent of the local authority required by Section 32B-9-201, the locality may provide a recommendation as to whether the entity is conducting a civic or community enterprise.]~~

~~[(e)-(1) Authority. This rule is made pursuant to Sections 32B-2-202 and 32B-9-201.~~

~~\_\_\_\_\_ (2)(a) The director may consider the recommendation of the local authority in determining whether the entity is conducting a civic or community enterprise as required in Section 32B-9-303.~~

~~\_\_\_\_\_ (b) The local authority may provide a recommendation as to whether an applicant is conducting a civic or community enterprise as part of the written consent of the local authority required in Section 32B-9-201.~~

~~\_\_\_\_\_ (d) Notwithstanding 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 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 Subsection (3).~~

~~\_\_\_\_\_ (3)(a) In accordance with 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.]~~

~~[(b) The] (3)(a) In accordance with Section 32B-9-202 and except as provided in Subsection (3)(c), 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] is required~~ show proof of age ~~[prior to] before~~ purchasing an alcoholic beverage;~~

~~(ii) each individual assigned to check proof of age will have completed the alcohol server training seminar ~~[outlined] described~~ in Section 26B-5-205 within ~~[the last] three years~~ ~~[prior to] before~~ the date of the event;~~

~~(iii) one or more individuals ~~[who have completed the alcohol server training seminar outlined in Section 26B-5-205 within the last three years] described in Subsection (3)(a)(ii)~~ 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 ~~at least one police officer, hired security guard, organization staff member, or security volunteer~~ ~~[one or more individuals]~~ for every 50 individuals estimated to be in the ~~[consumption] area~~ ~~the applicant designates for alcohol consumption~~ at one time ~~[, which may be provided by a police officer, hired security guard, organization staff member, or security volunteer.] to minimize the possibility of:~~~~

~~\_\_\_\_\_ (A) minors being sold or furnished alcohol at the event;~~

~~\_\_\_\_\_ (B) patrons being overserved alcohol at the event; or~~

~~\_\_\_\_\_ (C) patrons removing alcohol from the area designated for alcohol consumption at the event.~~

~~(b) ~~[(e)-]~~ In accordance with Section 32B-9-202 and except as provided in Subsection (3)(c), 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 with 1,000 or more attendees, where minors are present:~~

~~(i) any alcoholic beverage ~~[shall] will~~ be served in a readily identifiable ~~[cups or containers] cup or container~~ distinct from ~~[those] the cup or container~~ used for a non-alcoholic ~~[beverages] beverage;~~~~

~~(ii) dispensing and consumption of an alcoholic ~~[beverages shall] beverage~~ will 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] is required~~ to show proof of age ~~[prior to] before~~ purchasing an alcoholic beverage ~~[shall] will~~ 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 an alcoholic ~~[beverages] beverage~~ at the event.~~

~~(c) ~~[(4)-]~~ The director, after reviewing the facts and circumstances of a particular event, may modify any of the control measures ~~[outlined] described~~ in Subsection[s] ~~[(3)(b) or (e)] (3)(a) or (b)~~ 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~~ attendees being overserved alcohol at the event.

(4) Notwithstanding Subsections (2) and (3), the director may not issue an event permit if, based on the totality of the circumstances, the director determines that the event permit is being used to circumvent other applicable requirements of Title 32B, Chapter 9, Event Permit Act.

(5)~~(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)~~ Subsection (3) 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:** ~~2024~~ December 22, 2023

**Authorizing, and Implemented or Interpreted Law:** 32B-2-202; 32B-9-101 through 32B-9-406

**NOTICE OF SUBSTANTIVE CHANGE**

<b>TYPE OF FILING:</b> Amendment		
<b>Rule or Section Number:</b>	<b>R156-15A-231</b>	<b>Filing ID: 56788</b>

**Agency Information**

<b>1. Title catchline:</b>	Commerce, Professional Licensing	
<b>Building:</b>	Heber M. Wells Building	
<b>Street address:</b>	160 E 300 S	
<b>City, state:</b>	Salt Lake City, UT	
<b>Mailing address:</b>	PO Box 146741	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-6741	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Matt Johnson	801-530-6628	mmjohnson@utah.gov
Steve Duncombe	801-530-6628	sduncombe@utah.gov
<b>Please address questions regarding information on this notice to the persons listed above.</b>		

**General Information**

<b>2. Rule or section catchline:</b>	R156-15A-231. Administration of Building Code Inspector Training Fund, Building Code Construction-Related Training Fund, and Factory Built Housing Fees Account
<b>3. Purpose of the new rule or reason for the change:</b>	<p>Subsection 15A-1-209(5)(c) states that funds transmitted to the Division of Professional Licensing (Division) from the issuance of building permits be used for various educational purposes. Subsection R156-15A-231(4)(f)(i) establishes that instructors reimbursed from these funds may be reimbursed at a rate not to exceed \$150 per instruction hour without review and approval by the Education Advisory Committee of the Uniform Building Code Commission.</p> <p>During the Committee's meeting on March 19, 2024, the Committee voted to increase this amount to \$200 per instruction hour.</p>
<b>4. Summary of the new rule or change:</b>	<p>This amendment changes Subsection R156-15A-231(f)(i) to increase the maximum reimbursement rate for instruction that does not require additional approval from the Education Advisory Committee from \$150 to \$200.</p> <p>Also, Subsections R156-15A-231(7) and (8) include a nonsubstantive change to the Division's title.</p>

**Fiscal Information**

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>
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**A) State budget:**

There are no anticipated costs or savings to the state budget. The updated rate (i) aligns with acceptable and recognized industry standards, and (ii) reflects the Committee's standard practice of approving this rate. The rule change will have no impact on how the Department of Commerce functions or the parties to which it applies.

**B) Local governments:**

The proposed amendment will have no impact on local governments. The source of the funds from which the instructor reimbursement is paid is established by Subsection 15A-1-209(5)(c). These funds are 85% of the revenue derived from fees collected by compliance agencies from the issuance of building permits

This amendment changes neither the total percentage transferred to the Division from the compliance agencies, nor the fees charged for building permits. A local government that acts as a compliance agency and issues building permits will continue to transfer 85% of the revenue derived from the fees collected from those permits.

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

The proposed amendments will have no impact on small businesses. This amendment does not change the fees charged for building permits to small businesses.

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

The proposed amendment will have no impact on non-small businesses. The source of the funds from which the instructor reimbursement is paid is established by Subsection 15A-1-209(5)(c). These funds are 85% of the revenue derived from fees collected by compliance agencies from the issuance of building permits.

This amendment changes neither the total percentage transferred to the Division from the compliance agencies nor the fees charged for building permits.

**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 amendment will have no impact on persons other than small businesses, non-small businesses, state, or local government-entities. The source of the funds from which the instructor reimbursement is paid is established by Subsection 15A-1-209(5)(c) . These funds are 85% of the revenue derived from fees collected by compliance agencies from the issuance of building permits.

This amendment changes neither the total percentage transferred to the Division from compliance agencies nor the fees charged for building permits.

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

The amendment will reduce the costs associated with retaining building permit instructors and will be more reflective of current market rates. By more closely reflecting market rates, retaining instructors will not require Committee approval as frequently, reducing overall costs.

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

Regulatory Impact Table			
Fiscal Cost	FY2025	FY2026	FY2027
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
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
Fiscal Benefits	FY2025	FY2026	FY2027

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
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**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 58-1-106(1)(a)	Subsection 58-1-202(1)(a)	Subsection 15A-1-204(6)
Section 15A-1-205		

**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:** 10/31/2024

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

<b>Date:</b>	<b>Time:</b>	<b>Place (physical address or URL):</b>
10/04/2024	2:00 PM	160 East 300 South - Conference Room 475 Salt Lake City, Utah and also via Google Meet link below  Google Meet joining info Video call link: <a href="https://meet.google.com/eyw-zgpk-hwa">https://meet.google.com/eyw-zgpk-hwa</a> Or dial: (US) +1 314-325-6481 PIN: 853 925 725# More phone numbers: <a href="https://tel.meet/eyw-zgpk-hwa?pin=6286685690226">https://tel.meet/eyw-zgpk-hwa?pin=6286685690226</a>

**9. This rule change MAY become effective on:** 11/07/2024

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**

<b>Agency head or designee and title:</b>	Mark Steinagel, Division Director	<b>Date:</b>	09/05/2024
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**R156. Commerce, Professional Licensing.**

**R156-15A. State Construction Code Administration and Adoption of Approved State Construction Code Rule.**

**R156-15A-231. Administration of Building Code Inspector Training Fund, Building Code Construction-Related Training Fund, and Factory Built Housing Fees Account.**

Under Subsections 15A-1-209(5)(c) and 58-56-17.5(2)(c), and Section R156-15A-230, the following procedures, standards, and policies are established for the administration of the Building Code Inspector Training Fund, the Building Code Construction-Related Training Fund, and the Factory Built Housing Fees Account:

(1) The Division may not approve or deny education grant requests from a separate fund or account until the Education Advisory Committee has considered and made its recommendations on the requests.

(2) Appropriate funding expenditure categories include:

NOTICES OF PROPOSED RULES

(a) for the Building Code Inspector Training Fund or the Factory Built Housing Fees Account, grants in the form of reimbursement funding to the following organizations that administer code-related training or factory built housing educational events, seminars, or classes:

- (i) schools, colleges, universities, departments of universities, or other institutions of learning;
- (ii) construction trade associations;
- (iii) professional associations or organizations; and
- (iv) governmental agencies;

(b) for the Building Code Construction-Related Training Fund, grants in the form of reimbursement funding to the following organizations that administer code-related training events, seminars, or classes:

- (i) construction trade associations; or
- (ii) professional associations;
- (c) costs or expenses incurred as a result of code events, seminars, or classes directly administered by the Division;
- (d) expenses incurred for the salary, benefits, or other compensation and related expenses resulting from the employment of a Board

Secretary;

(e) office equipment and associated administrative expenses required for the performance of the duties of the Board Secretary, including computer equipment, telecommunication equipment and costs and general office supplies; and

(f) other related expenses as determined by the Division.

(g) Gift cards, door prizes, and the cost of food and food services provided to training participants are not appropriate funding expenditure categories, and may not be paid or reimbursed from any fund.

(3) The following procedure shall be used for submission, review, and payment of funding grants:

(a)(i) A funding grant applicant shall submit a completed application on Division forms;

(A) at least 15 days before the meeting at which the request is to be considered; and

(B) before the training event.

(ii) An application that does not comply with Subsection (3)(a) may be denied.

(b) Payment of approved funding grants shall be made as reimbursement after:

(i) the approved event, class, or seminar has been held; and

(ii) the required receipts, invoices, and supporting documentation, including proof of payment if requested by the Division or Committee, have been submitted to the Division.

(c) Approved funding grants shall be reimbursed only for eligible expenditures that have been executed in good faith with the intent to ensure the best reasonable value.

(d)(i)(A) A Request for Reimbursement of an approved funding grant shall be submitted to the Division within 60 days following the approved event, class, or seminar, unless an extenuating circumstance occurs.

(B) Written notice shall be given to the Division of an extenuating circumstance.

(ii) Failure to submit a Request for Reimbursement within 60 days shall result in non-payment of approved funds, unless an extenuating circumstance has been reviewed and accepted by the Division.

(4) The Committee shall consider the following in determining whether to recommend to the Division approval of a proposed funding request:

(a) the fund balance available;

(b) if the proposed request meets the overall training objectives of the fund, including the need for training:

(i) on the subject matter;

(ii) in the geographical area where the training is offered; and

(iii) on new codes being considered for adoption;

(c) if the grant applicant agrees to charge a cost for the training event, class, or seminar that is uniform across categories of attendees;

(d) the earlier record of the program sponsor in providing codes training, including if:

(i) the subject matter taught was appropriate;

(ii) the instructor was appropriately qualified and prepared; and

(iii) the program sponsor followed appropriate and adequate procedures and requirements in providing the training and submitting requests for funding;

(e) costs of the facility, including:

(i) the location of a facility or venue, or the type of event, seminar, or class;

(ii) the suitability of the facility or venue for the anticipated attendance, or in connection with additional non-funded portions of an event or conference;

(iii) the duration of the proposed event, seminar, or class; and

(iv) if the proposed cost of the facility is reasonable compared to the cost of alternative available facilities;

(f) the estimated cost for instructor fees, including:

(i) a reimbursement rate for instruction activities not to exceed [~~\$150~~]\$200 per instruction hour without further review and approval by the Committee, and with preparation time, event coordination, course development costs, staff time, and travel time not separately reimbursable;

(ii) the experience or expertise of the instructor in the proposed training area;

(iii) the quality of training based upon events, seminars or classes that have been previously taught by the instructor;

(iv) the drawing power of the instructor, meaning the ability to increase the attendance at the proposed educational event, seminar, or class;

(v) travel expenses; and



- (vi) if the proposed cost for the instructor or instructors is reasonable compared to the costs of similar events, seminars, or classes;
- (g) the estimated cost of advertising materials, brochures, registration, and agenda materials, including:
  - (i) printing costs that may include creative or design expenses;
  - (ii) whether printed materials comply with Subsection (4)(b); and
  - (iii) delivery or mailing costs;
- (h) other reasonable and comparable cost alternatives for each proposed expense item;
- (i) other information the Committee reasonably believes may assist in evaluating a proposed expenditure; and
- (j) a total reimbursement rate of the lesser of \$10 per student hour or the cost of the approved actual expenditures.

(5) The Division, after consideration and recommendation of the Committee based upon the criteria in Subsection (4), may reimburse the following reasonable costs in addition to the lesser of \$10 per student hour or the cost of the approved actual expenditures:

- (a) text books, code books, or code update books;
- (b) cost of one Division licensee mailing list per provider per two-year renewal period;
- (c) cost incurred to upload continuing education hours into the Division's online registry for contractors, plumbers, electricians, or elevator mechanics; and
- (d) cost of advertising materials, brochures, registration and agency materials, including:
  - (i) printing costs, which may include creative or design expenses; and
  - (ii) delivery or mailing costs.

(6) Joint function.  
 (a) "Joint function" means a proposed event, class, seminar, or program that provides code or code-related training or factory built housing education, and education or activities in other areas.

(b) Only the prorated portions of a joint function that apply to the purposes of a separate fund are eligible for a funding grant from that fund.

- (c) In considering a proposed funding request that involves a joint function, the Committee shall consider if:
  - (i) the expenses subject to funding are reasonably prorated for the costs directly related to the purposes of the separate fund; and
  - (ii) the education being proposed will be reasonable and successful in the training objective in the context of the entire program or event.

(7) Advertising materials, brochures, and agenda or training materials for a Building Code Training funded event, seminar, or class shall include a statement that acknowledges that partial funding of the program has been provided by the Utah Division of [~~Occupational and~~ Professional Licensing from the 1% surcharge funds on building permits.

(8) Advertising materials, brochures, and agenda or training materials for a Factory Built Housing Fees Account funded educational event, seminar, or class shall include a statement that acknowledges that partial funding of the training program has been provided by the Utah Division of [~~Occupational and~~ Professional Licensing from surcharge fees on factory built housing sales.

(9) If an approved event or joint event is not held, no amount is reimbursable except for the costs described in Subsection (5)(d).

**KEY: contractors, building codes, building inspections, licensing**

**Date of Last Change:** [~~October 25, 2023~~]**2024**

**Notice of Continuation:** May 20, 2021

**Authorizing, and Implemented or Interpreted Law:** 58-1-106(1)(a); 58-1-202(1)(a); 15A-1-204(6); 15A-1-205

**NOTICE OF SUBSTANTIVE CHANGE**

<b>TYPE OF FILING:</b> New		
<b>Rule or Section Number:</b>	<b>R277-333</b>	<b>Filing ID: 56799</b>

**Agency Information**

<b>1. Title catchline:</b>	Education, Administration	
<b>Building:</b>	Board of Education	
<b>Street address:</b>	250 E 500 S	
<b>City, state:</b>	Salt Lake City, UT 84111	
<b>Mailing address:</b>	PO Box 144200	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4200	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov
<b>Please address questions regarding information on this notice to the persons listed above.</b>		

**General Information**

<b>2. Rule or section catchline:</b>
R277-333. Registered Apprenticeship Program for Teachers
<b>3. Purpose of the new rule or reason for the change:</b>
This rule is being created as a result of H.B. 208 passed in the 2024 General Session.  This new rule seeks to create a pathway for a prospective educator to earn a professional license through an apprenticeship program, operated in conjunction with Local Education Agencies (LEAs) and Institutions of Higher Education. The US Department of Labor (DOL) registered the apprenticeship program on July 16, 2024, and Utah has received a one-time \$1,900,000 grant from the DOL to fund the apprenticeship program.
<b>4. Summary of the new rule or change:</b>
The new rule establishes the rules for LEAs seeking to take part in the apprenticeship program, including requirements for eventual licensing and pay for apprentices and mentors.

**Fiscal Information**

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b> This proposed rule is not expected to have fiscal impact on state government revenues or expenditures. This program was created by H.B. 208 (2024), and the Utah State Board of Education (USBE) believes the fiscal impacts for USBE, Institutions of Higher Education (IHEs), and LEAs were captured in the fiscal note to H.B. 208 (2024).
<b>B) Local governments:</b> This rule change is not expected to have fiscal impact on local governments' revenues or expenditures. This program was created by H.B. 208 (2024), and USBE believes the fiscal impacts for USBE, IHEs, and LEAs were captured in the fiscal note to H.B. 208 (2024).
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons): This proposed rule is not expected to have fiscal impacts on small business revenues or expenditures. This only affects USBE, LEAs, and IHEs.
<b>D) Non-small businesses</b> ("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.
<b>E) Persons other than small businesses, non-small businesses, state, or local government entities</b> ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <i>agency</i> ): This rule change is not expected to have fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities. This only affects USBE, IHEs, and LEAs.
<b>F) Compliance costs for affected persons</b> (How much will it cost an impacted entity to adhere to this rule or its changes?): There are no compliance costs for affected persons. This program was created by H.B. 208 (2024), and USBE believes the fiscal impacts for USBE, IHEs, and LEAs were captured in the fiscal note to H.B. 208 (2024).
<b>G) Regulatory Impact Summary Table</b> (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	FY2025	FY2026	FY2027
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
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
Fiscal Benefits	FY2025	FY2026	FY2027
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
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>H) Department head comments on fiscal impact and approval of regulatory impact analysis:</b>			
The State Superintendent of the Utah State Board of Education, Sydnee Dickson, has reviewed and approved this regulatory impact analysis.			

**Citation Information**

<b>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:</b>		
Article X, Section 3	Subsection 53E-3-401(4)	Subsection 53E-6-201(3)(a)
Section 53E-6-206		

**Public Notice Information**

<b>8. The public may submit written or oral comments to the agency identified in box 1.</b> (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.)
<b>A) Comments will be accepted until:</b> 10/31/2024

<b>9. This rule change MAY become effective on:</b> 11/07/2024
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**

<b>Agency head or designee and title:</b> Angie Stallings, Deputy Superintendent of Policy	<b>Date:</b> 09/16/2024
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**R277. Education, Administration.**

**R277-333. Registered Apprenticeship Program for Teachers.**

**R277-333-1. Authority, Purpose, and Oversight Category.**

- (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-6-201(3)(a), which gives the Board authority to make rules establishing the criteria for obtaining a license; and
  - (d) Section 53E-6-206, which directs the Board to work with the Utah Board of Higher Education to develop a strategy for modifying traditional and alternative programs for training teachers.
- (2) The purpose of this rule is to establish requirements for the RAPT, which allows a teacher to earn a professional license through an approved apprenticeship program.
- (3) This Rule R277-333 is categorized as Category 4 as described in Rule R277-111.

NOTICES OF PROPOSED RULES

**R277-333-2. Definitions.**

(1)(a) "Apprentice" means a paid employee of an LEA who participates in structured on-the-job learning to prepare for a successful career as a teacher.

(b) An apprentice earns a progressive wage as the apprentice's skills and productivity increase.

(c) An apprentice may not be a teacher of record or long-term substitute teacher for an LEA.

(2) "Competency" means evidence established through demonstration in a higher education setting or pre-kindergarten to grade 12 classroom setting of successful application of knowledge and skills.

(3) "DOL" means the United States Department of Labor.

(4) "Education related expenses" may include:

(a) tuition;

(b) books;

(c) fees; or

(d) supplies.

(5) "Employer partner" means an LEA employing an apprentice, whether or not the LEA is a party to an apprenticeship agreement with the apprentice.

(6) "Individualized Professional Learning Plan" or "IPLP" means a plan developed for each apprentice, which shall include:

(a) all requirements for a professional license, as described in Rule R277-301; and

(b) all competencies for an apprentice's professional license areas of concentration and endorsements.

(7) "Institution of higher education" or "IHE" means:

(a) a college or university that has a physical location in Utah where students attend classes; or

(b) an online college or university, which:

(i) has its primary headquarters in the state; and

(ii) is licensed to do business through the Utah Department of Commerce.

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

(9) "Mentor" means an experienced teacher who:

(a) has attained a mastery level of skill, abilities, and competencies required for the profession;

(b) oversees and guides the work of an apprentice in an on-the-job placement;

(c) has an assignment from an LEA as a teacher in a Utah public school;

(d) has a professional license area of concentration in:

(i) Deaf education;

(ii) Early childhood education;

(iii) Elementary education;

(iv) Secondary education;

(v) Special education; or

(vi) Preschool special education;

(e) has a professional endorsement in:

(i) instructional coaching; or

(ii) teacher mentoring; and

(f) may evaluate an apprentice's competencies.

(10) "On-the-job learning" means:

(a) time spent in a public school working directly with a mentor teacher;

(b) experiences that provide fully supported, increasingly demanding opportunities to apply learning, reflect on practice, and demonstrate competency under supervision of a mentor teacher; and

(c) time spent directly with students or performing other aspects of teaching under supervision of a mentor teacher, such as:

(i) professional learning;

(ii) extracurricular activities;

(iii) lesson planning; and

(iv) parent communication, as outlined by the LEA.

(11) "Registered Apprentice Partners Information Database System" or "RAPIDS" means the DOL case management system for all registered apprenticeship programs.

(12)(a) "Registered Apprentice Program for Teachers" or "RAPT" means an industry-driven, high quality career pathway where:

(i) employers can develop and prepare the future workforce; and

(ii) an individual can:

(A) obtain paid work experience;

(B) receive progressive wage increases;

(C) receive supplemental education; and

(D) qualify for a Utah professional educator license, which is a portable, nationally-recognized credential.

(b) The "RAPT" is industry-vetted and approved and validated by DOL and the Board.

(13) "Related instruction provider" means an entity that:

(a) provides related supplemental education to an apprentice;

(b) offers a competency-based postsecondary general education course online or in person; and

(c) is accredited by an organization recognized by the United States Department of Education.

(14) "Sponsor" means the Superintendent operating in coordination with the Utah Department of Workforce Services and the DOL to coordinate, administer, and oversee all aspects of the apprenticeship program.

(15) "Supplemental education" means learning experiences required to successfully demonstrate all required competencies and meet professional educator license requirements.

**R277-333-3. RAPT.**

- (1) There is one RAPT in the state.
- (2) The Superintendent may partner with an LEA as an employer partner.
- (3) The Superintendent may partner with an IHE as a related instruction provider.
- (4) The Superintendent shall register the RAPT and all related standards with the DOL.
- (5) The Superintendent shall register all apprenticeship agreements with the DOL within 45 days of an apprentice's enrollment.
- (6) The Superintendent shall notify the DOL of any change of status of an apprentice through RAPIDS.
- (7) An apprentice may pursue a professional license with a license area of concentration in the following eligible license areas:
  - (a) Deaf education;
  - (b) Early Childhood education;
  - (c) Elementary education;
  - (d) Secondary education;
  - (e) Special education;
  - (f) Preschool special education.
- (8) The Superintendent shall provide an application for participation in the RAPT.
- (9) The Superintendent shall provide documentation related to the RAPT as required by the DOL.
- (10) The Superintendent shall require periodic evaluation of an apprentice's progress in skills and technical knowledge and maintain appropriate progress records.
- (11) The Superintendent may award an apprentice education related expenses of up to \$10,000 annually.
- (12) The Superintendent shall develop and maintain a model IPLP for an apprentice.

**R277-333-4. Apprentice Requirements.**

- (1) An apprentice must be at least 18 years old.
- (2) An apprentice must have a high school diploma or GED.
- (3) An apprentice shall have a cleared background check and must enroll in FBI Rapback as set forth in Section R277-301-10.
- (4)(a) An LEA may not record an apprentice as a teacher of record or long-term substitute teacher in the LEA.
- (b) If an individual is a teacher of record or long-term substitute teacher:
  - (i) the Superintendent may not enroll the individual in the RAPT; and
  - (ii) the Superintendent may require the individual to repay education related expenses provided through the RAPT.
- (5) An apprentice shall complete a FAFSA, if enrolled in an IHE program.
- (6) An apprentice shall be physically capable to perform the basic functions of teaching, with or without reasonable accommodation, and without jeopardizing the safety of the apprentice or others.
- (7) If an apprentice is a military veteran, the apprentice may be eligible for GI Bill training programs while registered as an apprentice.
- (8) An apprentice shall provide transcripts from an IHE as requested by the Superintendent.
- (9) An apprentice shall serve under the direction of a mentor.
- (10) An apprentice shall complete a minimum of 1,000 hours of on-the-job learning.
- (11) An apprentice shall demonstrate competency in all 37 general teacher preparation competencies, as incorporated by reference in Rule R277-304.
- (12) An apprentice shall demonstrate all competencies required for the apprentice's desired license area of concentration as described in Rule R277-304.
- (13) If an apprentice is seeking a secondary endorsement, the apprentice shall demonstrate additional content specific training as recorded in the apprentice's IPLP.
- (14) An apprentice shall complete the RAPT in no more than three years.
- (15) The Superintendent shall award a professional license to an apprentice upon completion of all requirements identified in this rule and Rule R277-301.

**R277-333-5. Employer Partners.**

- (1) An employer partner shall establish a RAPT employer partner agreement with the Superintendent, which shall include the following terms:
  - (a) An employer partner shall employ each apprentice, which may be full-time;
  - (b) An employer partner shall establish progressive wage rates that are compliant with the RAPT;
  - (c) Apprentice wages shall increase at least once during the apprenticeship period;
  - (d) Apprentice wages shall progress based on the demonstration of the General Teacher Preparation competencies, as follows:
    - (i) Minimum of \$18.21 hourly for up to 20 demonstrated competencies;
    - (ii) Minimum of \$23.18 hourly for 21-29 demonstrated competencies; and
    - (iii) Minimum of \$26.49 hourly for 30-37 demonstrated competencies; and
  - (e) An employer partner may not employ an apprentice as a teacher or long-term substitute teacher.

