

UTAH STATE BULLETIN

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Nancy L. Lancaster, Managing Editor

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

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

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

Office of Administrative Rules, Salt Lake City 84114

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EDITOR'S NOTES

Publication Error in the July 1, 2020, Bulletin on the Filing for Rule R277-924

On 06/15/2020, the Utah State Board of Education (USBE) filed an amendment on Rule R277-924, Partnerships for Student Success Grant Program. During the processing of the filing, an error occurred where the marked-up text was removed and that was the text that was published in the July 1, 2020, Bulletin. USBE made this filing effective on 08/12/2020. USBE did a review after making the rule effective and discovered that the marked-up text was not published.

After a discussion with the Office of Administrative Rules, the decision was made that since USBE filed the rule correctly and had discussed the rule at public USBE meetings, the filing can be, and has been, made effective.

In the interests of a complete record, the correctly marked up text is provided below:

R277. Education, Administration.

R277-924. Partnerships for Student Success Grant Program.

R277-924-1. 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; and
- (b) Section 53F-5-406, which requires the Board to make rules to administer the Partnerships for Student Success Grant Program;

and

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

(2) The purpose of this rule is to provide:

- (a) criteria for evaluating grant applications; and
- (b) procedures for:
 - (i) an eligible partnership to apply to the Board to receive grant money; and
 - (ii) the evaluation of an eligible partnership's use of grant money.

R277-924-2. Definitions.

(1) "Eligible partnership" means the same as that term is defined in Section 53F-5-401.

(2) "Eligible school feeder pattern" means the same as that term is defined in Section 53F-5-401.

(3) "Grant program" means the Partnerships for Student Success Grant Program established in Section 53F-5-402.

(4) "Lead applicant" means an LEA or local nonprofit organization designated by an eligible partnership to act as the lead applicant for a grant described in Title 53F, Chapter 5, Part 4, Partnerships for Student Success Grant Program and this Rule.

(5) "Low performing school" means the same as that term is defined in Section 53E-5-301.

R277-924-3. Grant Application.

(1) The Superintendent shall:

(a) develop a grant application that allows an eligible partnership, through the lead applicant, to apply to participate in the grant program; and

(b) make the grant application available on the Board's website.

(2) An eligible partnership may apply for a grant described in Section 53F-5-402 by submitting an application to the Superintendent[

~~(a) on or before September 1, 2016; or~~

~~(b)] on or before the date published on the Board's website.~~

(3)(a) An eligible partnership or lead applicant may notify the Superintendent of the eligible partnership's intention to apply for a grant at any time.

(b) If an eligible partnership intends to be considered for a grant for the upcoming school year, the eligible partnership shall submit a letter of intent by the deadline established by the Superintendent and published on the Board's website.

(4) For each year the Superintendent is authorized to solicit grant applications, the Superintendent shall publish a timeline on the Board's website by March 1, including a date for the application release, and due dates for [the]an LEA to submit required materials.

(5) The Superintendent shall evaluate each application using the criteria described in Section R277-924-4 to determine if the applying partnership is an eligible partnership.

(6) The Superintendent shall notify the lead applicant of successful receipt of a grant by July 1.

R277-924-4. Procedure and Criteria for Awarding a Grant.

(1) The Superintendent shall award grants to eligible partnerships based on the amount of funding available for the grant program.

(2) The Superintendent shall award the grant described in Subsection (1) to an eligible partnership based on the following criteria:

EDITOR'S NOTES

- (a) the percentage of students who live in families with an income at or below 185% of the federal poverty level enrolled in schools within the eligible school feeder pattern;
 - (b) the comprehensive needs assessment of the eligible partnership, including the shared goals, outcomes and measurement practices based on the unique community needs and interests;
 - (c) the proposed program services to be implemented based on the comprehensive needs assessment described in Subsection (2)(b), including how the eligible partnership's plan aligns with:
 - (i) the five- and ten-year plan to address intergenerational poverty described in Section 35A-9-303; and
 - (ii) if the eligible partnership has a low performing school within the eligible partnership's school feeder pattern, the school turnaround plans of the low performing schools;
 - (d) how the eligible partnership will:
 - (i) improve educational outcomes for low income students through the formation of cross-sector partnerships; and
 - (ii) improve efforts focused on student success;
 - (e) the outcome-based measures selected by the eligible partnership, including the eligible partnership's plan to:
 - (i) objectively assess the success of the eligible partnership's program design plan; and
 - (ii) make changes to the eligible partnership's plan based on the assessment described in Subsection (2)(e)(i);
 - (f) the strength of the eligible partnership's commitment to:
 - (i) the establishment and maintenance of data systems that inform program decisions;
 - (ii) sharing of information and collaboration with ~~[third party]~~program evaluators; and
 - (iii) meeting annual reporting requirements;
 - (g) the eligible partnership's budget, including:
 - (i) identifying the estimated cost per student for the program;
 - (ii) an explanation for each proposed expenditure and how each expenditure aligns with the eligible partnership's proposed program;
- and
- (iii) providing matching funds as required in Section 53F-5-403.
 - (3) Additional points will be awarded to an eligible partnership that:
 - (a) includes a low performing school~~[-as defined in Section 53E-5-301]~~; or
 - (b) includes community and parent engagement as a part of the eligible partnership's plan.
 - (4) The Superintendent shall administer and oversee the evaluation of the program as provided in Section 53F-5-405.

KEY: Partnerships for Student Success, grant program[s], community, non-profit organizations
Date of Enactment or Last Substantive Amendment: ~~October 11, 2016~~2020
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53F-5-406; 53E-3-401(4)

Any questions should be directed to the: Office of Administrative Rules at rulesonline@utah.gov

End of the Editor's Notes Section

EXECUTIVE DOCUMENTS

Under authority granted by the Utah Constitution and various federal and state statutes, the Governor periodically issues **EXECUTIVE DOCUMENTS**, which can be categorized as either Executive Orders, Proclamations, and Declarations. Executive Orders set policy for the executive branch; create boards and commissions; provide for the transfer of authority; or otherwise interpret, implement, or give administrative effect to a provision of the Constitution, state law or executive policy. Proclamations call special or extraordinary legislative sessions; designate classes of cities; publish states-of-emergency; promulgate other official formal public announcements or functions; or publicly avow or cause certain matters of state government to be made generally known. Declarations designate special days, weeks or other time periods; call attention to or recognize people, groups, organizations, functions, or similar actions having a public purpose; or invoke specific legislative purposes (such as the declaration of an agricultural disaster).

The Governor's Office staff files **EXECUTIVE DOCUMENTS** that have legal effect with the Office of Administrative Rules for publication and distribution.

EXECUTIVE ORDER 2020-50

Adopting Version 4.10 of the Phased Guidelines for the General Public and Businesses to Maximize Public Health and Economic Reactivation

WHEREAS, on March 6, 2020, I issued Executive Order 2020-1, declaring a state of emergency to facilitate the State's response to novel coronavirus disease 2019 (COVID-19);

WHEREAS, on March 13, 2020, Donald J. Trump, President of the United States, issued the Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak;

WHEREAS, COVID-19 is caused by a virus that spreads easily from person to person, may result in serious illness or death, and has been characterized by the World Health Organization as a worldwide pandemic;

WHEREAS, the State must establish minimum standards to address a statewide emergency and recognizes the need for local authorities to impose directives and orders to address the unique circumstances in different locations in Utah;

WHEREAS, the Utah Department of Health has released and updated the Phased Guidelines for the General Public and Businesses to Maximize Public Health and Economic Reactivation, which provide a color-coded health guidance system (hereinafter, "Utah COVID-19 Level of Restriction"), to guide economic engagement while still protecting public health;

WHEREAS, the Utah Department of Health has determined that the Utah COVID-19 Level of Restriction set forth in Executive Order 2020-49 should be maintained to protect public health throughout the state;

WHEREAS, Utah Code § 53-2a-209(1) provides that orders issued by the governor under Title 53, Chapter 2a, Part 2, Disaster Response and Recovery Act, have the "full force and effect of law";

WHEREAS, Utah Code § 53-2a-204(1)(a) authorizes the governor to utilize all available resources of state government as reasonably necessary to cope with a state of emergency; and

WHEREAS, Utah Code § 53-2a-204(1)(b) authorizes the governor to employ measures and give direction to state and local officers and agencies that are reasonable and necessary for the purpose of securing compliance with orders made pursuant to the Disaster Response and Recovery Act:

NOW, THEREFORE, I, Gary R. Herbert, Governor of the State of Utah, hereby order the following:

1. As used in this Order:
 - a. "Person" means the same as that term is defined in Utah Code § 68-3-12.5(18).
 - b. "Phased Guidelines" means the Phased Guidelines for the General Public and Businesses to Maximize Public Health and Economic Reactivation version 4.10.
2. The Utah COVID-19 Level of Restriction is:

EXECUTIVE DOCUMENTS

- a. Moderate Level of Restriction (Orange) in Salt Lake City;
 - b. Minimal Level of Restriction (Green) in Beaver County, Daggett County, Duchesne County, Emery County, Garfield County, Kane County, Millard County, Piute County, Uintah County, and Wayne County; and
 - c. Low Level of Restriction (Yellow) in each area of the State not identified in Subsection (2)(a) or (2)(b).
3. The provisions of the Phased Guidelines apply as follows:
- a. Each person in an area identified in Subsection (2)(a) shall comply with the Moderate Level of Restriction (Orange) provisions of the Phased Guidelines;
 - b. Each person in an area identified in Subsection (2)(b) shall comply with the Minimal Level of Restriction (Green) provisions of the Phased Guidelines;
 - c. Each person in an area identified in Subsection (2)(c) shall comply with the Low Level of Restrictions (Yellow) provisions of the Phased Guidelines; and
 - d. Notwithstanding any other provision of Section (3), any reference in the Phased Guidelines to the use of a mask or face covering is adopted:
 - i. as an order for:
 - A. each individual who is acting in the capacity as an employee of a business when the individual is unable to maintain a distance of six feet from another individual; and
 - B. each individual in a healthcare setting; and
 - ii. as a strong recommendation for any individual not identified in Subsection (3)(d)(i).
4. A political subdivision desiring an exception to this Order or the Phased Guidelines or desiring to move to Minimal Level of Restriction (Green) shall submit the request and justification for the request through the applicable Local Health Department to the Utah Department of Health. The Utah Department of Health shall consult with the Office of the Governor as necessary.
5. Notwithstanding Subsections (3) or (4), a political subdivision desiring to adopt a mandatory face covering requirement may do so without prior approval from the Utah Department of Health by notifying the Utah Department of Health of their intent to adopt the requirement.
6. To the extent that any provision of this Order conflicts with a provision of Executive Order 2020-48 or Utah Public Health Order 2020-11, the provision of Executive Order 2020-48 or Utah Public Health Order 2020-11 shall control.
7. This Order rescinds and replaces Executive Order 2020-49.

This Order is declared effective immediately and shall remain in effect until 11:59 p.m. on August 20, 2020, unless otherwise lawfully modified, amended, rescinded, or superseded.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done in Salt Lake City, Utah, on this, the 14th day of August, 2020.

(State Seal)

Gary R. Herbert
Governor

ATTEST:

Spencer J. Cox
Lieutenant Governor

2020/050/EO

EXECUTIVE ORDER
2020-51

Declaring a State of Emergency Due to the Ongoing COVID-19 Pandemic

WHEREAS, on March 6, 2020, I issued Executive Order 2020-1, declaring a state of emergency to facilitate the State's response to the novel coronavirus disease 2019 (COVID-19) pandemic;

WHEREAS, on March 13, 2020, Donald J. Trump, President of the United States, issued the Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak;

WHEREAS, the state of emergency declared in Executive Order 2020-1 expires on this day, August 20, 2020;

WHEREAS, COVID-19 has been characterized by the World Health Organization as a worldwide pandemic caused by severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2), a virus that spreads easily from person to person and can cause serious illness or death;

WHEREAS, the Utah Department of Health has reported 47,157 cases of COVID-19 and 2,804 COVID-19-related hospitalizations as of August 19, 2020;

WHEREAS, the Utah Department of Health has reported 369 COVID-19-related deaths as of August 19, 2020;

WHEREAS, due to the valiant efforts of state and local officials and health authorities and of the public in responding to the COVID-19 pandemic, COVID-19-related cases are declining, and Utah has experienced a seven-day average of 341 COVID-19 cases and a seven-day rolling average of 7.3% testing positivity as of August 19, 2020;

WHEREAS, despite improving conditions in Utah, COVID-19 continues to spread and threaten public health and safety throughout the state;

WHEREAS, it is imperative that state and local officials and health authorities implement measures to protect the health and safety of students, educators, and families throughout the state as schools and institutions of higher education resume classes;

WHEREAS, the negative economic and social impacts of the COVID-19 pandemic continue to be felt throughout the state;

WHEREAS, COVID-19 is a new disease caused by a virus for which there is no existing vaccine;

WHEREAS, the COVID-19 pandemic requires cooperation by public health authorities, hospitals, and the general population to avoid overwhelming hospitals and causing the higher case fatality rates experienced by other countries and regions of the United States;

WHEREAS, scientific and medical knowledge concerning COVID-19 is incomplete and continues to evolve, requiring constant adaptation by elected officials and public health authorities to address the pandemic based on new information;

WHEREAS, Utah Code § 53-2a-206(1) provides that a state of emergency may be declared by executive order of the governor if the governor finds a "disaster" has occurred or the occurrence or threat of a disaster is imminent in any area of the state in which state government assistance is required to supplement the response and recovery efforts of the affected political subdivision or political subdivisions;

WHEREAS, Utah Code § 53-2a-102(5) provides that a "disaster" is an event that causes, or threatens to cause, loss of life, human suffering, public or private property damage, or economic or social disruption resulting from "natural phenomena," among other things;

WHEREAS, Utah Code § 53-2a-102(13) provides that "natural phenomena" include an "epidemic," among other things;

WHEREAS, I find that the effects of the COVID-19 pandemic and its continuing threat to public health and economic and social stability are emergency conditions sufficient to constitute a disaster within the intent of the Utah Code Title 53, Chapter 2a, Disaster Response and Recovery Act;

NOW, THEREFORE, I, Gary R. Herbert, Governor of the State of Utah, declare a "State of Emergency" due to the aforesaid circumstances requiring aid, assistance, and relief available from State resources and hereby order:

1. the continued execution of the State Emergency Operations Plan;
2. assistance from State government to political subdivisions as needed and coordinated by the Utah Department of Health, the Utah Department of Public Safety, and other state agencies as necessary;
3. the continued dissemination of timely and accurate information by state agencies to the public that will mitigate the spread of COVID-19, prevent unnecessary confusion and alarm, and mitigate impacts to the economy;
4. the continued outreach and assistance to the populations most vulnerable to COVID-19; and
5. coordination with local authorities and the private sector to maximize access to appropriate medical care while preserving critical services for those most in need.

This Order shall take effect immediately upon the expiration or termination of Executive Order 2020-1 and shall remain in effect until September 19, 2020, unless extended by the Utah State Legislature, or earlier if I find the threat of danger has passed or reduced to the extent that emergency conditions no longer exist.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done in Salt Lake City, Utah, on this, the 20th day of August, 2020.

(State Seal)

Gary R. Herbert
Governor

ATTEST:

Spencer J. Cox
Lieutenant Governor

2020/051/EO

EXECUTIVE ORDER
2020-52

Reauthorizing the Suspension of Utah Administrative Code R671-302 Regarding Public Access to Board of Pardons and Parole Hearings

WHEREAS, on March 6, 2020, I issued Executive Order 2020-1, declaring a state of emergency to facilitate the State's response to novel coronavirus disease 2019 (COVID-19);

WHEREAS, on March 13, 2020, Donald J. Trump, President of the United States, issued the Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak;

WHEREAS, on March 17, 2020, I issued Executive Order 2020-3, suspending Utah Administrative Code R671-302, which governs public access to hearings of the Board of Pardons and Parole, as necessary to mitigate the spread of COVID-19;

WHEREAS, the state of emergency declared in Executive Order 2020-1 expires on this day, August 20, 2020, causing the termination of several executive orders necessary to mitigate the spread of COVID-19, including Executive Order 2020-3;

WHEREAS, on this day, August 20, 2020, I issued Executive Order 2020-51, declaring a state of emergency due to the ongoing COVID-19 pandemic;

WHEREAS, the facts and conditions necessitating the suspension of Utah Administrative Code R671-302 persist;

WHEREAS, COVID-19 has been characterized by the World Health Organization as a worldwide pandemic caused by severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2), a virus that spreads easily from person to person and can cause serious illness or death;

WHEREAS, strict adherence to Utah Administrative Code R671-302, News Media and Public Access to Hearings, will substantially hinder necessary action by the Utah Department of Corrections in coping with and preventing the continuing spread of COVID-19;

WHEREAS, Utah Code § 53-2a-209(3) authorizes the governor to suspend by executive order the provisions of any order, rule, or regulation of any state agency, if the strict compliance with the provisions of the order, rule, or regulation would substantially prevent, hinder, or delay necessary action in coping with an emergency or disaster;

WHEREAS, Utah Code § 53-2a-204(1)(b) authorizes the governor to employ measures and give direction to state and local officers and agencies that are reasonable and necessary to secure compliance with orders made pursuant to part 2 of the Emergency Management Act;

NOW, THEREFORE, I, Gary R. Herbert, Governor of the State of Utah, hereby order the suspension of Utah Administrative Code R671-302, News Media and Public Access to Hearings. Effective immediately, the Utah Board of Pardons and Parole ("Board") shall restrict in-person access to Board hearings as follows:

1. At any parole revocation hearing, including an evidentiary hearing, in-person access shall be limited to: (1) a Board member; (2) a hearing officer; (3) a prison staff member; (4) an offender; (5) legal counsel for the offender; (6) an Adult Probation and Parole agent; (7) legal counsel for Adult Probation and Parole; (8) a witness; (9) a victim; (10) one representative of each victim; and (11) up to two family members of each victim.

2. At any original hearing, rehearing, special attention review hearing, or redetermination hearing, in-person access shall be limited to: (1) a Board member; (2) a hearing officer; (3) a prison staff member; (4) an offender; (5) a victim; (6) one representative of each victim; and (7) up to two family members of each victim.

3. At any pardon hearing, in-person access shall be limited to: (1) a Board member; (2) a prison staff member; (3) a pardon applicant; (4) legal counsel for the pardon applicant; (5) a victim; (6) one representative of each victim; (7) up to two family members of each victim; and (8) an authorized representative of the arresting or investigative agency, sentencing court, or prosecutor's office for each conviction being addressed.