NOTICES OF PROPOSED RULES

- (2) An employer partner may adapt its RAPT agreement to fit local context with approval from the Superintendent.
- (3) The Superintendent may reimburse an employer partner for on-the-job learning for up to 50% of an apprentice's salary.
- (4) An employer partner shall develop and maintain an IPLP for an apprentice, in collaboration with the Superintendent, for each year the apprentice is part of the RAPT.
- (5) An employer partner shall assign a mentor to each apprentice.
- (6) An employer partner may not assign more than two apprentices to a mentor.
- (7) An employer partner shall ensure each mentor and school administrator has training to evaluate apprentice competency.
- (8) A mentor shall have a similar license area of concentration as the one defined in the mentored apprentice's IPLP, as defined by the Superintendent.
- (9) A mentor or school administrator shall evaluate each apprentice annually using the general teacher preparation competencies incorporated by reference in Rule R277-304.
- (10) An employer partner may not report an apprentice as an educator preparation program enrollee or completer.
- (11) The Superintendent may reimburse an LEA for mentor compensation for apprenticeship related work completed outside an LEA employment contract for up to \$1,000 per assigned apprentice per year.

**R277-333-6. Related Instruction Providers.**

- (1)(a) An IHE shall establish a related instruction provider agreement with the Superintendent to participate in the RAPT.
- (b) An IHE may adapt a related instruction provider agreement to fit local context, with the approval of the Superintendent.
- (2) A related instruction provider may enroll an apprentice.
- (3) A related instruction provider may award college or university credit for competency demonstrated in on-the-job learning.
- (4) A related instruction provider may evaluate apprentice competency.

**KEY: apprentice, license, RAPT**

**Date of Last Change: 2024**

**Authorizing, and Implemented or Interpreted Law: Article X, Section 3; 53E-3-401(4); 53E-6-201(3)(a); 53E-6-206**

NOTICE OF SUBSTANTIVE CHANGE		
<b>TYPE OF FILING:</b> Amendment		
<b>Rule or Section Number:</b>	R277-419	<b>Filing ID:</b> 56800
<b>Agency Information</b>		
<b>1. Title catchline:</b>	Education, Administration	
<b>Building:</b>	Board of Education	
<b>Street address:</b>	250 E 500 S	
<b>City, state:</b>	Salt Lake City, UT	
<b>Mailing address:</b>	PO Box 144200	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4200	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov
<b>Please address questions regarding information on this notice to the persons listed above.</b>		

General Information
<b>2. Rule or section catchline:</b>
R277-419. Pupil Accounting
<b>3. Purpose of the new rule or reason for the change:</b>
This rule is being amended as a result of the passage of H.B. 82 in the 2024 General Session.
<b>4. Summary of the new rule or change:</b>
The amendments specifically update Section R277-419-2, changing the definition of "YIC". Currently the rule states that "YIC" means "Youth in Custody." The revised language will state that "YIC" means "Youth in Care" and will reflect current state statute.

**Fiscal Information**

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

**A) State budget:**

This rule change is not expected to have fiscal impact on state government revenues or expenditures. This is an update to language only and the Utah State Board of Education (USBE) believes any fiscal impacts for USBE and Local Education Agencies (LEAs) were captured in the fiscal note to H.B. 82 (2024).

**B) Local governments:**

This rule change is not expected to have fiscal impact on local governments' revenues or expenditures. This is an update to language only and USBE believes any fiscal impacts for USBE and LEAs were captured in the fiscal note to H.B. 82 (2024).

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

This rule change is not expected to have fiscal impact on small business revenues or expenditures. This only affects USBE 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 USBE 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. This is an update to language only and USBE believes any fiscal impacts for USBE and LEAs were captured in the fiscal note to H.B. 82 (2024).

**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.)**

<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2025</b>	<b>FY2026</b>	<b>FY2027</b>
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
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>	<b>FY2025</b>	<b>FY2026</b>	<b>FY2027</b>
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
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>H) Department head comments on fiscal impact and approval of regulatory impact analysis:</b>			
The State Superintendent of the Utah State Board of Education, Sydnee Dickson, has reviewed and approved this regulatory impact analysis.			

**Citation Information**

<b>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:</b>		
Article X, Section 3	Subsection 53E-3-401(4)	Subsection 53F-2-102(7)
Subsection 53E-3-501(1)(e)	Subsection 53E-3-602(2)	Subsection 53E-3-301(3)(d)
Section 53G-4-404		

**Public Notice Information**

<b>8. The public may submit written or oral comments to the agency identified in box 1.</b> (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.)	
<b>A) Comments will be accepted until:</b>	10/31/2024
<b>9. This rule change MAY become effective on:</b>	11/07/2024
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**

<b>Agency head or designee and title:</b>	Angie Stallings, Deputy Superintendent of Policy	<b>Date:</b>	09/16/2024
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**R277. Education, Administration.**

**R277-419. Pupil Accounting.**

**R277-419-1. 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), which directs the Board to establish rules and standards regarding:
    - (i) cost-effectiveness;
    - (ii) school budget formats; and
    - (iii) financial, statistical, and student accounting requirements;
  - (d) Subsection 53E-3-602(2), which requires a local school board's auditing standards to include financial accounting and student accounting;
  - (e) Subsection 53E-3-301(3)(d), which requires the Superintendent to present to the Governor and the Legislature data on the funds allocated to LEAs;
  - (f) Section 53G-4-404, which requires annual financial reports from school districts; and
  - (g) Subsection 53G-5-404(4), which requires charter schools to make the same annual reports required of other public schools.
- (2) The purpose of this rule is to specify pupil accounting procedures used in apportioning and distributing state funds for education.

**R277-419-2. Definitions.**

- (1) "Aggregate Membership" means the sum of all days in membership during a school year for eligible students enrolled in a public school.
- (2) "Approved CTE course" means a course approved by the Board within the Career and Technical Education (CTE) Pathways.
- (3) "Attendance validated program" means a program within an LEA that consists of eligible, enrolled public school students who physically attend school in a brick and mortar school.
- (4) "Blended learning program" means a formal education program under the direction of an LEA in which a student learns through an integrated experience that is in part:
  - (a) through online learning, with an element of student control over time, place, path, or pace; and
  - (b) in a supervised brick and mortar school away from home.
- (5) "Brick and mortar school" means a school where classes are conducted in a physical school building.



(6) "Data Clearinghouse" means the electronic data collection system used by the Superintendent to collect information required by law from LEAs about individual students at certain points throughout the school year to support the allocation of funds and accountability reporting.

(7) "Educational services" means providing learning opportunities and services designed to support a student to be prepared to succeed and lead by having the knowledge and skills to learn, engage civically, and lead meaningful lives, including by providing:

- (a) high quality instruction for each student;
- (b) personalized learning supports for each student; and
- (c) implementation of evidence-based student health and wellness practices.

(8) "Eligible student" means a student who satisfies the criteria for enrollment in an LEA, set forth in Section R277-419-5.

(9) "Enrollment verification data" includes:

- (a) a student's birth certificate or other verification of age;
- (b) verification of immunization or exemption from immunization form;
- (c) proof of Utah public school residency;
- (d) family income verification; or
- (e) special education program information, including:

- (i) an individualized education program;
- (ii) a Section 504 accommodation plan; or
- (iii) an English learner plan.

(10)(a) "Home school" means the formal instruction of children in their homes instead of in an LEA.

(b) "Home school" does not include public school instruction provided in a home, including when:

- (i) an online student receives instruction at home, but the student is enrolled in a public school that follows state Core Standards;
- (ii) an online student is:

(A) subject to laws and rules governing state and federal mandated tests; and

(B) included in accountability measures; or

(iii) an online student receives instruction under the direction of a highly qualified, licensed teacher who is subject to the licensure requirements of Rule R277-301 and fingerprint and background checks consistent with Rules R277-214 and R277-309.

(11) "Home school course" means instruction:

(a) delivered in a home school environment where the curriculum and instruction methods, evaluation of student progress or mastery, and reporting, are provided or administered by the parent, guardian, custodian, or other group of individuals; and

(b) not supervised or directed by an LEA.

(12)(a) "Influenza pandemic" or "pandemic" means a global outbreak of serious illness in people.

(b) "Influenza pandemic" or "pandemic" may be caused by a strain of influenza that most people have no natural immunity to and that is easily spread from person to person.

(13) "ISI-1" means a student who receives 1 to 59 minutes of YIC related services during a typical school day.

(14) "ISI-2" means a student who receives 60 to 179 minutes of YIC related services during a typical school day.

(15) "Learner validated enrollment measurement" means a methodology used to establish a student's membership or enrollment status for purposes of generating membership days.

(16) "Learner validated program" means a program within an LEA that consists of eligible, enrolled public school students where the student receives instruction through:

- (a) an online learning program;
- (b) a blended learning program; or
- (c) a personalized, competency-based learning program.

(17)(a) "Membership" means a public school student is on the current roll of a public school class or public school as of a given date.

(b) A student is a member of a class or school from the date of entrance at the school and is placed on the current roll until official removal from the class or school due to the student having left the school.

(c) Removal from the roll does not mean that an LEA should delete the student's record, only that the student should no longer be counted in membership.

(18) "Minimum School Program" means the same as that term is defined in Section 53F-2-102.

(19) "Online learning program" means a program:

- (a) that is under the direction of an LEA; and
- (b) in which students receive educational services primarily over the internet.

(20) "Personalized, Competency-based Learning Grants Program" means an education program that provides instruction through personalized, competency-based learning as defined in Section 53F-5-501.

(21) "Private school" means an educational institution that:

- (a) is not an LEA;
- (b) is owned or operated by a private person, firm, association, organization, or corporation; and
- (c) is not subject to governance by the Board consistent with the Utah Constitution.

(22) "Program" means a course of instruction within a school that is designed to accomplish a predetermined curricular objective or set of objectives.

(23) "Qualifying school age" means:

- (a) a person who is at least five years old and no more than 18 years old on or before September 1;
- (b) with respect to special education, a person who is at least three years old and no more than 21 years old on or before July 1;

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- (c) with respect to YIC, a person who is at least five years old and no more than 21 years old on or before September 1.
- (24) "Resource" means a student who receives 1 to 179 minutes of special education services during a typical school day consistent with the student's IEP provided for under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. Sec. 1400 et seq., amended in 2004.
- (25) "Retained senior" means a student beyond the general compulsory school age who is authorized at the discretion of an LEA to remain in enrollment as a high school senior in the years after the student's cohort has graduated due to:
  - (a) sickness;
  - (b) hospitalization;
  - (c) pending court investigation or action; or
  - (d) other extenuating circumstances beyond the control of the student.
- (26) "S1" means the record maintained by the Superintendent containing individual student demographic and school membership data in a Data Clearinghouse file.
- (27) "S2" means the record maintained by the Superintendent containing individual student data related to participation in a special education program in a Data Clearinghouse file.
- (28) "S3" means the record maintained by the Superintendent containing individual student data related to participation in a YIC program in a Data Clearinghouse file.
- (29) "School" means an educational entity governed by an LEA that:
  - (a) is supported with public funds;
  - (b) includes enrolled or prospectively enrolled full-time students;
  - (c) employs licensed educators as instructors that provide instruction consistent with Rule R277-301;
  - (d) has one or more assigned administrators;
  - (e) is accredited consistent with Section R277-410-3; and
  - (f) administers required statewide assessments to the school's students.
- (30) "School day" means a day where an LEA provides educational services to students subject to the requirements described in Section R277-419-4.
- (31) "School membership" means membership other than in a special education or YIC program in the context of the Data Clearinghouse.
- (32) "School of enrollment" means:
  - (a) a student's school of record; and
  - (b) the school that maintains the student's cumulative file, enrollment information, and transcript for purposes of high school graduation.
- (33) "School year" means the 12 month period from July 1 through June 30.
- (34) "Self-contained" means a public school student with an IEP or YIC, who receives 180 minutes or more of special education or YIC related services during a typical school day.
- (35) "Self-Contained Resource Attendance Management (SCRAM)" means a record that tracks the aggregate membership of public school special education students for state funding purposes.
- (36) "SSID" means Statewide Student Identifier.
- (37) "Student with a disability" means a student who:
  - (a)(i)(A) is of an age during which it is mandatory under state law to provide educational services to persons with disabilities as described in Subsection 53E-3-503(1)(a); or
  - (B) is of an age during which a student without a disability is provided educational services; and
  - (ii) is entitled to receive a free appropriate public education under the Individuals with Disabilities Education Act or Board rules related to special education, including Rule R277-750; or
  - (b) is entitled to receive a free appropriate public education under Section 504 of the Rehabilitation Act of 1973 because the student:
    - (i) has a physical or mental impairment which substantially limits one or more major life activities;
    - (ii) has a record of an impairment described in Subsection (37)(b)(i); or
    - (iii) is regarded as having an impairment described in Subsection (37)(b)(i).
- (38) "Unexcused absence" means an absence charged to a student when:
  - (a) the student was not physically present at school at any of the times attendance checks were made in accordance with Subsection R277-419-8(5); and
  - (b) the student's absence could not be accounted for by evidence of a legitimate or valid excuse in accordance with local board policy on truancy as defined in Section 53G-6-201.
- (39) "Weighted pupil unit" or "WPU" means the same as that term is defined in Section 53F-2-102.
- (40) "Year end upload" means the Data Clearinghouse file due annually by July 15 from LEAs to the Superintendent for the prior school year.
- (41) "Youth in [custody]care or YIC" means a person under the age of 21 who is:
  - (a) in the custody of the Department of Health and Human Services;
  - (b) in the custody of an equivalent agency of a Native American tribe recognized by the United States Bureau of Indian Affairs and whose custodial parent or legal guardian resides within the state; or
  - (c) being held in a juvenile detention facility.

**R277-419-3. Schools and Programs.**

(1)(a) The Superintendent shall provide a list to each school detailing the required accountability reports and other state-mandated reports for the school type and grade range.

(b) A school shall submit a Clearinghouse report to the Superintendent.

(c) A school shall employ at least one licensed educator and one administrator.

(2)(a) A student who is enrolled in a program is considered a member of a public school.

(b) The Superintendent may not require programs to receive separate accountability and other state-mandated reports.

(c) A student reported under an LEA's program shall be included in the LEA's WPU and student enrollment calculations of the LEA's school of enrollment.

(d) A course taught at a program shall be credited to the appropriate school of enrollment.

(3) A private school or program may not be required to submit data to the Superintendent.

(4) A private school or program may not receive annual accountability reports.

**R277-419-4. Minimum School Days.**

(1)(a) Except as provided in Subsection (1) and Subsection 53F-2-102(4), an LEA shall provide educational services over a minimum of 180 school days each school year.

(b)(i) Except as provided in Subsection (1)(b)(ii), an LEA that participates in the National School Lunch Program shall provide school meals on each day that the LEA schedules toward the LEA's 180 educational service days described in Subsection (1)(a).

(ii) The requirement to provide school meals described in Subsection (1)(b)(i) does not apply to:

(A) an unplanned school closure or unplanned learn from home day due to snow, inclement weather, or other emergency;

(B) a day that an LEA governing board reallocates as a teacher preparation or teacher professional development day as described in Subsection 53F-2-102(4)(d);

(C) a day that an LEA counts in student membership for professional development or parent-teacher conference days as described in Subsection (6); or

(D) a day where the LEA provides educational services while all the LEA's students engage in distance learning.

(c) An LEA may seek an exception to the number of school days described in Subsection (1)(a):

(i) except as provided in Subsection (1)(c)(ii), for a whole school or LEA as described in Rule R277-121;

(ii) for a school closure due to snow, inclement weather, or other emergency as described in Section R277-121-5; or

(iii) for an individual student as described in Section R277-419-11.

(2) An LEA may offer the required school days described in Subsection (1)(a) at any time during the school year, consistent with the law.

(3) An LEA shall plan for emergency, activity, and weather-related exigency time in its annual calendaring.

(4) Minimum standards apply to a public school in all settings unless Utah law or this rule provides for a specific exception.

(5) An LEA's governing board shall provide adequate contingency school days in the LEA's yearly calendar to avoid the necessity of requesting a waiver except in the most extreme circumstances.

(6)(a) A school may conduct parent-teacher and student Plan for College and Career Readiness conferences during the school day.

(b) Parent-teacher and college and career readiness conferences may only be held for a total of the equivalent of three full school days for the school year.

(c) Student membership for professional development or parent-teacher conference days shall be counted as that of the previous school day.

(d) The final decision and approval regarding planning time, parent-teacher and Student Plan for College and Career Readiness conferences rests with an LEA, consistent with Utah Code and Board administrative rules.

(e) Total instructional time and school calendars shall be approved by an LEA in an open meeting.

**R277-419-5. Student Membership Eligibility and Learner Validated Enrollment Measurements.**

(1) A student may enroll in two or more LEAs at the discretion of the LEAs.

(2) A kindergarten student may only enroll in one LEA at a time.

(3) To generate membership for funding through the Minimum School Program on any school day, an LEA shall ensure that a student being counted by the LEA in membership:

(a) has not previously earned a basic high school diploma or certificate of completion;

(b) has not been enrolled in a YIC program with a YIC time code other than ISI-1 or ISI-2;

(c) does not have unexcused absences, which are determined using one of the learner validated enrollment measurements described in Subsection (4);

(d) is a resident of Utah as defined under Section 53G-6-302;

(e) is of qualifying school age or is a retained senior;

(f)(i) is expected to attend a regular learning facility operated or recognized by an LEA on each regularly scheduled school day, if enrolled in an attendance validated program;

(ii) has direct instructional contact with a licensed educator provided by an LEA at:

(A) an LEA-sponsored center for tutorial assistance; or

(B) the student's place of residence or convalescence for at least 120 minutes each week during an expected period of absence, if physically excused from such a facility for an extended time, due to:

(I) injury;

## NOTICES OF PROPOSED RULES

- (II) illness;
- (III) surgery;
- (IV) suspension;
- (V) pregnancy;
- (VI) pending court investigation or action; or
- (VII) an LEA determination that home instruction is necessary;
- (iii) is enrolled in an approved CTE course on the campus of another state funded institution where such a course is:
  - (A) not offered at the student's school of membership;
  - (B) being used to meet Board-approved CTE graduation requirements under Subsection R277-700-6(16); and
  - (C) a course consistent with the student's Plan for College and Career Readiness; or
- (iv) is enrolled in a learner validated program under the direction of an LEA that:
  - (A) is consistent with the student's Plan for College and Career Readiness;
  - (B) has been approved by the student's counselor; and
  - (C) includes regular instruction or facilitation by a designated employee of an LEA.
- (4) An LEA shall use one of the following learner validated enrollment measures:
  - (a) For a student primarily enrolled in an attendance validated program, the LEA may not count a student as an eligible student if the eligible student has unexcused absences during the prior ten consecutive school days.
  - (b) For a student enrolled in a learner validated program, an LEA shall:
    - (i) adopt a written policy that designates a learner validated enrollment measurement to document the learner validated membership or enrollment status for each student enrolled in the learner validated program consistent with this section;
    - (ii) document each student's continued enrollment status in compliance with the learner validated enrollment policy at least once every ten consecutive school days; and
    - (iii) appropriately adjust and update student membership records in the student information system for students that did not meet the learner validated enrollment measurement, consistent with this section.
  - (c) For a student enrolled in a learner validated program, the LEA may not count a student as an eligible student if the LEA has not engaged with the student during the prior ten consecutive school days.
- (5) Notwithstanding Subsection (4), an LEA:
  - (a) shall continue to provide a student with a disability a free and appropriate public education even when the student has not attended school or engaged with the LEA during the prior ten consecutive days;
  - (b) shall maintain the student with a disability's enrollment in the LEA; and
  - (c) may continue to count the student with a disability in membership for funding purposes up to 30 days if the LEA documents that the LEA is working to locate and engage with the student with a disability.
- (6) The learner validated enrollment measurement described in Subsection (4)(b) may include the following components, in addition to other components, as determined by an LEA:
  - (a) a minimum student login or teacher contact requirement;
  - (b) required periodic contact with a licensed educator;
  - (c) a minimum hourly requirement, per day or week, when students are engaged in course work; or
  - (d) required timelines for a student to provide or demonstrate completed assignments, coursework, or progress toward academic goals.
- (7)(a) Beginning with the 2021-22 school year, an LEA shall submit each student's attendance validated or learner validated enrollment status through the UTREx or Data Clearinghouse.
- (b) For a student who participates in both attendance validated, and learner validated programs, the LEA shall designate the student's status as learner validated enrollment.
- (8)(a) An LEA desiring to generate membership for student enrollment in courses outlined in Subsection (3)(f)(iii), or to seek a waiver from a requirement -in Subsection (3)(f)(iii), shall submit an application for course approval by April 1 of the year prior to which the membership will be counted.
- (b) An LEA shall be notified within 30 days of the application deadline if courses have been approved.

### **R277-419-6. Student Membership Calculations.**

- (1)(a) Except as provided in Subsection (1)(b) -or (1)(c), a student enrolled in only one LEA during a school year is eligible for no more than 180 days of regular membership per school year.
- (b) With written verification from the student's parent that the student intends to graduate early, an early graduation student may be counted for more than 180 days of regular membership in accordance with the student's Plan for College and Career Readiness.
- (c) A student transferring within an LEA to or from a year-round school is eligible for no more than 205 days of regular membership per school year.
- (2)(a) Except as provided in Subsection (2)(b), (2)(c), or (2)(d), a student enrolled in two or more LEAs during a school year is eligible for no more than 180 days of regular membership per school year.
- (b) A student transferring to or from an LEA with a schedule approved under Subsection R277-419-4(1)(b) is eligible for no more than 220 days of regular membership per school year.
- (c) A student transferring to or from an LEA where the student attended or will attend a year-round school is eligible for no more than 205 days of regular membership per school year.

(d) If the exceptions in Subsections (2)(b) and (2)(c) do not apply but a student transfers from one LEA to another at least one time during the school year, the student is eligible for regular membership in an amount not to exceed the sum of:

- (i) 170 days; plus
- (ii) 10 days multiplied by the number of LEAs the student attended during the school year.

(3) If a student is enrolled in two or more LEAs during a school year and the aggregate regular membership generated for the student between the LEAs exceeds the amount allowed under Subsection (2), the Superintendent shall apportion the days of regular membership allowed between the LEAs.

(4) If a student was enrolled for only part of the school day or only part of the school year, an LEA shall prorate the student's membership according to the number of hours, periods or credits for which the student actually was enrolled in relation to the number of hours, periods or credits for which a full-time student normally would have been enrolled, for example:

(a) if the student was enrolled for four periods each day in a seven period school day for 180 school days, the student's aggregate membership would be  $\frac{4}{7}$  of 180 days or 103 days; or

(b) if the student was enrolled for seven periods each day in a seven period school day for 103 school days, the student's membership would also be 103 days.

(5)(a) An LEA shall calculate the days in membership for all students using a method equivalent to the following: total clock hours of educational services for which the student was enrolled during the school year divided by 990 hours and then multiplied by 180 days and finally rounded up to the nearest whole day.

(b) For example, if a student was enrolled for only 900 hours during the school year, the student's aggregate membership would be  $(900/990)*180$ , and the LEA would report 164 days.

(6) The sum of regular plus self-contained special education and self-contained YIC membership days may not exceed 180 days.

(7) The sum of regular and resource special education membership days may not exceed 360 days.

(8) The sum of regular, ISI-1 and ISI-2 YIC membership days may not exceed 360 days.

(9) An LEA may also count a student in membership for the equivalent in hours of up to:

(a) one period each school day, if the student has been:

(i) released by the school, upon a parent or guardian's request, during the school day for religious instruction or individual learning activity consistent with the student's Plan for College and Career Readiness; or

(ii) participating in one or more co-curricular activities under Rule R277-438, but has otherwise been exempted from school attendance under Section 53G-6-204 for home schooling;

(b) two periods each school day per student for time spent in bus travel during the regular school day to and from another state funded institution, if the student is enrolled in CTE instruction consistent with the student's Plan for College and Career Readiness;

(c) all periods each school day, if the student is enrolled in:

(i) a concurrent enrollment program that satisfies the Title 53E, Chapter 10, Part 3, Concurrent Enrollment;

(ii) a private school without religious affiliation under a contract initiated by an LEA to provide special education services which directs that the instruction be paid by public funds if the contract with the private school is approved by an LEA board in an open meeting;

(iii) a foreign exchange student program under Section 53G-6-707; or

(iv) a school operated by an LEA under a Utah Schools for the Deaf and the Blind IEP provided that:

(A) the student may only be counted in S1 membership and may not have an S2 record; and

(B) the S2 record for the student is submitted by the Utah Schools for the Deaf and the Blind.

(10)(a) Except as provided in Subsection (10)(b), a student receiving instruction delivered in a home school course or by a private school is not eligible to be claimed in an LEA's membership and does not qualify for funding under the Minimum School Program in Title 53F, Chapter 2, Minimum School Program Act.

(b) Subsection (10)(a) does not apply to public school instruction provided by an LEA to a home school or private school student participating in dual enrollment as described in Section 53G-6-702.

#### **R277-419-7. Calculations for a First Year Charter School.**

(1) For the first operational year of a charter school or a new satellite campus, the Superintendent shall determine the charter school's WPU funding based on October 1 counts.

(2) For the second operational year of a charter school or a new satellite campus, the Superintendent shall determine the charter school's WPU funding based on Section 53F-2-302.

#### **R277-419-8. Reporting Requirements and LEA Records.**

(1) An LEA shall report aggregate membership for each student via the School Membership field in the S1 record and special education membership in the SCRAM Membership field in the S2 record and YIC membership in the S3 record of the Year End upload of the Data Clearinghouse file.

(2) In the Data Clearinghouse, aggregate membership is calculated in days of membership.

(3) To determine student membership, an LEA shall ensure that records of daily student attendance or student engagement are maintained in each school which clearly and accurately show for each student the:

- (a) entry date;
- (b) exit date;
- (c) exit or high school completion status;
- (d) whether or not an absence was excused;
- (e) disability status, resource or self-contained, if applicable; and

## NOTICES OF PROPOSED RULES

- (f) YIC status, ISI-1, ISI-2 or self-contained, if applicable.
- (4) An LEA shall ensure that:
  - (a) computerized or manually produced records for CTE programs are kept by teacher, class, and core code; and
  - (b) the records described in Subsection (4)(a) clearly and accurately show for each student in a CTE class the:
    - (i) entry date;
    - (ii) exit date; and
    - (iii) excused or unexcused status of absence.
- (5) An LEA shall ensure that each school within the LEA completes a minimum of one attendance check each school day.
- (6) Due to school activities requiring schedule and program modification during the first days and last days of the school year:
  - (a) for the first five school days, an LEA may report aggregate days of membership equal to the number recorded for the second five-day period of the school year;
  - (b) for the last five-day period, an LEA may report aggregate days of membership equal to the number recorded for the immediately preceding five-day period; and
  - (c) schools shall continue educational service activities throughout required calendared days.
- (7) The Superintendent:
  - (a) shall review each LEA's student membership and fall enrollment reports as they relate to the allocation of state funds; and
  - (b) may periodically or for cause review LEA records and practices for compliance with Federal and State laws and this rule.