4. At any commutation hearing, in-person access shall be limited by the Board as the Board reasonably determines is necessary to prevent or control the spread of COVID-19.

Notwithstanding the foregoing restrictions, the Board shall simultaneously transmit by electronic means hearings for public viewing and listening.

This Order shall take effect immediately upon Executive Order 2020-51 becoming effective and shall remain in effect until the date the state of emergency declared in Executive Order 2020-51 is terminated, or until otherwise lawfully modified, amended, rescinded, or superseded.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done in Salt Lake City, Utah, on this, the 20th day of August, 2020.

(State Seal)

Gary R. Herbert
Governor

ATTEST:

Spencer J. Cox
Lieutenant Governor

2020/052/EO

EXECUTIVE ORDER
2020-53

Reauthorizing the Suspension of Enforcement of Provisions of the Utah Postretirement Reemployment Restrictions Act

WHEREAS, on March 6, 2020, I issued Executive Order 2020-1, declaring a state of emergency due to novel coronavirus disease 2019 (COVID-19);

WHEREAS, on March 13, 2020, Donald J. Trump, President of the United States, issued the Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak;

WHEREAS, on March 30, 2020, I issued Executive Order 2020-9, suspending provisions of the Utah Postretirement Reemployment Restrictions Act, found in Utah Code Title 49, Chapter 11, Part 12, as necessary to assist the State response to the COVID-19 pandemic emergency;

WHEREAS, the state of emergency declared in Executive Order 2020-1 expires on this day, August 20, 2020, causing the termination of several executive orders necessary to mitigate the spread of COVID-19, including Executive Order 2020-9;

WHEREAS, on this day, August 20, 2020, I issued Executive Order 2020-51, declaring a state of emergency due to the ongoing COVID-19 pandemic;

WHEREAS, the facts and conditions necessitating the suspension of provisions of the Utah Postretirement Reemployment Restrictions Act persist;

WHEREAS, COVID-19 has been characterized by the World Health Organization as a worldwide pandemic caused by severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2), a virus that spreads easily from person to person and can cause serious illness or death;

WHEREAS, despite improving conditions in Utah, COVID-19 continues to spread and threaten public health and safety throughout the state;

WHEREAS, it is imperative that healthcare facilities maximize the number of capable healthcare workers to ensure Utahns impacted by COVID-19 have access to medical treatment;

WHEREAS, state and local governmental entities must have staffing sufficient to appropriately address the impacts of COVID-19;

WHEREAS, the following governmental functions are critical because they enable state and local officials to protect their communities and ensure continuity of functions essential to public health and safety: communications, emergency services and first responders, energy, financial services, food and agriculture, government facilities, healthcare and public health facilities, information technology, transportation systems, and water and wastewater systems (the "Critical Government Functions");

WHEREAS, many retirees of the Utah Retirement Systems (URS) in the state are skilled workers willing to be reemployed to meet the Critical Government Functions staffing needs of state and local governmental entities that are URS participating employers to be able to appropriately address the impacts of COVID-19;

WHEREAS, certain provision of Utah Code Title 49, Chapter 11, Part 12, Postretirement Reemployment Restrictions Act, may restrict the ability of URS participating employers to reemploy certain retirees in Utah who may help provide or expedite Critical Government Functions needed for emergency response and recovery;

WHEREAS, Certain provisions of Utah Code §§ 49-11-1201 through 49-11-1208 may limit the ability of URS participating employers to have staffing sufficient to appropriately respond to the COVID-19 disaster and to ensure that Utahans have Critical Government Functions;

WHEREAS, Utah Code § 53-2a-209(4) authorizes the governor to suspend by executive order enforcement of a statute that is directly related and necessary to address a state of emergency;

WHEREAS, Utah Code § 53-2a-204(1)(b) authorizes the governor to employ measures and give direction to state and local officers and agencies that are reasonable and necessary to secure compliance with orders made pursuant to Utah Code Title 53, Chapter 2a, Part 2, Disaster Response and Recovery Act.

NOW, THEREFORE, I, Gary R. Herbert, Governor of the State of Utah, hereby order the suspension of enforcement of the following, consistent with applicable federal law:

1. Utah Code § 49-11-1204(2), requiring cancellation of a retirement allowance for reemployment without a one-year break in service;
2. Utah Code § 49-11-1204(4)(b), to the extent it requires the participating employer to pay the amortization rate to URS;
3. Utah Code § 49-11-1206(1)(b), to the extent it requires a participating employer to immediately notify URS of the reemployment;
4. Utah Code § 49-11-1206(3), to the extent it requires a retiree to report the status of the reemployment to URS; and

5. Utah Code § 49-11-1207(1), to the extent it requires URS to take action regarding a violation of Subsection 49-11-1204(2) or (4)(b);

PROVIDED THAT, the suspensions in this Order apply only as to an individual who:

1. retired prior to March 30, 2020; and
2. becomes temporarily reemployed to ensure adequate staffing of Critical Government Functions for a URS participating employer during the state of emergency.

This Order shall take effect immediately upon Executive Order 2020-51 becoming effective and shall remain in effect until the date the state of emergency declared in Executive Order 2020-51 is terminated, or until otherwise lawfully modified, amended, rescinded, or superseded.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done in Salt Lake City, Utah, on this, the 20th day of August, 2020.

(State Seal)

Gary R. Herbert
Governor

ATTEST:

Spencer J. Cox
Lieutenant Governor

2020/053/EO

EXECUTIVE ORDER
2020-54

Reauthorizing the Suspension of Enforcement of Utah Code § 32B-5-309 Regarding Ceasing Operation of Certain Retail Licensees

WHEREAS, on March 6, 2020, I issued Executive Order 2020-1, declaring a state of emergency to facilitate the State's response to novel coronavirus disease 2019 (COVID-19);

WHEREAS, on March 13, 2020, Donald J. Trump, President of the United States, issued the Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak;

WHEREAS, on May 8, 2020, I issued Executive Order 2020-21, suspending the enforcement of certain provisions of the Retail License Act, found in Utah Code Title 32B, Chapter 5, Part 3, Section 309, as necessary to address the impacts of the COVID-19 pandemic;

WHEREAS, the state of emergency declared in Executive Order 2020-1 expires on this day, August 20, 2020, causing the termination of several executive orders necessary to mitigate the spread of COVID-19, including Executive Order 2020-21;

WHEREAS, on this day, August 20, 2020, I issued Executive Order 2020-51, declaring a state of emergency due to the ongoing COVID-19 pandemic;

WHEREAS, the facts and conditions necessitating the suspension of enforcement of Utah Code § 32B-5-309 persist;

WHEREAS, COVID-19 has been characterized by the World Health Organization as a worldwide pandemic caused by severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2), a virus that spreads easily from person to person and can cause serious illness or death;

EXECUTIVE DOCUMENTS

WHEREAS, Utah Code § 32B-5-309 prohibits certain retail licensees that serve alcoholic beverages from closing or ceasing operation for a period longer than 240 hours without notifying and receiving approval from the Department of Alcoholic Beverage Control (DABC);

WHEREAS, to mitigate the spread of COVID-19, state and local authorities have issued orders restricting the operation of businesses and restaurants, including retail licensees governed by Utah Code § 32B-5-309;

WHEREAS, the economic impact of COVID-19 and related orders has caused and is expected to cause some retail licensees governed by Utah Code § 32B-5-309 to close or cease operation for a period longer than 240 hours;

WHEREAS, enforcement of state and local health orders and Utah Code § 32B-5-309 places a significant burden on retail licensees and DABC;

WHEREAS, suspending the enforcement of provisions of Utah Code § 32B-5-309 is directly related to and necessary to address the COVID-19 pandemic;

WHEREAS, Utah Code § 53-2a-209(4) authorizes the governor to suspend by executive order enforcement of a statute that is directly related and necessary to address a state of emergency;

WHEREAS, Utah Code § 53-2a-204(1)(b) authorizes the governor to employ measures and give direction to state and local officers and agencies that are reasonable and necessary to secure compliance with orders made pursuant to Utah Code Title 53, Chapter 2a, Part 2, Disaster Response and Recovery Act:

NOW, THEREFORE, I, Gary R. Herbert, Governor of the State of Utah, hereby order the suspension of enforcement of Utah Code § 32B-5-309.

This Order shall take effect immediately upon Executive Order 2020-51 becoming effective and shall remain in effect until the date the state of emergency declared in Executive Order 2020-51 is terminated, or until otherwise lawfully modified, amended, rescinded, or superseded.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done in Salt Lake City, Utah, on this, the 20th day of August, 2020.

(State Seal)

Gary R. Herbert
Governor

ATTEST:

Spencer J. Cox
Lieutenant Governor

2020/054/EO

EXECUTIVE ORDER
2020-55

Reauthorizing the Suspension of Enforcement of Statutes Relating to Telehealth Services

WHEREAS, on March 6, 2020, I issued Executive Order 2020-1, declaring a state of emergency due to coronavirus disease 2019 (COVID-19);

WHEREAS, on March 13, 2020, Donald J. Trump, President of the United States, issued the Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak;

WHEREAS, on May 15, 2020, I issued Executive Order 2020-23, suspending certain provisions of the Telehealth Act, found in Utah Code Title 26, Chapter 60, as necessary to mitigate the spread of COVID-19;

WHEREAS, the state of emergency declared in Executive Order 2020-1 expires on this day, August 20, 2020, causing the termination of several executive orders necessary to mitigate the spread of COVID-19, including Executive Order 2020-23;

WHEREAS, on this day, August 20, 2020, I issued Executive Order 2020-51, declaring a state of emergency due to the ongoing COVID-19 pandemic;

WHEREAS, the facts and conditions necessitating the suspension of provisions of the Telehealth Act persist;

WHEREAS, COVID-19 has been characterized by the World Health Organization as a worldwide pandemic caused by severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2), a virus that spreads easily from person to person and can cause serious illness or death;

WHEREAS, the Centers for Disease Control and Prevention have issued guidelines encouraging healthcare facilities to use telehealth services to reduce in-person healthcare visits and to prevent transmission of COVID-19 and other respiratory viruses;

WHEREAS, state and local health authorities have encouraged patients needing access to healthcare to use telehealth services when possible rather than go to a healthcare facility or doctor's office;

WHEREAS, the use of telehealth services is critical to ensure that the healthcare system is not overwhelmed and to mitigate the spread of COVID-19;

WHEREAS, Utah Code Title 26, Chapter 60, Telehealth Act governs the use of telehealth services in Utah;

WHEREAS, Utah Code §§ 26-60-102(9)(b)(ii) and 26-60-103(4)(a) may limit the ability of a healthcare provider to offer telehealth services during this state of emergency;

WHEREAS, Utah Code § 53-2a-209(4) authorizes the governor to suspend by executive order enforcement of a statute that is directly related and necessary to address a state of emergency;

WHEREAS, Utah Code § 53-2a-204(1)(b) authorizes the governor to employ measures and give direction to state and local officers and agencies that are reasonable and necessary to secure compliance with orders made pursuant to Utah Code Title 53, Chapter 2a, Part 2, Disaster Response and Recovery Act:

NOW, THEREFORE, I, Gary R. Herbert, Governor of the State of Utah, hereby order the following:

1. Enforcement of the following statutes is suspended:
 - a. Utah Code § 26-60-102(9)(b)(ii); and
 - b. Utah Code § 26-60-103(4)(a) to the extent that it interferes with a medical provider's ability to offer telehealth services.
2. A medical provider that pursuant to this Order offers telehealth services that do not comply with the federal Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, 110 Stat. 1936, as amended, or the federal Health Information Technology for Economic and Clinical Health Act, Pub. L. No. 111-5, 123 Stat. 226, 467, as amended, shall:
 - a. inform the patient the telehealth service does not comply with those federal acts;
 - b. give the patient an opportunity to decline use of the telehealth service; and
 - c. take reasonable care to ensure security and privacy of the telehealth service.

This Order shall take effect immediately upon Executive Order 2020-51 becoming effective and shall remain in effect until the date the state of emergency declared in Executive Order 2020-51 is terminated, or until otherwise lawfully modified, amended, rescinded, or superseded.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done in Salt Lake City, Utah, on this, the 20th day of August, 2020.

(State Seal)

Gary R. Herbert
Governor

ATTEST:

Spencer J. Cox
Lieutenant Governor

2020/055/EO

EXECUTIVE ORDER
2020-56

Updating the State Facilities Face Covering Requirement

WHEREAS, on March 6, 2020, I issued Executive Order 2020-1, declaring a state of emergency to facilitate the State's response to novel coronavirus disease 2019 (COVID-19);

WHEREAS, on March 13, 2020, Donald J. Trump, President of the United States, issued the Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak;

WHEREAS, on August 8, 2020, I issued Executive Order 2020-48, requiring the use of face coverings by any individual while in a state facility to mitigate the spread of COVID-19;

WHEREAS, the state of emergency declared in Executive Order 2020-1 expires on this day, August 20, 2020;

WHEREAS, on this day, August 20, 2020, I issued Executive Order 2020-51, declaring a state of emergency due to the ongoing COVID-19 pandemic;

WHEREAS, the facts and conditions necessitating the use of face coverings in state facilities persist;

WHEREAS, COVID-19 has been characterized by the World Health Organization as a worldwide pandemic caused by severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2), a virus that spreads easily from person to person and can cause serious illness or death;

WHEREAS, COVID-19 can spread between individuals in close proximity through respiratory droplets produced when an infected individual speaks, coughs, or sneezes;

WHEREAS, an infected individual can transmit COVID-19 even if the individual does not present symptoms or know that the individual is infected;

WHEREAS, the United States Centers for Disease Control and Prevention and the Utah Department of Health have recommended the use of face masks or other face coverings to mitigate the transmission of COVID-19;

WHEREAS, the Utah Department of Health and I have determined that it is appropriate to continue to require individuals, including employees and members of the public, to wear face coverings while in state facilities to protect public health;

WHEREAS, Utah Code § 53-2a-209(1) provides that orders issued by the governor under Title 53, Chapter 2a, Part 2, Disaster Response and Recovery Act, have the "full force and effect of law";

WHEREAS, Utah Code § 53-2a-204(1)(a) authorizes the governor to utilize all available resources of state government as reasonably necessary to cope with a state of emergency; and

WHEREAS, Utah Code § 53-2a-204(1)(b) authorizes the governor to employ measures and give direction to state and local officers and agencies that are reasonable and necessary for the purpose of securing compliance with orders made pursuant to the Disaster Response and Recovery Act;

NOW, THEREFORE, I, Gary R. Herbert, Governor of the State of Utah, hereby order the following:

1. As used in this Order:
 - a. "Face covering" means a face mask or a face shield.
 - b. "Face mask" means a mask that:
 - i. covers the nose and mouth without openings that can be seen through;
 - ii. is made of synthetic or natural fabrics;
 - iii. secures under the chin;
 - iv. fits snugly against the nose and sides of the face; and
 - v. does not have an exhalation valve or vent.
 - c. "Face shield" means a shield that:
 - i. covers the entire face;
 - ii. protects the eyes of the wearer;
 - iii. is made of clear plastic or similar nonpermeable transparent material;
 - iv. secures around the top of the head;
 - v. does not secure under the chin;
 - vi. does not fit snugly against the nose or sides of the face; and
 - vii. can be used in conjunction with a mask for enhanced protection.
 - d. "State facility" means a building or structure, or part thereof, that is owned, leased, occupied, or controlled by the state or a state governmental entity.
 - e. "State facility" does not mean:
 - i. a state prison or state community correctional center;
 - ii. a detention facility or secure facility operated by the Division of Juvenile Justice Services; or
 - iii. a building or structure, or part thereof, that is owned, leased, occupied, or controlled exclusively by:
 - A. the legislative branch of the state;
 - B. the judicial branch of the state;
 - C. the Attorney General's Office;
 - D. the State Auditor's Office;
 - E. the State Treasurer's Office; or
 - F. an independent entity as defined in Utah Code § 63E-1-102.
 - f. "State governmental entity" means any department, board, commission, institution, agency, or institution of higher education of the state.
2. Each individual in a state facility shall wear a face mask, except as provided in Section (3).
3. Section (2) does not apply to:
 - a. a child who:
 - i. is in a childcare setting;
 - ii. is younger than three years old; or
 - iii. is three years old or older if the parent, guardian, or individual responsible for caring for the child cannot place the face mask safely on the child's face;
 - b. an individual with a medical condition, mental health condition, or disability that prevents wearing a face mask, including an individual with a medical condition for whom wearing a face mask could cause harm or obstruct breathing, or who is unconscious, incapacitated, or otherwise unable to remove a face mask without assistance;
 - c. an individual engaged in an activity where the ability to see the mouth is essential for communication, including an individual who is deaf or hard of hearing while communicating with others or an individual communicating with an individual who is deaf or hard of hearing, in which case a the individual shall wear a face shield without a mask or use alternative protection such as a plexiglass barrier;
 - d. an individual who is receiving or providing a service involving the nose or face for which temporary removal of the face mask is necessary to perform the service;
 - e. an individual who is outdoors;
 - f. an individual in a vehicle;
 - g. an individual who is actively engaged in any of the following activities while maintaining a physical distance of at least six feet from any other individual who is not from the same household or residence:
 - i. using an indoor recreational facility; or
 - ii. eating or drinking; or
 - h. a state employee who is not speaking in person with any other individual and who:
 - i. is the sole occupant of a fully enclosed room or office;
 - ii. is the sole occupant of a partially enclosed room, office, or similar space, including a cubicle, that is enclosed on at least three sides by walls or other physical barriers or dividers of a height that reaches no lower than the top of the employee's head when the employee is seated; or
 - iii. is seated or stationary, and maintains a physical distance of at least six feet from any other individual.
 - 4a. Except as provided in Subsections (4)(b) and (4)(c), a state governmental entity may not require an individual to provide medical documentation verifying the basis for an exemption under Subsection (3)(b).

EXECUTIVE DOCUMENTS

- b. A state governmental entity may require an individual employed by the state governmental entity to provide medical documentation verifying the basis for an exemption under Subsection (3)(b).
- c. A state institution of higher education may require an individual who is enrolled as a student of the state institution of higher education to provide medical documentation verifying the basis for an exemption under Subsection (3)(b).
- 5. A state governmental entity may refuse to provide in-person service to any individual who does not wear a mask in a state facility of the state governmental entity if:
 - a. an alternative means of service is available;
 - b. the state governmental entity specifies to the individual how to access the alternative means of service; and
 - c. the state governmental entity determines that the individual has reasonable access to the alternative means of service.
- 6. The Utah Department of Corrections shall implement requirements regarding the wearing of face coverings in a state prison or state community correctional center.
- 7. The Division of Juvenile Justice Services shall implement requirements regarding the wearing of face coverings in a detention facility or secure facility operated by the Division of Juvenile Justice Services.