### **R277-419-9. High School Completion Status.**

(1) An LEA shall account for the final status of students who enter high school, grades 9-12, whether they graduate or leave high school for other reasons, using the following decision rules to indicate the high school completion or exit status of each student who leaves the Utah public education system:

- (a) graduates are students who earn a basic high school diploma by satisfying one of the options consistent with Rule R277-705 or out-of-school youths of school age who complete adult education secondary diploma requirements consistent with Rule R277-733;
- (b) completers are students who have not satisfied Utah's requirements for graduation but who:
  - (i) are in membership in twelfth grade on the last day of the school year; and
  - (ii)(A) meet any additional criteria established by an LEA consistent with its authority under Rule R277-705;
  - (B) meet any criteria established for special education students under Utah State Board of Education Special Education Rules, Revised, June 2016, and available at: <http://www.schools.utah.gov/sars/Laws.aspx> and the Utah State Board of Education;
  - (C) meet any criteria established for special education students under Subsection R277-700-8(5); or
  - (D) pass a General Educational Development or GED test with a designated score;
- (c) continuing students are students who:
  - (i) transfer to higher education, without first obtaining a diploma;
  - (ii) transfer to the Utah Center for Assistive Technology without first obtaining a diploma; or
  - (iii) age out of special education;
- (d) dropouts are students who:
  - (i) leave school with no legitimate reason for departure or absence;
  - (ii) withdraw due to a situation so serious that educational services cannot be continued even under the conditions of Subsection

R277-419-5(3)(f)(ii);

- (iii) are expelled and do not re-enroll in another public education institution; or
- (iv) transfer to adult education;
- (e) an LEA shall exclude a student from the cohort calculation if the student:
  - (i) transfers out of state, out of the country, to a private school, or to home schooling;
  - (ii) is a U.S. citizen who enrolls in another country as a foreign exchange student;
  - (iii) is a non-U.S. citizen who enrolls in a Utah public school as a foreign exchange student under Section 53G-6-707 in which case the student shall be identified by resident status, J for those with a J-1 visa, F for all others, not by an exit code;
  - (iv) dies; or
  - (v) beginning with the 2015-2016 school year, is attending an LEA that is not the student's school of enrollment.
- (2)(a) An LEA shall report the high school completion status or exit code of each student to the Superintendent as specified in Data Clearinghouse documentation.

- (b) High School completion status or exit codes for each student are due to the Superintendent by year end upload for review.
- (c) Except as provided in Subsection (2)(d), an LEA shall submit any further updates of completion status or exit codes by October 1 following the end of a student's graduating cohort pursuant to Rule R277-484.
- (d) An LEA with an alternative school year schedule where the students have an extended break in a season other than summer, shall submit the LEA's data by the next complete data submission update, following the LEA's extended break, as defined in Rule R277-484.
- (3)(a) The Superintendent shall report a graduation rate for each school, LEA, and the state.
- (b) The Superintendent shall calculate the graduation rates in accordance with applicable federal law.
- (c) The Superintendent shall include a student in a school's graduation rate if:
  - (i) the school was the last school the student attended before the student's expected graduation date; and
  - (ii) the student does not meet any exclusion rules as stated in Subsection (1)(e).
- (d) The last school a student attended will be determined by the student's exit dates as reported to the Data Clearinghouse.
- (e) A student's graduation status will be attributed to the school attended in the student's final cohort year.

- (f) If a student attended two or more schools during the student's final cohort year, a tie-breaking logic to select the single school will be used in the following hierarchical order of sequence:
- (i) school with an attached graduation status for the final cohort year;
  - (ii) school with the latest exit date;
  - (iii) school with the earliest entry date;
  - (iv) school with the highest total membership;
  - (v) school of choice;
  - (vi) school with highest attendance; or
  - (vii) school with highest cumulative GPA.
- (g) The Superintendent shall report the four-year cohort rate on the annual state reports.

**R277-419-10. Student Identification and Tracking.**

- (1)(a) Pursuant to Section 53E-4-308, an LEA shall:
- (i) use the SSID system maintained by the Superintendent to assign every student enrolled in a program under the direction of the Board or in a program or a school that is supported by public school funding a unique student identifier; and
  - (ii) display the SSID on student transcripts exchanged with LEAs and Utah public institutions of higher education.
- (b) The unique student identifier:
- (i) shall be assigned to a student upon enrollment into a public school program or a public school-funded program;
  - (ii) may not be the student's social security number or contain any personally identifiable information about the student.
- (2)(a) An LEA shall require all students to provide their legal first, middle, and last names at the time of registration to ensure that the correct SSID follows students who transfer among LEAs.
- (b) A school shall transcribe the names from the student's birth certificate or other reliable proof of the student's identity and age, consistent with Section 53G-6-603;
- (c) The direct transcription of student names from birth certificates or other reliable proof of student identity and age shall be the student's legal name for purposes of maintaining school records; and
- (d) An LEA may modify the order of student names, provide for nicknames, or allow for different surnames, consistent with court documents or parent preferences, so long as legal names are maintained on student records and used in transmitting student information to the Superintendent.
- (3) The Superintendent and LEAs shall track students and maintain data using students' legal names.
- (4) If there is a compelling need to protect a student by using an alias, an LEA should exercise discretion in recording the name of the student.
- (5) An LEA is responsible to verify the accuracy and validity of enrollment verification data, prior to enrolling students in the LEA, and provide students and their parents with notification of enrollment in a public school.
- (6) An LEA shall ensure enrollment verification data is collected, transmitted, and stored consistent with sound data policies, established by the LEA as required in Rule R277-487.

**R277-419-11. Exceptions.**

- (1)(a) An LEA may, at its discretion, make an exception for school attendance for a public school student, in the length of the school day or year, for a student with compelling circumstances.
- (b) The time an excepted student is required to attend school shall be established by the student's IEP or Plan for College and Career Readiness.
- (2) A school using a modified 45-day/15-day year-round schedule initiated prior to July 1, 1995 is in compliance with this rule if the school's schedule includes a minimum of 990 hours of time the LEA will provide educational services over a minimum of 172 days.

**KEY: education finance, school enrollment, pupil accounting**

**Date of Last Change:** ~~2024~~ ~~November 7, 2023~~

**Notice of Continuation:** December 2, 2021

**Authorizing, and Implemented or Interpreted Law:** Art X Sec 3; 53E-3-401(4); 53F-2-102(7); 53E-3-501(1)(e); 53E-3-602(2); 53E-3-301(3)(d); 53G-4-404

NOTICE OF SUBSTANTIVE CHANGE		
<b>TYPE OF FILING:</b> Amendment		
<b>Rule or Section Number:</b>	<b>R277-468</b>	<b>Filing ID: 56801</b>
Agency Information		
<b>1. Title catchline:</b>	Education, Administration	
<b>Building:</b>	Board of Education	
<b>Street address:</b>	250 E 500 S	

NOTICES OF PROPOSED RULES

<b>City, state:</b>	Salt Lake City, UT	
<b>Mailing address:</b>	PO Box 144200	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4200	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov
<b>Please address questions regarding information on this notice to the persons listed above.</b>		

**General Information**

<b>2. Rule or section catchline:</b>
R277-468. Parents Review of Public Education Curriculum and Review of Complaint Process
<b>3. Purpose of the new rule or reason for the change:</b>
This rule is being amended in order to add an "Oversight Category".
<b>4. Summary of the new rule or change:</b>
The amendments specifically add an Oversight Category 2 in Section R277-468-1 of the rule and update terminology consistent with recent legislation.

**Fiscal Information**

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
This rule change is not expected to have fiscal impact on state government revenues or expenditures. The oversight framework categorization is part of the Utah State Board of Education's (USBE) effort through Rule R277-111 to categorize each rule into an oversight framework category, or to delineate for stakeholders what type of monitoring or oversight is required by USBE resulting from the rule.
This categorization does not add any requirements or resources in and of itself.
<b>B) Local governments:</b>
This rule change is not expected to have fiscal impact on local governments' revenues or expenditures. The oversight framework categorization is part of the USBE effort through Rule R277-111 to categorize each rule into an oversight framework category, or to delineate for stakeholders what type of monitoring or oversight is required by USBE resulting from the rule.
This categorization does not add any requirements or resources in and of itself.
<b>C) Small businesses ("small business" means a business employing 1-49 persons):</b>
This rule change is not expected to have fiscal impacts on small business revenues or expenditures. This only affects USBE and Local Education Agencies (LEAs).
<b>D) Non-small businesses ("non-small business" means a business employing 50 or more persons):</b>
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.
<b>E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <i>agency</i>):</b>



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 USBE 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. The oversight framework categorization is part of the Utah State Board of Education's (USBE) effort through Rule R277-111 to categorize each rule into an oversight framework category, or to delineate for stakeholders what type of monitoring or oversight is required by USBE resulting from the rule.

This categorization does not add any requirements or resources in and of itself.

**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	FY2025	FY2026	FY2027
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
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
Fiscal Benefits	FY2025	FY2026	FY2027
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
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**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 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:**

Article X, Section 3	Subsection 53E-3-401(3)	
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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.)

<b>A) Comments will be accepted until:</b>	10/31/2024
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<b>9. This rule change MAY become effective on:</b>	11/07/2024
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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**

<b>Agency head or designee and title:</b>	Angie Stallings, Deputy Superintendent of Policy	<b>Date:</b>	09/16/2024
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**R277. Education, Administration.**

**R277-468. Parents Review of Public Education Curriculum and Review of Complaint Process.**

**R277-468-1. Authority, ~~and~~ Purpose, and Oversight Category.**

(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;~~and~~

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

(c) Sections 53G-4-402 and 53G-5-404, which require LEAs to make instructional materials available for parent review and to involve parents of students in the LEA in reviewing instructional materials prior to approval.

(2) The purpose of this rule is to direct an LEA to include parents in the adoption and review of an LEA's~~[-primary]~~ instructional materials including the review of complaints specific to curriculum materials.

(3) The Rule R277-468 is categorized as Category 2 as described in Rule R277-111.

**R277-468-2. Definitions.**

~~[(4)]~~"Instructional materials" means the same as the term is defined in Section 53E-4-401 and may not be sensitive materials as defined in S~~[ubs]~~ection 53G-10-103~~[(4)(e)]~~.

**R277-468-3. Parental Involvement with Instructional Material.**

(1) An LEA shall involve parents reflective of the school's community, who have a student who attends a school within the LEA, and instructional staff in the consideration of LEA-purchased instructional materials.

(2) An LEA shall include parents reflective of the school's community, who have a student who attends a school within the LEA, in reviewing complaints specific to instructional materials.

(3) An LEA may seek assistance from parent organizations or associations or other groups to recruit and select parent members reflective of the school's community for the purposes described in Subsections (1) and (2).

(4) An LEA shall make the LEA's instructional material approval or complaint processes transparent and publicly available.

**R277-468-4. Parental Involvement Resources.**

(1) An LEA may request the Board provide the LEA resources for effective parent participation in the instructional materials review or complaint process.

(2) An LEA may request the Board assist the LEA in policy development regarding parental involvement in the instructional materials review or complaint process.

**KEY: parents, committees, curriculum, complaints**

**Date of Last Change: 2024**~~[November 7, 2022]~~

**Notice of Continuation: October 7, 2019**

**Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-401(3)**

NOTICE OF SUBSTANTIVE CHANGE		
TYPE OF FILING: Amendment		
Rule or Section Number:	R277-701	Filing ID: 56802

**Agency Information**

1. Title catchline:	Education, Administration	
Building:	Board of Education	
Street address:	250 E 500 S	
City, state:	Salt Lake City, UT	
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**

<b>2. Rule or section catchline:</b>
R277-701. Early College Programs
<b>3. Purpose of the new rule or reason for the change:</b>
This rule is being amended as a result of the passage of H.B. 493 in the 2024 General Session.
<b>4. Summary of the new rule or change:</b>
The amendments specifically add a provision referencing new requirements for Local Education Agencies (LEAs) to contract with eligible institutions for Concurrent Enrollment courses and adding an Oversight Category consistent with Rule R277-111.

**Fiscal Information**

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>												
<b>A) State budget:</b>												
This rule change is not expected to have fiscal impact on state government revenues or expenditures. The Utah State Board of Education (USBE) believes that fiscal impacts were captured in the fiscal note for H.B. 493 (2024) and there are no other measurable fiscal impacts created as a result of this rule for USBE or LEAs.												
<b>B) Local governments:</b>												
This rule change is not expected to have fiscal impact on local governments' revenues or expenditures. USBE believes that fiscal impacts were captured in the fiscal note for H.B. 493 (2024) and there are no other measurable fiscal impacts created as a result of this rule for USBE or LEAs.												
<b>C) Small businesses</b> ("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 impacts USBE and LEAs.												
<b>D) Non-small businesses</b> ("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.												
<b>E) Persons other than small businesses, non-small businesses, state, or local government entities</b> ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <i>agency</i> ):												
This rule change is not expected to have fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities. This only impacts USBE and LEAs.												
<b>F) Compliance costs for affected persons</b> (How much will it cost an impacted entity to adhere to this rule or its changes?):												
There are no compliance costs for affected persons. USBE believes that fiscal impacts were captured in the fiscal note for H.B. 493 (2024) and there are no other measurable fiscal impacts created as a result of this rule for USBE or LEAs.												
<b>G) Regulatory Impact Summary Table</b> (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.)												
<b>Regulatory Impact Table</b>												
<table border="1"> <thead> <tr> <th>Fiscal Cost</th> <th>FY2025</th> <th>FY2026</th> <th>FY2027</th> </tr> </thead> <tbody> <tr> <td>State Government</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> <tr> <td>Local Governments</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> </tbody> </table>	Fiscal Cost	FY2025	FY2026	FY2027	State Government	\$0	\$0	\$0	Local Governments	\$0	\$0	\$0
Fiscal Cost	FY2025	FY2026	FY2027									
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NOTICES OF PROPOSED RULES

Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
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<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**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 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:**

Article X, Section 3	Subsection 53E-3-401(4)	Section 53F-2-408.5
Section 53F-2-409		

**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:** 10/31/2024

**9. This rule change MAY become effective on:** 11/07/2024  
 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**

<b>Agency head or designee and title:</b>	Angie Stallings, Deputy Superintendent of Policy	<b>Date:</b>	09/16/2024
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**R277. Education, Administration.**

**R277-701. Early College Programs.**

**R277-701-1. Authority, ~~and~~ Purpose, and Oversight Category.**

- (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-2-408.5, which requires the Board to establish a distribution formula for the expenditure of funds appropriated for Early College Programs; and
  - (d) Section 53F-2-409, which directs the Board to provide for the distribution of concurrent enrollment dollars in rule.
- (2) The purpose of this rule is to:
  - (a) specify the procedures for distributing funds appropriated under Sections 53F-2-408.5 and 53F-2-409 to LEAs;
  - (b) provide resources to LEAs for early college programs; and
  - (c) specify the standards and procedures for concurrent enrollment courses and the criteria for funding appropriate concurrent enrollment expenditures.
- (3) This Rule R277-701 is categorized as Category 3 as described in Rule R277-111.

**R277-701-2. Definitions.**

- (1) "Advanced placement" or "AP" courses means the same as the term is defined in Section 53F-2-408.5.
- (2) "Concurrent enrollment" or "CE" means the same as the term is defined in Section 53E-10-301.
- (3) "Early college programs" means an LEA's AP courses, IB programs, and CE programs.
- (4) "Eligible institution" has the same meaning as described in Section 53E-10-301.

~~(4)~~(5) "Enhancement of Accelerated Students Programs" means the same as the term is defined in Section R277-707-2.

~~(5)~~(6) "International Baccalaureate" or "IB" Program means the same as the term is defined in Section 53F-2-408.5.

~~(6)~~(7) "Master course list" means a list of approved CE courses, maintained by the Superintendent and USHE, which may be offered and funded.

- ~~(7)~~(8) "Successfully completed" means that a student received USHE credit for a CE course.
- ~~(8)~~(9) "Underrepresented students" means the same as the term is defined in Section R277-707-2.
- ~~(9)~~(10) "USHE" means the Utah System of Higher Education as described in Section 53B-1-102.

**R277-701-3. Eligibility and Application.**

- (1) All LEAs are eligible to apply for the Early College Program funds annually.
- (2) To receive program money, an LEA shall submit an application to the Superintendent that includes an LEA's plan for:
  - (a) how the LEA intends to spend program money;
  - (b) how the LEA intends to engage parents so that parents understand the opportunities available for their children in elementary, middle school, high school and beyond, including how the LEA will comply with Rule R277-462; and
  - (c) how the LEA intends to eliminate barriers and increase student enrollment, in Early college programs, including underrepresented students.
- (3) The Superintendent shall publish:
  - (a) expectations;
  - (b) targets related to gap closures for underrepresented students; and
  - (c) timelines related to an LEA application.

**R277-701-4. Distribution and Use of Funds for AP and IB Programs.**

- (1) The Superintendent shall distribute the total allocation for Enhancement of Accelerated Students program as follows after setting aside the requisite funding described in Subsection 53F-2-408.5(3):
  - (a) 40% of the total allocation to AP and IB programs as described in Rule R277-701; and
  - (b) 60% of the total allocation to LEAs to support Gifted and Talented programs as described in Rule R277-707.
- (2)(a) The Superintendent shall determine funding to be awarded to an LEA's IB programs by:
  - (i) the number of IB programs at each school; and
  - (ii) the exam costs for students experiencing socioeconomic disadvantage.
- (b) The Superintendent shall determine 30% of the funding to be awarded for LEA AP programs by:
  - (i) dividing the number of students enrolled in an LEA's AP classes by the total enrollment of students in AP classes throughout the state; and
  - (ii) multiplying the result from Subsection (2)(b)(i) by 30% of the total AP allocation.
- (c) The Superintendent shall determine 70% of the funding to be awarded for LEA AP programs by:
  - (i) dividing the number of students in the LEA receiving a three or higher on an AP examination by the total number of students receiving a three or higher on an AP examination throughout the state; and
  - (ii) multiplying the result from Subsection (2)(c)(i) by 70% of the total AP allocation.
- (3) An LEA may use the LEA's allocation of funds for:
  - (a) professional learning for teachers;
  - (b) identification of underrepresented students;
  - (c) Advanced Placement courses;
  - (d) International Baccalaureate programs; or
  - (e) International Baccalaureate test fees of eligible low-income students.
- (4) An LEA shall use at least a portion of the LEA's allocation for Advanced Placement test fees of eligible low-income students, as defined in Section 53F-2-408.5.

**R277-701-5. Distribution and Use of Funds for CE Programs.**

- (1) CE funds shall be allocated in accordance with Section 53F-2-409.
- (2) CE funds allocated to LEAs may not be used for any other program or purpose, except as provided in Section 53F-2-206 and after funds distribution as described in Subsection 53F-2-409(5)(c).
- (3) CE funding may not be used to fund a parent or student-initiated college-level course at an institution of higher education.
- (4) The Superintendent may not distribute CE funds to an LEA for reimbursement of a CE course:
  - (a) that is not on the master course list;
  - (b) for a student that has exceeded 30 semester hours of CE for the school year;
  - (c) for a CE course repeated by a student; or
  - (d) taken by a student:
    - (i) who has received a diploma;

## NOTICES OF PROPOSED RULES

- (ii) whose class has graduated; or
- (iii) who has participated in graduation exercises.
- (5) An LEA shall receive a pro-rated amount of the funds appropriated for CE according to the number of semester hours successfully completed by students registered through the LEA in the prior year compared to the state total of completed CE hours.
- (6) An LEA's use of state funds for CE is limited to the following:
  - (a) increasing access for groups of students who are underrepresented;
  - (b) aid in professional development of an eligible CE instructor in cooperation with the participating USHE institution;
  - (c) assistance with delivery costs for distance learning programs;
  - (d) participation in the costs of LEA personnel who work with the program;
  - (e) student textbooks and other instructional materials;
  - (f) fee waivers for costs or expenses related to CE for fee waiver eligible students under Rule R277-407;
  - (g) purchases by LEAs of classroom equipment required to conduct CE courses; and
  - (h) other uses approved in writing by the Superintendent consistent with the law and purposes of this rule.
- (7) An LEA that receives program funds shall provide the Superintendent with the following:
  - (a) end-of-year expenditures reports;
  - (b) an annual report containing:
    - (i) supervisory services and professional development provided by a USHE institution; and
    - (ii) data as required by Section R277-701-12.
- (8) Appropriate reimbursement may be verified at any time by an audit of the LEA.

### **R277-701-6. Early College Programs Funding Requirements.**

- (1) If an LEA fails to demonstrate progress in meeting plan goals, the Superintendent may:
  - (a) place the LEA on probation and provide targeted technical assistance; and
  - (b) reduce funding to the LEA.
- (2) Excepted as described in Subsection (3) and subject to the general requirements of Section R277-700-7:
  - (a) A middle school or high school:
    - (i) shall provide all course registration opportunities to each student; and
    - (ii) through consultation with students, parents, educators, and administrators, may consider academic readiness, but may not require prerequisites for enrolling in an AP, IB, or CE course.
  - (b) Except as described in USHE Policy R165, a school that offers an early college program may not prohibit a student from enrolling in the course based on the student's:
    - (i) grades or grade point average;
    - (ii) state standardized assessment scores; or
    - (iii) referral or lack of a referral from an educator;
  - (c) In addition to the restrictions listed in Subsection R277-701-6(2)(d), an early college program may not prohibit a student from enrolling in a course based on the student's:
    - (i) grade level;
    - (ii) participation in or passing a pre-requisite course;
    - (iii) participation in or passing an honors-level or college-preparatory course; or
    - (iv) requirements over the summer.

### **R277-701-7. Student Eligibility and Participation for CE.**

- (1) A student participating in CE shall be an "eligible student" as described in Subsection 53E-10-301(5).
- (2) Student eligibility requirements for CE shall be:
  - (a) established by an LEA and a USHE institution;
  - (b) sufficiently selective to predict a successful experience; and
  - (c) in accordance with Subsection R277-701-5(3)(b).
- (3) An LEA has the primary responsibility for identifying a student who is eligible to participate in a CE course.
- (4) An LEA shall appropriately evaluate the supports the LEA employs to assist in achieving the highest access rate reasonable for all students to enroll in a CE course.
- (5) An LEA shall contract with an eligible institution to provide a CE course if required in Section 53E-10-303.

### **R277-701-8. CE Course Credit and Offerings -- CE Course Approval Process.**

- (1) Credit earned through a CE course:
  - (a) has the same credit hour value as the CE course's counterpart on a college campus;
  - (b) applies toward graduation on the same basis as a course taught at a USHE institution to which the credits are submitted;
  - (c) generates higher education credit that becomes a part of a student's permanent college transcript;
  - (d) generates high school credit that is consistent with the LEA policies for awarding credit for graduation; and
  - (e) is transferable from one USHE institution to another.
- (2) A USHE institution is responsible to determine the credit for a CE course, consistent with State Board of Higher Education policies.

(3) An LEA and a USHE institution shall provide the Superintendent and USHE with proposed new course offerings, including syllabi and curriculum materials, by November 15 of the year preceding the school year in which the courses would be offered.

(4) A CE course shall be approved by the Superintendent and USHE, and designated on the master course list, maintained by the Superintendent and USHE.

(5)(a) CE course offerings shall reflect the strengths and resources of the respective schools and USHE institutions and be based upon student needs.

(b) The number of courses selected shall be kept small enough to ensure coordinated statewide development and professional development activities for participating teachers.

(6) To provide for the focus of energy and resources on quality instruction in the CE program, CE courses shall be limited to courses in:

- (a) English;
- (b) mathematics;
- (c) fine arts;
- (d) humanities;
- (e) science;
- (f) social science;
- (g) world languages; and
- (h) career and technical education.

(7) A CE course may not be approved if the course is a postsecondary course below the 1,000 level.

(8) The appropriate USHE institution shall take responsibility for:

- (a) course content;
- (b) procedures;
- (c) examinations;
- (d) teaching materials; and
- (e) program monitoring.

(9) CE procedures and materials shall be:

- (a) consistent with Utah law; and
- (b) ensure quality and comparability with CE courses offered on a college or university campus.

#### **R277-701-9. CE Program Management and Delivery.**

(1) An LEA shall use a Superintendent-designated 11-digit course code for a CE course.

(2) An LEA and a USHE institution shall jointly align information technology systems with individual student academic achievement data so that student information will be tracked through both education systems consistent with Section 53E-4-308.

(3) An LEA shall only receive funds for the LEA's CE program if the LEA's course enrollment matches the USHE institution enrollment in the technology systems as described in Subsection (2).

#### **R277-701-10. Faculty and Educator Requirements.**

(1) An educator who is not employed by a USHE institution and teaches a CE course shall:

- (a) be employed by an LEA; and
- (b) meet the requirements of Subsections 53E-10-302(5) and (6).

(2) An educator employed by an LEA who teaches a CE course shall be approved as an adjunct faculty member at the contracting USHE institution before teaching the CE course.

(3) High school educators who hold adjunct or part time faculty status with a USHE institution to teach CE courses shall be included as fully as possible in the academic life of the supervising academic department at the USHE institution.

(4) An LEA and a USHE institution shall share expertise and professional development, as necessary, to adequately prepare a teacher to teach in the CE program, including federal and state laws specific to student privacy and student records.

(5) A USHE institution that employs a faculty member who teaches in a high school has responsibility for ensuring and maintaining documentation that the faculty member has successfully completed a criminal background check, consistent with Section 53G-11-402.

#### **R277-701-11. Student Tuition and Fees.**

(1) A CE program student may be charged partial tuition and program-related fees, in accordance with Section 53E-10-305.

(2) Postsecondary tuition and participation fees charged to a CE student are not fees, as defined in Rule R277-407, and do not qualify for a fee waiver under Rule R277-407.

(3)(a) All costs related to CE courses that are not tuition and participation fees are subject to a fee waiver consistent with Rule R277-407.

(b) CE costs subject to fee waiver may include:

- (i) consumables;
- (ii) lab fees;
- (iii) copying;
- (iv) material costs;
- (v) application fees; and
- (vi) textbooks required for the course.

NOTICES OF PROPOSED RULES

- (4)(a) Except as provided in Subsection (4)(b), an LEA shall be responsible for fee waivers.
- (b) An agreement between a USHE institution and an LEA may address the responsibility for fee waivers.

**R277-701-12. Annual Contracts and Other Student Instruction Issues.**

- (1) An LEA and a USHE institution that plan to collaborate to offer a CE course shall enter into an annual contract for the upcoming school year by no later than May 30.
- (2) An LEA shall provide the USHE with a copy of each annual contract entered into between the LEA and a USHE institution for the upcoming school year by no later than May 30.
- (3) An LEA and a USHE institution shall use the standard contract language developed by the Superintendent and USHE.

**R277-701-13. Performance Criteria and Reports.**

- (1) An LEA receiving an allocation of funds shall submit an annual evaluation report to the Superintendent consistent with Section 53F-2-408.5.
- (2) An LEA shall present the evaluation report identified in Subsection (1) to the LEA's local board in a public meeting.
- (3) The report shall include the following:
  - (a) an accounting of student performance, disaggregated by student group for each early college program that the LEA participates;
  - (b) evidence of stakeholder input demonstrating that the LEA engaged parents;
  - (c) an accounting of how the LEA's funds were disbursed to the teacher level; and
  - (d) evidence that the LEA is making progress toward the LEA's plan goals.