This Order shall take effect immediately upon Executive Order 2020-51 becoming effective and shall remain in effect through September 4, 2020, or until otherwise lawfully modified, amended, rescinded, or superseded.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done in Salt Lake City, Utah, on this, the 20th day of August, 2020.

(State Seal)

Gary R. Herbert
Governor

ATTEST:

Spencer J. Cox
Lieutenant Governor

2020/056/EO

EXECUTIVE ORDER
2020-57

Extending the Utah COVID-19 Level of Restriction

WHEREAS, on March 6, 2020, I issued Executive Order 2020-1, declaring a state of emergency to facilitate the State's response to novel coronavirus disease 2019 (COVID-19);

WHEREAS, on March 13, 2020, Donald J. Trump, President of the United States, issued the Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak;

WHEREAS, on August 14, 2020, I issued Executive Order 2020-50, extending the Utah COVID-19 Level of Restriction to mitigate the spread of COVID-19;

WHEREAS, the state of emergency declared in Executive Order 2020-1 expires on this day, August 20, 2020;

WHEREAS, on this day, August 20, 2020, I issued Executive Order 2020-51, declaring a state of emergency due to the ongoing COVID-19 pandemic;

WHEREAS, the facts and conditions necessitating the extension of the Utah COVID-19 Level of Restriction persist;

WHEREAS, COVID-19 has been characterized by the World Health Organization as a worldwide pandemic caused by severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2), a virus that spreads easily from person to person and can cause serious illness or death;

WHEREAS, the State must establish minimum standards to address a statewide emergency and recognizes the need for local authorities to impose directives and orders to address the unique circumstances in different locations in Utah;

WHEREAS, the Utah Department of Health has released and updated the Phased Guidelines for the General Public and Businesses to Maximize Public Health and Economic Reactivation, which provide a color-coded health guidance system (hereinafter, "Utah COVID-19 Level of Restriction"), to guide economic engagement while still protecting public health;

WHEREAS, the Utah Department of Health has determined that the Utah COVID-19 Level of Restriction set forth in Executive Order 2020-50 should be maintained to protect public health throughout the state;

WHEREAS, Utah Code § 53-2a-209(1) provides that orders issued by the governor under Title 53, Chapter 2a, Part 2, Disaster Response and Recovery Act, have the "full force and effect of law";

WHEREAS, Utah Code § 53-2a-204(1)(a) authorizes the governor to utilize all available resources of state government as reasonably necessary to cope with a state of emergency; and

WHEREAS, Utah Code § 53-2a-204(1)(b) authorizes the governor to employ measures and give direction to state and local officers and agencies that are reasonable and necessary for the purpose of securing compliance with orders made pursuant to the Disaster Response and Recovery Act:

NOW, THEREFORE, I, Gary R. Herbert, Governor of the State of Utah, hereby order the following:

1. As used in this Order:
 - a. "Person" means the same as that term is defined in Utah Code § 68-3-12.5(18).
 - b. "Phased Guidelines" means the Phased Guidelines for the General Public and Businesses to Maximize Public Health and Economic Reactivation version 4.10.
2. The Utah COVID-19 Level of Restriction is:
 - a. Moderate Level of Restriction (Orange) in Salt Lake City;
 - b. Minimal Level of Restriction (Green) in Beaver County, Daggett County, Duchesne County, Emery County, Garfield County, Kane County, Millard County, Piute County, Uintah County, and Wayne County; and
 - c. Low Level of Restriction (Yellow) in each area of the State not identified in Subsection (2)(a) or (2)(b).
3. The provisions of the Phased Guidelines apply as follows:
 - a. Each person in an area identified in Subsection (2)(a) shall comply with the Moderate Level of Restriction (Orange) provisions of the Phased Guidelines;
 - b. Each person in an area identified in Subsection (2)(b) shall comply with the Minimal Level of Restriction (Green) provisions of the Phased Guidelines;
 - c. Each person in an area identified in Subsection (2)(c) shall comply with the Low Level of Restrictions (Yellow) provisions of the Phased Guidelines; and
 - d. Notwithstanding any other provision of Section (3), any reference in the Phased Guidelines to the use of a mask or face covering is adopted:
 - i. as an order for:
 - A. each individual who is acting in the capacity as an employee of a business when the individual is unable to maintain a distance of six feet from another individual; and
 - B. each individual in a healthcare setting; and
 - ii. as a strong recommendation for any individual not identified in Subsection (3)(d)(i).
4. A political subdivision desiring an exception to this Order or the Phased Guidelines or desiring to move to Minimal Level of Restriction (Green) shall submit the request and justification for the request through the applicable Local Health Department to the Utah Department of Health. The Utah Department of Health shall consult with the Office of the Governor as necessary.
5. Notwithstanding Subsections (3) or (4), a political subdivision desiring to adopt a mandatory face covering requirement may do so without prior approval from the Utah Department of Health by notifying the Utah Department of Health of their intent to adopt the requirement.
6. Any exception to the Phased Guidelines or mask mandate authorized by the Utah Department of Health and effective as of August 20, 2020, is hereby reauthorized.
7. To the extent that any provision of this Order conflicts with a provision of Executive Order 2020-56 or Utah Public Health Order 2020-11, the provision of Executive Order 2020-56 or Utah Public Health Order 2020-11 shall control.

EXECUTIVE DOCUMENTS

This Order shall take effect immediately upon Executive Order 2020-51 becoming effective and shall remain in effect through September 4, 2020, or until otherwise lawfully modified, amended, rescinded, or superseded.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done in Salt Lake City, Utah, on this, the 20th day of August, 2020.

(State Seal)

Gary R. Herbert
Governor

ATTEST:

Spencer J. Cox
Lieutenant Governor

2020/057/EO

End of the Executive Documents Section

NOTICES OF PROPOSED RULES

A state agency may file a **PROPOSED RULE** when it determines the need for a substantive change to an existing rule. With a **NOTICE OF PROPOSED RULE**, an agency may create a new rule, amend an existing rule, repeal an existing rule, or repeal an existing rule and reenact a new rule. Filings received between August 01, 2020, 12:00 a.m., and August 14, 2020, 11:59 p.m. are included in this, the September 01, 2020, issue of the *Utah State Bulletin*.

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

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

The law requires that an agency accept public comment on **PROPOSED RULES** published in this issue of the *Utah State Bulletin* until at least October 01, 2020. The agency may accept comment beyond this date and will indicate the last day the agency will accept comment in the **RULE ANALYSIS**. The agency may also hold public hearings. Additionally, citizens or organizations may request the agency hold a hearing on a specific **PROPOSED RULE**. Section 63G-3-302 requires that a hearing request be received by the agency proposing the rule "in writing not more than 15 days after the publication date of the proposed rule."

From the end of the public comment period through December 30, 2020, the agency may notify the Office of Administrative Rules that it wants to make the **PROPOSED RULE** effective. The agency sets the effective date. The date may be no fewer than seven calendar days after the close of the public comment period nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file a **CHANGE IN PROPOSED RULE** in response to comments received. If the Office of Administrative Rules does not receive a **NOTICE OF EFFECTIVE DATE** or a **CHANGE IN PROPOSED RULE**, the **PROPOSED RULE** lapses.

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

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

The Proposed Rules Begin on the Following Page

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R70-201	Filing No. 53005

Agency Information

1. Department:	Agriculture and Food	
Agency:	Regulatory Services	
Street address:	350 N Redwood Road	
City, state:	Salt Lake City, UT	
Mailing address:	PO Box 146500	
City, state, zip:	Salt Lake City, UT 84114-6500	
Contact person(s):		
Name:	Phone:	Email:
Amber Brown	801-982-2204	ambermbrown@utah.gov
Travis Waller	801-982-2250	twaller@utah.gov
Kelly Pehrson	801-982-2202	Kwpehrson@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R70-201. Compliance Procedures
3. Purpose of the new rule or reason for the change:
The changes are necessary to update statutory references and make the violation section of this rule more clear.
4. Summary of the new rule or change:
The changes update outdated statutory references and add additional explanation as to when different penalty amounts might be used in order to add clarity to this rule.

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
There is no anticipated cost or savings to the state budget because the changes just add clarification but do not change the Department of Agriculture and Food (Department) compliance procedures.
B) Local governments:
There is no anticipated cost or savings to local governments because they do not follow or enforce Department compliance procedures.

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

There is no anticipated cost or savings for small businesses because these changes to this rule add clarification but do not change Department compliance procedures.

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

There is no anticipated cost or savings for non-small businesses because these changes to this rule add clarification but do not change Department compliance procedures.

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 for other persons because these changes to this rule add clarification but do not change Department compliance procedures.

F) Compliance costs for affected persons:

There are no additional compliance costs for affected persons because the changes just add clarification to this rule.

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

Regulatory Impact Table			
Fiscal Cost	FY2021	FY2022	FY2023
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0

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

H) Department head approval of regulatory impact analysis:

The Commissioner of the Utah Department of Agriculture and Food, R. Logan Wilde, has reviewed and approves this fiscal analysis.

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

These changes add clarification to this rule and will not have any fiscal impact on businesses in Utah.

B) Name and title of department head commenting on the fiscal impacts:

R. Logan Wilde, Commissioner

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Subsection 4-2-103(1)(i)	Section 4-3-205	Section 4-3-403
Subsection 4-5-105(1)(a)	Section 4-5-202	Section 4-9-110
Section 4-9-111	Section 4-10-112	Section 4-33-108

Public Notice Information

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

A) Comments will be accepted until: 10/01/2020

10. This rule change MAY become effective on: 10/08/2020

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the

date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	R. Logan Wilde, Commissioner	Date:	08/07/2020
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R70. Agriculture and Food, Regulatory Services.

R70-201. Compliance Procedures.

R70-201-1. Authority.

This rule is promulgated by the Division of Regulatory Services (~~[D]~~division), within the Department of Agriculture and Food (~~[D]~~department) under authority of Subs[S]ection 4-2-103~~2(1)~~(1)(i).

R70-201-2. Definition of Terms.

(A) ~~[A-]~~"Emergency Order" means a written action by the Division, ~~[which is]~~ issued to a person, as a result of information that is known by the ~~[D]~~division, ~~[which identifies]~~ identifying an immediate and significant danger to the public's health, animal health, safety or welfare, and warrants prompt action pursuant to Section 63G-4-502.

Emergency orders include: "quarantine", "seized", "Utah Inspection and Condemned", "sealed", "reject", "retain", "denatured", "detained", and "suspect", and may be issued when division action is warranted to stop the sale of a product, or halt an immediate condition or service from occurring, pursuant to Sections 4-3-~~[6]~~205, 4-3-~~[9]~~403, ~~[4-5-5(1)(a);]~~4-5-202, 4-9-~~[6]~~110, 4-9-~~[7]~~111, 4-10-~~[11(1)]~~112 ~~[and]~~ 4-33-~~[8(1)]~~108, and Subsection 4-5-105(1)(a).

(B) ~~[A-]~~"Citation" means a lawful notice, issued by the division, ~~[which is]~~ intended to immediately remedy a violation of agricultural statutes or rules by a person, business, or operator~~[, etc.].~~ Pursuant to Section 4-2-~~[15]~~304, a citation may include a penalty assessment, or provide for a fine to take effect within a stated time period.

R70-201-3. Emergency Order.

(A) The ~~[D]~~division may issue an emergency order when it determines that there is an immediate and significant danger to public health, animal health, safety or welfare, ~~[may be issued]~~ to secure the well-being, safety, or removal of danger to state citizens. Orders are intended to protect the public from unlawful agricultural and food products and services.

(B) When an emergency order is justified, and conditions warrant immediate action by the ~~[D]~~division, it shall~~[-P]~~ promptly issue a written order~~[,]~~ that includes the following information:

(1) name, street address, city, state, zip-code, phone-number, and title or position of the person being given the order, or name, street-address, city, state, zip-code, phone-number of the business, organization, corporation, firm, or limited liability company, ~~[etc.,]~~ and the name and title or position of the person in the business or organization to whom the order is given~~[,];~~

(2) a brief statement of findings of fact as determined by the division~~[,];~~

NOTICES OF PROPOSED RULES

(3) references to statutes or administrative rules violated[?];
 (4) the reasons for issuance of the emergency order[?];
 (5) the signature of the agency representative[?]; and
 (6) a space[?] or line for the signature of the person, although [(a signature is not required if the person refuses)].
 (C) This order shall be written and no product, condition, or service subject to the order shall be released, except upon the subsequent written release by the department.

R70-201-4. Citation.

(A) The Commissioner or [persons designated by the] Commissioner's designee, may enforce this rule by [the issuance]issuing [of]the person a citation for violation, in order to secure subsequent payment[s] of fines or the imposition of penalties[?].

(B) The citation [will]shall include the following information:

- (1) name, street address, city, state, zip-code, phone-number, and title or position of the [person]individual being given the order, or name, street-address, city, state, zip-code, phone-number of the entity, which includes business, organization, corporation, firm, or limited liability company, [etc.,]and the name and title or position of the [person]individual in the [business—or organization]entity to whom the order is given[?];
- (2) references to the statutes or rules violated[?];
- (3) a brief statement to the findings of fact as determined by the division[?];
- (4) a penalty or fine amount[?];
- (5) the signature of the agency representative[?];
- (6) a space or line for the signature of the [person]individual, although [(a signature is not required if the [person]individual refuses to sign[?]); and
- (7) a statement explaining[to the effect] that a person is allowed to request an administrative hearing under Section 4-1-104 and 63G-4-201 if the person believes[feels] that a citation was not warranted.

(C) The [F]fine or penalty amount[s] will be set by the department or the division, under the direction of the [e]Commissioner, for [amounts]up to \$5,000 per violation[?].[-or]

(D) [i]If the citation involves a criminal proceeding, the individual[person] may be found guilty of a class B misdemeanor.

(E) In accordance with Section 4-2-[45]304, fine or penalty amounts shall be \$500 to \$5,000 per violation depending on the level of the violation and any adverse effect or potential adverse effect at the time of the incidents giving rise to the violation.[determined according to the following: PENALTY AMOUNTS: Citation per violation up to, but not to exceed \$500;

- (1) [i]If the citation is not paid within 15 days, the penalty or fine shall be [2]two times the citation amount[?].
- (2) [i]If the citation is not paid within 30 days, the penalty or fine shall be [4]four times the citation amount.
- (3) The total penalty or fine per violation shall not exceed \$5,000.

R70-201-5. Request for Hearing.

When any order or citation, as defined above, is issued, the person being charged with the violation may elect to file, within allowable time limits, a request for the department to schedule an informal Administrative Hearing in accordance with the provisions of Section 4-1-[3-5]104.

KEY: agricultural law

Date of Enactment or Last Substantive Amendment: [~~April 15, 1998~~]2020

Notice of Continuation: January 12, 2017

Authorizing, and Implemented or Interpreted Law: 4-2-[2]103(l)(i)

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R162-2f	Filing No. 52504

Agency Information

1. Department:	Commerce
Agency:	Real Estate
Room no.:	Second Floor
Building:	Heber M. Wells
Street address:	160 E 300 S
City, state:	Salt Lake City, UT 84111
Mailing address:	PO Box 146711
City, state, zip:	Salt Lake City, UT 84114-6711

Contact person(s):		
Name:	Phone:	Email:
Justin Barney	801-530-6603	justinbarney@utah.gov

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

General Information

2. Rule or section catchline:
R162-2f. Real Estate Licensing and Practices Rules

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

The purposes of the proposed rule amendment are:
 1) to replace strict mandatory rule provisions for licensing decisions and the naming of trust accounts with more flexible rules;
 2) to extend a continuing education requirement to a holder of a license status other than an active license before activating the license;
 3) to provide a time limit for the enforcement of certain rule violations; and
 4) to update the rule consistent with current banking practices and Utah law.

4. Summary of the new rule or change:

In Section R162-2f-201, the change eliminates the mandatory denial of an application for licensure from a person who has entered into a felony plea agreement within five years of the date of application.
 In Section R162-2f-202b, the change allows the term "escrow account" as an alternative name for a trust

account.
 In Sections R162-2f-203 and R162-2f-204, the change adds a requirement to complete the mandatory three-hour continuing education before a person who was issued an inactive license at the time of their last renewal, and their license is currently on inactive status or a person reinstating an expired license can activate or reinstate the license. Currently only a person with an active license is required to complete the course. The mandatory three-hour course does not add additional hours of required continuing education but satisfies three hours of the nine core class hours currently required.
 In Sections R162-2f-205, R162-2f-207, R162-2f-401a, R162-2f-401b, R162-2f-401h, and R162-2f-401j, the changes establish a four-year time limit for the enforcement of a violation of certain of the provisions of these sections.
 In Section R162-2f-401c, the change resolves overlap and inconsistencies between Utah law and other Administrative Rules relative to the obligation of a real estate broker to supervise affiliated sales agents and unlicensed staff.
 In Section R162-2f-403a, the change amends the rule to require a principal broker to remit unclaimed funds to the State Treasurer's Office within three years as required by Utah law.
 In Section R162-2f-403b, the change increases the amount of a broker's own funds that can be held in a real estate trust account from \$500 to \$1,000 consistent with current banking practices and account fee schedules.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:
 The proposed rule amendment updates this rule and resolves inconsistencies but does not impose additional actions of the Division of Real Estate (Division) or its staff. After conducting a thorough analysis, it was determined that this proposed rule amendment will not result in a fiscal impact or result in any additional cost or savings to the state budget.

B) Local governments:
 Local governments are not required to comply with or enforce the Real Estate Licensing and Practices Rules. After conducting a thorough analysis, it was determined that this proposed rule amendment will not result in a fiscal impact to local governments.

C) Small businesses ("small business" means a business employing 1-49 persons):
 The proposed amendment does not create new obligations for small businesses, nor does it increase the cost associated with any existing obligation. After conducting a thorough analysis, it was determined that this proposed rule amendment will not result in a fiscal impact to small business.

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

The proposed amendment does not create new obligations for non-small businesses, nor does it increase the cost associated with any existing obligation. After conducting a thorough analysis, it was determined that this proposed rule amendment will not result in a fiscal impact to non-small business.

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 does not create new obligations for persons other than small businesses, non-small businesses, state, or local government entities nor does it increase the cost associated with any existing obligation. After conducting a thorough analysis, it was determined that this proposed rule amendment will not result in a fiscal impact to persons other than small businesses, businesses, or local government entities.