**KEY: early college program, advanced placement, international baccalaureate, concurrent enrollment**

**Date of Last Change: 2024[November 7, 2023]**

**Authorizing, and Implemented[;] or Interpreted Law: Art X Sec 3; 53E-3-401(4); 53F-2-408.5; 53F-2-409**

NOTICE OF SUBSTANTIVE CHANGE		
<b>TYPE OF FILING:</b> Amendment		
<b>Rule or Section Number:</b>	R277-705	<b>Filing ID: 56803</b>

**Agency Information**

<b>1. Title catchline:</b>	Education, Administration	
<b>Building:</b>	Board of Education	
<b>Street address:</b>	250 E 500 S	
<b>City, state:</b>	Salt Lake City, UT	
<b>Mailing address:</b>	PO Box 144200	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4200	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov
<b>Please address questions regarding information on this notice to the persons listed above.</b>		

**General Information**

<b>2. Rule or section catchline:</b>
R277-705. Secondary School Completion and Diplomas
<b>3. Purpose of the new rule or reason for the change:</b>
This rule is being amended as a result of the passage of H.B. 82 in the 2024 General Session.
<b>4. Summary of the new rule or change:</b>
The amendments specifically update Section 2, changing the definition of "YIC". Currently the rule states that "YIC" means "Youth in Custody." The revised language will state that "YIC" means "Youth in Care".



**Fiscal Information**

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

**A) State budget:**

This rule change is not expected to have fiscal impact on state government revenues or expenditures. This is an update to language only and the Utah State Board of Education (USBE) believes any fiscal impacts for USBE and Local Education Agencies (LEAs) were captured in the fiscal note to H.B. 82 (2024).

**B) Local governments:**

This rule change is not expected to have fiscal impact on local governments' revenues or expenditures. This is an update to language only and USBE believes any fiscal impacts for USBE and LEAs were captured in the fiscal note to H.B. 82 (2024).

**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 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 USBE 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. This is an update to language only and USBE believes any fiscal impacts for USBE and LEAs were captured in the fiscal note to H.B. 82 (2024).

**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.)**

<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2025</b>	<b>FY2026</b>	<b>FY2027</b>
State Government	\$0	\$0	\$0
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Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>	<b>FY2025</b>	<b>FY2026</b>	<b>FY2027</b>
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<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>H) Department head comments on fiscal impact and approval of regulatory impact analysis:</b>			
The State Superintendent of the Utah State Board of Education, Sydnee Dickson, has reviewed and approved this regulatory impact analysis.			

**Citation Information**

<b>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:</b>		
Article X, Section 3	Subsection 53E-3-501(1)(b)	Subsection 53E-3-401(4)

**Public Notice Information**

<b>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.)</b>	
<b>A) Comments will be accepted until:</b>	10/31/2024

<b>9. This rule change MAY become effective on:</b>	11/07/2024
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**

<b>Agency head or designee and title:</b>	Angie Stallings, Deputy Superintendent of Policy	<b>Date:</b>	09/16/2024
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**R277. Education, Administration.**

**R277-705. Secondary School Completion and Diplomas.**

**R277-705-1. Authority and Purpose.**

- (1) This rule is authorized by:
  - (a) Utah Constitution Article X, Section 3, which vests general control and supervision of public education in the Board;
  - (b) Subsections 53E-3-501(1)(b) and (c), which direct the Board to make rules regarding competency levels, graduation requirements, curriculum, and instruction requirements; and
  - (c) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.
- (2) The purpose of this rule is to:
  - (a) provide consistent definitions;
  - (b) provide alternative methods for a student to earn credit and alternate methods for schools to award credit;
  - (c) provide rules and procedures for the assessment of all students as required by law; and
  - (d) provide rules for a student to receive an alternative to a traditional diploma if appropriate criteria are met.

**R277-705-2. Definitions.**

- (1) "Alternate Diploma" means a diploma issued in accordance with Section R277-705-5.
- (2) "Demonstrated competence" means subject mastery as determined by LEA standards and review. LEA review may include such methods and documentation as: tests, interviews, peer evaluations, writing samples, reports, or portfolios.
- (3) "Diploma" means an official document awarded by an LEA consistent with state and LEA graduation requirements and the provisions of this rule.
- (4) "FAPE" means a free appropriate public education, which includes special education and related services that are provided at public expense, under public supervision and direction, and without charge in accordance with Board rule and the IDEA and Section 504 of the Rehabilitation Act of 1973.
  - (5)(a) "Secondary school" means grades 7-12 in whatever kind of school the grade levels exist.
  - (b) Grade 6 may be considered a secondary grade for some purposes.
  - (6) "Section 504 plan" means a written statement of related aids and services for a student with a qualifying disability that is developed, reviewed, and revised in accordance with Section 504 of the Rehabilitation Act of 1973.
  - (7)(a) "Special purpose school" means a school designated by a regional accrediting agency, adopted by the Board.
  - (b) "Special purpose school" includes a school:
    - (i) that serves a specific population such as a student with a disability, youth in ~~custody~~care, or a school with a specific curricular emphasis; and
    - (ii) with curricula designed to serve specific populations that may be modified from a traditional program.
  - (8) "Student with a significant cognitive disability" or "SWSCD" is determined by a comprehensive understanding of a whole student, including review of educational considerations and data obtained through the IEP process, including whether a student:

- (a) requires intensive, repeated, modified, and direct individualized instruction and requires substantial supports to learn, maintain, and generalize skills in the student's grade and age-appropriate curriculum;
- (b) has special education eligibility documentation indicating the disability significantly impacts intellectual functioning and adaptive behavior;
- (c) demonstrates cognitive functioning and adaptive behavior in home, school, and community environments, which are significantly below age expectations, even with program modifications, adaptations, and accommodations;
- (d) has a severe and complex cognitive disability, which limits the student from meaningful participation in the standard academic core curriculum or achievement of the academic content standards established at grade level, without substantial support, modifications, adaptations, and accommodations;
- (e) may be eligible to participate in alternate assessments; and
- (f) has a disability, which increases the need for dependence on others for many, if not all, daily living needs, and is expected to require extensive ongoing support through adulthood.
- (9) "Supplemental education provider" means a private school or educational service provider:
  - (a) that may or may not be accredited; and
  - (b) that provides courses or services similar to public school courses or classes.
- (10)(a) "Transcript" means an official document or record generated by one or several schools which includes:
  - (i) the courses in which a secondary student was enrolled;
  - (ii) grades and units of credit earned; and
  - (iii) citizenship and attendance records.
- (b) A transcript is one part of a student's permanent record or cumulative file that may include:
  - (i) birth certificate
  - (ii) immunization records; and
  - (iii) other information as determined by the school in possession of the record.
- (11) "Unit of credit" means credit awarded for a course taken:
  - (a) consistent with this rule;
  - (b) upon LEA authorization; or
  - (c) for mastery demonstrated by approved methods.

**R277-705-3. Required LEA Policy Explaining Student Credit.**

- (1)(a) An LEA governing board shall establish a policy, in an open meeting, explaining the process and standards for acceptance and reciprocity of credits earned by a student in accordance with state law.
- (b) An LEA policy described in Subsection (1)(a) shall include specific and adequate notice to a student and a parent of all policy requirements and limitations.
- (2)(a) An LEA shall accept credits and grades awarded to a student from a school or a provider accredited by an accrediting entity adopted by the Board.
- (b) An LEA policy may establish reasonable timelines and may require adequate and timely documentation of authenticity for credits and grades submitted.
- (3) An LEA policy shall provide various methods for a student to earn credit from a non-accredited source, course work, or education provider including:
  - (a) satisfaction of coursework by demonstrated competency, as evaluated at the LEA level;
  - (b) assessment as proctored and determined at the school or school level;
  - (c) review of student work or projects by an LEA administrator; and
  - (d) satisfaction of electronic or correspondence coursework, as approved at the LEA level.
- (4) An LEA may require documentation of compliance with Section 53G-6-204 before reviewing a student's home school or competency work, assessment, or materials.
- (5) An LEA policy for participation in extracurricular activities, awards, recognitions, and enhanced diplomas may be determined locally consistent with the law and this rule.
- (6) An LEA has the final decision-making authority for the awarding of credit and grades from a non-accredited source consistent with state law, due process, and this rule.

**R277-705-4. Diplomas and Certificates of Completion.**

- (1) An LEA shall award diplomas and certificates of completion.
- (2) An LEA shall establish criteria for a student to earn a certificate of completion that may be awarded to a student who:
  - (a) has completed the student's senior year;
  - (b) is exiting or aging out of the school system; and
  - (c) has not met all state or LEA requirements for a diploma.
- (3) A student with a disability served by a special education program shall satisfy high school completion or graduation criteria, consistent with state and federal law and the student's IEP.
- (4) An LEA may award a student a certificate of completion consistent with state and federal law and the student's IEP or Section 504 plan.
- (5) An LEA may not enroll a student with the intent to award a diploma or a certificate of completion once the student has earned a high school equivalence.

**R277-705-5. Alternate Diploma.**

- (1) An LEA may award an alternate diploma to a student with a significant cognitive disability if:
  - (a) the student accesses grade-level Core standards through the Essential Elements;
  - (b) the student's IEP team makes graduation substitutions in the same content area, from a list of alternative courses approved by the Superintendent; and
  - (c) the student meets all graduation requirements before exiting school at or before age 22.
- (2) An alternate diploma issued in accordance with Subsection (1) may not indicate that the recipient is a student with a disability.
- (3) Notwithstanding the award of an alternate diploma, an LEA may still be obligated to provide FAPE to an eligible student in accordance with the IDEA.
- (4)(a) The Superintendent shall provide a list of alternative courses that may be considered for student with cognitive disabilities working to receive an alternate diploma.
  - (b) An LEA may submit courses to the Superintendent to be considered for possible inclusion on the list required by Subsection (4)(a).
- (4)(a).
  - (c) The Superintendent shall annually update the list of alternative courses required under Subsection (4)(a) following review of LEA recommendations made under Subsection (4)(b).

**R277-705-6. Career Development Credentials.**

- (1) An LEA may award a career development credential to a student with an IEP or Section 504 plan:
  - (a) who meets the requirements of a career focused work experience before leaving school; and
  - (b) consistent with:
    - (i) state and federal law; and
    - (ii) the student's IEP or Section 504 plan.
- (2) Before receiving a career development credential, a student shall:
  - (a) earn the following credits in core content:
    - (i) English Language Arts (3.0);
    - (ii) Mathematics (2.0);
    - (iii) Science (1.0); and
    - (iv) Social Studies (1.0);
  - (b) complete 120 hours of community based work experience, to include:
    - (i) 40 hours of paid employment; or
    - (ii) documentation of completion of intake with a vocal rehabilitation counselor or the Department of Workforce Services;
  - (c) complete an LEA approved transition curriculum class or coursework that includes:
    - (i) disability awareness;
    - (ii) accommodations;
    - (iii) self-advocacy training;
    - (iv) career exploration; and
    - (v) workplace soft skills;
  - (d) receive .5 credits in a CTE Work Based Learning internship, including accommodations or modifications as appropriate and allowed by industry standards; and
  - (e) verify concentration in a CTE pathway in the student's area of interest.

**R277-705-7. Adult Education Students.**

- (1) An adult education student is eligible only for an adult education secondary diploma.
- (2) An adult education diploma may not be upgraded or changed to a traditional, high school-specific diploma.
- (3) A school district shall establish a policy:
  - (a) allowing or disallowing adult education student participation in graduation activities or ceremonies; and
  - (b) establishing timelines and criteria for satisfying adult education graduation and diploma requirements.

**R277-705-8. Student Rights and Responsibilities Related to Graduation, Transcripts, and Receipt of Diplomas.**

- (1) An LEA shall supervise the granting of credit and awarding of diplomas, but may delegate the responsibility to schools within the LEA.
- (2) An LEA may determine criteria for a student's participation in graduation activities, honors, and exercises, independent of a student's receipt of a diploma or certificate of completion.
- (3) A diploma, a certificate, credits, or an unofficial transcript may not be withheld from a student for nonpayment of school fees.
- (4)(a) An LEA shall establish a consistent timeline for all students for completion of graduation requirements.
  - (b) A timeline described in Subsection (4)(a) shall be consistent with state law and this rule.
  - (5) An LEA's graduation requirements may not apply retroactively.

**KEY: adult education, high school credits, graduation requirements**

**Date of Last Change: 2024[January 11, 2023]**

**Notice of Continuation: November 15, 2022**

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

**NOTICE OF SUBSTANTIVE CHANGE**

**TYPE OF FILING:** Amendment

**Rule or Section Number:**

**R277-709**

**Filing ID: 56804**

**Agency Information**

<b>1. Title catchline:</b>	Education, Administration	
<b>Building:</b>	Board of Education	
<b>Street address:</b>	250 E 500 S	
<b>City, state:</b>	Salt Lake City, UT	
<b>Mailing address:</b>	PO Box 144200	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4200	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov
<b>Please address questions regarding information on this notice to the persons listed above.</b>		

**General Information**

<b>2. Rule or section catchline:</b>
R277-709. Education Programs Serving Youth in Custody
<b>3. Purpose of the new rule or reason for the change:</b>
This rule is being amended as a result of the passage of H.B. 82 in the 2024 General Session.
<b>4. Summary of the new rule or change:</b>
The amendments specifically change the definition of "YIC". Currently the rule states that "YIC" means "Youth in Custody." The revised language will state that "YIC" means "Youth in Care".

**Fiscal Information**

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
This rule change is not expected to have fiscal impact on state government revenues or expenditures. This is an update to language only and the Utah State Board of Education (USBE) believes any fiscal impact for USBE and Local Education Agencies (LEAs) were captured in the fiscal note to H.B. 82 (2024).
<b>B) Local governments:</b>
This rule change is not expected to have fiscal impact on local governments' revenues or expenditures. This is an update to language only and USBE believes any fiscal impact for the USBE and LEAs were captured in the fiscal note to H.B. 82 (2024).
<b>C) Small businesses</b> ("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 and LEAs.
<b>D) Non-small businesses</b> ("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 USBE 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. This is an update to language only and USBE believes any fiscal impacts for the USBE and LEAs were captured in the fiscal note to H.B. 82 (2024).

**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	FY2025	FY2026	FY2027
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
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
Fiscal Benefits	FY2025	FY2026	FY2027
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
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**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 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:**

Article X, Section 3	Subsection 53E-3-401(4)	Subsection 53E-3-503(2)(b)
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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.)

<b>A) Comments will be accepted until:</b>	10/31/2024
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<b>9. This rule change MAY become effective on:</b>	11/07/2024
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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**

<b>Agency head or designee and title:</b>	Angie Stallings, Deputy Superintendent of Policy	<b>Date:</b>	09/16/2024
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**R277. Education, Administration.****R277-709. Education Programs Serving Youth in ~~Custody~~Care.****R277-709-1. Authority, ~~and~~ Purpose, and Oversight Category.**

- (1) This rule is authorized by:
  - (a) Utah Constitution Article X, Section 3, which vests general control and supervision of public education in the Board;
  - (b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and
  - (c) Subsection 53E-3-503(2)(b) which requires the Board to adopt rules for the distribution of funds for the education of youth in ~~custody~~care.
- (2) The purpose of this rule is to specify operation standards, procedures, and distribution of funds for youth in ~~custody~~care programs.
- (3) This Rule R277-709 is categorized as Category 4 as described in Rule R277-111.

**R277-709-2. Definitions.**

- (1) "Accreditation" means the formal process for evaluation and approval from a regional accrediting body.
- ~~(2) "Custody" means the status of being legally subject to the control of another person or a public agency.~~
- ~~(3)~~(2) "Youth in ~~custody~~care" or "YIC" means a person for whom the Board is responsible to provide -educational services under S[ubs]ections 53E-3-503 and ~~[62A-15-609]~~26B-5-325.

**R277-709-3. LEA Programs.**

- (1) An LEA shall submit an annual application and plan for approval by the Superintendent to receive funds and provide educational services for YIC.
- (2) The LEA's plan described in Subsection (1) shall include:
  - (a) a strategic plan outlining the key goals and strategies the program will achieve for YIC students;
  - (b) the respective responsibilities of the Board, LEAs, and other local service providers for education; and
  - (c) any third-party providers of educational services the LEA plans to utilize.
- (3) An LEA with an approved YIC program shall:
  - (a) assign each YIC student in a school-based program a mentor using an evidence-based mentoring program;
  - (b) admit a YIC student to classes within five school days following arrival at a new residential placement;
  - (c) flag the student as a YIC student in the LEA's student information system and obtain applicable forms from the Utah Department of Health and Human Services (DHHS) regarding the YIC designation of the student;
  - (d) maintain a system to record incident data including incident data described by Rule R277-912 and Section 53E-3-516;
  - (e) offer courses consistent with the Utah Core standards described in Rule R277-700;
  - (f) ensure staff assigned to a YIC student be qualified and appropriate for the student's assignments in accordance with Board licensing rules;
  - (g) maintain accreditation as part of the LEA where the programs are located consistent with Rule R277-410;
  - (h) prioritize course content mastery rather than completion of predetermined seat time in a classroom; and
  - (i) coordinate educational services with non-custody programs to enable a YIC student to continue the student's education following discharge from custody.
- (4) The Superintendent shall make available written course descriptions for GED Test preparation for YIC students who consider pursuing GED Tests as an alternative to traditional Carnegie diploma courses.
- (5) An LEA shall provide an education program for a YIC student that:
  - (a) is in the least restrictive environment appropriate for the student's behavior and educational performance;
  - (b) conforms to the student's individualized education program (IEP) when the student qualifies for special education;
  - (c) adheres to the student's 504 plan, if applicable; and
  - (d) references existing administrative rule and its applicability where appropriate.
- (6) An LEA may provide a YIC student a temporary schedule that can be modified to meet the YIC student's needs after an evaluation and planning process is complete.
- (7) An LEA may not assign or allow a YIC student to remain in a restrictive environment, including separation from general education students and programs, due to:
  - (a) the student's custodial status;
  - (b) past behavior that does not put others at risk; or
  - (c) the inappropriate behavior of another student.
- (8) If an LEA uses a secured facility, including a residential treatment center, to provide educational services to a YIC student, the LEA shall provide an educational and career transition advocate and transition services for the YIC student.
- (9) An LEA shall maintain all grades, attendance records, and special education SCRAM records for a YIC student in the LEA's student information system in compliance with Rule R277-484, Data Standards.
- (10) An LEA with a YIC program shall participate in regular compliance monitoring visits by the Superintendent.
- (11) Following a student's release from ~~custody~~ or transfer to a new LEA's program, the- sending LEA shall ensure all available school records are up to date and forward the school records to the receiving LEA consistent with Section 53G-6-604.

NOTICES OF PROPOSED RULES

**R277-709-4. School Counseling.**

(1) An LEA shall ensure each YIC student has a written plan for college and career readiness as described in Section R277-462-5 including defining the student's academic achievement and known in-school and extra-school factors which may affect the student's school performance.

(2) An LEA with a YIC program shall develop the plans required under Section R277-462-5 in cooperation with appropriate representatives of other service agencies working with a YIC student, such as Division of Juvenile Justice and Youth Services, Division of Child and Family Services, and Department of Workforce Services.

(3) An LEA shall accept credit earned in a YIC program that is accredited at face value in Utah's public schools consistent with Section R277-410-9.

**R277-709-5. Special Education.**

(1) An LEA with a YIC program shall adhere to the IDEA and state special education rules for the LEA's YIC program.

(2) The IEP team shall review the postsecondary transition plan in connection with the development of the college and career readiness plan.

(3) An LEA with a student who is both a student with a disability and a YIC student may provide services to that student from the LEA's YIC program and shall provide services from the LEA's special education program if the student qualifies for special education.

(4) An LEA shall provide educational instruction as defined in Rule R277-750 to a YIC student who qualifies for special education services.

(5) An LEA shall ensure that custodial status alone is not used to qualify a YIC student as a student with a disability under laws regulating special education.

(6) The Superintendent shall monitor special education programs provided through YIC in conjunction with Utah Program Improvement Planning Systems (UPIPS) monitoring.

**R277-709-6. Program Fiscal and Accountability Procedures.**

(1) An LEA with an approved application and plan, and the Utah State Hospital, shall receive an allocation of state funds appropriated for YIC programs in accordance with Section 53E-3-503 and Section ~~[62A-15-609]~~26B-5-325.

(2) An LEA shall receive funding determined by a set of criteria including:

- (a) the number of YIC students served by the LEA;
- (b) the type of program required for a student;
- (c) the setting for providing educational services; and
- (d) the length of the YIC program.

(3) An LEA with an approved YIC program shall expend funds approved solely for the purposes described in the LEA's approved plan.

(4) An LEA with an approved program may use funds that provide incidental benefits for non YIC students if:

(a) the educational provider is performing a task related to specific needs of at least one YIC student outlined in the YIC student's education plan; and

(b) the task does not require additional time beyond what is required to address the specific needs of at least one YIC student outlined in the YIC student's education plan.

(5) The Superintendent may retain no more than 5% of the total YIC annual legislative appropriation for administration, oversight, monitoring, and evaluation of YIC programs and their compliance with law and this rule.

(6) Up to 3% of the 5% of administrative funds allowed under Subsection (5) may be withheld by the Superintendent and directed to students attending YIC programs for short periods of time or to new or beginning YIC programs or initiatives benefiting YIC students.

(7) The Superintendent may only contract through an RFP process with an appropriate entity if the Superintendent determines that the LEA where the facility is located is unable or unwilling to provide adequate education services.

(8) YIC students receiving education services by or through an LEA shall be considered students of that LEA.

(9) Notwithstanding the procedures for determining an alternative district of residency- in Rule R277-621, an LEA may not create an alternative district of residency for a student who has been placed in custody primarily in an attempt to receive services in a state funded YIC program.

(10) An LEA may carry forward 10% of state YIC funds or educational contract funds for use in the next fiscal year with written approval of the Superintendent.

(11) An LEA shall submit to the Superintendent a request to carry forward funds for approval by the deadline specified by the Superintendent.

(12) If approved, an LEA shall detail carry forward amounts in a revised budget submitted to the Superintendent by the deadline specified by the Superintendent in the year requested.

(13) The Superintendent shall consider carry forward funds in determining the LEA's allocation for the next fiscal year.

(14) The Superintendent shall:

- (a) annually assess carry forward fund balances more than 10%; and
- (b) reallocate excess funds to YIC programs based on the criteria and procedures provided by this rule.

(15) An LEA may make budget adjustments to the LEA's approved plan without approval from the Superintendent if the adjustments are below 10% of the LEA's approved plan.

(16) An LEA shall seek approval by the Superintendent to make budget adjustments that are larger than 10% of the LEA's approved plan.



**R277-709-[8]7. Confidentiality.**

(1) An LEA shall issue transcripts and diplomas prepared for a YIC student in the name of an existing accredited school and ~~shall~~ may not bear references to custodial status.

(2) An LEA shall use reasonable methods to ensure that school officials obtain access to only those education records in which they have a legitimate educational interest.

(3) An LEA that does not use physical or technological access controls shall:

(a) ensure that the LEA's administrative policy for controlling access to education records is effective; and

(b) that the LEA remains in compliance with the legitimate educational interest requirement as described in Family Educational and Privacy Rights Act and 34 CFR Section 99.31.

(4) An interagency team, including an LEA, that oversees student education plans shall:

(a) have access to relevant records of the various agencies through each team member representatives of the participating agencies; and

(b) ensure the records and information obtained from the records remain the property of the supplying agency and ~~shall~~ may not be transferred or shared with other persons or agencies without the permission of the supplying agency, the student's parent, or the eligible student, as defined under the Family Educational and Privacy Rights Act 20 U.S.C. 1232g(d).

**R277-709-[9]8. Coordinating Council.**

The Board shall coordinate with DHHS to appoint a coordinating council in accordance with Subsection 53E-3-503(6)(a) to plan, coordinate, and recommend budget, policy, and program guidelines for the education and treatment of persons in the custody of the Division of Juvenile Justice and Youth Services and the Division of Child and Family Services.

**R277-709-[10]9. Local Interagency Councils.**

(1) An LEA serving YIC students shall establish a local interagency council which shall be responsible for advising member agencies concerning coordination of YIC programs; and

(2) Members of council required under Subsection (1) shall include, if applicable to the LEA, the following:

(a) a representative of the Division of Child and Family Services;

(b) a representative of the Division of Juvenile Justice and Youth Services;

(c) directors of agencies located in an LEA such as detention centers, secure lockup facilities, observation and assessment units, and the Utah State Hospital;

(d) a representative from contracted residential providers serving YIC in their LEA; and

(e) a representative of the LEA.

(3) A local interagency advisory council required under Subsection (1)(a) shall:

(a) adopt by-laws for its operation; and

(b) meet at least quarterly

**R277-709-[11]10. Corrective Action.**

An LEA that does not comply with the requirements of this rule may be subject to a corrective action plan and potential reduction of funds or penalty in accordance with Rule R277-114.

**KEY: students, education, juvenile courts**

**Date of Last Change: 2024[February 8, 2023]**

**Notice of Continuation: December 15, 2022**

**Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-401(4); 53E-3-503(2)(b)**

NOTICE OF SUBSTANTIVE CHANGE		
TYPE OF FILING: Repeal		
Rule or Section Number:	R277-715	Filing ID: 56805

**Agency Information**

1. Title catchline:	Education, Administration
Building:	Board of Education
Street address:	250 E 500 S
City, state:	Salt Lake City, UT
Mailing address:	PO Box 144200
City, state and zip:	Salt Lake City, UT 84114-4200

<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov
<b>Please address questions regarding information on this notice to the persons listed above.</b>		

**General Information**

<b>2. Rule or section catchline:</b>
R277-715. Out-of-School Time Program Standards
<b>3. Purpose of the new rule or reason for the change:</b>
This rule is being repealed because there is no longer any funding provided for the "Out-of-School Time Program".
<b>4. Summary of the new rule or change:</b>
This rule is no longer necessary because legislative funding for the program has been discontinued.

**Fiscal Information**

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
This proposed repeal is not expected to have fiscal impact on state government revenues or expenditures. The legislature has discontinued funding for this program, so there are no fiscal impacts for the Utah State Board of Education (USBE), Local Education Agencies (LEAs), or other entities associated with repealing this rule.
<b>B) Local governments:</b>
This proposed repeal is not expected to have fiscal impact on local governments' revenues or expenditures. The legislature has discontinued funding for this program, so there are no fiscal impacts for USBE, LEAs, or other entities associated with repealing this rule.
<b>C) Small businesses ("small business" means a business employing 1-49 persons):</b>
This proposed repeal is not expected to have fiscal impact on small businesses' revenues or expenditures. The legislature has discontinued funding for this program, so there are no fiscal impacts for USBE, LEAs, or other entities associated with repealing this rule.
<b>D) Non-small businesses ("non-small business" means a business employing 50 or more persons):</b>
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.
<b>E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <i>agency</i>):</b>
This proposed repeal is not expected to have fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities. The legislature has discontinued funding for this program, so there are no fiscal impacts for USBE, LEAs, or other entities associated with repealing this rule.
<b>F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):</b>
There are no compliance costs for affected persons. The legislature has discontinued funding for this program, so there are no fiscal impacts for USBE, LEAs, or other entities associated with repealing this rule.

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

<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2025</b>	<b>FY2026</b>	<b>FY2027</b>
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
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>	<b>FY2025</b>	<b>FY2026</b>	<b>FY2027</b>
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
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**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 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:**

Article X, Section 3	Subsection 53E-3-401(4)	Section 53E-3-508
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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:** 10/31/2024

**9. This rule change MAY become effective on:** 11/07/2024

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**

<b>Agency head or designee and title:</b>	Angie Stallings, Deputy Superintendent of Policy	<b>Date:</b>	09/16/2024
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**R277. Education, Administration.**

~~[R277-715. Out of School Time Program Standards.~~

~~R277-715-1. 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-4-301(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and~~
  - ~~(c) Section 53E-3-508, which requires the Board to adopt rules to set standards for high quality out of school time programs.~~
- ~~(2) The purpose of this rule is to set standards for high quality out of school time programs and define the programs required to adopt those standards.~~

NOTICES OF PROPOSED RULES

**R277-715-2. Definitions.**

- \_\_\_\_\_ (1) "Assessment tool" means the Utah After school Program Quality Assessment and Improvement Tool developed by a statewide multi-agency stakeholder group, and administered by the Utah After school Network.
- \_\_\_\_\_ (2) "Out of school time" means time that a student at a participating program is engaged in a learning environment that is not during regular school hours, including before school, after school, and during the summer.
- \_\_\_\_\_ (3) "Participating program" means a program that receives funds from the Board or from the Department of Workforce Services to support the program's out-of-school-time programming.
- \_\_\_\_\_ (4) "Program quality assessment tool" or "PQA tool" means the evidence-based program quality assessment tool used to assess program quality during an observation in classrooms with school-age and teen children, including children five years old and older.
- \_\_\_\_\_ (5) "Reliable observer" means a Department of Workforce Services or Superintendent approved individual who is trained to utilize an evidence-based classroom observation tool to fidelity.

**R277-715-3. Requirements and Standards for High Quality Out-of-School-Time Programs.**

- \_\_\_\_\_ (1) A participating program shall:
  - \_\_\_\_\_ (a)(i) use the assessment tool to determine the extent to which the program is meeting the standards described in this Section; or
  - \_\_\_\_\_ (ii) allow a reliable observer to use the quality assessment tool to determine the extent to which the program is meeting the standards described in this Section;
  - \_\_\_\_\_ (b) ensure that it is working toward achieving the standards described in this Section; and
  - \_\_\_\_\_ (c) for a participating program that receives after school program funds from the Board, collect and submit student attendance data to the Superintendent in a format prescribed by the Superintendent.
- \_\_\_\_\_ (2) The Superintendent shall provide for a flag in a student's data file to indicate the student's attendance in a participating program.
- \_\_\_\_\_ (3) The safety standard includes the following components in order to provide a safe, healthy, and nurturing environment for all participants, including that:
  - \_\_\_\_\_ (a) staff are professionally qualified to work with program participants;
  - \_\_\_\_\_ (b) policies and procedures are established and implemented to ensure the health and safety of all program participants;
  - \_\_\_\_\_ (c) program participants are carefully supervised to maintain safety;
  - \_\_\_\_\_ (d) a transportation policy is established and communicated to staff and families of participants; and
  - \_\_\_\_\_ (e) a consistent and responsive behavior management plan is established and implemented.
- \_\_\_\_\_ (4) The relationships standard includes the following components in order to develop and maintain positive relationships among staff, participants, families, schools, and communities, including that:
  - \_\_\_\_\_ (a) staff and participants know, respect, and support each other;
  - \_\_\_\_\_ (b) the program communicates and collaborates with the school and the community; and
  - \_\_\_\_\_ (c) the program fosters family involvement to support program goals.
- \_\_\_\_\_ (5) The skills standard includes the following components in order to encourage participants to learn new skills, including that:
  - \_\_\_\_\_ (a) participants are actively engaged in learning activities that promote critical thinking, creative thinking, and that build on the individual's interests and strengths;
  - \_\_\_\_\_ (b) the program aligns academic support and interventions to the school-day curricula to address student learning needs; and
  - \_\_\_\_\_ (c) the program offers a variety of life-skill activities and needs-based support to promote leadership skills, personal growth, and responsible behaviors toward self and others.
- \_\_\_\_\_ (6) The administration standard includes the following components in order to ensure that the program is effectively administered, including that the program:
  - \_\_\_\_\_ (a) has established a plan for increasing capacity, ensuring program quality, and promoting sustainability, including sound fiscal management;
  - \_\_\_\_\_ (b) establishes and consistently implements clearly defined policies and procedures;
  - \_\_\_\_\_ (c) recruits, hires, and trains diverse and qualified staff members who value and nurture all participants; and
  - \_\_\_\_\_ (d) provides professional development and training opportunities to enhance staff job performance.

**KEY: out-of-school-time, programs, standards, students**

**Date of Last Change: January 9, 2020**

**Notice of Continuation: November 14, 2019**

**Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-401(4); 53E-3-508]**

NOTICE OF SUBSTANTIVE CHANGE		
<b>TYPE OF FILING:</b> Repeal		
<b>Rule or Section Number:</b>	R277-718	<b>Filing ID:</b> 56806

**Agency Information**

<b>1. Title catchline:</b>	Education, Administration
<b>Building:</b>	Board of Education

<b>Street address:</b>	250 E 500 S	
<b>City, state:</b>	Salt Lake City, UT	
<b>Mailing address:</b>	PO Box 144200	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4200	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov
<b>Please address questions regarding information on this notice to the persons listed above.</b>		

### General Information

<b>2. Rule or section catchline:</b>
R277-718. Out-of-School Time Program Quality Improvement Grants
<b>3. Purpose of the new rule or reason for the change:</b>
This rule is being repealed because there is no longer any funding provided for "Out-of-School Time Program Quality Improvement Grants".
<b>4. Summary of the new rule or change:</b>
This rule is no longer necessary because legislative funding for the grants was discontinued as of June 30, 2024.

### Fiscal Information

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
This proposed repeal is not expected to have fiscal impact on state government revenues or expenditures. The legislature has discontinued funding for this program, so there are no fiscal impact for the Utah State Board of Education (USBE), Local Education Agencies (LEAs), or other entities associated with repealing this rule.
<b>B) Local governments:</b>
This proposed repeal is not expected to have fiscal impact on local governments' revenues or expenditures. The legislature has discontinued funding for this program, so there are no fiscal impact for USBE, LEAs, or other entities associated with repealing this rule.
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):
This proposed repeal is not expected to have fiscal impact on small businesses' revenues or expenditures. The legislature has discontinued funding for this program, so there are no fiscal impact for USBE, LEAs, or other entities associated with repealing this rule.
<b>D) Non-small businesses</b> ("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.
<b>E) Persons other than small businesses, non-small businesses, state, or local government entities</b> ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <b>agency</b> ):

NOTICES OF PROPOSED RULES

This rule change is not expected to have fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities. The legislature has discontinued funding for this program, so there are no fiscal impacts for USBE, LEAs, or other entities associated with repealing this rule.

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

There are no compliance costs for affected persons. The legislature has discontinued funding for this program, so there are no fiscal impacts for USBE, LEAs, or other entities associated with repealing this rule.

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

Regulatory Impact Table			
Fiscal Cost	FY2025	FY2026	FY2027
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
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
Fiscal Benefits	FY2025	FY2026	FY2027
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
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**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 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:**

Article X, Section 3	Section 53E-3-401	Section 53F-5-210
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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.)

<b>A) Comments will be accepted until:</b>	10/31/2024
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<b>9. This rule change MAY become effective on:</b>	11/07/2024
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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**

<b>Agency head or designee and title:</b>	Angie Stallings, Deputy Superintendent of Policy	<b>Date:</b>	09/16/2024
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**R277. Education, Administration.****~~R277-718. Out-of-School-Time Program Quality Improvement Grants.~~****~~R277-718 1. Authority and Purpose.~~**

- ~~\_\_\_\_\_ (1) This rule is authorized by:~~
  - ~~\_\_\_\_\_ (a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;~~
  - ~~\_\_\_\_\_ (b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and~~
  - ~~\_\_\_\_\_ (c) Section 53F-5-210, which creates a grant program for out-of-school-time programs, and requires the Board to adopt rules to administer the grant program.~~
- ~~\_\_\_\_\_ (2) The purpose of this rule is to outline grant procedures, including:~~
  - ~~\_\_\_\_\_ (a) an application procedure;~~
  - ~~\_\_\_\_\_ (b) criteria and procedures for awarding grants; and~~
  - ~~\_\_\_\_\_ (c) requirements for grant recipients.~~

**~~R277-718 2. Definitions.~~**

- ~~\_\_\_\_\_ (1) "Assessment tool" means the same as defined in R277-715.~~
- ~~\_\_\_\_\_ (2) "Grant program" means the Educational Improvement Opportunities Outside of the Regular School Day Grant Program established in Section 53F-5-210.~~
- ~~\_\_\_\_\_ (3) "Participating program" means the same as defined in R277-715.~~
- ~~\_\_\_\_\_ (4) "Private matching funds" does not include funds from federal, state, or local government sources.~~
- ~~\_\_\_\_\_ (5) "Quality observation process" means a process in which a trained and certified specialist observes a participating program that is awarded funds under the grant program, using a valid observation tool, on the extent to which the program is implementing the standards described in R277-715-3.~~

**~~R277-718 3. Grant Applications.~~**

- ~~\_\_\_\_\_ (1) The Superintendent shall create an application consistent with the provisions of Subsection 53F-5-210(4), and make the application available to participating programs operated by LEAs.~~
- ~~\_\_\_\_\_ (2) The application shall require the LEA to provide evidence and report how it intends to provide the matching private funds required in Subsection 53F-5-210(7), including the source of funding the LEA intends to use.~~
- ~~\_\_\_\_\_ (3) For each year the Superintendent is authorized to solicit grant applications, the Superintendent shall publish a timeline, and include a date for the application release, due dates for an LEA to submit required materials, and anticipated timeframes for evaluation to participating programs operated by LEAs through the Board's enterprise grant management system.~~

**~~R277-718 4. Procedures and Criteria for Awarding Grants.~~**

- ~~\_\_\_\_\_ (1) In accordance with Subsection 53F-5-210(5), the Superintendent shall evaluate LEA program proposals on:~~
  - ~~\_\_\_\_\_ (a) the percentage of students in the program who qualify for free or reduced-price lunch;~~
  - ~~\_\_\_\_\_ (b)(i) evidence that the LEA has dedicated private matching funds to support the LEA's grant funding request; or~~
  - ~~\_\_\_\_\_ (ii) provide assurances that the LEA will obtain private matching funds to support the LEA's grant funding request;~~
  - ~~\_\_\_\_\_ (c) the extent to which the program has participated in the assessment tool;~~
  - ~~\_\_\_\_\_ (d) the program's commitment to implementing the quality observation process and reporting timely results to the Superintendent;~~
  - ~~\_\_\_\_\_ (e) whether the program intends to spend grant funds on activities, purposes, or interventions that have a likelihood of improving student academic performance; and~~
  - ~~\_\_\_\_\_ (f) the extent to which the program has engaged in and implemented a program needs assessment for purposes of identifying gaps that may be addressed by funding.~~
- ~~\_\_\_\_\_ (2) A program shall receive priority points or additional weighting for a higher percentage of students in the program who qualify for free or reduced-price lunch.~~
- ~~\_\_\_\_\_ (3) The Superintendent may not distribute grant funds until the LEA has certified that the LEA has obtained the private matching funds in an amount that is equal to or more than the grant funds.~~

**~~R277-718 5. Grant Recipient Requirements, Accountability, and Reporting.~~**

- ~~\_\_\_\_\_ (1) An LEA that receives funding under the grant program shall target grant funds to expenditures that are likely to have a positive effect on the quality of the program, such as highly qualified staff, specific professional development or training for staff, or evidence-based curriculum.~~
- ~~\_\_\_\_\_ (2) LEAs shall submit reimbursement requests to claim grant funds.~~
- ~~\_\_\_\_\_ (3) An LEA grant recipient shall participate in the quality observation process to assess the quality of the program.~~
- ~~\_\_\_\_\_ (4) To determine the impact of the program on the academic performance of participating students, the Superintendent shall use statewide assessments.~~
- ~~\_\_\_\_\_ (5) An LEA grant recipient shall report to the Superintendent:~~
  - ~~\_\_\_\_\_ (a) the average daily attendance of regularly participating students;~~
  - ~~\_\_\_\_\_ (b) the types of interventions that program recipients received on the days they attended the program; and~~
  - ~~\_\_\_\_\_ (c) the amount of services received by participating students, grouped by:~~
    - ~~\_\_\_\_\_ (i) 30 days;~~

NOTICES OF PROPOSED RULES

- ~~(ii) 30-59 days;~~
- ~~(iii) 60-89 days; and~~
- ~~(iv) more than 90 days.~~
- ~~(6) An LEA grant recipient shall report the data described in Subsection (4) to the Superintendent in:~~
  - ~~(a) a mid-year report by Dec 31; and~~
  - ~~(b) an end-of-year report by May 31.~~
- ~~(7) LEAs that receive grant funds may be required to provide evidence to the Superintendent that the private matching funds were obtained and expended for the same purposes as the activities supported by these state funds.~~
- ~~(8) LEAs that receive grant funds are subject to fiscal and programmatic monitoring to validate uses of funds and programmatic performance and outcomes annually.~~

**KEY:** ~~grant program, application procedures, reporting, assessments~~  
**Date of Last Change:** ~~October 16, 2018~~  
**Notice of Continuation:** ~~September 11, 2023~~  
**Authorizing, and Implemented or Interpreted Law:** ~~Art X Sec 3; 53E-3-401; 53F-5-210]~~

NOTICE OF SUBSTANTIVE CHANGE		
<b>TYPE OF FILING:</b> Repeal		
<b>Rule or Section Number:</b>	R277-928	<b>Filing ID:</b> 56807

**Agency Information**

<b>1. Title catchline:</b>	Education, Administration	
<b>Building:</b>	Board of Education	
<b>Street address:</b>	250 E 500 S	
<b>City, state:</b>	Salt Lake City, UT	
<b>Mailing address:</b>	PO Box 144200	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4200	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov
<b>Please address questions regarding information on this notice to the persons listed above.</b>		

**General Information**

<b>2. Rule or section catchline:</b>
R277-928. High-Need Schoos Grants
<b>3. Purpose of the new rule or reason for the change:</b>
This rule is being repealed because there is no longer any funding provided for "High-Need School" grants.
<b>4. Summary of the new rule or change:</b>
This rule is no longer necessary because the legislature recently repealed Section 53F-5-212, which leaves no funding for the "High-Need Schools" grants.

**Fiscal Information**

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
This proposed repeal is not expected to have fiscal impact on state government revenues or expenditures. The legislature has discontinued funding for this program, so there are no fiscal impact for the Utah State Board of Education (USBE), Local Education Agencies (LEAs), or other entities associated with repealing this rule.



<b>B) Local governments:</b>			
This proposed repeal is not expected to have fiscal impact on local governments' revenues or expenditures. The legislature has discontinued funding for this program, so there are no fiscal impact for USBE, LEAs, or other entities associated with repealing this rule.			
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):			
This proposed repeal is not expected to have fiscal impact on small businesses' revenues or expenditures. The legislature has discontinued funding for this program, so there are no fiscal impact for USBE, LEAs, or other entities associated with repealing this rule.			
<b>D) Non-small businesses</b> ("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.			
<b>E) Persons other than small businesses, non-small businesses, state, or local government entities</b> ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <b>agency</b> ):			
This proposed repeal is not expected to have fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities. The legislature has discontinued funding for this program, so there are no fiscal impact for USBE, LEAs, or other entities associated with repealing this rule.			
<b>F) Compliance costs for affected persons</b> (How much will it cost an impacted entity to adhere to this rule or its changes?):			
There are no compliance costs for affected persons. The legislature has discontinued funding for this program, so there are no fiscal impact for USBE, LEAs, or other entities associated with repealing this rule.			
<b>G) Regulatory Impact Summary Table</b> (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.)			
<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2025</b>	<b>FY2026</b>	<b>FY2027</b>
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
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>	<b>FY2025</b>	<b>FY2026</b>	<b>FY2027</b>
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
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>H) Department head comments on fiscal impact and approval of regulatory impact analysis:</b>			
The State Superintendent of the Utah State Board of Education, Sydnee Dickson, 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:**

Article X, Section 3	Subsection 53E-3-401(4)	Section 53F-5-212
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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.)

<b>A) Comments will be accepted until:</b>	10/31/2024
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<b>9. This rule change MAY become effective on:</b>	11/07/2024
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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**

<b>Agency head or designee and title:</b>	Angie Stallings, Deputy Superintendent of Policy	<b>Date:</b>	09/16/2024
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**R277. Education, Administration.**

~~**R277-928. High Need Schools Grant.**~~

~~**R277-928-1. Authority and Purpose.**~~

- ~~\_\_\_\_\_ (1) This rule is authorized by:~~
  - ~~\_\_\_\_\_ (a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;~~
  - ~~\_\_\_\_\_ (b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and~~
  - ~~\_\_\_\_\_ (c) Section 53F-5-212, which establishes a grant to hire educators in high need schools and directs the Board to make rules to govern the application process.~~
- ~~\_\_\_\_\_ (2) The purpose of this rule is to provide:~~
  - ~~\_\_\_\_\_ (a) procedures for an LEA to apply for the High Need Schools Grant; and~~
  - ~~\_\_\_\_\_ (b) criteria for determining if an elementary school is a high need school.~~

~~**R277-928-2. Definitions.**~~

- ~~\_\_\_\_\_ (1) "High need school" means the same as the term is defined in Subsection 53F-5-212(1)(c).~~
- ~~\_\_\_\_\_ (2) "Qualifying educator," except as provided in Subsection R277-928-4(2), means a first-year classroom teacher holding a professional educator license.~~

~~**R277-928-3. Application Process.**~~

- ~~\_\_\_\_\_ (1) The Superintendent shall establish an application process for an LEA to apply for a high need school grant.~~
- ~~\_\_\_\_\_ (2) An LEA shall submit an application for the high need school grant by November 30<sup>th</sup> annually.~~
- ~~\_\_\_\_\_ (3) An LEA's application shall include acknowledgments that:~~
  - ~~\_\_\_\_\_ (a) the high need school grant is for a single year only;~~
  - ~~\_\_\_\_\_ (b) the LEA shall match the grant amount in accordance with Subsection 53F-5-212(4)(b); and~~
  - ~~\_\_\_\_\_ (c) comply with the requirements of Subsection 53F-5-212(6).~~
- ~~\_\_\_\_\_ (4) The Superintendent shall review an LEA's application based on October 1 enrollment data.~~
- ~~\_\_\_\_\_ (5) The Superintendent shall:~~
  - ~~\_\_\_\_\_ (a) create a rubric to assign weight to the criteria outlined in Subsection 53F-5-212(5)(b); and~~
  - ~~\_\_\_\_\_ (b) assess low school performance to include the lowest ten percent of schools as evidenced by results from Board approved standardized testing.~~
- ~~\_\_\_\_\_ (6) The Superintendent shall select grantees by January 31<sup>st</sup> annually.~~
- ~~\_\_\_\_\_ (7) An LEA shall submit the report required under Subsection 53F-5-212(6)(b) by June 30<sup>th</sup> annually.~~
- ~~\_\_\_\_\_ (8) If an LEA that receives a high need school grant is unable to fill a position with a qualifying educator or a funded educator leaves mid year and the LEA is unable to fill the position with a qualifying educator:~~
  - ~~\_\_\_\_\_ (a) the LEA shall notify the Superintendent; and~~
  - ~~\_\_\_\_\_ (b) the LEA shall forfeit grant funds on a pro rata basis for the remainder of the school year.~~

~~**R277-928-4. Grants for the 2019-20 School Year.**~~

- ~~\_\_\_\_\_ (1) The Superintendent shall establish an expedited process to take applications and award grant funds for the high need school grant in the 2019-20 school year.~~
- ~~\_\_\_\_\_ (2) A qualifying educator shall hold a Level 1 License for an LEA to qualify for a high need school grant in the 2019-20 school year.~~

~~KEY: grant, high-need school~~  
~~Date of Last Change: October 8, 2019~~  
~~Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-401(4); 53F-5-212]~~

NOTICE OF SUBSTANTIVE CHANGE		
<b>TYPE OF FILING:</b> Amendment		
<b>Rule or Section Number:</b>	<b>R357-5</b>	<b>Filing ID: 56757</b>

**Agency Information**

<b>1. Title catchline:</b>	Governor, Economic Opportunity	
<b>Building:</b>	World Trade Center	
<b>Street address:</b>	60 E South Temple, Suite 300	
<b>City, state:</b>	Salt Lake City, UT	
<b>Mailing address:</b>	60 E South Temple, Suite 300	
<b>City, state and zip:</b>	Salt Lake City, UT 84111	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Greg Jeffs	801-368-1957	gjeffs@utah.gov
<b>Please address questions regarding information on this notice to the persons listed above.</b>		

**General Information**

<b>2. Rule or section catchline:</b>
R357-5. Motion Picture Incentive Rule
<b>3. Purpose of the new rule or reason for the change:</b>
The purpose of this change is to clarify the meaning of the rule and how it will be applied.
<b>4. Summary of the new rule or change:</b>
The amendment adds the definition of "Above-The-Line", establishes minimum motion picture budget level for Community Film Incentive Program, clarifies what constitutes "Significant percentage of cast and crew from Utah", and explains how this rule applies to reality television.

**Fiscal Information**

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
There is no new aggregate anticipated costs or savings to the state budget. The rule is clarifying how the Governor's Office of Economic Opportunity (GOEO) will continue to carry out this statutorily mandated program.
<b>B) Local governments:</b>
There is no new aggregate anticipated cost of savings to local governments because local governments are not required to comply with or enforce this rule.
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):
There is no new aggregate anticipated cost or savings to small businesses because participation in the program is optional and this proposed rule does not create new obligations for small businesses.

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

There is no new aggregate anticipated cost or savings to non-small businesses because participation in the program is optional and this proposed rule does not create new obligations for non-small businesses.

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

There is no new aggregate anticipated cost or savings to other persons because participation in the program is optional and this proposed rule does not create new obligations for small businesses.

**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 new compliance costs for affected persons because participation in the program is optional.

**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.)

<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2025</b>	<b>FY2026</b>	<b>FY2027</b>
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
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>	<b>FY2025</b>	<b>FY2026</b>	<b>FY2027</b>
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
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

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

The Executive Director of the Governor's Office of Economic Opportunity, Ryan Starks, 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 63N-8-104(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.)

<b>A) Comments will be accepted until:</b>	10/31/2024
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<b>9. This rule change MAY become effective on:</b>	11/07/2024
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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

<b>Agency head or designee and title:</b>	Ryan Starks, Executive Director	<b>Date:</b>	08/27/2024
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**R357. Governor, Economic Opportunity.****R357-5. Motion Picture Incentive Rule.****R357-5-101. Authority.**

~~[(1)]~~Section 63N-8-104 requires the Office to make rules establishing the standards that a motion picture company and digital media company must meet to qualify for a motion picture incentive and the criteria for determining the amount of the motion picture incentive.

**R357-5-102. Definitions.**

The definitions in this rule are in addition to or serve to clarify the definitions found in Section 63N-8-102.

~~[(1)]~~ "Above-The-Line" (ATL) means creative talent that are attached to a production as the director, producers, stunt performers, screenwriters, storyboard artists or casting directors.

~~[(1)]~~~~[(2)]~~ "Cast" means performers appearing in a particular film with featured or speaking roles.

~~[(2)]~~~~[(3)]~~ "Community Film Incentive Program" means a production where a motion picture company has a minimum budget of \$100,000 and a maximum budget of under \$500,000.

~~[(3)]~~~~[(4)]~~ "Crew" means those involved in the production of a film who are not defined as cast, above-the-line or extras.

~~[(4)]~~~~[(5)]~~ "Deferred Payment" means, tax credits in amounts over \$2,000,000 paid in installments over a specified number of years but not to exceed three years.

~~[(5)]~~~~[(6)]~~ "Extras" means an extra or background actor is a performer in a production, who appears in a non-speaking or non-singing capacity, usually in the background.

~~[(6)]~~~~[(7)]~~ "Independent Utah CPA" means a Certified Public Accountant holding an active license in the state that is independent of the production and production activities.

~~[(7)]~~~~[(8)]~~ "Made-For-Television" means feature length motion pictures specifically made-for-television or streaming platforms.

~~[(8)]~~~~[(9)]~~ "Motion Pictures" means a production that is originally intended for commercial distribution and does not include:

- (a) news;
- (b) commercials;
- (c) live broadcasts;
- (d) digital media products;
- (e) live sporting events;
- (f) live coverage of theatrical or entertainment events; or
- (g) programs that solicit funds.

~~[(9)]~~~~[(10)]~~ "Principal photography," "Producing" or "Production" means the filming of major and significant portions of a film that involves the lead actors and actresses.

~~[(10)]~~~~[(11)]~~ "Rural county" means a county of the third, fourth, fifth, or sixth class.

~~[(11)]~~~~[(12)]~~ "Significant Percentage of cast and crew from Utah" means:

(a) For productions that have total budgets of less than \$500,000 ~~[dollars left in state]~~: that at least 85% of the cast and crew are Utah residents excluding extras, above-the-line and three principal cast members;

(b) For productions that have more than \$500,000  ~~[dollars]~~ left in state: that at least 75% of the cast and crew are Utah residents excluding extras, above-the-line and five principal cast members.

~~[(12)]~~~~[(13)]~~ "State-approved production" means a production that is:

(a) approved by the Office and ratified by the  ~~[Governor's Office of Economic Opportunity Board]~~ Utah Board of Tourism Development; and

(b) any of the production is produced in the state.

~~[(13)]~~~~[(14)]~~ "Total budget for the project" means the total budget for dollars left in state of pre-production, production, and post-production.

~~[(14)]~~~~[(15)]~~ "Television series" means a group of episodes of a production released on television or streaming platforms.

~~[(15)]~~~~[(16)]~~ "Treatment" means: A written description of the production.

~~[(16)]~~~~[(17)]~~ "UFC" means: the Utah Film Commission, a sub-entity of the Utah Governor's Office of Economic Opportunity.

~~[(17)]~~~~[(18)]~~ "Utah Resident" means a person who has lived in Utah for at least 183 days even if temporarily outside of Utah for an extended length of time, maintains a permanent home in Utah, and is subject to Utah personal income tax.

**R357-5-103. Motion Picture Incentive Applications: Procedures and Minimum Requirements for a Motion Picture Company.**

(1) A motion picture company's application may be approved for a motion picture incentive award only if each of the following requirements are met in addition to those listed throughout Title 63N, Motion Picture Incentives:

- (a) the motion picture company is producing any of a motion picture in Utah;
- (b) the motion picture is a state-approved production;
- (c) the motion picture company guarantees UFC access to production's behind the scenes footage, interviews and still photography or allow the Office to produce its own;

(d) the motion picture company guarantees the production will display the Utah logo as outlined in the incentive agreement and provide a screenshot of the logo as it appears in the credits;

## NOTICES OF PROPOSED RULES

(e) the motion picture company has obtained financing for 100% of the anticipated dollars left in state for the project, and the applicant provides proof of financing in a form specified in the application documents;

(f) the motion picture company must retain financing as set forth in Subsection (1)(e) for the life of the contract with the state;

(g) the motion picture company intends to report at least \$500,000 [~~dollars~~] left in state if applying for a film incentive under Subsection R357-5-5(1) or a maximum of under \$500,000 if applying for an incentive under Subsection R357-5-5(2); and

(h) if a production has initiated principal photography before the Office's receipt of a completed application or will not start principal photography for more than 90 days from date of application, the application for incentive may be denied.

(2) The motion picture incentive application [~~shall~~] may not be construed as a property right and neither the Office nor the Board is required to approve an application.