F) Compliance costs for affected persons:

The proposed rule imposes a mandatory three-hour continuing education (CE) course for persons with an inactive license or persons reinstating an expired license. This class is not in addition to the currently required CE but satisfies three hours of the nine core class hours currently required. The Division is not able to determine if the cost of the mandatory three-hour CE course would cost more or less than the cost of three hours of other core CE courses but estimates that overall, the costs would be substantially the same. After conducting a thorough analysis, it was determined that the proposed rule amendment will not result in a fiscal impact to affected persons.

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

Regulatory Impact Table			
Fiscal Cost	FY2021	FY2022	FY2023
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

NOTICES OF PROPOSED RULES

Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0
H) Department head approval of regulatory impact analysis:			
The Executive Director of the Department of Commerce, Chris Parker, has reviewed and approved the fiscal analysis for small and non-small businesses.			
6. A) Comments by the department head on the fiscal impact this rule may have on businesses:			
The proposed amendments do not create new obligations for businesses nor do they increase the cost associated with any existing obligations. The proposed rule amendments will not result in a fiscal impact to businesses.			
B) Name and title of department head commenting on the fiscal impacts:			
Chris Parker, Executive Director			

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):		
Section 61-2f-103	Section 61-2f-204	Section 61-2f-206
Section 61-2f-404		

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in

the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	10/01/2020

10. This rule change MAY become effective on:	10/08/2020
NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.	

Agency Authorization Information

Agency head or designee, and title:	Jonathan Stewart, Director	Date:	07/13/2020
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R162. Commerce, Real Estate.

R162-2f. Real Estate Licensing and Practices Rules.

R162-2f-201. Qualification for Licensure.

(1) Character. Pursuant to Subsection 61-2f-203(1)(c), an applicant for licensure as a sales agent, associate broker, or principal broker shall evidence honesty, integrity, truthfulness, and reputation.

(a) An applicant shall be denied a license for:

(i) a felony that resulted in:

(A) a conviction occurring within the five years preceding the date of application; or

(B) ~~[a plea agreement occurring within the five years preceding the date of application; or~~

~~(C) a jail or prison term with a release date falling within the five years preceding the date of application; or~~

(ii) a misdemeanor involving fraud, misrepresentation, theft, or dishonesty that resulted in:

(A) a conviction occurring within the three years preceding the date of application; or

(B) a jail or prison term with a release date falling within the three years preceding the date of application.

(b) An applicant may be denied a license or issued a restricted license for incidents in the applicant's past that reflect negatively on the applicant's honesty, integrity, truthfulness, and reputation. In evaluating an applicant for these qualities, the division and commission may consider:

(i) criminal convictions ~~[or plea agreements]~~ other than those specified in ~~[this]~~ Subsection (1)(a);

~~(ii) plea agreements;~~

~~(iii) [(ii)]~~ past acts related to honesty or truthfulness, with particular consideration given to any such acts involving the business of real estate, that would be grounds under Utah law for sanctioning an existing license;

~~(iv) [(iii)]~~ civil judgments in lawsuits brought on grounds of fraud, misrepresentation, or deceit;

~~(v) [(iv)]~~ court findings of fraudulent or deceitful activity;

~~(vi) [(v)]~~ evidence of non-compliance with court orders or conditions of sentencing; and

~~(vii) [(vi)]~~ evidence of non-compliance with:

(A) terms of a diversion agreement not yet closed and dismissed;

(B) a probation agreement; or

(C) a plea in abeyance.

(c)(i) An applicant who, as of the date of application, is serving probation or parole for a crime that contains an element of violence or physical coercion shall, in order to submit a complete application, provide for the commission's review current documentation from two licensed therapists, approved by the division, stating that the applicant does not pose an ongoing threat to the public.

(ii) For purposes of applying this rule, crimes that contain an element of violence or physical coercion include~~], but are not limited to,~~ the following:

(A) assault, including domestic violence;

(B) rape;

(C) sex abuse of a child;

(D) sodomy on a child;

(E) battery;

(F) interruption of a communication device;

(G) vandalism;

(H) robbery;

(I) criminal trespass;

(J) breaking and entering;

(K) kidnapping;

(L) sexual solicitation or enticement;

(M) manslaughter; and

(N) homicide.

(iii) Information and documents submitted in compliance with this Subsection ~~[(1)(e)]~~ shall be reviewed by the commission, which may exercise discretion in determining whether the applicant qualifies for licensure.

(2) Competency. In evaluating an applicant for competency, the division and commission may consider evidence including:

(a) civil judgments, with particular consideration given to any such judgments involving the business of real estate;

(b) failure to satisfy a civil judgment that has not been discharged in bankruptcy;

(c) suspension or revocation of a professional license;

(d) sanctions placed on a professional license; and

(e) investigations conducted by regulatory agencies relative to a professional license.

(3) Age. An applicant shall be at least 18 years of age.

(4) Minimum education. An applicant shall have:

(a) a high school diploma;

(b) a GED; or

(c) equivalent education as approved by the commission.

R162-2f-202b. Broker Licensing Fees and Procedures.

(1) To obtain a Utah license to practice as a broker, an individual shall:

(a) evidence honesty, integrity, truthfulness, and reputation pursuant to Subsection R162-2f-201(1);

(b) evidence competency to transact the business of real estate pursuant to Subsection R162-2f-201(2);

(c)(i) successfully complete 120 hours of approved prelicensing education, including:

(A) 45 hours of broker principles;

(B) 45 hours of broker practices; and

(C) 30 hours of Utah law and testing; or

(ii) apply to the division for waiver of all or part of the education requirement by virtue of:

(A) completing equivalent education as part of a college undergraduate or postgraduate degree program, regardless of the date of the degree; or

(B) completing other equivalent real estate education within the 12-month period prior to the date of application;

(d)(i) apply with a testing service designated by the division to sit for the licensing examination; and

(ii) pay a nonrefundable examination fee to the testing center;

(e) pursuant to ~~this~~ Subsection (3)(a), take and pass both the state and national components of the licensing examination;

(f)(i) unless Subsection (2)(a) applies, evidence the individual's having, within the five-year period preceding the date of application either:

(A) three years full-time, licensed, active real estate experience; or

(B) two years full-time, licensed, active, real estate experience and one year full-time professional real estate experience from the optional experience table in Appendix 3; and

(ii) evidence having accumulated, within the five-year period preceding the date of application, a total of at least 60 documented experience points complying with R162-2f-401a, as follows:

(A) 45 to 60 points pursuant to the experience points tables found in Appendices 1 and 2, of which a maximum of 25 points may have been accumulated from the "All other property management" subsections of Appendix 2; and

(B) 0 to 15 points pursuant to the experience point table found in Appendix 3;

(iii) a minimum of one-half of the experience points from Tables 1 and 2 must derive from transactions of properties located in the state of Utah;

(iv) evidence of qualifying experience which the individual shall submit to the division by:

(A) selecting from the individual's total qualifying experience documented experience points for which the experience complies with the requirements in section R162-2f-401a; and

(B) submitting for review and approval by the division documentation of at least 60 documented experience points and no more than 80 documented experience points of the individual's qualifying experience; and

(v) if an individual submits evidence of experience points for transactions involving a team or group, experience points are limited to those transactions for which the individual is named in any written agency agreements and purchase and lease contracts and the applicable experience points will be divided proportionally among the licensees identified in the agency agreements and lease contracts;

(g) pursuant to ~~this~~ Subsection (3)(b), submit to the division an application for licensure including:

(i) documentation indicating successful completion of the approved broker prelicensing education;

(ii) a report of the examination showing a passing score for each component of the examination; and

(iii) the applicant's business, home, and e-mail addresses;

(h) provide from any state where licensed as a real estate agent or broker:

(i) a written record of the applicant's license history; and

(ii) complete documentation of any disciplinary action taken against the applicant's license;

(i) if applying for an active license, affiliate with a registered company;

(j) pay the nonrefundable fees required for licensure, including the nonrefundable fee required under Section 61-2f-505 for the Real Estate Education, Research, and Recovery Fund;~~and~~

NOTICES OF PROPOSED RULES

(k) if applying for licensure as a principal broker, establish real estate and property management trust accounts, as applicable pursuant to Sections R162-2f-403a, R162-2f-403b, and R162-2f-403c ~~that: [R162-2f-403, that:]~~

(i) for a real estate trust account contains either the term "real estate trust account" or "real estate escrow account" in the account name;

(ii) for a property management trust account contains either the term "property management trust account" or "property management escrow account" in the account name; and

~~_____ (i) contain the term "real estate trust account" or "property management trust account", as applicable, in the account name; and~~

~~_____ (ii) are separate from any operating account(s) of the registered entity for which the individual will serve as a broker; and~~

~~_____ (iii) identify the location(s) where brokerage records will be kept.]~~

(iii) are separate and distinct from any operating accounts of the registered entity for which the broker applicant will serve as principal broker; and

(l) if applying for licensure as a principal broker, the applicant shall identify the locations where brokerage records will be kept.

(2)(a) If an individual applies under this ~~[Sub]~~section R162-2f-202b within two years of allowing a broker license to expire, the experience required under Subsection (1)(f) shall be accumulated within the seven-year period preceding the date of application.

(b) Pursuant to Section R162-2f-407, an individual whose application is denied by the division for failure to meet experience requirements under ~~this~~ Subsection (1)(f) may bring the application before the commission.

(3) Deadlines.

(a) If an individual passes one test component but fails the other, the individual shall retake and pass the failed component:

(i) within six months of the date on which the individual achieves a passing score on the passed component; and

(ii) within 12 months of the date on which the individual completes the prelicensing education.

(b) An application for licensure shall be submitted:

(i) within 90 days of the date on which the individual achieves passing scores on both examination components; and

(ii) within 12 months of the date on which the individual completes the prelicensing education.

(c) If any deadline in this Section R162-2f-202b falls on a day when the division is closed for business, the deadline shall be extended to the next business day.

(4) Restriction. A broker license may not be granted to an applicant whose sales agent license is on suspension or probation at the time of application.

(5) Dual broker licenses.

(a)(i) A person who holds or obtains a dual broker license under this ~~[Sub]~~section may function as the principal broker of a property management company that is a separate entity from the person's real estate brokerage.

(ii) A dual broker may not conduct real estate sales activities from the separate property management company.

(iii) A principal broker may conduct property management activities from the person's real estate brokerage:

(A) without holding a dual broker license; and

(B) in accordance with Subsections R162-2f-401j and R162-2f-403a-403c. ~~[i]~~

(b) A dual broker who wishes to consolidate real estate and property management operations into a single brokerage may:

(i) at the broker's request, convert the dual broker license to a principal broker license; and

(ii)(A) convert the property management company to a branch office of the real estate brokerage, including the assignment of a branch broker and using the same name as the real estate brokerage; or

(B) close the separate property management company.

(c) As of May 8, 2013:

(i) the Division shall:

(A) cease issuing property management principal broker (PMPB) licenses;

(B) cease issuing property management company (MN) registrations except as to a second company registered under a dual broker license;

(C) convert any property management principal broker (PMPB) license to a real estate principal broker (PB) license; and

(D) as to any property management company (MN) registration that is not a second company under a dual broker license, convert the registration to a real estate brokerage (CN) registration; and

(ii) it shall be permissible to conduct real estate sales activities under any company registration that is converted pursuant to ~~this~~ Subsection (5)(c)(i)(C).

R162-2f-203. Inactivation and Activation.

(1) Inactivation.

(a) To voluntarily inactivate the license of a sales agent or an associate broker, the holder of the license shall complete and submit a change form through RELMS pursuant to Section R162-2f-207.

(b) To voluntarily inactivate a principal broker license, the principal broker shall:

(i) prior to inactivating the license:

(A) give written notice to each licensee affiliated with the principal broker of the date on which the principal broker proposes to inactivate the license; and

(B) provide to the division evidence that the licensee has complied with ~~this~~ Subsection (1)(b)(i)(A); and

(ii) complete and submit a change form through RELMS pursuant to Section R162-2f-207.

(c) The license of a sales agent or associate broker is involuntarily inactivated upon:

(i) termination of the licensee's affiliation with a principal broker;

(ii) expiration, suspension, revocation, inactivation, or termination of the license of the principal broker with whom the sales agent or associate broker is affiliated; or

(iii) inactivation or termination of the registration of the entity with which the licensee's principal broker is affiliated.

(d) The registration of an entity is involuntarily inactivated upon:

(i) termination of the entity's affiliation with a principal broker; or

(ii) expiration, suspension, revocation, inactivation, or termination of the license of the principal broker with whom the entity is affiliated.

(e) The license of a principal broker is involuntarily inactivated upon termination of the licensee's affiliation with a registered entity.

(f) If the division or commission orders that a principal broker's license is to be suspended or revoked:

(i) the order shall state the effective date of the suspension or revocation; and

(ii) prior to the effective date, the entity shall:

(A)(I) affiliate with a new principal broker; and

(II) submit change forms through RELMS to affiliate each licensee with the new principal broker; or

(B)(I) provide written notice to each licensee affiliated with the principal broker of the pending suspension or revocation; and

(II) comply with Subsection R162-2f-207(3)(c)(ii)(B).

(2) Activation.

(a) To activate a license, the holder of the inactive license shall:

(i) complete and submit a change card through RELMS pursuant to Section R162-2f-207;

(ii) submit proof of:

(A) having been issued an active license at the time of last renewal;

(B) having completed, within the one-year period preceding the date on which the licensee requests activation, 18 hours of continuing education, including nine hours of core topics of which three hours shall include the Mandatory 3-Hour CE course; or

(C) having passed the licensing examination within the six-month period prior to the date on which the licensee requests activation;

(iii)(A) if applying to activate a sales agent or associate broker license, evidence affiliation with a principal broker; or

(B) if applying to activate a principal broker license, evidence affiliation with a registered entity; and

(iv) pay a non-refundable activation fee.

(b) A licensee who submits continuing education to activate a license may not use the same continuing education to renew the license at the time of the licensee's next renewal.

R162-2f-204. License Renewal or Reinstatement.

(1) Renewal period and deadlines.

(a) A license issued under these rules is valid for a period of two years from the date of licensure.

(b) To renew on time without incurring a late fee, an applicant for renewal shall, by the 15th day of the month of expiration, have completed all continuing education credits required under subsection (2)(b) to ensure continuing education providers have time to bank continuing education hours prior to license expiration.

(c) An individual who is required to submit a renewal application through the online RELMS system shall complete the online process, including the completion and banking of continuing education credits, in the licensee's individual password protected RELMS account, by the license expiration date.

(d) An individual whose circumstances require a "yes" answer to a disclosure question on the renewal application shall submit a paper renewal application:

(i) by the license expiration date, if that date falls on a day when the division is open for business; or

(ii) on the next business day following the license expiration date, if that date falls on a day when the division is closed for business.

(2) Qualification for renewal or reinstatement.

(a) Character and competency.

(i) An individual applying for a renewed license or for reinstatement of a license shall evidence that the individual maintains character and competency as required for initial licensure.

(ii) An individual applying for a renewed or reinstated license may not have:

(A) a felony conviction since the last date of licensure; or

(B) a finding of fraud, misrepresentation, or deceit entered against the applicant, related to activities requiring a real estate license, by a court of competent jurisdiction or a government agency since the last date of licensure, unless the finding was explicitly considered by the division in a previous application.

(b) Continuing education.

(i) To renew at the end of the first renewal cycle, an actively licensed individual shall complete:

(A) the 12-hour new sales agent course certified by the division; ~~and~~

(B) the Mandatory 3-Hour CE course; and
~~(C)(~~B~~)~~ an additional three~~six~~ non-duplicative hours of continuing education:

(I) certified by the division as either core or elective; or

(II) acceptable to the division pursuant to ~~[this]~~ Subsection (2)(b)(ii)(B).

(ii) To renew at the end of a renewal cycle subsequent to the first renewal, an actively licensed individual shall:

(A) complete 18 non-duplicative hours of continuing education:

(I) certified by the division;

(II) including at least nine non-duplicative hours of core curriculum, three hours of which are for completion of the Mandatory 3-Hour CE Course, a required continuing education course approved by the division; and

(III) taken during the previous license period; or

(B) apply to the division by the 15th day of the month of expiration for a waiver of all or part of the required continuing education hours by virtue of having completed non-certified courses that:

(I) were not required under Subsection R162-2f-206c(1)(a) to be certified; and

(II) meet the continuing education objectives listed in Subsection R162-2f-206c(2)(f).

(iii) If when renewing at the end of a renewal cycle subsequent to the first renewal, an actively licensed individual did not previously complete the 12-hour new sales agent course when qualifying for the individual's current license, the individual shall complete the 12-hour new sales agent course certified by the Division plus an additional six hours of non-duplicative core topic or elective continuing education hours.

(iv) The Division has certified the mandatory 3-Hour course and the 12-hour new sales agent course as core hours for continuing education purposes.

~~(v)(~~iii~~)~~(A) Completed continuing education courses will be credited to an individual when the hours are uploaded by the course provider pursuant to Subsection R162-2f-401d(1)(j).

(B) If a provider fails to upload course completion information within the ten-day period specified in Subsection R162-2f-401d(1)(j), an individual who attended the course may obtain credit by:

(I) filing a complaint against the provider; and

(II) submitting the course completion certificate to the division.

(c) Principal broker. In addition to meeting the requirements of ~~[this]~~ Subsection (2)(a) and (b), an individual applying to renew a principal broker license shall certify that:

(i) the business name under which the individual operates is current and in good standing with the Division of Corporations and Commercial Code; and

(ii) the trust account maintained by the principal broker is current and in compliance with Section R162-2f-403.

(3) Renewal and reinstatement procedures.

(a) To renew a license, an applicant shall, prior to the expiration of the license:

(i) complete the online renewal of the license in the applicant's password protected RELMS account; and

(ii) pay a nonrefundable renewal fee.

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(b) To reinstate an expired license, an applicant shall, according to deadlines set forth in Subsections 61-2f-204(2)(b) [~~through 61-2f-204(2)~~] (d):

(i) submit ~~any~~[~~all~~] forms required by the division, including proof of having completed continuing education pursuant to Subsection 61-2f-204(2), including the Mandatory 3-Hour CE course; and

(ii) pay a nonrefundable reinstatement fee.

(4) Transition to online renewal. An individual licensee shall submit an application for renewal through the online RELMS system unless the individual's circumstances require a "yes" answer in response to a disclosure question.

R162-2f-205. Registration of Entity.

(1) A principal broker may not conduct business through an entity, including a branch office, dba, or separate property management company, without first registering the entity with the division. The division may not bring an action for enforcement of this subsection after the expiration of four years following the occurrence of the violation.

(2) Exemptions. The following locations may be used to conduct real estate business without being registered as branch offices:

(a) a model home;

(b) a project sales office; and

(c) a facility established for twelve months or less as a temporary site for marketing activity, such as an exhibit booth.