(3) To receive state approval for an incentive application, a production must, in the state's sole discretion, reflect positively on the image of Utah. In determining whether or not a production reflects positively on the image of the state, the Office and Board may take into consideration:

(a) whether and to what extent the motion picture promotes Utah as a tourist destination;

(b) general standards of decency and respect for the diverse beliefs and values of Utahns; and

(c) any other factors related to the production or the motion picture company that may reasonably affect the image of the state.

(4) The Office and Board may consider the relative merit of applications, and the need to reserve its allocations for future applications.

(a) Factors that contribute to the relative merit include:

(i) the overall strength and viability of the script of the production;

(ii) the industry reputation of the production or motion picture company;

(iii) the record of the motion picture company in matters of safety and responsible filmmaking;

(iv) the existence of any legal action or the likelihood of any legal action in relation to either the production or the motion picture company; and

(v) anticipated:

(A) number of jobs in Utah;

(B) number of production days in Utah;

(C) dollars left in state;

(D) local cast and crew wages; and

(E) new state revenue that the film contributes in Utah.

(b) Applications shall be made in the form prescribed by the Office, including required attachments or additional information.

(i) Incomplete applications will not be considered received until the application is deemed complete by the UFC.

(ii) A script is required as part of the application.

(iii) A treatment may only be submitted where a script for a project type is not possible, for example when the project is a documentary. The Utah Film Commission will determine in its sole discretion if a treatment can be substituted for a script.

(5) A production company may file more than one application if it has more than one production in the state, but a separate application must be filed for each production.

(6) Applications will be subject to submission deadlines, which will be posted on the Utah Film Commission Website and are available in other formats upon request.

(7) If the applicant fails to submit a completed application before the submission deadline, the application may be considered with the next round of submissions.

(8) Submitting an application does not guarantee approval of a film incentive.

(9) Film incentives are subject to and contingent upon the amount of available funding and tax credit allocation available in the Motion Picture Restricted account.

(10) Lack of state approval [~~shall~~] may not be construed as prohibiting a production or prohibiting a motion picture company from filming in Utah.

(11) A production's eligibility for an incentive ends upon approval or denial by the Office. A production may reapply, subject to compliance with program statutes and rules.

### **R357-5-104. Motion Picture Incentive Applications: Award for a Motion Picture Production.**

(1) Upon receipt of a completed application, the Office will align each project into incentive categories as set forth in Section R357-5-105.

(2) In calculating dollars left in the state, the Office may limit the following expenditures:

(a) salary above \$500,000 for one individual;

(b) marketing and distributions expenditures;

(c) any value beyond the depreciated amount for capital expenditures, rentals, and any purchases made where the item is used for only a portion of its useful life; and

(d) any per diem value beyond 100% of the current federal rate for the area.

### **R357-5-105. Film Categories and Conditions.**

(1) Utah Motion Picture Incentive Program.

(a) The Utah Motion Picture Incentive Program will have an incentive cap of 20% of the dollars left in state, unless a higher cap is awarded pursuant to Subsection (1)(c).

- ~~(i) Unscripted programs, including reality television and documentaries, qualify for a 10% baseline with a potential increase if additional criteria are met, not to exceed 20%.~~
- (b) Incentives will only be awarded if the motion picture company meets criteria listed in Section R357-5-103.
- (c) An additional cap of up to 5% may be granted if the motion picture company:
  - (i) Motion picture company has at least \$1,000,000 in qualified dollars left in state; and
  - (ii) ~~[75% of the]~~ **Significant Percentage of cast and crew from Utah; or**
  - (A) ~~[east and crew are Utah residents excluding extras and five principal cast members; or]~~ **75% of production days occur in rural county.**
  - ~~[(B) production days occur in rural county.]~~
- (2) Community Film Incentive Program:
  - (a) will provide a maximum of a 20% post-performance cash rebate or tax ~~[incentive]~~ **credit** for dollars left in state ~~[by a community film production];~~
  - (b) will only be awarded if the motion picture company meets criteria listed in Section R357-5-103 ~~[has a minimum budget of \$100,000 and a maximum budget of under \$500,000, and meets the criteria found on the Utah Film Commission Website];~~
  - (c) applications will be reviewed monthly; and
  - (d) awards will be made to motion picture companies based upon the criteria outlined in the application provided by UFC.
  - (3) For applications made under Subsection (1) or (2), the motion picture company must provide any information and documentation to show measurable outcomes as outlined in the application for any incentive listed in this section-

**R357-5-106. Funding -- Post-Performance Compliance.**

~~[(1)]~~ A motion picture company may qualify for issuance of either a Post-Performance Refundable Tax Credit or Post-Performance Cash award:

- ~~[(a)]~~ (1) based on the method outlined in their contract; and
- ~~[(b)]~~ (2) the motion picture company adheres to the Agreed-Upon Procedures version 2.0 dated May 13, 2022 posted on the Utah Film Commission Website which is incorporated by reference.

**R357-5-107. Funding -- Post-Performance Refundable Tax Credit.**

- (1) Post-performance refundable tax credits are non-transferable and can only be issued to the state-approved motion picture that submits the motion picture incentive application and is approved by the Office with advice from the Board.
- (2) Post-performance refundable tax credits in amounts over \$2,000,000 may be paid in deferred payments over multiple years as authorized by the Office within the approved Board motion for the tax credit.
  - (a) Deferred payments for tax credits over \$2,000,000 are subject to available tax credit allocation as authorized by the ~~[legislature]~~ **Legislature**.
  - (b) Each annual installment of the deferred payment amount shall be outlined in the tax credit agreement.
  - (c) A deferred payment plan cannot exceed three years.

**R357-5-108. Request for Incentive Amendment.**

- (1) A motion picture company may request an incentive amendment only under the conditions prescribed by the Office.
- (2) Amendments will be reviewed and approved by the UFC on a case by case basis with a written explanation for the approval or denial provided to the applicant.

**KEY: economic development, motion picture, digital media, new state revenue**

**Date of Last Change: ~~2024~~ **July 15, 2022****

**Notice of Continuation: March 11, 2021**

**Authorizing, and Implemented or Interpreted Law: 63N-8-104**

NOTICE OF SUBSTANTIVE CHANGE		
<b>TYPE OF FILING:</b> Amendment		
<b>Rule or Section Number:</b>	<b>R590-79-3</b>	<b>Filing ID: 56792</b>

**Agency Information**

<b>1. Title catchline:</b>	Insurance, Administration
<b>Building:</b>	Taylorsville State Office Building
<b>Street address:</b>	4315 S 2700 W
<b>City, state</b>	Taylorsville, UT
<b>Mailing address:</b>	PO Box 146901
<b>City, state and zip:</b>	Salt Lake City, UT 84114-6901

<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Steve Gooch	801-957-9322	sgooch@utah.gov
<b>Please address questions regarding information on this notice to the persons listed above.</b>		

**General Information**

<b>2. Rule or section catchline:</b>
R590-79-3. Definitions
<b>3. Purpose of the new rule or reason for the change:</b>
During a five-year review of this rule, the Insurance Department discovered two definitions that needed to be updated.
<b>4. Summary of the new rule or change:</b>
This filing updates the definitions of "generic name" and "non-guaranteed element" to be consistent with other rules that deal with life insurance.

**Fiscal Information**

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>								
<b>A) State budget:</b>								
There is no anticipated cost or savings to the state budget. The change merely updates a definition and will have no fiscal impact on any person.								
<b>B) Local governments:</b>								
There is no anticipated cost or savings to local governments. The change merely updates a definition and will have no fiscal impact on any person.								
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):								
There is no anticipated cost or savings to small businesses. The change merely updates a definition and will have no fiscal impact on any person.								
<b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):								
There is no anticipated cost or savings to non-small businesses. The change merely updates a definition and will have no fiscal impact on any person.								
<b>E) Persons other than small businesses, non-small businesses, state, or local government entities</b> ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <b>agency</b> ):								
There is no anticipated cost or savings to any other persons. The change merely updates a definition and will have no fiscal impact on any person.								
<b>F) Compliance costs for affected persons</b> (How much will it cost an impacted entity to adhere to this rule or its changes?):								
There are no compliance costs for any affected persons. The change merely updates a definition and there are no costs associated with the definition.								
<b>G) Regulatory Impact Summary Table</b> (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.)								
<b>Regulatory Impact Table</b>								
<table border="1"> <thead> <tr> <th>Fiscal Cost</th> <th>FY2025</th> <th>FY2026</th> <th>FY2027</th> </tr> </thead> <tbody> <tr> <td>State Government</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> </tbody> </table>	Fiscal Cost	FY2025	FY2026	FY2027	State Government	\$0	\$0	\$0
Fiscal Cost	FY2025	FY2026	FY2027					
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
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>	<b>FY2025</b>	<b>FY2026</b>	<b>FY2027</b>
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
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**H) Department head comments on fiscal impact and approval of regulatory impact analysis:**  
 The Commissioner of the Insurance Department, 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	Section 31A-23a-402
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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:** 10/31/2024

**9. This rule change MAY become effective on:** 11/07/2024

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**

<b>Agency head or designee and title:</b>	Steve Gooch, Public Information Officer	<b>Date:</b>	09/10/2024
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**R590. Insurance, Administration.**

**R590-79. Life Insurance Disclosure Rule.**

**R590-79-3. Definitions.**

Terms used in this rule are defined in Section 31A-1-301 and Rule R590-177. Additional terms are defined as follows:

- (1) "Buyer's guide" means a document that contains, and is limited to, the language contained in the "Life Insurance Buyer's Guide," as adopted and periodically amended by the National Association of Insurance Commissioners.
- (2) "Current scale of nonguaranteed elements" means a formula or other mechanism that produces values for an illustration as if there is no change in the basis of those values after the time of illustration.
- (3) "Generic name" means a short title ~~[that describes the premium and benefit patterns of a policy or a rider, such as "whole life", "term life", or "flexible premium adjustable life".]~~descriptive of the policy being illustrated such as "whole life," "term life," or "flexible premium adjustable life."
- (4)(a) "Nonguaranteed element" means ~~[any premium, credited interest rate including any bonus, benefit, value, non interest based credit, charge, or element of a formula used to determine any of these that are subject to company discretion and are not guaranteed at issue]~~a premium, benefit, value, credit, or charge under a life insurance policy that is not guaranteed or not determined at issue.
- (b) An element is considered nonguaranteed if any underlying nonguaranteed element is used in its calculation.
- (5) "Policy data" means a display or schedule of numerical values, both guaranteed and nonguaranteed, for each policy year or a series of designated policy years of the following information:
  - (a) illustrated annual, other periodic, and terminal dividends;
  - (b) premiums;

NOTICES OF PROPOSED RULES

- (c) death benefits;
- (d) cash surrender values; and
- (e) endowment benefits.
- (6) "Policy summary" means a written statement describing only the guaranteed elements of the policy.
- (7) "Preneed funeral contract" and "prearrangement" each mean an agreement by or for an individual before that individual's death relating to the purchase or provisions of specific funeral or cemetery merchandise or services.

**KEY: insurance law**  
**Date of Last Change:** ~~2024~~**December 9, 2024**  
**Notice of Continuation:** August 9, 2024  
**Authorizing, and Implemented or Interpreted Law:** 31A-2-201

NOTICE OF SUBSTANTIVE CHANGE		
<b>TYPE OF FILING:</b> Amendment		
<b>Rule or Section Number:</b>	R590-229	<b>Filing ID:</b> 56793

**Agency Information**

<b>1. Title catchline:</b>	Insurance, Administration	
<b>Building:</b>	Taylorsville State Office Building	
<b>Street address:</b>	4315 S 2700 W	
<b>City, state</b>	Taylorsville, UT	
<b>Mailing address:</b>	PO Box 146901	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-6901	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Steve Gooch	801-957-9322	sgooch@utah.gov
<b>Please address questions regarding information on this notice to the persons listed above.</b>		

**General Information**

<b>2. Rule or section catchline:</b>	R590-229. Annuity Disclosure
<b>3. Purpose of the new rule or reason for the change:</b>	During a five-year review of this rule, the Insurance Department discovered a definition that is now defined in statute, and a hyphenation error.
<b>4. Summary of the new rule or change:</b>	This filing removes the definition of "direct response solicitation," which is defined in Section 31A-1-301, and removes the hyphen in "non-guaranteed" in Subsection R590-229-5(2)(c)(iii) to be consistent with the rest of the rule.

**Fiscal Information**

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
There is no anticipated cost or savings to the state budget. The amendment merely removes a definition and fixes a spelling error. These changes will have no fiscal impact on any person.
<b>B) Local governments:</b>
There is no anticipated cost or savings to local governments. The amendment merely removes a definition and fixes a spelling error. These changes will have no fiscal impact on any person.

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

There is no anticipated cost or savings to small businesses. The amendment merely removes a definition and fixes a spelling error. These changes will have no fiscal impact on any person.

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

There is no anticipated cost or savings to non-small businesses. The amendment merely removes a definition and fixes a spelling error. These changes will have no fiscal impact on any person.

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

There is no anticipated cost or savings to any other persons. The amendment merely removes a definition and fixes a spelling error. These changes will have no fiscal impact on any person.

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

There are no compliance costs for any affected persons. The amendment merely removes a definition and fixes a spelling error. These changes do not require compliance, and there are no costs associated with the changes.

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

Regulatory Impact Table			
Fiscal Cost	FY2025	FY2026	FY2027
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
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
Fiscal Benefits	FY2025	FY2026	FY2027
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
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

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

The Commissioner of the Insurance Department, 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.)

<b>A) Comments will be accepted until:</b>	10/31/2024
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<b>9. This rule change MAY become effective on:</b>	11/07/2024
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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**

<b>Agency head or designee and title:</b>	Steve Gooch, Public Information Officer	<b>Date:</b>	09/10/2024
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**R590. Insurance, Administration.**

**R590-229. Annuity Disclosure.**

**R590-229-1. Authority.**

This rule is promulgated by the commissioner pursuant to Sections 31A-2-201 and 31A-22-425.

**R590-229-2. Purpose and Scope.**

(1) The purpose of this rule is to provide a standard for the disclosure of information in connection with the sale of an annuity contract to protect a consumer and foster consumer education.

(2) This rule applies to an insurer when offering an individual or group annuity contract or certificate except:

- (a) a registered or non-registered variable annuity or other registered product;
- (b) a structured settlement annuity;
- (c) a funding agreement; or
- (d) an annuity used to fund:

(i) an employee pension plan that is covered by the Employee Retirement Income Security Act (ERISA);

(ii) a plan described by Section 401(a), 401(k), or 403(b) of the Internal Revenue Code where the plan is established or maintained by an employer;

(iii) a government or church plan defined in Section 414, Internal Revenue Code;

(iv) a deferred compensation plan of a state, a local government, or a tax-exempt organization under Section 457, Internal Revenue Code; or

(v) a nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor.

(3) Notwithstanding Subsection (2)(d), this rule applies to an annuity used to fund a plan or arrangement that:

- (a) is funded only by contributions an employee elects to make on a pre-tax or after-tax basis; and
- (b) where there is direct solicitation of an individual employee by a producer for the purchase of an annuity contract.

(4) An immediate or deferred annuity that does not contain a nonguaranteed element is exempt from the disclosure document requirement of this rule.

**R590-229-3. Definitions.**

Terms used in this rule are defined in Section 31A-1-301. Additional terms are defined as follows:

(1) "Buyer's guide" means a document that contains, and is limited to, the language contained in the "Buyer's Guide for Deferred Annuities," "Buyer's Guide for Deferred Annuities - Fixed," and "Buyer's Guide for Deferred Annuities - Variable" as adopted and periodically amended by the NAIC.

(2) "Contract owner" means the owner named in the annuity contract or certificate holder in the case of a group annuity contract.

(3)(a) "Determinable element" means an element derived from a process or method that is guaranteed at issue and not subject to company discretion, but where the value or amount cannot be determined until some point after issue.

(b) An element is considered determinable if all the underlying elements that go into its calculation are either guaranteed or determinable.

(4)(a) "Direct solicitation" means a personalized solicitation to a specific individual through an insurer or producer that is not a direct-response solicitation.

(b) "Direct solicitation" does not include a group meeting held by a producer solely educating or enrolling individuals or, when initiated by an individual member of the group, assisting with the selection of investment options offered by a single insurer in connection with enrolling that individual.

~~[(5) "Direct response solicitation" means a solicitation through a sponsoring or endorsing entity or individually solely through mail, telephone, the internet, or other mass communication media.]~~

~~[(6)](5) "Disclosure document" means a document that describes, outlines, and specifies the required information to be provided to a prospective applicant.~~

~~[(7)](6) "Funding agreement" means an agreement for an insurer to accept and accumulate funds and to make one or more payments at a future date in amounts that are not based on a mortality or morbidity contingency.~~

~~[(8)](7) "Generic name" means a short title that describes the premium and benefit patterns of an annuity contract, such as "single premium deferred annuity."~~

~~[(9)(a)](8)(a) "Guaranteed element" means any of the following elements that are guaranteed and determined at issue:~~

- ~~(i) a premium;~~

- (ii) a credited interest rate with applicable bonus;
- (iii) a benefit;
- (iv) a value;
- (v) a non-interest-based credit;
- (vi) a charge; or
- (vii) an element of a formula used to determine an element in Subsections (9)(a)(i) through (9)(a)(vi).

(b) An element is considered guaranteed if all the underlying elements that go into its calculation are guaranteed.

~~[(10)(a)](9)(a)~~ "Nonguaranteed element" means any of the following elements that are subject to company discretion and are not guaranteed or not determined at issue:

- (i) a premium;
- (ii) a credited interest rate with applicable bonus;
- (iii) a benefit;
- (iv) a value;
- (v) a non-interest-based credit;
- (vi) a charge; or
- (vii) an element of a formula used to determine an element in Subsections (10)(a)(i) through (10)(a)(vi).

(b) An element is considered nonguaranteed if any underlying element that goes into its calculation is nonguaranteed.

~~[(11)](10)~~ "Structured settlement annuity" means an annuity that is or would be a "qualified funding asset" as defined in Section 130(d), Internal Revenue Code, but for the fact that it is not owned by an assignee under a qualified assignment.

#### **R590-229-4. Appropriate Buyer's Guide.**

(1) The "Buyer's Guide for Deferred Annuities" is the appropriate buyer's guide for an annuity product.

(2) Notwithstanding Subsection (1):

- (a) the "Buyer's Guide for Deferred Annuities - Fixed" may be used as the appropriate buyer's guide for a non-variable annuity product; and
- (b) the "Buyer's Guide for Deferred Annuities - Variable" may be used as the appropriate buyer's guide for a variable annuity product.

#### **R590-229-5. Standards for the Disclosure Document and Buyer's Guide.**

(1)(a) When an application for an annuity contract is taken in a face-to-face meeting, the applicant shall, at or before the time of application, be given both the disclosure document described in Subsection (2) and the appropriate buyer's guide described in Section R590-229-4.

(b) When an application for an annuity contract is not taken in a face-to-face meeting, the applicant shall be sent both the disclosure document described in Subsection (2) and the appropriate buyer's guide described in Section R590-229-4 no later than five business days after the completed application is received by the insurer.

(i) For an application received as a result of a solicitation through the mail:

(A) providing a buyer's guide in the mailing inviting a prospective applicant to apply for an annuity contract shall satisfy the requirement that the appropriate buyer's guide is provided no later than five business days after receipt of the application; and

(B) providing a disclosure document in the mailing inviting a prospective applicant to apply for an annuity contract shall satisfy the requirement that the disclosure document is provided no later than five business days after receipt of the application.

(ii) For an application received via the internet:

(A) making the appropriate buyer's guide available for viewing and printing on the insurer's website shall satisfy the requirement that the appropriate buyer's guide is provided no later than five business days after receipt of the application; and

(B) making the disclosure document available for viewing and printing on the insurer's website shall satisfy the requirement that the disclosure document is provided no later than five business days after receipt of the application.

(c) A solicitation for an annuity contract provided in other than a face-to-face meeting shall include a statement that the prospective applicant can obtain from the insurer a free annuity buyer's guide upon request.

(2) Disclosure document. The following information shall be included in the disclosure document:

(a) the generic name of the contract, the company product name, if different, the form number, and the fact that it is an annuity;

(b) the insurer's name and address;

(c) a description of the contract and its benefits, emphasizing its long-term nature, and examples, as appropriate, including:

(i) the guaranteed, nonguaranteed and determinable elements of the contract, their limitations, and an explanation of how they operate;

(ii) an explanation of the initial crediting rate, specifying any bonus or introductory portion, the duration of the rate and the fact that the rate may change from time to time and is not guaranteed;

(iii) periodic income options, both on a guaranteed and ~~non-guaranteed~~ nonguaranteed basis;

(iv) any value reduction caused by a withdrawal from or surrender of the contract;

(v) how the value of the contract can be accessed;

(vi) the death benefit, if available, and how it is calculated;

(vii) a summary of the federal tax status of the contract and any penalty applicable on a withdrawal of a value from the contract; and

(viii) the impact of any rider, such as a long-term care rider;

(d) the specific dollar amount or percentage of any charge or fee shall be listed with an explanation of how it applies; and

(e) information about the current guaranteed rate for a new contract that contains a clear notice that the rate is subject to change.

NOTICES OF PROPOSED RULES

(3) An insurer shall define terms used in the disclosure document in language that is understandable by a typical person within the segment of the public to which the disclosure document is directed.

**R590-229-6. Report to Contract Owners.**

- (1) The insurer shall provide to a contract owner, at least annually, a report on the status of an annuity contract for:
  - (a) an annuity in the payout period with changes in nonguaranteed elements; or
  - (b) a deferred annuity in the accumulation period.
- (2) The report shall contain at least the following information:
  - (a) the beginning and end date of the current report period;
  - (b) any accumulation or cash surrender value at the end of the previous report period and at the end of the current report period;
  - (c) any amount that has been credited, charged to the contract value, or paid during the current report period; and
  - (d) the amount of any outstanding loan as of the end of the current report period.

**R590-229-7. Severability.**

If any provision of this rule, Rule R590-229, 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 disclosure**

**Date of Last Change: 2024|April 7, 2023|**

**Notice of Continuation: August 20, 2019**

**Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-22-425**

NOTICE OF SUBSTANTIVE CHANGE		
<b>TYPE OF FILING:</b> Amendment		
<b>Rule or Section Number:</b>	R614-1-4	<b>Filing ID: 56794</b>

**Agency Information**

<b>1. Title catchline:</b>	Labor Commission, Occupational Safety and Health	
<b>Building:</b>	Heber M. Wells Building	
<b>Street address:</b>	160 E 300 S	
<b>City, state:</b>	Salt Lake City UT	
<b>Mailing address:</b>	PO Box 146600	
<b>City, state and zip:</b>	Salt Lake City UT 84114-6600	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Holly Lawrence	801-530-6494	hlawrence@utah.gov
Floyd Johnson	801-530-6898	fjohnsion@utah.gov
Chris Hill	801-530-6113	chill@utah.gov
<b>Please address questions regarding information on this notice to the persons listed above.</b>		

**General Information**

<b>2. Rule or section catchline:</b>
R614-1-4. Incorporation of Federal Standards
<b>3. Purpose of the new rule or reason for the change:</b>
The purposes of these amendments to Utah's Occupational Safety and Health (UOSH) rules are to update the rule to ensure UOSH is enforcing the most current 29 CFR 1910.1200 standards.
Revisions to the hazard communication standard would make employers hazard communication programs more worker-protective, efficient, and effective through standardizing practices nationally and internationally.

**4. Summary of the new rule or change:**

The proposed amendment:

1. Federal Register Vol. 89, No. 98, Monday, May 20, 2024, Rules and Regulations, pages 44144 to and including 44461, "Hazard Communication Standard; Final Rule" is incorporated by reference.
  - a. Amends the Hazard Communication Standard (HCS) to conform to the Globally Harmonized System of Classification and Labelling of Chemicals (GHS), to address issues that arose during the implementation of the 2012 update to the HCS, and to provide better alignment with other U.S. agencies and international trading partners, while enhancing the effectiveness of the standard.
  - b. Revises criteria for classification of certain health and physical hazards.
  - c. Revises provisions for labels (including provisions addressing the labeling of small containers and the relabeling of chemicals that have been released for shipment).
  - d. Includes new provisions relating to concentrations or concentration ranges being claimed as trade secrets.
  - e. Includes technical amendments related to the contents of safety data sheets (SDSs).
  - f. Includes related revisions to definitions of terms used in the HCS.

**Fiscal Information****5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:****A) State budget:**

UOSH's enforcement of the proposed amendment will not result in additional costs or savings to the state budget. The changes to the HCS involve costs and costs savings mainly for manufacturers, importers and distributors.

**B) Local governments:**

Local governments have no administration or enforcement obligations under the proposed amendment. The changes to the HCS involve costs and costs savings mainly for manufacturers, importers and distributors.

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

The changes to the HCS will involve costs and costs savings mainly for manufacturers, importers and distributors. The estimated costs and cost savings resulting from the revisions to the HCS consist of five main categories:

- (1) the cost of reclassifying affected chemicals and revising the corresponding SDSs and labels to achieve consistency with the reclassification (per changes to Appendix B of 29 CFR 1910.1200), and the cost of revising SDSs and labels to conform with new precautionary statements and other new mandatory language in the appendices to the HCS (per changes to Appendices C and D);
- (2) the cost of management familiarization and other management-related costs (associated with all the revisions of the standard);
- (3) the cost of training employees as necessitated by the changes to the HCS [see paragraph (h)(1) of the 2012 HCS];
- (4) the cost savings resulting from the new released-for-shipment provision [revisions to paragraph (f)(11) of 29 CFR 1910.1200]; and
- (5) the cost savings from limiting labeling requirements for certain very small containers [proposed paragraph (f)(12) of 29 CFR 1910.1200].

The first three categories are considered to be one-time costs and the last two categories are cost savings that would accrue to employers annually.

Some changes specifically affect certain establishment groupings that manufacture aerosols, desensitized explosives, and flammable gases.

Other changes affect certain manufacturers of hazardous chemicals that are packaged in small containers and manufacturers of chemicals that are not immediately distributed after being released for shipment.

There are approximately 2,490 small business entities in Utah that will be affected by the revisions to the HCS; however, the changes to the HCS are not considered a significant regulatory action. The Occupational Safety and Health Administration (OSHA) provides that the revisions will not likely have a national "annual effect on the economy of \$200 million or more."

OSHA also provides that "nor is the final standard a major rule under the Congressional Review Act because this rule will not result in:

- (1) an annual effect on the economy of \$100 million or more;
- (2) a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; nor

(3) significant adverse effects on competition, employment, investment, productivity, or innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

As stated above, the estimated cost savings for some entities are a result from the new released-for-shipment provision [revisions to paragraph (f)(11)] of the revised HCS (total cost savings of approximately \$614,103 for combined affected NAICS) and limiting labeling requirements for certain very small containers [proposed paragraph (f)(12)] (total cost savings of approximately \$45,765 for combined affected NAICS).

The costs are associated with reclassifying affected chemicals, revising corresponding SDSs and labels (total costs of approximately \$104,117 for combined affected NAICS), and familiarization and training on the revised HCS (total costs of approximately \$34,467 for combined affected NAICS).

A full breakdown of costs and cost savings for affected industries is available upon request from UOSH.