(3) To register an entity with the division, a principal broker shall:

(a) evidence that the name of the entity is registered with the Division of Corporations;

(b) certify that the entity is affiliated with a principal broker who:

(i) is authorized to use the entity name; and

(ii) will actively supervise the activities of ~~each~~ [~~all~~] sales agent[s], associate broker[s], branch broker[s], and unlicensed staff member;

(c) if registering a branch office, identify the branch broker who will actively supervise ~~each~~ [~~all~~] licensee[s] and unlicensed staff working from the branch office;

(d) submit an application that includes:

(i) the physical address of the entity;

(ii) if the entity is a branch office, the name and license number of the branch broker;

(iii) the names of associate brokers and sales agents assigned to the entity; and

(iv) the location and account number of any real estate and property management trust account(s) in which funds received at the registered location will be deposited;

(e) inform the division of:

(i) the location and account number of any operating account(s) used by the registered entity; and

(ii) the location where brokerage records will be kept; and

(f) pay a nonrefundable application fee.

(4) Restrictions.

(a)(i) The division shall not register an entity proposing to use a business name that:

(A) is likely to mislead the public into thinking that the entity is not a real estate brokerage or property management company;

(B) closely resembles the name of another registered entity;

or

(C) the division determines might otherwise be confusing or misleading to the public.

(ii) Approval by the division of an entity's business name does not ensure or grant to the entity a legal right to use or operate under that name.

(b) A branch office shall operate under the same business name as the principal brokerage.

(c) An entity may not designate a post office box as its business address, but may designate a post office box as a mailing address.

(d) ~~Each~~ [~~all~~] trust account[s] and operating account[s] used by a registered entity shall be maintained in a bank or credit union located in the state of Utah.

(5) Registration not transferable.

(a) A registered entity shall not transfer the registration to any other person.

(b) A registered entity shall not allow an unlicensed person to use the entity's registration to perform work for which licensure is required.

(c) If a change in corporate structure of a registered entity creates a separate and unique legal entity, that entity shall obtain a unique registration, and shall not operate under an existing registration.

(d) The dissolution of a corporation, partnership, limited liability company, association, or other entity registered with the division terminates the registration.

R162-2f-207. Reporting a Change of Information.

(1) Individual notification requirements.

(a) An individual licensed as a sales agent, associate broker, or principal broker shall report the following to the division:

(i) change in licensee's name; and

(ii) change in licensee's business, home, e-mail, or mailing address.

(b) In addition to complying with ~~this~~ Subsection (1)(a):

(i) an individual licensed as a sales agent or associate broker shall report to the division a change in affiliation with a principal broker; and

(ii) an individual licensed as a principal broker shall report to the division:

(A) termination of a sales agent, associate broker, or branch broker, if the change is not reported pursuant to ~~this~~ Subsection (1)(b)(i);

(B) change in assignment of branch broker; and

(C) termination of the principal broker's affiliation with an entity.

(2) Entity notification requirements. A registered entity shall report the following to the division:

(a) change in entity's name;

(b) change in entity's affiliation with a principal broker;

(c) change in corporate structure;

(d) dissolution of corporation; and

(e) change of location where brokerage records are kept.

(3) Notification procedures.

(a) Name. To report a change in name, a person shall submit to the division a paper change form and:

(i) if the person is an individual, attach to it official documentation such as a:

(A) marriage certificate;

(B) divorce decree;

(C) court order; or

(D) driver license; and

(ii) if the person is an entity:

(A) obtain prior approval from the division of the new entity name; and

(B) attach to the change form proof that the new name as approved by the division pursuant to ~~[this]~~ Subsection (3)(a)(ii)(A) is registered with, and approved by, the Division of Corporations.

(b) Address. To report a change in address, a person shall enter the change into RELMS.

(c) Affiliation.

(i) To terminate an affiliation between an individual and a principal broker, a person shall submit a change form through RELMS to inactivate or transfer the individual's license; and

(A)(I) obtain the electronic affirmation of the other party to the terminated affiliation; or

(II) comply with ~~[this]~~ Subsection (4); and

(B) if a sales agent, associate broker, or branch broker simultaneously establishes an affiliation with a new principal broker, obtain the electronic affirmation of the new principal broker on a change form.

(ii) To terminate an affiliation between a principal broker and an entity:

(A) the principal broker shall submit a paper change form to the division to inactivate or transfer the principal broker's license; and

(B) if the entity does not simultaneously affiliate with a new principal broker, the entity shall:

(I) cease operations;

(II) submit to the division a paper company/branch change form to inactivate the entity registration;

(III) submit change forms through RELMS to inactivate the license of any licensee affiliated with the entity;

(IV) advise the division as to the location where records will be stored;

(V) notify each listing and management client that the entity is no longer in business and that the client may enter into a new listing or management agreement with a different brokerage;

(VI) notify each party and cooperating broker to any existing contracts; and

(VII) retain money held in trust under the control of a signer on the trust account, or an administrator or executor, until each party ~~[all parties]~~ to every ~~[each]~~ transaction agree in writing to the disposition or until a court of competent jurisdiction issues an order relative to the disposition.

(iii) Branch broker. To change an assignment of branch broker, a principal broker shall submit a paper change form to the division.

(d) Corporate structure.

(i) To report a change in corporate structure of a registered entity, the affiliated principal broker shall:

(A) if the change does not involve a new business license, or a new registration with the Utah Division of Corporations and Commercial Code, submit a letter to the division, fully explaining the change; and

(B) if the change involves a new business license or a new registration with the Utah Division of Corporations and Commercial Code for a purpose other than a company name change, obtain a new registration.

(ii) To report the dissolution of an entity registered with the division, a person shall comply with ~~[this]~~ Subsection (3)(c)(ii)(B).

(e) Brokerage records. To report a change in the location where brokerage records are kept, the principal broker of the registered entity shall submit to the division a letter on brokerage letterhead.

(4) Unavailability of individual. If an individual is unavailable to sign or electronically affirm a change form, the person responsible to report the change may do so by:

(a) sending a letter by certified mail to the last known address of the individual to notify that individual of the change~~[s]~~ and, as applicable:

~~[(i) as applicable:]~~

~~(i)~~ ~~[(A)]~~ entering the certified mail reference number into the appropriate field on the electronic change form; or

~~(ii)~~ ~~[(B)]~~ providing to the division a copy of the certified mail receipt; or

(b) sending an email to notify the individual.

The division may not bring an action for enforcement of this subsection after the expiration of four years following the occurrence of the violation.

(5) The termination of affiliation by sending an email is effective 10 days after the date that the email was sent.

(6) Fees. The division may require a notification submitted pursuant to this ~~[sub]~~section to be accompanied by a nonrefundable change fee.

(7) Deadlines.

(a) A change in affiliation shall be reported to the division before the change is made.

(b) A change in branch manager shall be reported to the division at the time the change is made.

(c) Any other change shall be reported to the division within ten business days of the change taking effect.

(d) As to a change that requires submission of a paper form or document, if the deadline specified in this Section R162-2f-207 falls on a day when the division is closed for business, the deadline shall be extended to the next business day.

(8) Effective date. A change reported in compliance with this Section R162-2f-207 becomes effective with the division the day on which the properly executed change form is received by the division.

R162-2f-401a. Affirmative Duties Required of ~~[All]~~ Licensed Individuals.

An individual licensee shall:

(1) uphold the following fiduciary duties in the course of representing a principal:

(a) loyalty, which obligates the agent to place the best interests of the principal above any ~~[all]~~ other interest[s], including the agent's own;

(b) obedience, which obligates the agent to obey any ~~[all]~~ lawful instructions from the principal;

(c) full disclosure, which obligates the agent to inform the principal of any material fact the agent learns about:

(i) the other party; or

(ii) the transaction;

(d) confidentiality, which prohibits the agent from disclosing, without permission, any information given to the agent by the principal that would likely weaken the principal's bargaining position if it were known, but excepting any known material fact concerning:

(i) a defect in the property; or

(ii) the client's ability to perform on the contract;

(e) reasonable care and diligence;

(f) holding safe and accounting for any ~~[all]~~ money or property entrusted to the agent; and

(g) any additional duties created by the agency agreement;

(2) for the purpose of defining the scope of the individual's agency, execute a written agency agreement between the individual and the individual's principal, including:

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(a) seller(s) the individual represents;
(b) buyer(s) the individual represents;
(c) buyer(s) and seller(s) the individual represents as a limited agent in the same transaction pursuant to ~~[this]~~ Subsection (4);
(d) the owner of a property for which the individual will provide property management services; and
(e) a tenant whom the individual represents;
(3) in order to represent both principals in a transaction as a limited agent, obtain prior informed consent by:
(a) clearly explaining in writing to both parties:
(i) that each is entitled to be represented by a separate agent;
(ii) the type(s) of information that will be held confidential;
(iii) the type(s) of information that will be disclosed; and
(iv) the circumstances under which the withholding of information would constitute a material misrepresentation regarding the property or regarding the abilities of the parties to fulfill their obligations;
(b) obtaining a written acknowledgment from each party affirming that the party waives the right to:
(i) undivided loyalty;
(ii) absolute confidentiality; and
(iii) full disclosure from the licensee; and
(c) obtaining a written acknowledgment from each party affirming that the party understands that the licensee will act in a neutral capacity to advance the interests of each party;
(4) when acting under a limited agency agreement:
(a) act as a neutral third party; and
(b) uphold the following fiduciary duties to both parties:
(i) obedience, which obligates the limited agent to obey any ~~[all]~~ lawful instructions from the parties, consistent with the agent's duty of neutrality;
(ii) reasonable care and diligence;
(iii) holding safe any ~~[all]~~ money or property entrusted to the limited agent; and
(iv) any additional duties created by the agency agreement;
(5) when making an offer or solicitation to buy, sell, lease or rent real property as a principal, either directly or indirectly, or as an agent for a client, a licensee shall disclose in the initial contact with the other party the fact that the licensee holds a license with the division, whether the license status is active or inactive;
(6) prior to the execution of a binding purchase or lease agreement, disclose in writing to clients, agents for other parties, and unrepresented parties:
(a) the licensee's position as a principal in any transaction where the licensee operates either directly or indirectly to buy, sell, lease, or rent real property;
(b) the fact that the licensee holds a license with the division, whether the license status is active or inactive, in any circumstance where the licensee is a principal in an agreement to buy, sell, lease, or rent real property;
(c) the licensee's agency relationship(s); and
(d)(i) the existence or possible existence of a due-on-sale clause in an underlying encumbrance on real property; and
(ii) the potential consequences of selling or purchasing a property without obtaining the authorization of the holder of an underlying encumbrance;
(7) in order to offer any property for sale or lease, make reasonable efforts to verify the accuracy and content of the information and data to be used in the marketing of the property;
(8) in order to offer a residential property for sale, disclose the source on which the licensee relies for any square footage data that will be used in the marketing of the property;

(a) in the written agreement, executed with the seller, through which the licensee acquires the right to offer the property for sale; and
(b) in a written disclosure provided to the buyer, at the licensee's direction, at or before the deadline for the seller's disclosure per the contract for sale;
(9) upon initial contact with another agent in a transaction, disclose the agency relationship between the licensee and the client;
(10) when executing a binding agreement in a sales transaction, confirm the prior agency disclosure:
(a) in the currently approved Real Estate Purchase Contract; or
(b) in a separate provision with substantially similar language incorporated in or attached to the binding agreement;
(11) when executing a lease or rental agreement, confirm the prior agency disclosure by:
(a) incorporating it into the agreement; or
(b) attaching it as a separate document;
(12) if the licensee desires to act as a sub-agent for the purpose of showing property owned by a seller who is under contract with another brokerage, prior to showing the seller's property:
(a) notify the listing brokerage that sub-agency is requested; and
(b) enter into a written agreement with the listing brokerage with which the seller has contracted:
(i) consenting to the sub-agency; and
(ii) defining the scope of the agency;
(c) obtain from the listing brokerage any ~~[all]~~ available information about the property; and
(d) uphold the same fiduciary duties outlined in ~~[this]~~ Subsection (1);
(13) provide copies of a lease or purchase agreement, properly signed by each party, ~~[all parties]~~ to the party for whom the licensee acts as an agent;
(14)(a) in identifying the seller's brokerage in paragraph 5 of the approved Real Estate Purchase Contract, use:
(i) the principal broker's individual name; or
(ii) the principal broker's brokerage name; and
(b) personally fulfill the licensee's agency relationship with the client, notwithstanding the information used to complete paragraph 5;
(15) timely inform the licensee's principal broker or branch broker of real estate transactions in which:
(a) the licensee is involved as agent or principal;
(b) the licensee has received funds on behalf of the principal broker; or
(c) an offer has been written;
(16)(a) disclose in writing to each party ~~[all parties]~~ to a transaction any compensation in addition to any real estate commission that will be received in connection with a real estate transaction; and
(b) ensure that any such compensation is paid to the licensee's principal broker;
(17)(a) in negotiating and closing a transaction, a licensee may fill out those legal forms as provided for in Section 61-2f-306;
(18) use an approved addendum form to make a counteroffer or any other modification to a contract;
(19) in order to sign or initial a document on behalf of a principal in a sales transaction:
(a) obtain prior written authorization in the form of a power of attorney duly executed by the principal;
(b) retain in the file for the transaction a copy of said power of attorney;

(c) attach said power of attorney to any document signed or initialed by the individual on behalf of the principal;

(d) sign as follows: "(Principal's Name) by (Licensee's Name), Attorney-in-Fact;" and

(e) initial as follows: "(Principal's Initials) by (Licensee's Name), Attorney-in-Fact for (Principal's Name);"

(20) in order to sign or initial a document on behalf of a principal in a property management transaction:

(a) obtain prior written authorization executed by the principal which specifically identifies the actions that are authorized to be taken on behalf of the principal;

(b) retain in the file for the transaction a copy of the written authorization;

(c) sign as follows: "by (Licensee's Name), on behalf of Owner;" and

(d) initial as follows: "by (Licensee's initials), on behalf of Owner;"

(21) if employing an unlicensed individual to provide assistance in connection with real estate transactions, adhere to the provisions of Section R162-2f-401g;

(22) strictly adhere to advertising restrictions as outlined in Section R162-2f-401h;

(23) as to a guaranteed sales agreement, provide full disclosure regarding the guarantee by executing a written contract that contains:

(a) the conditions and other terms under which the property is guaranteed to be sold or purchased;

(b) the charges or other costs for the service or plan;

(c) the price for which the property will be sold or purchased;

and

(d) the approximate net proceeds the seller may reasonably expect to receive;

(24) immediately deliver money received in a real estate transaction to the principal broker for deposit; and

(25) as contemplated by Subsection 61-2f-401(20), when notified by the division that information or documents are required for investigation purposes, respond with the required information or documents in full and within ten business days. The division may not bring an action for enforcement of this subsection after the expiration of four years following the occurrence of the violation.

R162-2f-401b. Prohibited Conduct As Applicable to [All] Licensed Individuals.

(1) An individual licensee may not:

(a) engage in any of the practices described in Section 61-2f-401 and the following sections, [et seq.], whether acting as agent or on the licensee's own account, in a manner that:

(i) fails to conform with accepted standards of the real estate sales, leasing, or management industries;

(ii) could jeopardize the public health, safety, or welfare;

or

(iii) violates any provision of Title 61, Chapter 2f [et seq.] or the rules of this chapter;

(b) require parties to acknowledge receipt of a final copy of any document prepared by the licensee prior to all parties signing a contract evidencing agreement to the terms thereof;

(c) make a misrepresentation to the division:

(i) in an application for license renewal; or

(ii) in an investigation.

(d) propose, prepare, or cause to be prepared a document, agreement, settlement statement, or other device that the

licensee knows or should know does not reflect the true terms of the transaction; or

(ii) knowingly participate in a transaction in which such a false device is used;

(e) participate in a transaction in which a buyer enters into an agreement that:

(i) is not disclosed to the lender; and

(ii) if disclosed, might have a material effect on the terms or the granting of the loan;

(f) use or propose the use of a double contract;

(g) place a sign on real property without the written consent of the property owner;

(h) take a net listing;

(i) sell listed properties other than through the listing broker;

(j) subject a principal to paying a double commission without the principal's informed consent;

(k) enter or attempt to enter into a concurrent agency representation when the licensee knows or should know that the principal has an existing agency representation agreement with another licensee;

(l) pay a finder's fee or give any valuable consideration to an unlicensed person or entity for referring a prospect, except that:

(i) a licensee may give a gift valued at \$250 or less to an individual in appreciation for an unsolicited referral of a prospect that results in a real estate transaction; and

(ii) as to a property management transaction, a licensee may compensate an unlicensed employee or previous or current tenant up to \$250 per lease for assistance in retaining an existing tenant or securing a new tenant;

(m) accept a referral fee from:

(i) a lender; or

(ii) a mortgage broker;

(n) act as a real estate agent or broker in the same transaction in which the licensee also acts as a:

(i) mortgage loan originator, associate lending manager, or principal lending manager;

(ii) appraiser or appraiser trainee;

(iii) escrow agent; or

(iv) provider of title services;

(o) act or attempt to act as a limited agent in any transaction in which:

(i) the licensee is a principal in the transaction; or

(ii) any entity in which the licensee is an officer, director, partner, member, manager, employee, or stockholder is a principal in the transaction;

(p) make a counteroffer by striking out, whitening out, substituting new language, or otherwise altering:

(i) the boilerplate provisions of the Real Estate Purchase Contract; or

(ii) language that has been inserted to complete the blanks of the Real Estate Purchase Contract;

(q) advertise or offer to sell or lease property without the written consent of:

(i) the owner(s) of the property; and

(ii) if the property is currently listed, the listing broker;

(r) advertise or offer to sell or lease property at a lower price than that listed without the written consent of the seller or lessor;

(s) represent on any form or contract that the individual is holding client funds without actually receiving funds and securing them pursuant to Subsection R162-2f-401a(24);

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~~(t)(20)~~ when acting as a limited agent, disclose any information given to the agent by either principal that would likely weaken that party's bargaining position if it were known, unless the licensee has permission from the principal to disclose the information;

~~(u)(24)~~ disclose, or make any use of, a short sale demand letter outside of the purchase transaction for which it is issued;

~~(v)(22)~~ in a short sale, have the seller sign a document allowing the licensee to lien the property; or

~~(w)(23)~~ charge any fee that represents the difference between:

~~(i)(4)~~ the total concessions authorized by a seller and the actual amount of the buyer's closing costs; or

~~(ii)(4)~~ in a short sale, the sale price approved by the lender and the total amount required to clear encumbrances on title and close the transaction.