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

The changes to the HCS will involve costs and costs savings mainly for manufacturers, importers and distributors. The estimated costs and cost savings resulting from the revisions to the HCS consist of five main categories:

- (1) the cost of reclassifying affected chemicals and revising the corresponding SDSs and labels to achieve consistency with the reclassification (per changes to Appendix B of 29 CFR 1910.1200), and the cost of revising SDSs and labels to conform with new precautionary statements and other new mandatory language in the appendices to the HCS (per changes to Appendices C and D);
- (2) the cost of management familiarization and other management-related costs (associated with all the revisions of the standard);
- (3) the cost of training employees as necessitated by the changes to the HCS [see paragraph (h)(1) of the 2012 HCS];
- (4) the cost savings resulting from the new released-for-shipment provision [revisions to paragraph (f)(11) of 29 CFR 1910.1200]; and
- (5) the cost savings from limiting labeling requirements for certain very small containers [proposed paragraph (f)(12) of 29 CFR 1910.1200].

The first three categories are considered to be one-time costs and the last two categories are cost savings that would accrue to employers annually.

Some changes specifically affect certain establishment groupings that manufacture aerosols, desensitized explosives, and flammable gases. Other changes affect certain manufacturers of hazardous chemicals that are packaged in small containers and manufacturers of chemicals that are not immediately distributed after being released for shipment.

There are approximately 238 non-small business entities in Utah that will be affected by the revisions to the HCS; however, the changes to the HCS are not considered a significant regulatory action.

The Occupational Safety and Health Administration (OSHA) provides that the revisions will not likely have a national "annual effect on the economy of \$200 million or more." OSHA also provides that "nor is the final standard a major rule under the Congressional Review Act because this rule will not result in:

- (1) an annual effect on the economy of \$100 million or more;
- (2) a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; nor
- (3) significant adverse effects on competition, employment, investment, productivity, or innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

As stated above, the estimated cost savings for some entities are a result from the new released-for-shipment provision [revisions to paragraph (f)(11)] of the revised HCS (total cost savings of approximately \$12,776 for combined affected NAICS) and limiting labeling requirements for certain very small containers [proposed paragraph (f)(12)] (total cost savings of approximately \$9,205 for combined affected NAICS).

The costs are associated with reclassifying affected chemicals, revising corresponding SDSs and labels (total costs of approximately \$13,419 for combined affected NAICS), and familiarization and training on the revised HCS (total costs of approximately \$5,689 for combined affected NAICS).

A full breakdown of costs and cost savings for affected industries is available upon request from UOSH.



**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**):

Changes to this rule will not result in additional costs or savings to persons other than small businesses, non-small businesses, state, or local government entities.

The changes to the HCS involve costs and costs savings mainly for manufacturers, importers and distributors.

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

Changes to this rule will not result in additional compliance costs or savings for affected persons. The changes to the HCS involve costs and costs savings mainly for manufacturers, importers and distributors.

**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	FY2025	FY2026	FY2027
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$138,584	\$0	\$0
Non-Small Businesses	\$19,108	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$157,692</b>	<b>\$0</b>	<b>\$0</b>
Fiscal Benefits	FY2025	FY2026	FY2027
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	-\$659,868	-\$659,868	-\$659,868
Non-Small Businesses	-\$21,980	-\$21,980	-\$21,980
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>-\$681,848</b>	<b>-\$681,848</b>	<b>-\$681,848</b>
<b>Net Fiscal Benefits</b>	<b>-\$524,156</b>	<b>-\$681,848</b>	<b>-\$681,848</b>

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

The Commissioner of the Utah Labor Commission, Jaceson R. Maughan, has reviewed and approved this regulatory impact analysis. This rule will not have a significant fiscal impact on businesses.

To remain at least as effective as Federal OSHA and be able to retain Utah's State-Plan status, and to keep the employees of the state safe, these changes to this rule, specifically the incorporation of Federal Register Vol. 89, No. 98, Monday, May 20, 2024, Rules and Regulations, pages 44144 to and including 44461, "Hazard Communication Standard; Final Rule," must be adopted.

**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:**

Title 34A, Chapter 6		
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**Incorporations by Reference Information**

**7. Incorporations by Reference:**

**A) This rule adds or updates the following title of materials incorporated by references:**

<b>Official Title of Materials Incorporated (from title page)</b>	Federal Register Vol. 89, No. 98
<b>Publisher</b>	US Government

<b>Issue Date</b>	May 20, 2024
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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.)

<b>A) Comments will be accepted until:</b>	10/31/2024
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<b>9. This rule change MAY become effective on:</b>	11/07/2024
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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**

<b>Agency head or designee and title:</b>	Jaceson R. Maughan, Commissioner	<b>Date:</b>	09/10/2024
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**R614. Labor Commission, Occupational Safety and Health.**

**R614-1. General Provisions.**

**R614-1-4. Incorporation of Federal Standards.**

A. The following federal occupational safety and health standards are incorporated:

1. 29 CFR 1904, July 1, 2021, is incorporated by reference, except 29 CFR 1904.36 and the workplace fatality, injury and illness reporting requirements found in 29 CFR 1904.1, 1904.2, 1904.7 and 1904.39. Workplace fatalities, injuries and illnesses shall be reported pursuant to the more specific Utah standards in Subsection 34A-6-301(3)(b)(ii) of the Utah OSH Act and Subsection R614-1-5(B)(1).
2. 29 CFR 1908, July 1, 2015, is incorporated by reference.
3. 29 CFR 1910.6 and 1910.21 through the end of part 1910, of the July 1, 2021, edition are incorporated by reference.
4. 29 CFR 1926.6 and 1926.20 through the end of part 1926, of the July 1, 2021, edition are incorporated by reference.
5. Federal Register Vol. 88, No. 139, Friday, July 21, 2023, Rules and Regulations, pages 47254 to and including 47349, "Improve Tracking of workplace Injuries and Illnesses: Final Rule" is incorporated by reference.
6. Federal Register Vol.89, No. 98, Monday, May 20, 2024, Rules and Regulations, pages 44144 to and including 44461, "Hazard Communication Standard: Final Rule" is incorporated by reference.

**KEY:** safety

**Date of Last Change:** ~~August 21,~~ 2024

**Notice of Continuation:** June 24, 2022

**Authorizing, and Implemented or Interpreted Law:** 34A-6

**NOTICE OF SUBSTANTIVE CHANGE**

<b>TYPE OF FILING:</b> New	
<b>Rule or Section Number:</b> R650-103	<b>Filing ID:</b> 56790

**Agency Information**

<b>1. Title catchline:</b>	Natural Resources, Outdoor Recreation	
<b>Building:</b>	Department of Natural Resources	
<b>Street address:</b>	1594 W North Temple	
<b>City, state:</b>	Salt Lake City, UT	
<b>Mailing address:</b>	1594 W North Temple, Suite 100	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
India Nielsen Barfuss	385-268-2570	indianielsen@utah.gov
Tara Mckee	801-870-8504	tmckee@utah.gov
JC Bailey	801-538-7351	jcbailey@utah.gov
<b>Please address questions regarding information on this notice to the persons listed above.</b>		

### General Information

**2. Rule or section catchline:**

R650-103. Fiscal Emergency Contingent Management of Federal Lands

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

The purpose of this new rule is to create a priority list of federal areas that may remain open in the case of a federal government shutdown.

This rule is being created under the Division of Outdoor Recreation/Department of Natural Resources following creation of the Division; this rule previously existed under the Office of Outdoor Recreation/Governor's Office of Economic Development.

**4. Summary of the new rule or change:**

This rule creates a priority list of national parks, national monuments, national forests, and national recreation areas in the state that might remain open in the case of a federal government shutdown.

The Division of Outdoor Recreation has a statutory obligation to create and review this priority list annually based on economic impact and recreational value of the areas.

### Fiscal Information

**5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:**
**A) State budget:**

There are no anticipated costs or savings to the state budget associated with this rule, as this rule existed prior to the merging of the Office of Outdoor Recreation, under the Governor's Office of Economic Opportunity, and the Division of Outdoor Recreation, under the Department of Natural Resources, and the content of this rule is unaltered.

**B) Local governments:**

There are no anticipated costs or savings to local governments associated with this rule, as this rule existed prior to the merging of the Office of Outdoor Recreation, under the Governor's Office of Economic Opportunity, and the Division of Outdoor Recreation, under the Department of Natural Resources, and the content of this rule is unaltered.

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

There are no anticipated costs or savings to small businesses associated with this rule, as this rule existed prior to the merging of the Office of Outdoor Recreation, under the Governor's Office of Economic Opportunity, and the Division of Outdoor Recreation, under the Department of Natural Resources, and the content of this rule is unaltered.

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

There are no anticipated costs or savings to non-small businesses associated with this rule, as this rule existed prior to the merging of the Office of Outdoor Recreation, under the Governor's Office of Economic Opportunity, and the Division of Outdoor Recreation, under the Department of Natural Resources, and the content of this rule is unaltered.

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

There are no anticipated costs or savings to persons other than small businesses, state, or local government entities associated with this rule, as this rule existed prior to the merging of the Office of Outdoor Recreation, under the Governor's Office of Economic Opportunity, and the Division of Outdoor Recreation, under the Department of Natural Resources, and the content of this rule is unaltered.

**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 anticipated compliance costs associated with this rule, as this rule existed prior to the merging of the Office of Outdoor Recreation, under the Governor's Office of Economic Opportunity, and the Division of Outdoor Recreation, under the Department of Natural Resources, and the content of this rule is unaltered.

**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.)

<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2025</b>	<b>FY2026</b>	<b>FY2027</b>
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
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>	<b>FY2025</b>	<b>FY2026</b>	<b>FY2027</b>
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
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**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:**

Title 79, Chapter 7, Part 6		
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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.)

<b>A) Comments will be accepted until:</b>	10/31/2024
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<b>9. This rule change MAY become effective on:</b>	11/07/2024
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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**

<b>Agency head or designee and title:</b>	Jason Curry, Director	<b>Date:</b>	08/26/2024
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**R650-103. Natural Resources, Outdoor Recreation.**

**R650-103. Fiscal Emergency Contingent Management of Federal Lands.**

**R650-103-1. Purpose.**

The purpose of this rule is to address the variability of core natural assets that could be affected by a shut-down. The following list is the recommendations for prioritizing the opening of federal lands that would be affected. The priority list reflects minimizing the economic impact on Utah and the subsequent gateway communities.

**R650-103-2. Authority.**

In accordance with Subsections 79-4-1103(2) and (3), this rule establishes the priority for opening and maintaining national parks, national monuments, national forests, and national recreation areas in the state during a fiscal emergency.

**R650-103-3. Definitions.**

This rule adopts the definitions set forth in Section 79-4-1101.

**R650-103-4. Priority List.**

(1) This rule has no effect until the requirements of Section 79-4-1102 have been satisfied.

(2) The following federally managed natural assets constitute locations in Utah, to be known as Tier I priorities. These assets should be funded to remain open year-round because of their significant economic contributions to nearby communities:

(a) Arches National Park;

(b) Bryce National Park;

(c) Canyonlands National Park;

(d) Capitol Reef National Park;

(e) Zion National Park;

(f) Cedar Breaks National Monument; and

(g) Glen Canyon National Recreation Area.

(3) The following constitute natural assets that generate significant seasonal value for local communities and will be known as Tier II priorities. These assets should remain open during the specified seasonal period once each Tier I location has been funded for opening during a fiscal emergency:

(a) Bears Ears National Monument, April 1 through October 31;

(b) Dinosaur National Monument, May 1 through October 31;

(c) Golden Spike National Historic Park, May 1 through August 31;

(d) Grand Staircase-Escalante National Monument, April 1 through October 31; and

(i) the Monument would remain open to dispersed recreation; supplemental funding would be required to open the visitor centers and process guiding permits;

(e) Hovenweep National Monument, April 1 through October 31;

(f) Flaming Gorge National Recreation Area, May 15 through September 15; and

(i) Flaming Gorge is the only natural asset being managed by the National Forest Service that would require a separate agreement with the Department of Agriculture; and

(ii) the boat ramp and dispersed recreation would remain open to the public in the event of a fiscal emergency, supplemental funding would be required to allow the local concessionaires to remain open;

(f) San Juan River Special Recreation Management Area, March 1 through November 30; and

(i) supplemental funding would facilitate permit holders and concessionaires to continue to run the San Juan River;

(g) Desolation Canyon Special Recreation Management Area, May 1 through October 31; and

(i) supplemental funding would facilitate permit holders and concessionaires to continue to run the Green River;

(h) Two Rivers Special Recreation Management Area, April 1 through October 31; and

(i) supplemental funding would facilitate permit holders and concessionaires to continue to run the Westwater section of the Colorado

River.

(j) Natural Bridges National Monument.

(4) The following locations, to be known as Tier III assets, require no supplemental funding in the event of a fiscal emergency. There is a general understanding with the Federal Public Land Managers that these assets should remain open to dispersed recreation as defined by the Federal Public Land Managers:

(a) Private concessionaires within the National Forest areas will be subject to the closure rules dictated by the Department of the Interior unless a Memorandum of Understanding with the regional Forest Service office can be negotiated; and

(b) the negotiation of the MOU will be initiated by the Executive Director of the Department of Natural Resources in consultation with the Director of the Office of Outdoor Recreation;

(i) Ashley National Forest;

(ii) Dixie National Forest;

(iii) Fishlake National Forest;

(iv) Manti-La Sal National Forest;

(v) Uinta-Wasatch-Cache National Forest; and

(vi) Any other BLM Special Recreation Management Areas not delineated in another section of this rule

(5) The following natural assets are not recommended to be opened and maintained during a fiscal emergency due to their minimal contribution to the local economies:

(a) Hovenweep National Monument;

(b) Timpanogos Cave National Monument; and

(c) Little Sahara Special Recreation Management Area;

(i) the gates would be closed, and public access would not be permitted during a fiscal emergency; and

(d) Knolls Special Recreation Management Area.

(i) the gates would be closed, and public access would not be permitted during a fiscal emergency.

(6) This section is designed in anticipation that a shut-down would likely occur in the fall and last for ten days or less. The state funding considerations and the priorities may vary based on the time of year and the corresponding recreational assets that will be opened at that time.

NOTICES OF PROPOSED RULES

**KEY: federal lands, federal shutdown, fiscal emergency**

**Date of Last Change: 2024**

**Authorizing, and Implemented or Interpreted Law: 79-4-1103**

**End of the Notices of Proposed Rules Section**

## NOTICES OF CHANGES IN PROPOSED RULES

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After an agency has published a **PROPOSED RULE** in the *Utah State Bulletin*, it may receive comment that requires the **PROPOSED RULE** to be altered before it goes into effect. A **CHANGE IN PROPOSED RULE** allows an agency to respond to comments it receives.

As with a **PROPOSED RULE**, a **CHANGE IN PROPOSED RULE** is preceded by a **RULE ANALYSIS**. This analysis provides summary information about the **CHANGE IN PROPOSED RULE** including the name of a contact person, anticipated cost impact of the rule, and legal cross-references.

While the law does not designate a comment period for a **CHANGE IN PROPOSED RULE**, it does provide for a 30-day waiting period. An agency may accept additional comments during this period and, at its option, may designate a comment period or may hold a public hearing. The 30-day waiting period for **CHANGES IN PROPOSED RULES** published in this issue of the *Utah State Bulletin* ends October 31, 2024.

Following the **RULE ANALYSIS**, the text of the **CHANGE IN PROPOSED RULE** is usually printed. The text shows only those changes made since the **PROPOSED RULE** was published in an earlier edition of the *Utah State Bulletin*. Additions made to the rule appear underlined (example). Deletions made to the rule appear struck out with brackets surrounding them (~~example~~). A row of dots in the text between paragraphs (. . . . .) indicates that unaffected text, either whole sections or subsections, was removed to conserve space. If a **CHANGE IN PROPOSED RULE** is too long to print, the Office of Administrative Rules may include only the **RULE ANALYSIS**. A copy of rules that are too long to print is available from the agency or from the Office of Administrative Rules.

From the end of the 30-day waiting period through January 29, 2025, an agency may notify the Office of Administrative Rules that it wants to make the **CHANGE IN PROPOSED RULE** effective. When an agency submits a **NOTICE OF EFFECTIVE DATE** for a **CHANGE IN PROPOSED RULE**, the **PROPOSED RULE** as amended by the **CHANGE IN PROPOSED RULE** becomes the effective rule. The agency sets the effective date. The date may be no fewer than 30 days nor more than 120 days after the publication date of the **CHANGE IN PROPOSED RULE**. If the agency designates a public comment period, the effective 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. Alternatively, the agency may file another **CHANGE IN PROPOSED RULE** in response to additional comments received. If the Office of Administrative Rules does not receive a **NOTICE OF EFFECTIVE DATE** or another **CHANGE IN PROPOSED RULE** by the end of the 120-day period after publication, the **CHANGE IN PROPOSED RULE** filing, along with its associated **PROPOSED RULE**, lapses.

**CHANGES IN PROPOSED RULES** are governed by Section 63G-3-303, Rule R15-2, and Sections R15-4-3, R15-4-4, R15-4-5b, R15-4-7, R15-4-9, and R15-4-10.

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**The Changes in Proposed Rules Begin on the Following Page**

**NOTICE OF SUBSTANTIVE CHANGE**

<b>TYPE OF FILING:</b> CPR (Change in Proposed Rule)		
<b>Rule or Section Number:</b>	<b>R307-315</b>	<b>Filing ID: 56483</b>
<b>Date of Previous Publication (Only for CPRs): 05/15/2024</b>		

**Agency Information**

<b>1. Title catchline:</b>	Environmental Quality, Air Quality	
<b>Building:</b>	Multi Agency State Office Building	
<b>Street address:</b>	195 N 1950 W	
<b>City, state:</b>	Salt Lake City, UT	
<b>Mailing address:</b>	PO Box 144820	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4820	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Ryan Bares	801-536-4216	rbares@utah.gov
Erica Pryor	385-499-3416	epryor1@utah.gov
<b>Please address questions regarding information on this notice to the persons listed above.</b>		

**General Information**

<b>2. Rule or section catchline:</b>
R307-315. NO <sub>x</sub> Emission Controls for Natural Gas-Fired Boilers 2.0-5.0 MMBtu
<b>3. Purpose of the new rule or reason for the change:</b>
Based on feedback received during the public comment period, as well as in additional stakeholder meetings, the Division of Air Quality (Division) is proposing changes to provide clarifying language for the applicability and compliance of Rule R307-315.
<b>4. Summary of the new rule or change:</b>
The proposed amendments remove some definitions and provides additional language intended to clarify compliance and applicability of Rule R307-315. These amendments include: 1) adjusting the proposed carbon monoxide limit, 2) removing the definitions of "modification" and "construction" to clarify the intent and applicability of the rule, 3) clarifying the applicability language after the removal of these definitions, 4) adding in CO testing specifications, and 5) extending the implementation timeline to November 1, 2024.  (EDITOR'S NOTE: The original proposed amendment upon which this change in proposed rule (CPR) was based was published in the May 15, 2024, issue of the Utah State Bulletin, on page 24. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike-out indicates text that has been deleted. You must view the CPR and the proposed amendment together to understand all of the changes that will be enforceable should the agency make this rule effective.)

**Fiscal Information**

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
There are no anticipated costs or savings to the state budget as the amendments will have no impact on how the Division functions.  The proposed amendments provide additional clarity around applicability and compliance with the rule; however, do not expand the applicability beyond the original intent of the rule..



Therefore, the changes do not result in any costs or savings beyond those identified with the original adoption of Rule R307-315, nor do the changes to the rule result in any functional changes to how the Division implements the rule.

**B) Local governments:**

There are no anticipated costs or savings to local governments associated with the amendments. The proposed amendments provide additional clarity around applicability and compliance with the rule; however, do not expand the applicability beyond the original intent of the rule.

Therefore, the changes do not result in any costs or savings beyond those identified with the original adoption of Rule R307-315.

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

There are no anticipated costs or savings for small businesses associated with the amendments. The proposed amendments provide additional clarity around applicability and compliance with the rule; however, do not expand the applicability beyond the original intent of the rule.

Therefore, the changes do not result in any costs or savings beyond those identified with the original adoption of Rule R307-315.

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

There are no anticipated costs or savings to non-small businesses associated with the amendments. The proposed amendments provide additional clarity around applicability and compliance with the rule; however, do not expand the applicability beyond the original intent of the rule.

Therefore, the changes do not result in any costs or savings beyond those identified with the original adoption of Rule R307-315.

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

There are no anticipated costs or savings to persons other small businesses, non-small businesses, state, or local government entities associated with the amendments. The proposed amendments provide additional clarity around applicability and compliance with the rule; however, do not expand the applicability beyond the original intent of the rule.

Therefore, the changes do not result in any costs or savings beyond those identified with the original adoption of Rule R307-315.

**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 anticipated compliance costs or savings for affected persons associated with the amendments. The proposed amendments provide additional clarity around applicability and compliance with the rule; however, do not expand the applicability beyond the original intent of the rule.

Therefore, the changes do not result in any costs or savings beyond those identified with the original adoption of Rule R307-315.

While the addition of CO testing requirements may result in minor increase in the cost for compliance testing, given the uncertainty in which testing method would be utilized and the timing of the applicability of this rule to each individual affected boiler, this cost cannot be estimated at this time.

**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	FY2025	FY2026	FY2027
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0

NOTICES OF CHANGES IN PROPOSED RULES

Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>	<b>FY2025</b>	<b>FY2026</b>	<b>FY2027</b>
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
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**H) Department head comments on fiscal impact and approval of regulatory impact analysis:**  
 The Executive Director of the Department of Environmental Quality, Kim D. Shelley, 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 19-2-104	U.S.C. Title 42 Chapter 85 Subchapter I Part A Section 7410 (a)(1) 2 (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:** No Formal Comment Period

**9. This rule change MAY become effective on:** 10/31/2024

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**

<b>Agency head or designee and title:</b>	Bryce C. Bird, Director, Division of Air Quality	<b>Date:</b>	09/04/2024
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**R307. Environmental Quality, Air Quality.**

**R307-315. NO<sub>x</sub> and CO Emission Controls for Natural Gas-Fired Boilers 2.0-5.0 MMBtu.**

**R307-315-1. Purpose.**

Rule R307-315 establishes maximum emission thresholds for the emissions of oxides of nitrogen (NO<sub>x</sub>) and carbon monoxide (CO) for new or modified natural gas-fired boilers with a total rated heat input of at least 2.0 million British Thermal Units per hour (MMBtu/hr) and not more than 5.0 MMBtu/hr.

**R307-315-2. Applicability.**

- (1) Rule R307-315 applies to each boiler that:
  - (a) is fueled exclusively by natural gas;
  - (b) has a total rated heat input ~~[greater than]~~ at least 2.0 MMBtu/hr and not more than 5.0 MMBtu/hr;
  - (c) is an industrial boiler, institutional boiler, or commercial boiler;
  - (d) is located in Salt Lake, Utah, Davis, Weber, or Tooele County; and
  - (e) undergoes one of the following after the compliance date defined in Subsection R307-315-6(~~3~~)4):
    - (i) ~~[begins construction, or modification of a boiler]~~installs a boiler;
    - (ii) replaces an existing boiler;

(iii) replaces the components of a boiler such that the fixed capital cost of the new components exceeds 50% of the fixed capital cost that would be required to construct a comparable new boiler;

- (~~ii~~iv) replaces a burner in a boiler having only a single burner; or
- (~~ii~~v) replaces 50% or more of the burners in a multi-burner boiler.
- (2) Exemptions to this rule include:
  - (a) residential boilers as defined in this rule;
  - (b) CO boilers as defined in this rule;
  - (c) waste heat boilers as defined by this rule;
  - (d) process heaters as defined by this rule; and
  - (e) temporary boilers as defined by this rule.

### **R307-315-3. Definitions.**

As used in this rule:

"Boiler" means an enclosed device using controlled flame combustion of natural gas, as defined by this rule, in which water is heated to recover thermal energy in the form of steam or hot water. Controlled flame combustion refers to a steady-state, or near steady-state, process wherein fuel or oxidizer feed rates are controlled.

"Burner" means the functional component of a boiler that provides the heat input by combustion of a fossil fuel, with air or oxygen. Burners are available either as part of the boiler package from the manufacturer, as stand-alone products for custom installations, or as replacement products.

"CO boiler" means a boiler that is fired with gaseous fuel with an integral waste heat recovery system used to oxidize CO-rich waste gases generated by a Fluid Catalytic Cracking Unit.

"Combustion analysis" means an analysis performed on flue gases using a calibrated portable instrument which measures a range of variables relevant to the byproducts of combustion including temperatures, draft pressure, concentrations of oxygen, and concentrations of pollutants.

"Commercial boiler" means a boiler used in commercial establishments such as hotels, restaurants, and laundries to provide electricity, steam, or hot water.

~~["Construction" means any physical change or change in method of operation including fabrication, erection, installation, demolition, or modification of an emission unit that would result in a potential increase in emissions.]~~

"Industrial boiler" means a boiler used in manufacturing, processing, mining, and refining or any other industry to provide steam, hot water, or electricity.

"Institutional boiler" means a boiler used in institutional establishments such as medical centers, nursing homes, research centers, institutions of higher education, elementary and secondary schools, libraries, religious establishments, and governmental buildings to provide electricity, steam, or hot water.

~~["Modification" means any planned change in a source which results in a change in emissions.]~~

"Natural gas" means:

- (1) a mixture of gaseous hydrocarbons, with at least 80% methane by volume, and of pipeline quality, such as the gas sold or distributed by any utility company regulated by the Utah Division of Public Utilities;
- (2) liquefied petroleum gas, as defined by the American Society for Testing and Materials in ASTM D1835, or propane, propane-derived synthetic natural gas, or mixtures thereof; or
- (3) propane or propane-derived synthetic natural gas.

"Process Heater" means an enclosed device using controlled flame, and the unit's primary purpose is to transfer heat indirectly to a process material such as liquid, gas, or solid, or to a heat transfer material such as glycol or a mixture of glycol and water, for use in a process unit, instead of generating steam. Process heaters are devices in which the combustion gases do not come into direct contact with process materials. Process heaters include units that heat water and water mixtures for pool heating, sidewalk heating, cooling tower water heating, power washing, or oil heating.

"Propane" means a colorless gas derived from petroleum and natural gas, with the molecular structure C<sub>3</sub>H<sub>8</sub>.

"Residential boiler" means a boiler used to provide heat or hot water or as part of a residential combined heat and power system. This definition includes boilers located at an institutional facility such as a university campus, military base, church grounds, or a commercial, or industrial, such as a farm, used primarily to provide heat or hot water for:

- (1) a dwelling containing four or fewer families; or
- (2) a single unit residence dwelling that has since been converted or sub-divided into condominiums or apartments.

"Temporary boiler" means any gaseous or liquid fuel-fired steam generating unit that is designed to, and is capable of, being carried or moved from one location to another by wheels, skids, carrying handles, dollies, trailers, or platforms. A steam generating unit is not a temporary boiler if any one of the following conditions exists:

- (1) the equipment is attached to a foundation;
- (2) the steam generating unit or a replacement remains at a location for more than 180 consecutive days and any temporary boiler that replaces a temporary boiler at a location and performs the same or similar function shall be included in calculating the consecutive time period;

NOTICES OF CHANGES IN PROPOSED RULES

(3) the equipment is located at a seasonal facility and operates during the full annual operating period of the seasonal facility, remains at the facility for at least two years, and operates at that facility for at least three months each year; or

(4) the equipment is moved from one location to another in an attempt to circumvent the residence time requirements of this definition.