(2) The division may not bring an action for enforcement of either Subsection (1)(g) or Subsection (1)(q) after the expiration of four years following the occurrence of the violation.

R162-2f-401c. Additional Provisions Applicable to Brokers.

(1) A principal broker shall:

(a) strictly comply with the record retention and maintenance requirements of Subsection R162-2f-401k;

(b) provide to the person whom the principal broker represents in a real estate transaction:

(i) a detailed statement showing the current status of a transaction upon the earlier of:

(A) the expiration of 30 days after an offer has been made and accepted; or

(B) a buyer or seller making a demand for such statement; and

(ii) an updated transaction status statement at 30-day intervals thereafter until the transaction either closes or fails;

(c)(i) regardless of who closes a real estate transaction, ensure that final settlement statements are reviewed for content and accuracy at or before the time of closing by:

(A) the principal broker;

(B) an associate broker or branch broker affiliated with the principal broker; or

(C) the sales agent who is:

(I) affiliated with the principal broker; and

(II) representing the principal in the transaction; and

(ii) ensure the principals in each closed real estate transaction receive copies of each ~~all~~ document[s] executed in the transaction closing;

(d) in order to assign all or part of the principal broker's compensation to an associate broker or sales agent in accordance with Section 61-2f-305, provide written instructions to the title insurance agent that include the following:

(i) an identification of the property involved in the real estate transaction;

(ii) an identification of the principal broker and sales agent or associate broker who will receive compensation in accordance with the written instructions;

(iii) a designation of the amount of compensation that will be received by both the principal broker and the sales agent or associate broker;

(iv) a prohibition against alteration of the written instructions by anyone other than the principal broker; and

(v) additional instructions at the discretion of the principal broker;

(e) obtain written consent from both the buyer and the seller before retaining any portion of an earnest money deposit being held by the principal broker;

~~exercise active supervision over the conduct of all licensees and unlicensed staff employed by or affiliated with the principal broker, whether acting as:~~

~~(i) the principal broker for an entity; or~~

~~(ii) a branch broker;~~

~~(f)(4)~~ strictly adhere to the rules governing real estate auctions, as outlined in Section R162-2f-401i;

~~(g)(4)~~ strictly adhere to the rules governing property management, as outlined in Section R162-2f-401j;

~~(h)(4)(i)~~ except as provided in ~~this~~ Subsection (1)(h)(iii), ~~(1)(i)(iii)~~, within three business days of receiving a client's money in a real estate transaction, deposit the client's money into a trust account:

(A) maintained by the principal broker pursuant to Section R162-2f-403; or

(B) if the parties to the transaction agree in writing, maintained by:

(I) a title company pursuant to Section 31A-23a-406; or

(II) another authorized escrow entity; and

(ii) within three business days of receiving money from a client or a tenant in a property management transaction, deposit the money into a trust account maintained by the principal broker pursuant to Section R162-2f-403 or forward or deposit client or tenant money into an account maintained by the property owner;

(iii) a principal broker is not required to comply with ~~this~~ Subsection (1)(h)(i) or (ii) ~~(1)(i)(i) or (ii)~~ if:

(A) the contract or other written agreement states that the money is to be:

(I) held for a specific length of time; or

(II) as to a real estate transaction, deposited upon acceptance by the seller; or

(B) as to a real estate transaction, the Real Estate Purchase Contract or other written agreement states that a promissory note may be tendered in lieu of good funds and the promissory note:

(I) names the seller as payee; and

(II) is retained in the principal broker's file until closing;

~~(i)(4)(i)~~ maintain at the principal business location a complete record of any ~~all~~ consideration received or escrowed for real estate and property management transactions; and

(ii) be personally responsible at all times for deposits held in the principal broker's trust account;

~~(i)(4)(i)(A)(I)~~ in a real estate transaction, assign a consecutive, sequential number to each offer; and

(II) assign a unique identification to each property management client; and

(B) include the transaction number or client identification, as applicable, on:

(I) trust account deposit records; and

(II) trust account checks or other equivalent records evidencing the transfer of trust funds;

(ii) maintain a separate transaction file for each offer in a real estate transaction, including a rejected offer, that involves funds tendered through the brokerage and deposited into a trust account;

(iii) maintain a separate transaction file for each offer in a real estate transaction, including a rejected offer, that involves funds tendered through the brokerage and deposited into a trust account;

~~(iv)(4)(ii)~~ maintain a record of each rejected offer in a real estate transaction that does not involve funds deposited to trust:

(A) in separate files; or
 (B) in a single file holding any [all] such offer[s]; and
 (k)(4) if the principal broker assigns an affiliated associate broker or branch broker to assist the principal broker in accomplishing the affirmative duties outlined in ~~[this]~~ Subsection (1):

(i) actively supervise any such associate broker or branch broker; and

(ii) remain personally responsible and accountable for adequate supervision of each licensee [all licensees] and unlicensed staff affiliated with the principal broker.

(2) A branch broker shall:

(a) exercise active supervision over the conduct of each licensee [all licensees] and unlicensed staff employed by or affiliated with the branch or branches supervised by the branch broker; and

(b) be personally responsible and accountable for any other responsibility and duty [all other responsibilities and duties] assigned to the branch broker by the principal broker and accepted by the branch broker.

(3) Neither a principal broker nor a branch broker shall be deemed in violation of failing to exercise active and reasonable supervision [Subsections (1)(f) and (2)] where:

(a) an affiliated licensee or unlicensed staff member violates a provision of Title 61, Chapter 2f et seq. or the rules promulgated thereunder;

(b) the supervising broker had in place at the time of the violation specific written policies or instructions to prevent such a violation;

(c) reasonable procedures were established by the broker to ensure that licensees receive adequate supervision and the broker has followed those procedures;

(d) upon learning of the violation, the broker attempted to prevent or mitigate the damage;

(e) the broker did not participate in the violation;

(f) the broker did not ratify the violation; and

(g) the broker did not attempt to avoid learning of the violation.

R162-2f-401h. Requirements and Restrictions in Advertising.

(1) Except as provided for in subsections (2) and (3), a licensee shall not advertise or permit any person employed by or affiliated with the licensee to advertise real estate services or property in any medium without clearly and conspicuously identifying in the advertisement the name of the brokerage with which the licensee is affiliated. The division may not bring an action for enforcement of this subsection after the expiration of four years following the occurrence of the violation.

(2) When it is not reasonable for a licensee to identify the name of the brokerage in an electronic advertisement, the licensee shall ensure the electronic advertisement directly links to a display that clearly and conspicuously identifies the name of the brokerage.

(3) A licensee is not required to identify the name of the brokerage with which the licensee is affiliated if:

(a) the licensee advertises a property not currently listed with the brokerage with which the licensee is affiliated;

(b) the licensee has an ownership interest in the property; and

(c) the advertisement identifies the name of the individual licensee as "owner-agent" or "owner-broker."

(4) The name of the brokerage identified by a licensee in an advertisement shall be the name of the brokerage as shown on division records.

(5) A team, group, or other marketing entity which includes one or more licensees shall be subject to the same requirements and restrictions with regard to advertising as is an individual licensee.

(6)(a) If a licensee advertises a guaranteed sales plan, the advertisement shall include, in a clear and conspicuous manner:

(i) a statement that costs and conditions may apply; and

(ii) information about how to contact the licensee offering the guarantee so as to obtain the disclosures required under Subsection R162-2f-401a(23).

(b) Any radio or television advertisement of a guaranteed sales plan shall include a conspicuous statement advising if any conditions and limitations apply.

R162-2f-401j. Standards for Property Management.

(1) Property management performed by a real estate brokerage, or by licensees or unlicensed assistants affiliated with the brokerage, shall be done under the name of the brokerage as registered with the division unless the principal broker holds a dual broker license and obtains a separate registration pursuant to Section R162-2f-205 for a separate business name.

(2) In addition to fulfilling each duty [all duties] related to supervision per Section 61-2f-401(14), the principal broker of a registered entity, and the branch broker of a registered branch, shall implement training to ensure that each sales agent, associate broker, and unlicensed employee who is affiliated with the licensee has the knowledge and skills necessary to perform assigned property management tasks within the boundaries of these rules, including ~~[this]~~ Subsection R162-2f-401j(3).

(3) An unlicensed individual employed by a real estate or property management company may perform the following services under the supervision of the principal broker without holding an active real estate license:

(a) providing a prospective tenant with access to a rental unit;

(b) providing secretarial, bookkeeping, maintenance, or rent collection services;

(c) quoting rent and lease terms as established or approved by the principal broker;

(d) completing pre-printed lease or rental agreements, except as to terms that may be determined through negotiation of the principals;

(e) serving or receiving legal notices;

(f) addressing tenant or neighbor complaints; and

(g) inspecting units.

(4) Within 30 days of the termination of a contract with a property owner for property management services, the principal broker shall deliver any [all] trust money to the property owner, the property owner's designated agent, or other party as designated under the contract with the property owner. If the principal broker delivers the trust money but fails to deliver it within the 30-day deadline, the division may not bring an action for enforcement of this subsection after the expiration of four years following the occurrence of the violation.

R162-2f-403a. Trust Accounts - General Provisions.

(1) A principal broker shall:

(a)(i) if engaged in listing or selling real estate, maintain at least one real estate trust account in a bank or credit union located within the state of Utah; and

(ii) if engaged in property management, refer to Subsection R162-2f-403b(3);

(b) at the time a trust account is established, notify the division in writing of:

NOTICES OF PROPOSED RULES

(i) the account number;
(ii) the address of the bank or credit union where the account is located; and

(iii) the type of activity for which the account is used.

(2) A trust account maintained by a principal broker shall be non-interest-bearing, unless:

(a) the parties to the transaction agree in writing to deposit the funds in an interest-bearing account;

(b) the parties to the transaction designate in writing the person to whom the interest will be paid upon completion or failure of the sale;

(c) the person designated under ~~[this]~~ Subsection (2)(b):

(i) qualifies at the time of payment as a non-profit organization under Section 501(c)(3) of the Internal Revenue Code; and

(ii) operates exclusively to provide grants to affordable housing programs in Utah; and

(d) the affordable housing program that is the recipient of the grant under ~~[this]~~ Subsection (2)(c)(ii) qualifies at the time of payment as a non-profit organization under Section 501(c)(3) of the Internal Revenue Code.

(3) A principal broker may not deposit into the principal broker's real estate trust account funds received in connection with rental of tourist accommodations where the rental period is less than 30 consecutive days.

(4) Records of deposits to a trust account shall include:

(a) transaction number or unique client identifier, as applicable pursuant to Subsection R162-2f-401c(1)(k);

(b) identification of payee and payor;

(c) amount of deposit;

(d) location of property subject to the transaction; and

(e) date and place of deposit.

(5) Any instrument by which funds are disbursed from a real estate or property management trust account shall include:

(a) the business name of the registered entity;

(b) the address of the registered entity;

(c) clear identification of the trust account from which the disbursement is made, including:

(i) account name; and

(ii) account number;

(iii) transaction number or unique client identification, as applicable, pursuant to Subsection R162-2f-401c(1)(k);

(iv) date of disbursement;

(v) clear identification of payee and payor;

(vi) amount disbursed;

(vii) notation identifying the purpose for disbursement; and

(viii) check number, wire transfer number, or equivalent bank or credit union instrument identification.

(6) Any instrument of conveyance that is voided shall be clearly marked with the term "void" and the original instrument retained pursuant to Subsection R162-2f-401k.

(7) If both parties to a contract make a written claim to money held in a principal broker's trust fund and the principal broker cannot determine from any signed agreement which party's claim is valid, the principal broker may:

(a) interplead the funds into court and thereafter disburse:

(i) upon written authorization of the party who will not receive the funds; or

(ii) pursuant to the order of a court of competent jurisdiction;

or
(b) within 15 days of receiving written notice that both parties claim the funds, refer the parties to mediation if:

(i) no party has filed a civil suit arising out of the transaction; and

(ii) the parties have contractually agreed to submit disputes arising out of their contract to mediation.

(8) If a principal broker is unable to disburse trust funds within ~~three~~ ~~[five]~~ years after the failure of a transaction, the principal broker shall remit the funds to the State Treasurer's Office as unclaimed property pursuant to Title 67, Chapter 4a~~[-et seq.]~~.

(9) Trust account reconciliation. For each real estate or property management trust account operated by a registered entity, the principal broker of the entity shall:

(a) maintain a date-sequential record of each deposit to and disbursement ~~[all deposits to and disbursements]~~ from the account, including or cross-referenced to the information specified in Subsection R162-2f-401c(1)(k);

(b) maintain a current, running total of the balance contained in the trust account;

(c)(i) maintain records sufficient to detail the final disposition of any ~~[all]~~ funds associated with each transaction; and

(ii) ensure that each closed transaction balances to zero;

(d) reconcile the brokerage trust account records with the bank or credit union records at least monthly; and

(e) upon request, make all trust account records available to the division for auditing or investigation.

(10) The principal broker shall notify the division within 30 days if:

(a) the principal broker receives, from a bank or credit union in which the principal broker maintains a real estate or property management trust account, documentation to evidence that the trust account is out of balance; and

(b) the imbalance cannot be cured within the 30-day notification period.

R162-2f-403b. Real Estate Trust Accounts.

(1) A real estate trust account shall be used for the purpose of securing client funds:

(a) deposited with the principal broker in connection with a real estate transaction regulated under Title 61, Chapter 2f~~[-et seq.]~~;

(b) if the principal broker is also a builder or developer, deposited under a Real Estate Purchase Contract, construction contract, or other agreement that provides for the construction of a dwelling; and

(c) collected in the performance of property management duties, pursuant to ~~[this]~~ Subsection (3).

(2) A principal broker violates Subsection 61-2f-401(4)(B) if the principal broker deposits into the real estate trust account more than \$1,000 ~~[\$500]~~ of the principal broker's own funds.

(3)(a) A principal broker who regularly engages in property management on behalf of seven or more individual units shall establish at least one property management trust account that is:

(i) separate from the real estate trust account; and

(ii) operated in accordance with Subsection R162-2f-403c.

(b) A principal broker who collects rents or otherwise manages property for no more than six individual units at any given time may use the real estate trust account to secure funds received in connection with the principal broker's property management activities.

(4) Unless otherwise agreed pursuant to ~~[this]~~ Subsection (5)(b), a principal broker may not pay a commission from the real estate trust account without first:

(a) obtaining written authorization from the buyer and seller, through contract or otherwise;

(b) closing or otherwise terminating the transaction;

(c) delivering the settlement statement to the buyer and seller;

(d) ensuring that the buyer or seller whom the principal broker represents has been paid the amount due as determined by the settlement statement;

(e) making a record of each disbursement; and

(f) depositing funds withdrawn as the principal broker's commission into the principal broker's operating account prior to further disbursing the money.

(5) A principal broker may disburse funds from a real estate trust account only in accordance with:

(a) specific language in the Real Estate Purchase Contract authorizing disbursement;

(b) other proper written authorization of the parties having an interest in the funds; or

(c) court order.

(6) A principal broker may not release for construction purposes those funds held as deposit money under an agreement that provides for the construction of a dwelling unless the purchaser authorizes such disbursement in writing.

(7) A principal broker may not release earnest money or other trust funds associated with a failed transaction unless:

(a) a condition in the Real Estate Purchase Contract authorizing disbursement has occurred; or

(b) the parties execute a separate signed agreement containing instructions and authorization for disbursement.

KEY: real estate business, operational requirements, trust account records, notification requirements

Date of Enactment or Last Substantive Amendment: ~~June 19, 2019~~ **2020**

Notice of Continuation: August 12, 2015

Authorizing, and Implemented or Interpreted Law: 61-2f-103(1); 61-2f-105; 61-2f-203(1)(e); 61-2f-206(3); 61-2f-206(4)(a); 61-2f-306; 61-2f-307

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R277-100	Filing No. 53025

Agency Information

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

General Information

2. Rule or section catchline:
R277-100. Definitions for Utah State Board of Education (Board) Rules
3. Purpose of the new rule or reason for the change:
It was necessary to add two new definitions to Board Rule R277-100.
4. Summary of the new rule or change:
Board Rule R277-100 has been amended to add two new definitions: cumulative file or folder and multi-disciplinary team.

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
This rule change is not expected to have material fiscal impact on state government revenues or expenditures. The amendment defines certain terms to improve continuity of understanding across the system.
B) Local governments:
This rule change is not expected to have material fiscal impact on local governments' revenues or expenditures. The amendment defines certain terms to improve continuity of understanding across the system.
C) Small businesses ("small business" means a business employing 1-49 persons):
This rule change is not expected to have fiscal impact on small businesses' revenues or expenditures. The amendment defines certain terms to improve continuity of understanding across the system.
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):
There are no non-small businesses in the industry in question, Elementary and Secondary Schools (North American Industry Classification System (NAICS) 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. This proposed rule change is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses and it does not require any expenditures of, or generate revenue for non-small businesses.
E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <i>agency</i>):

This rule change is not expected to have fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities. The amendment defines certain terms to improve continuity of understanding across the system.

F) Compliance costs for affected persons:

There are no independent compliance costs for affected persons. The amendment defines certain terms to improve continuity of understanding across the system.

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	FY2021	FY2022	FY2023
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head approval of regulatory impact analysis:

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

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

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

B) Name and title of department head commenting on the fiscal impacts:

Sydnee Dickson, State Superintendent

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Article X, Section 3	Subsection 53E-3-401(4)	
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Public Notice Information

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

A) Comments will be accepted until: 10/01/2020

10. This rule change MAY become effective on: 10/08/2020

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	Angie Stallings, Deputy Superintendent	Date:	08/14/2020
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R277. Education, Administration.**R277-100. Definitions for Utah State Board of Education (Board) Rules.****R277-100-1. 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; 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.

(2) The purpose of this rule is to provide definitions that are used in the Board rules beginning with R277.

R277-100-2. Definitions.

(1) "Accreditation" means the formal process for internal and external review and approval under the standards of an accrediting entity adopted by the Board.

(2) "Agency" means:

(a) an entity governed by the Board;

(b) an LEA; or

(c) a grant sub-recipient.

(3) "Board" means the State Board of Education.

(4) "Charter school" means a school established as a charter school by a charter school authorizer under Title 53G, Chapter 5, Charter Schools, and Board rule.

(5) "Comprehensive dropout intervention and prevention program" means a program that:

(a) addresses needs of students who are not succeeding in a traditional school environment;

(b) provides targeted instruction that increases student credit-earning rates toward graduation; and

(c) partners with community entities to provide a continuum of services with the focus of preparing students for life after high school.

(6)(a) "Cumulative file" or "cumulative folder" means a physical or digital record maintained by an LEA for each student containing, at a minimum, the following information:

(i) evidence of the student's legal name and date of birth;

(ii) student demographic data, including race, ethnicity, and gender;

(iii) name and contact information for the student's parents;

(iv) a record of the student's courses, teachers, and grades or progress;

(v) a record of the student's performance on statewide assessments;

(vi) documentation concerning a student's eligibility for IDEA or 504 services;

(vii) a record of suspensions and expulsions, in accordance with Subsection 53G-8-208(4)(a);

(viii) known allergies;

(ix) a record of vision and health screening results; and

(x) a record of required student immunizations; and

(xi) pertinent legal documents, including protective orders, custody orders, and parenting or education plans.

(b) "Cumulative file" may include additional student information in accordance with an LEA's policies.

~~(6)7~~ "District school" means a public school under the control of a local school board elected under Title 20A, Chapter 14, Nomination and Election of State and Local School Boards.

~~(7)8~~ "Dual enrollment student" means a student who:

(a) is enrolled simultaneously in:

(i) a private school or home school; and

(ii) a public school; and

(b) is counted by an LEA in membership for purposes of generating state or federal funding for only those courses or subjects for which the LEA provides instruction.

~~(8)9~~ "Educator" means an individual licensed under Section 53E-6-201 and who meets the requirements of Board rule.

~~(9)10~~ "ESSA" or the "Every Student Succeeds Act" means the Congressional act, which reauthorized the Elementary and Secondary Education Act of 1965, which is found at 20 U.S.C. 6301, et seq.

~~(10)11~~(a) "Evaluate" or "review" means to observe and assess a program receiving state or federal funds with an objective of making recommendations, if appropriate, for necessary changes or improvement.

(b) An "evaluation" or "review" may include providing training and technical assistance on program-related matters and performing on-site reviews of program operations.

~~(11)12~~(a) "External audit" means an appraisal activity established under the direction of an individual or entity outside of the subject agency to examine and evaluate the adequacy and effectiveness of:

(i) agency control systems;

(ii) compliance;

(iii) performance; and

(iv) financial position.

(b) An external audit is conducted in accordance with current professional and industry technical standards, as applicable, for external audits.

~~(12)13~~(a) "Home school student" means a student who:

(a) attends a home school pursuant to Section 53G-6-204;

and

(b) is not counted by an LEA in membership for purposes of generating state or federal funding.

~~(13)14~~ "Individualized education program" or "IEP" means a written statement for a student with a disability that is developed, reviewed, and revised in accordance with Part B of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. Section 1400 (2004), and rule.

~~(14)15~~ "Individuals with Disabilities Education Act" or "IDEA," 20 U.S.C. Section 1400 et seq. (2004), is a four part (A-D) piece of federal legislation that ensures a student with a disability is provided with a Free Appropriate Public Education (FAPE) that is tailored to the student's individual needs.

~~(15)16~~(a) "Internal audit" means an independent appraisal activity established within an agency as a control system to examine and objectively evaluate the adequacy and effectiveness of other internal control systems within the agency.

(b) An "internal audit" is conducted in accordance with the current:

(i) International Standards for the Professional Practice of Internal Auditing; or

(ii) Government Auditing Standards, issued by the Comptroller General of the United States.

~~(16)17~~(a) "LEA" or "local education agency" means a school district or charter school.

NOTICES OF PROPOSED RULES

(b) For purposes of certain rules, "LEA" or "local education agency" may include the Utah Schools for the Deaf and the Blind (USDB) if indicated in the specific rule.

(~~17~~18)(a) "LEA governing board" means:

- (i) for a school district, a local school board; and
- (ii) for a charter school, a charter school governing board.

(b) For purposes of certain rules, "LEA governing board" may include the State Board of Education as the governing board for the Utah Schools for the Deaf and the Blind if indicated in the specific rule.

(~~18~~19)(a) "Monitor" or "oversee" means to formally supervise, inspect, or examine the compliance, performance, or finances of a program receiving state or federal education funding.

(b) A monitoring or oversight program may include:

- (i) review of financial and performance reports required of the subject program;
- (ii) follow-up to ensure the subject program takes timely and appropriate actions to correct identified deficiencies;
- (iii) supervising remedial action recommended by audit or monitoring findings or required by Board rule; and
- (iv) any function performed in an evaluation or review.

(20)(a) "Multi-disciplinary team" means a group of individuals from multiple disciplines who meet to:

(i) pursue the common goal of evaluating and triaging the academic, social, emotional, physical, and behavioral needs of a student or group of students; and

(ii) create individualized strategies and interventions to address identified needs.

(b) An LEA's multi-disciplinary school team as described in Subsection (20)(a) may include:

- (i) administrative personnel;
- (ii) a local law enforcement officer or school resource officer;
- (iii) a mental health professional;
- (iv) a general education or special education teacher; and
- (v) other community members as determined by the LEA.

(~~19~~21) "Parent" means a parent or guardian who has established residency of a child under Sections 53G-6-302, 53G-6-303, or 53G-6-402, or another applicable Utah guardianship provision.

(~~20~~22) "Plan for College and Career Readiness" or "SEOP" means a student education occupation plan for college and career readiness that is a developmentally organized intervention process that includes:

- (a) a written plan, updated annually, for a secondary student's (grades 7-12) education and occupational preparation;
- (b) all Board, local board and local charter board graduation requirements;
- (c) evidence of parent or guardian, student, and school representative involvement annually;
- (d) attainment of approved workplace skill competencies, including job placement when appropriate; and
- (e) identification of post secondary goals and approved sequence of courses.

(~~21~~23) "Preschool" means a school in which all the students enrolled are pre-kindergarten.

(~~22~~24)(a) "Private school student" means a student who:

- (a) attends a private school; and
- (b) is not counted by an LEA in membership for purposes of generating state or federal funding.

(~~23~~25) "Program" means an instructional environment that does not meet the criteria to be classified a school, as described in Subsection (26).

(~~24~~26) "Public school student" means a student who:

- (a) attends an LEA governed public school; and
- (b) is counted by an LEA in membership for purposes of generating state or federal funding.

(~~25~~27) "School" means an instructional environment that:

- (a) is governed by an LEA board;
- (b) has an assigned administrator;
- (c) has enrolled students that generate average daily membership hours during the school year;
- (d) has assigned instructional staff;
- (e) provides instruction in the Utah core standards;
- (f) has one or more grade groups in the range from kindergarten through grade 12; and
- (g) is not a program for students enrolled in another public school.

(~~26~~28) "Social emotional learning" or "SEL" means the process through which students acquire and effectively apply the knowledge, attitude, and skills necessary to:

- (a) understand and manage emotions;
- (b) set and achieve positive goals;
- (c) feel and show empathy for others;
- (d) establish and maintain positive relationships;
- (e) make responsible decisions; and
- (f) self-advocate.

(~~27~~29) "Split enrollment student" means a student who is:

- (a) regularly enrolled at two schools within two LEAs at the same time;
- (b) eligible for graduation and other services at both schools; and
- (c) subject to the split enrollment provisions of R277-419, counted by each LEA in membership for purposes of generating state or federal funding for only those courses or subjects for which each LEA provides instruction.

(~~28~~30) "State Charter School Board" or "SCSB" means the State Charter School Board created in Section 53G-5-201.

(~~29~~31) "Superintendent" means the State Superintendent of Public Instruction or the Superintendent's designee.

(~~30~~32) "Suspension" means:

- (a) an in-school suspension that is a temporary removal of a student from the student's regular classroom for disciplinary reasons for at least half a school day but remains under the direct supervision of school personnel; or
- (b) an out-of-school suspension that is the removal of a student from school grounds for disciplinary reasons unless the student removed is:

- (i) served solely under a Section 504 plan, where an out-of-school suspension is the excluding of the student from school for disciplinary purposes for one day or longer; or
- (ii) a student with disabilities under IDEA, where an out-of-school suspension is the temporary removal of the student from the student's regular school for disciplinary reasons to another setting.

(~~31~~33) "USDB" means the Utah Schools for the Deaf and the Blind.

KEY: Board of Education, rules, definitions
Date of Enactment or Last Substantive Amendment: ~~March 12,~~ 2020
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-401(4)

NOTICE OF PROPOSED RULE		
TYPE OF RULE: New		
Utah Admin. Code Ref (R no.):	R277-319	Filing No. 53026

Agency Information

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

General Information

2. Rule or section catchline:
R277-319. Special Educator Stipends
3. Purpose of the new rule or reason for the change:
The purpose of this new rule is providing standards and procedures for distributing money appropriated for stipends for special educators for additional days of work.
4. Summary of the new rule or change:
Utah State Board of Education repealed Rule R277-525, the rule on special educator stipends and incorporated the language into the new Board Rule R277-319, specifically to update the stipend disbursement process. (EDITOR'S NOTE: The proposed repeal of Rule R277-525 is under Filing No. 53028 in this issue, September 1, 2020, of the Bulletin.)

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
This proposed rule is not expected to have material fiscal impact on state government revenues or expenditures. This new rule clarifies and updates stipend disbursement

processes. This should not impact stipend amounts or administrative costs for the program.

B) Local governments:

This proposed rule is not expected to have material fiscal impact on local governments' revenues or expenditures. This new rule clarifies and updates stipend disbursement processes. This should not impact stipend amounts or administrative costs for the program.

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

This proposed rule is not expected to have fiscal impact on small businesses' revenues or expenditures. This new rule clarifies and updates stipend disbursement processes. This should not impact stipend amounts or administrative costs for the program.

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

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

This proposed rule is not expected to have fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities. This new rule clarifies and updates stipend disbursement processes. This should not impact stipend amounts or administrative costs for the program.

F) Compliance costs for affected persons:

There are no independent compliance costs for affected persons. This new rule clarifies and updates stipend disbursement processes. This should not impact stipend amounts or administrative costs for the program.

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	FY2021	FY2022	FY2023
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0
H) Department head approval of regulatory impact analysis:			
The State Superintendent of the Utah State Board of Education, Sydnee Dickson, has reviewed and approved this fiscal analysis.			
6. A) Comments by the department head on the fiscal impact this rule may have on businesses:			
There are no non-small businesses in the industry in question, Elementary and Secondary Schools (NAICS 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. This proposed rule is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses and it does not require any expenditures of, or generate revenue for non-small businesses. This proposed rule has no fiscal impact on local education agencies and will not have a fiscal impact on small businesses either.			

B) Name and title of department head commenting on the fiscal impacts:
Sydnee Dickson, State Superintendent

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):		
Article X, Section 3	Subsection 53F-2-310(2)	Subsection 53E-3-401(4)

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	10/01/2020

10. This rule change MAY become effective on:	10/08/2020
NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.	

Agency Authorization Information

Agency head or designee, and title:	Angie Stallings, Deputy Superintendent	Date:	08/14/2020
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R277. Education, Administration.

R277-319. Special Educator Stipends.

R277-319-1. Authority and Purpose.

- (1) This rule is authorized by:
 - (a) Utah Constitution Article X, Section 3, which vests general control and supervision of public education in the Board;
 - (b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and
 - (c) Subsection 53F-2-310(2), which requires the Board to distribute money appropriated for stipends for special educators for additional days of work.
- (2) The purpose of this rule is providing standards and procedures for distributing money appropriated for stipends for special educators for additional days of work, recognizing:

- (a) the added duties and responsibilities assumed by special educators to comply with federal law and Board special education rules regulating the education of students with disabilities; and
- (b) the need to attract and retain qualified special educators.

R277-319-2. Definitions.

- (1) "After the school year" means two weeks after the final day of the required contract period, as determined by the employer.
- (2) "Before the school year" means two weeks before the first day of the required contract period, as determined by the employer.
- (3)(a) "Duties related to the IEP process" means the duties and responsibilities provided in Subsection 53F-2-310(4);
 - (b) "Duties related to the IEP process" do not include:
 - (i) professional development;
 - (ii) instructional planning;
 - (iii) classroom set-up and tear-down;
 - (iv) district level planning; and
 - (v) direct student instruction.
- (4)(a) "Special educator" has the same meaning as described in Subsection 53F-2-310(1)(b).
- (b) "Special educator" includes a pre-kindergarten special education teacher.
- (5) "Work day" means a special educator's contract day as determined by the employer.

R277-319-3. Special Educator Stipend.

- (1) A special educator eligible for funding shall complete a survey through an online provider approved by the Superintendent as follows:
 - (a) by a date determined by the special educator's LEA, but no later than September 30 for a special educator who worked before the school year began; and
 - (b) by a date determined by the special educator's LEA, but no later than July 31 for a special educator who worked after the school year ended.
- (2) A special educator may only receive a stipend under this rule for actual days worked.
- (3) An LEA may not transfer stipend workdays under this rule among special educators.
- (4) A special educator hired by an LEA after the beginning of the school year may receive funding for extra days to the extent of funds available.

R277-319-4. Superintendent Responsibilities.

- (1) The Superintendent shall annually review this program and determine, based upon the annual appropriation, the number of special education days to be funded.
- (2) To simplify accounting and evaluation requirements for LEAs, the Superintendent shall:
 - (a) provide a methodology for tracking and accounting for special educator days to LEAs;
 - (b) provide a checklist of appropriate duties related to the IEP process for special educators; and
 - (c) distribute reimbursements to participating LEAs for eligible special educators on a semiannual basis.

R277-319-5. LEA Responsibilities.

- (1) An LEA shall distribute the survey required under Subsection R277-319-3(1) to special educators semi-annually in time to meet the reporting deadlines of this rule.

(2)(a) An LEA shall submit a semi-annual report in a form approved by the Superintendent no later than September 30 and July 31 annually.

- (b) In its report an LEA shall verify:
 - (i) that special educators have not exceeded the allowed days; and
 - (ii) that information submitted is complete and correct with no duplicate entries.

KEY: special educators, stipends

Date of Enactment or Last Substantive Amendment: 2020

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-401(4); 53F-2-310

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R277-406	Filing No. 53024

Agency Information

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

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

General Information

2. Rule or section catchline:
R277-406. Early Learning Program and Benchmark Assessments
3. Purpose of the new rule or reason for the change:
Rule R277-406 establishes the windows for administering and reporting the Benchmark Reading Assessments. This assessment is administered in a one-on-one setting and will require additional time for increased cleaning and hygiene regimen. For this reason, this rule is being amended to allow for more time to complete the assessments.
4. Summary of the new rule or change:
The due date for completion of the benchmark assessment and reporting deadline for the 2020-2021 school year has been suspended and will be established

by staff at the Utah State Board of Education (USBE) instead of being established in this rule.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

This rule change is not expected to have material fiscal impact on state government revenues or expenditures. This amendment provides local education agencies (LEAs) with additional time for increased cleaning protocols to protect students and staff from COVID-19.

B) Local governments:

This rule change is not expected to have material fiscal impact on local governments' revenues or expenditures. This amendment provides LEAs with additional time for increased cleaning protocols to protect students and staff from COVID-19.

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 amendment provides LEAs with additional time for increased cleaning protocols to protect students and staff from COVID-19.

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 amendment provides LEAs with additional time for increased cleaning protocols to protect students and staff from COVID-19.

F) Compliance costs for affected persons:

There are no independent compliance costs for affected persons. This amendment provides LEAs with additional time for increased cleaning protocols to protect students and staff from COVID-19.

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	FY2021	FY2022	FY2023
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head approval of regulatory impact analysis:

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

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

There are no non-small businesses in the industry in question, Elementary and Secondary Schools (NAICS 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary

and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. This rule change is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses and it does not require any expenditures of, or generate revenue for non-small businesses. This rule change has no fiscal impact on LEAs and will not have a fiscal impact on small businesses either.

B) Name and title of department head commenting on the fiscal impacts:

Sydnee Dickson, State Superintendent

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Article X, Section 3	Section 53E-3-521	Subsection 53F-2-503(14)(a)
Subsection 53E-3-401(4)	Section 53E-4-307	Section 53E-4-307.5

Public Notice Information

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

A) Comments will be accepted until:	10/01/2020
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10. This rule change MAY become effective on:	10/08/2020
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NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	Angie Stallings, Deputy Superintendent	Date:	08/07/2020
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R277. Education, Administration.

R277-406. Early Learning Program and Benchmark Assessments.

R277-406-1. 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 53F-2-503(14)(a), which directs the Board to develop rules for implementing the Early Learning Program;
 - (d) Section 53E-3-521, which requires the board to define the components of the early mathematics plan and establish a state-wide target using data from the mathematics benchmark assessment;
 - (e) Section 53E-4-307, which requires the Board to approve a benchmark assessment for statewide use to assess the reading competency of students in grades one, two, and three; and
 - (f) Section 53E-4-307.5, which requires the Board to approve a benchmark assessment statewide for use to assess the mathematics competency of students in grades one, two, and three.
- (2) The purpose of this rule is to outline the responsibilities of the Superintendent and LEAs for implementation of Section 53F-2-503 and the Board's administration of Early Learning in the state, including to:
 - (a) set expectations for LEA Early Learning Plans;
 - (b) establish timelines for LEA Early Learning Plans;
 - (c) provide definitions and designate assessments required in Section 53E-4-307 and 53E-4-307.5;
 - (d) provide testing reporting windows, and timelines; and
 - (e) require LEAs to submit student reading and mathematics assessment data to the Board.

R277-406-2. Definitions.

- (1) "Benchmark reading assessment" means the Acadience Reading assessment that:
 - (a) is given three times each year;
 - (b) gives teachers information to:
 - (i) plan appropriate instruction; and
 - (ii) evaluate the effects of instruction; and
 - (c) provides data about the extent to which students are prepared to be successful on an end of year criterion referenced test.
- (2) "Benchmark mathematics assessment" means the Board approved assessment that is administered in accordance with the requirements established by the Superintendent.
- (3) "Components of early mathematics" means the key areas of mathematical learning including:
 - (a) conceptual understanding;
 - (b) procedural fluency;
 - (c) strategic and adaptive mathematical thinking; and
 - (d) productive disposition.
- (4) "Conceptual understanding" means the comprehension and connection of concepts, operations, and relations.
- (5) "Evidence-based" means a strategy that has demonstrated a statistically significant effect on improving student outcomes.
- (6) "Parental notification requirements" means notice by any reasonable means, including electronic notice, notice by telephone, written notice, or personal notice.
- (7) "Plan" means the literacy and mathematics proficiency improvement plan required in the Early Learning Program that is submitted by a public school district or a charter school, as required in Subsection 53F-2-503(4) and 53G-7-218.

NOTICES OF PROPOSED RULES

(8) "Procedural fluency" means the meaningful, flexible, accurate, and efficient use of procedures to solve problems.