"Waste heat boiler" means a device that recovers normally unused energy such as hot exhaust gas and converts it to usable heat. Waste heat boilers are also referred to as heat recovery steam generators. Waste heat boilers are heat exchangers generating steam from incoming hot exhaust gas from an industrial or power equipment such as thermal oxidizers, kilns, furnaces, combustion turbines, and engines. Duct burners are sometimes used to increase the temperature of the incoming hot exhaust gas.

**R307-315-4. Requirements.**

(1) An owner or operator of a boiler subject to this rule shall:

(a) install a burner that meets a NO<sub>x</sub> emission rate of nine parts per million by volume (ppmv) or less at 3% volume stack gas oxygen on a dry basis; and

(b) meet a CO emission rate of ~~200~~400 ppmv or less at 3% volume stack gas oxygen on a dry basis.

(2) An owner or operator of a boiler subject to Subsection R307-315-4(1) shall:

(a) operate and maintain the boiler and boiler subsystems, including burners, according to the manufacturer's instructions;

(b) determine continued compliance based on Section R307-315-6; and

(c) meet the applicable recordkeeping requirements for any control device.

**R307-315-5. Recordkeeping.**

(1) The owner or operator of any boiler subject to Section R307-315-4 shall:

(a) retain documentation of the unit's emission rate specifications;

(b) retain a copy of the manufacturer's recommendations for proper operation and maintenance of units covered by Rule R307-315; and

(c) maintain records showing proper operation and maintenance of units covered by Rule R307-315 following manufacturer's recommendations.

(2) Operation and maintenance records shall be retained for five years and shall be made available to the director upon request.

**R307-315-6. Compliance Determination and Schedule.**

(1) Compliance with the NO<sub>x</sub> emission requirement listed in Subsection R307-315-4(1) shall be determined according to the following procedures:

(a) U.S. EPA Reference Method 7E, Determination of Nitrogen Oxides Emissions from Stationary Sources;

(b) other EPA-approved testing methods acceptable to the Director; or

(c) combustion analysis as part of a regular maintenance schedule.

(2) Compliance with the CO emissions requirement listed in Subsection R307-315-4(2) shall be determined according to the following procedures:

(a) U.S. EPA Reference Method 10, Determination of Carbon Monoxide Emissions from Stationary Sources;

(b) other EPA-approved testing methods acceptable to the director; or

(c) combustion analysis as part of a regular maintenance schedule.

~~(2)~~ Compliance Determination for requirements listed in Subsections R307-315-6(1) and R307-315-6(2) shall be conducted once every five years.

~~(3)~~ The compliance schedule for this rule shall begin on ~~May~~ November 1, 2024.

**KEY: air pollution, boiler, NO<sub>x</sub>, nitrogen oxides**

**Date of Last Change: 2024**

**Authorizing, and Implemented or Interpreted Law: 19-2-104**

NOTICE OF SUBSTANTIVE CHANGE		
TYPE OF FILING: CPR (Change in Proposed Rule)		
Rule or Section Number:	R307-316	Filing ID: 56484
Date of Previous Publication (Only for CPRs):	05/15/2024	

**Agency Information**

1. Title catchline:	Environmental Quality, Air Quality
Building:	Multi Agency State Office Building

<b>Street address:</b>	195 N 1950 W	
<b>City, state:</b>	Salt Lake City, UT	
<b>Mailing address:</b>	PO Box 144820	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4820	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Ryan Bares	801-536-4216	rbares@utah.gov
Erica Pryor	385-499-3416	epryor1@utah.gov
<b>Please address questions regarding information on this notice to the persons listed above.</b>		

**General Information**

<b>2. Rule or section catchline:</b>
R307-316. NO <sub>x</sub> Emission Controls for Natural Gas-Fired Boilers Greater Than 5.0 MMBtu
<b>3. Purpose of the new rule or reason for the change:</b>
Based on feedback received during the public comment period, as well as in additional stakeholder meetings, the Division of Air Quality (Division) is proposing changes to provide clarifying language for the applicability and compliance of Rule R307-316.
<b>4. Summary of the new rule or change:</b>
The proposed amendments remove some definitions and provides additional language intended to clarify compliance and applicability of Rule R307-316. These amendments include: 1) adjusting the proposed carbon monoxide limit, 2) removing the definitions of "modification" and "construction" to clarify the intent and applicability of the rule, 3) clarifying the applicability language after the removal of these definitions, 4) adding in CO testing specifications, and 5) extending the implementation timeline to November 1, 2024.  (EDITOR'S NOTE: The original proposed amendment upon which this change in proposed rule (CPR) was based was published in the May 15, 2024, issue of the Utah State Bulletin, on page 28. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike-out indicates text that has been deleted. You must view the CPR and the proposed amendment together to understand all of the changes that will be enforceable should the agency make this rule effective.)

**Fiscal Information**

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
There are no anticipated costs or savings to the state budget as the amendments will have no impact on how the Division functions. The proposed amendments provide additional clarity around applicability and compliance with the rule; however, do not expand the applicability beyond the original intent of the rule.  Therefore, the changes do not result in any costs or savings beyond those identified with the original adoption of Rule R307-316, nor do the changes to the rule result in any functional changes to how the Division implements the rule.
<b>B) Local governments:</b>
There are no anticipated costs or savings to local governments associated with the amendments. The proposed amendments provide additional clarity around applicability and compliance with the rule; however, do not expand the applicability beyond the original intent of the rule.  Therefore, the changes do not result in any costs or savings beyond those identified with the original adoption of Rule R307-316.

NOTICES OF CHANGES IN PROPOSED RULES

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

There are no anticipated costs or savings for small businesses associated with the amendments. The proposed amendments provide additional clarity around applicability and compliance with the rule; however, do not expand the applicability beyond the original intent of the rule.

Therefore, the changes do not result in any costs or savings beyond those identified with the original adoption of Rule R307-316.

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

There are no anticipated costs or savings for non-small businesses associated with the amendments. The proposed amendments provide additional clarity around applicability and compliance with the rule; however, do not expand the applicability beyond the original intent of the rule.

Therefore, the changes do not result in any costs or savings beyond those identified with the original adoption of Rule R307-316.

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

There are no anticipated costs or savings to persons other small businesses, non-small businesses, state, or local government entities associated with the amendments. The proposed amendments provide additional clarity around applicability and compliance with the rule; however, do not expand the applicability beyond the original intent of the rule.

Therefore, the changes do not result in any costs or savings beyond those identified with the original adoption of Rule R307-316.

**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 anticipated compliance costs or savings for affected persons associated with the amendments. The proposed amendments provide additional clarity around applicability and compliance with the rule; however, do not expand the applicability beyond the original intent of the rule.

Therefore, the changes do not result in any costs or savings beyond those identified with the original adoption of Rule R307-316.

While the addition of CO testing requirements may result in minor increase in the cost for compliance testing, given the uncertainty in which testing method would be utilized and the timing of the applicability of this rule to each individual affected boiler, this cost cannot be estimated at this time.

**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	FY2025	FY2026	FY2027
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
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
Fiscal Benefits	FY2025	FY2026	FY2027
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

<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>H) Department head comments on fiscal impact and approval of regulatory impact analysis:</b>			
The Executive Director of the Department of Environmental Quality, Kim D. Shelley, has reviewed and approved this regulatory impact analysis.			

**Citation Information**

<b>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:</b>		
Section 19-2-104	U.S.C. Title 42 Chapter 85 Subchapter I Part A Section 7410 (a)(1)2(A)	

**Public Notice Information**

<b>8. The public may submit written or oral comments to the agency identified in box 1.</b> (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.)	
<b>A) Comments will be accepted until:</b>	No Formal Comment Period

<b>9. This rule change MAY become effective on:</b>	10/31/2024
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**

<b>Agency head or designee and title:</b>	Bryce C. Bird, Director, Division of Air Quality	<b>Date:</b>	09/04/2024
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**R307. Environmental Quality, Air Quality.**

**R307-316. NO<sub>x</sub> and CO Emission Controls for Natural Gas-Fired Boilers Greater Than 5.0 MMBtu.**

**R307-316-1. Purpose.**

Rule R307-316 establishes maximum emission thresholds for the emissions of oxides of nitrogen (NO<sub>x</sub>) and carbon monoxide (CO) for new or modified natural gas-fired boilers with a total rated heat input greater than 5.0 million British Thermal Units per hour (MMBtu/hr).

**R307-316-2. Applicability.**

(1) Rule R307-316 applies to each boiler that:

- (a) is fueled exclusively by natural gas;
- (b) has a total rated heat input greater than 5.0 MMBtu/hr;
- (c) is an industrial boiler, institutional boiler, or commercial boiler;
- (d) is located in Salt Lake, Utah, Davis, Weber, or Tooele County; and
- (e) undergoes one of the following after the compliance date defined in Subsection R307-316-6([4]5):

(i) ~~begins construction, or modification of a boiler~~ installs a new boiler;

(ii) replaces an existing boiler;

(iii) replaces the components of a boiler such that the fixed capital cost of the new components exceeds 50% of the fixed capital cost that would be required to construct a comparable new boiler;

(~~iv~~)iv) replaces a burner in a boiler having only a single burner; or

(~~v~~)v) replaces 50% or more of the burners in a multi-burner boiler.

(2) Rule R307-316 do[es] not apply to:

- (a) residential boilers as defined in this rule;
- (b) CO boilers as defined in this rule;
- (c) waste heat boilers as defined by this rule;
- (d) process heaters as defined by this rule; and
- (e) temporary boilers as defined by this rule.

(3) References to 40 CFR in Rule R307-316 shall mean the version of the Code of Federal Regulations that is effective as of the date referenced in Section R307-101-3.

## NOTICES OF CHANGES IN PROPOSED RULES

### **R307-316-3. Definitions.**

As used in this rule:

"Boiler" means an enclosed device using controlled flame combustion of natural gas, as defined by this rule, in which water is heated to recover thermal energy in the form of steam or hot water. Controlled flame combustion refers to a steady-state, or near steady-state, process wherein fuel or oxidizer feed rates are controlled.

"Burner" means the functional component of a boiler that provides the heat input by combustion of a fossil fuel with air or oxygen. Burners are available either as part of the boiler package from the manufacturer, as stand-alone products for custom installations, or as replacement products.

"CO boiler" means a boiler that is fired with gaseous fuel with an integral waste heat recovery system used to oxidize CO-rich waste gases generated by a Fluid Catalytic Cracking Unit.

"Combustion analysis" means an analysis performed on flue gases using a calibrated portable instrument which measures a range of variables relevant to the byproducts of combustion including temperatures, draft pressure, concentrations of oxygen, and concentrations of pollutants.

"Commercial boiler" means a boiler used in commercial establishments such as hotels, restaurants, and laundries to provide electricity, steam, or hot water.

~~["Construction" means any physical change or change in method of operation including fabrication, erection, installation, demolition, or modification of an emission unit that would result in a potential increase in emissions.]~~

"Industrial boiler" means a boiler used in manufacturing, processing, mining, and refining or any other industry to provide steam, hot water, or electricity.

"Institutional boiler" means a boiler used in institutional establishments such as medical centers, nursing homes, research centers, institutions of higher education, elementary and secondary schools, libraries, religious establishments, and governmental buildings to provide electricity, steam, or hot water.

~~["Modification" means any planned change in a source which results in a change in emissions.]~~

"Natural gas" means:

(1) a mixture of gaseous hydrocarbons, with at least 80% methane by volume, and of pipeline quality, such as the gas sold or distributed by any utility company regulated by the Utah Division of Public Utilities;

(2) Liquefied petroleum gas, as defined by the American Society for Testing and Materials in ASTM D1835, or propane, propane-derived synthetic natural gas, or mixtures thereof; or

(3) propane or propane-derived synthetic natural gas.

"Process Heater" means an enclosed device using controlled flame, and the unit's primary purpose is to transfer heat indirectly to a process material such as liquid, gas, or solid, or to a heat transfer material such as glycol or a mixture of glycol and water, for use in a process unit, instead of generating steam. Process heaters are devices in which the combustion gases do not come into direct contact with process materials. Process heaters include units that heat water and water mixtures for pool heating, sidewalk heating, cooling tower water heating, power washing, or oil heating.

"Propane" means a colorless gas derived from petroleum and natural gas, with the molecular structure C<sub>3</sub>H<sub>8</sub>.

"Residential boiler" means a boiler used to provide heat or hot water as part of a residential combined heat and power system. This definition includes boilers located at an institutional facility such as a university campus, military base, church grounds or commercial or industrial facility such as a farm used primarily to provide heat or hot water for:

(1) a dwelling containing four or fewer families; or

(2) a single unit residence dwelling that has since been converted or sub-divided into condominiums or apartments.

"Temporary boiler" means any gaseous or liquid fuel-fired steam generating unit that is designed to, and is capable of, being carried or moved from one location to another by wheels, skids, carrying handles, dollies, trailers, or platforms. A steam generating unit is not a temporary boiler if any one of the following conditions exists:

(1) the equipment is attached to a foundation;

(2) the steam generating unit or a replacement remains at a location for more than 180 consecutive days. Any temporary boiler that replaces a temporary boiler at a location and performs the same or similar function shall be included in calculating the consecutive time period;

(3) the equipment is located at a seasonal facility and operates during the full annual operating period of the seasonal facility, remains at the facility for at least two years, and operates at that facility for at least three months each year; or

(4) the equipment is moved from one location to another in an attempt to circumvent the residence time requirements of this definition.

"Waste heat boiler" means a device that recovers normally unused energy such as hot exhaust gas and converts it to usable heat. Waste heat boilers are also referred to as heat recovery steam generators. Waste heat boilers are heat exchangers generating steam from incoming hot exhaust gas from an industrial or power equipment such as thermal oxidizers, kilns, furnaces, combustion turbines, and engines. Duct burners are sometimes used to increase the temperature of the incoming hot exhaust gas.

### **R307-316-4. Requirements.**

(1) Except as provided in Subsection R307-316-4(3), an owner or operator of a boiler subject to this rule shall:

(a) install a burner that meets a NO<sub>x</sub> emission rate of nine parts per million by volume (ppmv) or less at 3% volume stack gas oxygen on a dry basis; and



- (b) meet a CO emission rate of ~~200~~400 ppmv or less at 3% volume stack gas oxygen on a dry basis.
- (2) An owner or operator of a boiler subject to Subsection R307-316-4(1) shall:
  - (a) operate and maintain the boiler and boiler subsystems, including burners, according to the manufacturer's instructions;
  - (b) determine continued compliance based on Section R307-31~~5~~6-6; and
  - (c) ensure that manufacturer's operational specifications, records, and testing of any control system shall use the applicable EPA Reference Methods of 40 CFR Part 60, the most recent EPA test methods, or EPA-approved state methods, to determine the efficiency of the control device; and
  - (d) meet the applicable recordkeeping requirements for any control device.
- (3) Any person may apply to the director for approval of an alternate method of control. The application shall include a demonstration that the proposed alternate produces an equal air quality benefit as required by Subsection R307-316-4(1) or that meets Best Available Control Technology thresholds.

**R307-316-5. Recordkeeping.**

- (1) The owner or operator of any boiler subject to Section R307-316-4 shall:
  - (a) retain documentation of the unit's emission rate specifications;
  - (b) retain a copy of the manufacturer's recommendations for proper operation and maintenance of units covered by Rule R307-316;
  - (c) maintain records showing proper operation and maintenance of units covered by Rule R307-316 following manufacturer's recommendations; and
  - (d) retain a record of approval of any alternative method of control as outlined in Subsection R307-316-4(3).
- (2) Operation and maintenance records shall be retained for five years and shall be made available to the director upon request.

**R307-316-6. Compliance Determination and Schedule.**

- (1) Compliance with the NO<sub>x</sub> emission requirement listed in Subsection R307-316-4(1) shall be determined according to the following procedures:
  - (a) U.S.EPA Reference Method 7E, Determination of Nitrogen Oxides Emissions from Stationary Sources;
  - (b) a continuous in-stack nitrogen oxide monitor or equivalent verification system in compliance with 40 CFR Part 60 Appendix B Specification 2;
  - (c) other EPA-approved testing methods acceptable to the director; or
  - (d) combustion analysis as part of a regular maintenance schedule.
- (2) Compliance with the CO emissions requirement listed in Subsection R307-316-4(1) shall be determined according to the following procedures:
  - (a) U.S.EPA Reference Method 10, Determination of Carbon Monoxide Emissions from Stationary Sources;
  - (b) a continuous in-stack carbon monoxide monitor or equivalent verification system in compliance with 40 CFR Part 60 Appendix B Specification 4;
  - (c) other EPA-approved testing methods acceptable to the director; or
  - (d) combustion analysis as part of a regular maintenance schedule.
- (~~2~~3) Compliance Determination shall be conducted according to the following frequency:
  - (a) once every three years for units with a rated heat input capacity greater than or equal to 10 MMBtu/hr, except for boilers subject to Subsection R307-316-6(1)(b) and Subsection R307-316-6(2)(b); and
  - (b) once every five years for units with a rated heat input capacity less than 10 MMBtu/hr ~~[down to and including]~~but no more than 5 MMBtu/hr.
- (~~3~~4) Provided an emissions test is conducted within the same calendar year as the test required in Subsection R307-316-6(~~2~~3), an owner or operator may use the following emissions tests to comply with Subsection R307-316-6(~~2~~3):
  - (a) periodic monitoring or testing of a unit as required in a Title V permit; or
  - (b) relative accuracy testing for continuous emissions monitoring verification pursuant to 40 CFR Part 60 Appendix B Specification 2 and 40 CFR Part 60 Appendix B Specification 4.
- (~~4~~5) The compliance schedule for this rule shall begin on ~~May~~November 1, 2024.

**KEY: air pollution, boiler, NO<sub>x</sub>, nitrogen oxides****Date of Last Change: 2024****Authorizing, and Implemented or Interpreted Law: 19-2-104****End of the Notices of Changes in 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](http://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.

## NOTICE OF FIVE-YEAR REVIEW AND STATEMENT OF CONTINUATION

<b>Rule Number:</b>	R277-468	<b>Filing ID:</b> 54890
<b>Effective Date:</b>	09/16/2024	

### Agency Information

<b>1. Title catchline:</b>	Education, Administration	
<b>Building:</b>	Board of Education	
<b>Street address:</b>	250 E 500 S	
<b>City, state</b>	Salt Lake City, UT	
<b>Mailing address:</b>	PO Box 144200	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4200	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov
<b>Please address questions regarding information on this notice to the persons listed above.</b>		

### General Information

<b>2. Rule catchline:</b>	R277-468. Parents Review of Public Education Curriculum and Review of Complaint Process	
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>	This rule is authorized by the Utah Constitution, Article X, Section 3, which vests general control and supervision over public education in the Board; and 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.	
<b>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:</b>	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 a Local Education Agency (LEA) to include parents in the adoption and review of an LEA's primary instructional materials including the review of complaints specific to curriculum materials. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Angie Stallings, Deputy Superintendent of Policy	<b>Date:</b>	09/16/2024
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**NOTICE OF FIVE-YEAR REVIEW AND STATEMENT OF CONTINUATION**

<b>Rule Number:</b>	<b>R277-715</b>	<b>Filing ID:</b>	<b>52344</b>
<b>Effective Date:</b>	<b>09/16/2024</b>		

**Agency Information**

<b>1. Title catchline:</b>	Education, Administration		
<b>Building:</b>	Board of Education		
<b>Street address:</b>	250 E 500 S		
<b>City, state</b>	Salt Lake City, UT		
<b>Mailing address:</b>	PO Box 144200		
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4200		
<b>Contact persons:</b>			
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>	
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov	
<b>Please address questions regarding information on this notice to the persons listed above.</b>			

**General Information**

<b>2. Rule catchline:</b>
R277-715. Out-of-School Time Program Standards
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
This rule is authorized by the Utah Constitution, Article X, Section 3, which vests general control and supervision over public education in the Board; Subsection 53E-4-301(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and Section 53E-3-508, which requires the Board to adopt rules to set standards for high quality out-of-school time programs.
<b>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:</b>
There were no public comments received.
<b>5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:</b>
This rule is necessary because it sets standards for high quality out-of-school time programs and define the programs required to adopt those standards. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Angie Stallings, Deputy Superintendent of Policy	<b>Date:</b>	09/16/2024
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NOTICE OF FIVE-YEAR REVIEW AND STATEMENT OF CONTINUATION		
Rule Number:	R277-928	Filing ID: 53684
Effective Date:	09/16/2024	

**Agency Information**

1. Title catchline:	Education, Administration	
Building:	Board of Education	
Street address:	250 E 500 S	
City, state	Salt Lake City, UT	
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:	R277-928. High-Need Schools Grant	
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:	This rule is authorized by the Utah Constitution, Article X, Section 3, which vests general control and supervision over public education in the Board; Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and Section 53F-5-212, which establishes a grant to hire educators in high-need schools and directs the Board to make rules to govern the application process.	
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:	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 provides procedures for an LEA to apply for the High-Need Schools Grant, and also criteria for determining if an elementary school is a high-need school. Therefore, this rule should be continued.	

**Agency Authorization Information**

Agency head or designee and title:	Angie Stallings, Deputy Superintendent of Policy	Date:	09/16/2024
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NOTICE OF FIVE-YEAR REVIEW AND STATEMENT OF CONTINUATION		
Rule Number:	R357-25	Filing ID: 54270
Effective Date:	09/10/2024	

**Agency Information**

1. Title catchline:	Governor, Economic Opportunity	
Building:	World Trade Center	
Street address:	60 E South Temple, Suite 300	

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

<b>City, state</b>	Salt Lake City, UT	
<b>Mailing address:</b>	60 E South Temple, Suite 300	
<b>City, state and zip:</b>	Salt Lake City, UT 84111	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Greg Jeffs	801-368-1957	gjeffs@utah.gov
<b>Please address questions regarding information on this notice to the persons listed above.</b>		

**General Information**

<b>2. Rule catchline:</b>
R357-25. Rural Coworking and Innovation Center Grant Program
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
Subsection 63N-3-504(1) says "the office shall make rules establishing the eligibility and reporting criteria for an entity to receive a grant under this part." This part is the Part 5 Rural Coworking and Innovation Center Grant Program.
<b>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:</b>
No comments have been received.
<b>5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:</b>
This rule is necessary because statute says there must be a rule. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Ryan Starks, Executive Director	<b>Date:</b>	09/09/2024
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**NOTICE OF FIVE-YEAR REVIEW AND STATEMENT OF CONTINUATION**

<b>Rule Number:</b>	<b>R414-23</b>	<b>Filing ID:</b> 55981
<b>Effective Date:</b>	<b>09/16/2024</b>	

**Agency Information**

<b>1. Title catchline:</b>	Health and Human Services, Integrated Healthcare	
<b>Building:</b>	Cannon Health Building	
<b>Street address:</b>	288 N 1460 W	
<b>City, state</b>	Salt Lake City, UT	
<b>Mailing address:</b>	288 N 1460 W	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-3325	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Craig Devashrayee	801-538-6641	cdevashrayee@utah.gov
Mariah Noble	385-214-1150	mariahnoble@utah.gov
<b>Please address questions regarding information on this notice to the persons listed above.</b>		

**General Information**

<b>2. Rule catchline:</b>
R414-23. Provider Enrollment
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
Section 26B-3-108 requires the Department of Health and Human Services (Department) to implement Medicaid through administrative rules, and Section 26B-1-213 grants the Department the authority to adopt, amend, or rescind these rules.
<b>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:</b>
The Department has not received any written comments in support of or opposition to this rule since its last five-year review.
<b>5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:</b>
This rule is necessary because it implements revalidation requirements for providers to assure quality and cost-effective services. Therefore, this rule should be continued.  As there were no comments in opposition to this rule, the Department did not respond to any such comments.

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Tracy S. Gruber, Executive Director	<b>Date:</b>	09/16/2024
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**End of the Five-Year Notices of Review and Statements of Continuation Section**

## NOTICES OF RULE EFFECTIVE DATES

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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.

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### Agriculture and Food

#### Animal Industry

No. 56611 (Amendment) R58-2: Diseases, Inspections, and Quarantines

Published: 08/01/2024

Effective: 09/23/2024

No. 56684 (Repeal and Reenact) R58-15: Collection of Annual Fees for the Wildlife Damage Prevention Act

Published: 08/15/2024

Effective: 09/26/2024

### Environmental Quality

#### Waste Management and Radiation Control, Radiation

No. 56553 (Amendment) R313-15: Reports of Transactions Involving Nationally Tracked Sources

Published: 07/01/2024

Effective: 09/16/2024

No. 56554 (Amendment) R313-22: Special Requirements for a Specific License to Manufacture, Assemble, Repair, or Distribute Commodities, Products, or Devices That Contain Radioactive Material

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No. 56555 (Amendment) R313-32: Clarifications or Exceptions

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No. 56556 (Amendment) R313-37: Clarifications or Exceptions

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### Government Operations

#### Debt Collection

No. 56661 (New Rule) R21-4: Debtor's Request for Credit for Restitution Payments

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#### Finance

No. 56550 (Repeal and Reenact) R25-7: Travel-Related Reimbursements for State Travelers

Published: 07/01/2024

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NOTICES OF RULE EFFECTIVE DATES

Governor

Criminal and Juvenile Justice (State Commission on)

No. 56683 (New Rule) R356-8: Designation of Commission Duties

Published: 08/15/2024

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No. 56662 (New Rule) R356-9: Victim Complaints

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No. 56673 (New Rule) R356-10: Recusal of a Member for a Conflict of Interest

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Economic Opportunity

No. 56663 (New Rule) R357-47: Economic Assistance Grant Rule

Published: 08/15/2024

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Health and Human Services

Population Health, Environmental Health

No. 56273 (New Rule) R392-304: Artificial Swimming Lagoons

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No. 56273 (Change in Proposed Rule) R392-304: Artificial Swimming Lagoons

Published: 06/01/2024

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Insurance

Administration

No. 56654 (Amendment) R590-142: Continuing Education Rule

Published: 08/01/2024

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No. 56655 (Amendment) R590-186: Initial and Renewal Agency License

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No. 56656 (Amendment) R590-238: Captive Insurance Companies

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No. 56657 (Amendment) R590-273: Continuing Care Provider Rule

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No. 56658 (Amendment) R590-282: Licensing

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Title and Escrow Commission

No. 56659 (Amendment) R592-9: Assessment for Title Insurance Recovery, Education, and Research Fund

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No. 56660 (Amendment) R592-10: Assessment for the Title Licensee Enforcement Restricted Account

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National Guard

Administration

No. 56530 (New Rule) R630-1: Gifts to the Utah National Guard

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Natural Resources

Wildlife Resources

No. 56678 (Amendment) R657-5: Taking Big Game

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Tax Commission

Property Tax

No. 56561 (Amendment) R884-24P-16: Assessment of Interlocal Cooperation Act Project Entity Properties Pursuant to Utah Code Ann. Section 11-13-302

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Effective: 09/26/2024

**End of the Notices of Rule Effective Dates Section**