(9) "Productive disposition" means a student who sees mathematics as useful and worthwhile while exercising a steady effort to learn mathematics.

(10) "Program money" means the same as that term is defined in Section 53F-2-503.

(11) "Scoring below benchmark" means that a student:

(a) performs below the benchmark score on the benchmark reading or mathematics assessment; and

(b) requires additional instruction beyond that provided to typically-developing peers in order to close the gap between the student's current level of achievement and that expected of all students in that grade.

(12) "Remediation interventions" means reading or mathematics instruction or activities, or both, given to students in addition to their regular instruction, during another time in the school day, outside regular instructional time, or in the summer, which is focused on specific needs as identified by reliable and valid assessments.

(13) "Strategic and adaptive mathematical thinking" means the ability to formulate, represent, and solve mathematical problems with the capacity to justify the logic used to arrive at the solution.

(14) "Utah eTranscript and Record Exchange" or "UTREx" means the same as that term is defined in Section R277-404-2.

R277-406-3. Benchmark Reading and Mathematics Assessments.

(1) Subject to legislative appropriations, and except as provided in Subsection (2), [A]n LEA shall administer the benchmark reading and mathematics assessments in grade 1, grade 2, and grade 3 within the following testing windows:

- (a) the first benchmark before September 30;
- (b) the second benchmark between December 1 and January 31; and
- (c) the third benchmark between the middle of April and June 15.

(2) For the 2020-2021 school year, the Superintendent shall determine the testing and reporting deadlines.

~~[(2)]~~(3) An LEA shall report benchmark reading and mathematics assessment results to the Superintendent by:

- (a) October 30;
- (b) the last day of February; and
- (c) June 30.

~~[(3)]~~(4) If the benchmark reading or mathematics assessment indicates a student is scoring below benchmark:

(a) for reading, the LEA shall implement the parental notification requirements and evidence-based reading remediation interventions described in Section 53E-4-307;

(b) for mathematics, the LEA shall implement a remediation intervention as required by the Superintendent.

~~[(4)]~~(5) An LEA shall report benchmark reading and mathematics assessment results to parents of students in grade 1, grade 2, and grade 3 by:

- (a) October 30;
- (b) the last day of February; and
- (c) June 30.

~~[(5)]~~(6) An LEA shall submit to UTREx the following information from the benchmark reading and mathematics assessment:

(a) whether or not each student received remediation intervention; and

(b) UTREx Special Codes related to the benchmark reading assessment.

~~[(6)]~~(7) An LEA that selects the reading assessment technology shall use the assessment consistent with Board directives.

R277-406-4. Early Learning Plans -- LEA and Superintendent Requirements - Timelines.

(1) Beginning with the 2019-20 school year, to receive program money, an LEA shall submit:

- (a) a plan in accordance with Subsections:
 - (i) 53F-2-503(4); and
 - (iii) 53G-7-218; and
- (b) a plan that contains the components of early mathematics;

and

(b) other required materials within established deadlines.

(2)(a) Any time before July 1, an LEA may submit its plan to the Superintendent for pre-approval; and

(b) For each LEA that submits a plan for pre-approval, the Superintendent shall provide feedback in preparation for the LEA submitting the plan to its local board;

(3) An LEA shall submit a final plan to the Superintendent no later than September 1st by 5:00 p.m. including:

- (a) proof that:
 - (i) the LEA's governing board reviewed and approved the LEA's plan in an open and public meeting; and
 - (ii) the plan has been uploaded to the appropriate system as required by the Superintendent; and

(b) if necessary, a revised plan reflecting changes made to the LEA's plan by the LEA's governing board.

(5) Within three weeks of an LEA submitting a final, local board-approved plan to the Superintendent, the Superintendent shall notify the LEA if the plan has been approved or if modifications to the plan are required.

(6) If the Superintendent does not approve an LEA's plan, the LEA may, by October 15:

- (a) incorporate needed changes or provisions;
- (b) obtain approval for the amended plan from the LEA's governing board; and
- (c) resubmit the amended plan in accordance with Subsection (3)(a) of this part.

(7) If an LEA timely resubmits a plan that includes the required modifications, the Superintendent shall approve the plan by November 1.

(8) If an LEA fails to timely resubmit an acceptable plan by October 15, the LEA is not eligible for funding in the current school year.

(9) When reviewing an LEA plan for approval, the Superintendent shall evaluate:

(a) the extent to which the LEA's goals within the plan are ambitious, yet attainable; and

(b) whether the plan uses evidence-based curriculum, materials, and practices, which will support the LEA in meeting its growth goals.

(10) An LEA's goals, as outlined in the LEA's plan, shall be reported to the Superintendent using a digital reporting platform.

R277-406-5. Accountability and Reporting on Early Learning Plans.

(1) An LEA shall report progress toward the goals outlined in the LEA's plan to the Superintendent by June 30 each year.

(2) In accordance with Section 53F-2-503 and 53G-7-218, a growth goal in an LEA's plan:

(a) is calculated using the percentage of students in an LEA's grades 1 through 3 who made typical, above typical, or well-above typical progress from the beginning of the year to the end of the year, as measured by the benchmark reading and mathematics assessment;

(b) sets the literacy target percentage of students in grades 1 through 3 making typical progress or better at a minimum of 60 percent; and

(c) sets the mathematics target percentage of students in grades 1 through 3 making typical or better progress at a minimum set by the Superintendent beginning in the 2021-2022 school year.

(3) The Superintendent shall use the information provided by an LEA described in Subsection R277-406-4 to determine the progress of each student in grades 1 through 3 within the following categories:

- (i) well-above typical;
- (ii) above typical;
- (iii) typical;
- (iv) below typical; or
- (v) well-below typical.

(4) If an LEA does not make sufficient progress toward its plan goals for two consecutive years, as defined in Subsection (5), the LEA shall be in the Board System of Support and required to participate in interventions to improve early literacy, early mathematics, or both.

(5) Accept as provided for in Subsection (6), sufficient progress toward plan goals means the LEA meets:

(a) the LEA's growth goal, as described in Subsection 53F-2-503(4)(a)(v); and

(b) at least one of the LEA-designated goals addressing performance gaps, as described in Subsection 53F-2-503(4)(a)(vi).

(6) For the 2020-2021 school year, an LEA shall provide two local goals for literacy and zero local goals for mathematics.

(7) The Superintendent shall establish the strategies, interventions, and techniques for schools that are in the Board System of Support to help schools achieve early learning goals.

KEY: reading, improvement, goals

Date of Enactment or Last Substantive Amendment: [July 9,] 2020

Notice of Continuation: June 7, 2018

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-401(4); 53E-3-521; 53E-4-307; 53E-4-307.5; 53F-2-503(14)(a)

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R277-492	Filing No. 53027

Agency Information

1. Department:	Education
Agency:	Administration
Building:	Board of Education
Street address:	250 E 500 S
City, state:	Salt Lake City, UT 84111
Mailing address:	PO Box 144200
City, state, zip:	Salt Lake City, UT 84114-4200
Contact person(s):	

Name:	Phone:	Email:
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R277-492. Utah Science Technology and Research Initiative (USTAR) Centers Program
3. Purpose of the new rule or reason for the change:
S.B. 93, passed in the 2020 General Session, Math and Science Opportunities for Students and Teachers amended the existing USTAR program to create the Math and Science Opportunities for Students and Teachers (MOST) Program, amended the duties and the authority of the State Board of Education related to the MOST Program, and repealed requirements on the State Charter School Board related to the MOST Program.
4. Summary of the new rule or change:
Rule R277-492 incorporates changes made to the program by S.B. 93 (2020).

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
This rule change is not expected to have independent fiscal impact on state government revenues or expenditures. The amendments in this rule incorporate changes made by S.B. 93 (2020).
B) Local governments:
This rule change is not expected to have independent fiscal impact on local governments' revenues or expenditures. The amendments in this rule incorporate changes made by S.B. 93 (2020).
C) Small businesses ("small business" means a business employing 1-49 persons):
This rule change is not expected to have independent fiscal impact on small businesses' revenues or expenditures. The amendments in this rule incorporate changes made by S.B. 93 (2020).
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):
There are no non-small businesses in the industry in question, Elementary and Secondary Schools (North American Industry Classification System (NAICS) 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and

Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. This proposed rule change is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses and it does not require any expenditures of, or generate revenue for non-small businesses.

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

This rule change is not expected to have independent fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities. The amendments in this rule incorporate changes made by S.B. 93 (2020).

F) Compliance costs for affected persons:

There are no independent compliance costs for affected persons. The amendments in this rule incorporate changes made by S.B. 93 (2020).

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	FY2021	FY2022	FY2023
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0

Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head approval of regulatory impact analysis:

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

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

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

B) Name and title of department head commenting on the fiscal impacts:

Sydnee Dickson, State Superintendent

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Article X, Section 3	Section 53E-3-521	Subsection 53F-2-503(14)(a)
Subsection 53E-3-401(4)	Section 53E-4-307	Section 53E-4-307.5

Public Notice Information

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

A) Comments will be accepted until: 10/01/2020

10. This rule change MAY become effective on:	10/08/2020
NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.	

Agency Authorization Information

Agency head or designee, and title:	Angie Stallings, Deputy Superintendent	Date:	08/14/2020
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R277. Education, Administration.

R277-492. ~~Utah Science Technology and Research Initiative (USTAR) Centers~~ Math and Science Opportunities for Students and Teachers (MOST) Program.

R277-492-1. Authority and Purpose.

- (1) This rule is authorized by:
 - (a) Utah Constitution, Article X, Section 3, which vests general control and supervision of public education in the Board;
 - (b) Subsection 53E-3-401(4), which permits the Board to adopt rules to carry out its duties and responsibilities under the Utah Constitution and state law; and
 - (c) Section 53F-2-505, which provides for funding to establish extended contracts for participating ~~teachers~~ educators as part of the ~~Utah Science Technology and Research (USTAR) Centers Initiative~~ Math and Science Opportunities for Students and Teachers (MOST) program.
- (2) The purpose of this rule is to establish:
 - (a) ~~_~~ conditions for the Superintendent to manage the [USTAR]MOST [P]program;
 - (b) standards and procedures for an LEA to submit a proposal for ~~[USTAR]MOST~~ [MOST] funding to develop and create ~~[USTAR Centers]MOST programs~~ [MOST] programs to enhance the LEA's ability to retain participating ~~teachers~~ educators, offer more opportunities for students, and use capital facilities more effectively ~~[by creating an extended contract];~~ and
 - (c) requirements associated with receiving ~~[USTAR]MOST~~ [MOST] funding for a recipient LEA.

R277-492-2. Definitions.

- ~~(1) "Extended" means either a longer contract day or a longer contract year for participating teachers.]~~
- ~~(2) "LEA [USTAR]MOST proposal" means a written proposal, including components required by the Board, developed and submitted by an [school district charter school]LEA applying for [USTAR]MOST funding.~~
- ~~(2) "MOST Program" means the grant program created in Section 53F-2-505.~~
- ~~(3) "Participating [teacher]educator" means an educator who is qualified to teach mathematics or science in grades 7-12.:~~
 - ~~(a) licensed mathematics teacher with a secondary (7-12) mathematics teaching assignment; or~~
 - ~~(b) licensed science teacher with a secondary (7-12) science teaching assignment.~~
- ~~(4) "STEM" means science, technology, engineering and mathematics.~~

~~(5) "USTAR Program" means the grant program created in Section 53F-2-505.]~~

~~(4) "Regional Education Service Agency" or "RESA" means the same as that term is defined in Section 53G-4-410.~~

~~(5) "RESA MOST Proposal" means a written proposal, including components required by the Board, developed and submitted by a RESA applying for MOST base funds.~~

R277-492-3. [USTAR]MOST Proposal Criteria.

- ~~(1) An LEA shall first identify the purpose or goal(s) of its USTAR proposal.~~
- ~~(2) Appropriate purposes may include:~~
 - ~~(a) improvement in student test scores;~~
 - ~~(b) satisfaction of specific academic goals for all students or various groups of students;~~
 - ~~(c) increased retention of licensed educators in specific areas;~~
 - ~~(d) improved school climate;~~
 - ~~(e) increased opportunities for students to take remedial or college preparation courses;~~
 - ~~(f) increased student enrollment in identified courses;~~
 - ~~(g) additional opportunities for students to learn about specific or general higher education or career opportunities in math or science fields; or~~
 - ~~(h) other purposes consistent with Subsection 53F-2-505(1)(b).~~
- ~~(3) In accordance with Section 53F-2-505(1)(b)(ii), an LEA shall provide a school schedule showing how it will extend hours of the school day or days of the school year to maximize employee and facility resources in furtherance of the proposal's goals.~~
- ~~(4) A USTAR proposal shall:~~
 - ~~(a) explain how employees shall be used in the extended school day or extended school year to maximize their effectiveness with students, including how various groups of employees will participate including classified employees, licensed employees, and appropriate supervisors for all groups;~~
 - ~~(b) use USTAR grant funds only to pay for hours or days worked by participating teachers with valid, current Utah educator licenses, even though various school employee groups may be necessary or desirable to achieve the purposes of the proposal;~~
 - ~~(c) identify the number of designated employees that will participate in the extended school year or extended school day program with the understanding that USTAR grant funds may only be used for licensed participating teachers;~~
 - ~~(d) identify the compensation that participating teachers shall receive, including increased insurance and benefit costs, if appropriate, which may be reported by groups of employees or by individual employees;~~
 - ~~(e) identify how participating teachers will be evaluated for the extended hours or extended days worked;~~
 - ~~(f) include a budget section, including anticipated costs and narrative; and~~
 - ~~(g) include an annual evaluation component that provides opportunities for student, employee and parent participation in the assessment of the proposal's effectiveness.]~~
- ~~(1) An LEA MOST proposal shall include:~~
 - ~~(a) a description of the programming the LEA intends to use MOST funds for;~~
 - ~~(b) a description of the challenges the LEA's proposed programming is intended to solve;~~
 - ~~(c) the intended benefits of the proposed MOST program, which shall align with the benefits described in Subsection 53F-2-505(2)(b);~~

~~(d) an evaluation methodology for determining the efficacy of the program in meeting the intended benefits;~~

~~(e) a signed statement of assurances, expressing the LEA's intent to adhere to MOST program statutory requirements; and~~

~~(f) additional information as requested by the Superintendent.~~

~~(2) During each grant cycle, the Superintendent shall allocate a base amount of funds to participating RESAs to achieve their proposed benefits on a regional scale.~~

~~(3) A RESA MOST proposal shall include:~~

~~(a) a description of the programming the RESA intends to use MOST funds for;~~

~~(b) a description of the challenges the RESA's proposed programming is intended to solve;~~

~~(c) the intended benefits of the proposed MOST program, which shall align with the benefits described in Subsection 53F-2-505(2)(b);~~

~~(d) an evaluation methodology for determining the efficacy of the program in meeting the intended benefits;~~

~~(e) a signed statement of assurances, expressing the RESA's intent to adhere to MOST program statutory requirements; and~~

~~(f) additional information as requested by the Superintendent.~~

R277-492-4. Superintendent Responsibilities.

~~(1) Subject to legislative appropriations, [The]the Superintendent shall provide statewide supervision of the [USTAR]MOST program and budget, based on [USTAR objectives,]MOST intended benefits, and Board funding priorities[, and available funds].~~

~~(2) The Superintendent shall solicit proposals from LEAs and RESAs to participate in the [USTAR]MOST grant program.~~

~~(3)(a) In order to qualify for funding, an LEA or RESA shall submit a proposal to the Superintendent [by June 2 annually]consistent with timelines established by the Superintendent.~~

~~(a)[b] The Superintendent shall work with applicants that submit proposals early to improve proposals, to the extent of resource[s] and time availab[le]ility.~~

~~[(b) The Superintendent shall deliver final charter school proposals to the State Charter School Board for review and recommendation.~~

~~(4)(a) The State Charter School Board shall submit a consolidated request to the Superintendent, consistent with Subsection 53F-2-505(4), by June 20 annually.~~

~~(b) The State Charter Board and State Charter Board staff shall work with charter school applicants that submit proposals early to improve proposals, to the extent of resources and time available.]~~

~~(5)[4] The Superintendent shall receive all MOST proposals [from school districts, consider the consolidated request submitted by the State Charter Board as a proposal from one school district,]and rank them on an objective scale or rubric prepared by the Superintendent.~~

~~(6)[5] The Superintendent may appoint a[n expert] review panel, including representatives from Board staff and LEAs, to prioritize proposals and recommend proposals for funding.~~

~~(7)[6] The [expert]-review panel, the Superintendent, or both, shall consider the [priorities of Subsection 53F-2-505(5)]in recommending and selecting the recipients, with the following objectives:~~

~~(a) rural, urban, large, small, growing and declining school districts (considering the consolidated charter request as one school district) having unique circumstances;~~

~~(b) as many pilot programs shall be funded as possible; and~~

~~(c) funded proposals should address the objectives and benefits of Section 53F-2-505(1)(b).]the unique circumstances of~~

~~different rural, urban, large, small, growing and declining LEAs in recommending funding recipients.~~

~~(8)[7] The Superintendent shall review recommendations, make final recommendations to the Board for funding, and notify applicants that they will receive funding no later than July 31 annually.~~

~~(9)[8] The Superintendent shall provide funds to LEAs and RESAs[school districts/charter schools (or the consolidated charter recipient)] consistent with Board distribution practices for grants.~~

~~[R277-492-5. LEA and State Charter School Board Proposal Responsibilities.~~

~~(1) School districts shall submit proposals that meet the standards of Section 53F-2-505 no later than June 2 annually.~~

~~(2) The State Charter Board shall complete its work under Subsection 53F-2-505(4) and submit its consolidated request to the Superintendent no later than June 20 annually.~~

~~(3) LEA proposals shall clearly demonstrate that all participants necessary for the success of a proposal are voluntary participants and understand the requirements of their participation.~~

~~(4) LEA participants shall demonstrate parent and community notification and support of the school district/charter school proposals.~~

~~(5) Proposals shall clearly demonstrate that at least 95% of allocated funds shall be used for extended contracts for licensed participating teachers.~~

~~(6) Proposals shall clearly demonstrate that the remaining 5% of allocated funds is used only for purposes identified under Subsection 53F-2-505(6)(b).~~

~~(7) LEAs that receive USTAR funding shall provide all required evaluations to the Superintendent as identified by their proposals consistent with timelines established by the Superintendent.~~

~~(8) LEAs that receive USTAR funding shall provide information as requested by the Superintendent during the time periods identified in the proposals, including allowing for visits of Board staff and review of student work or assessments.]~~

R277-492-[6]5. Final Decision-making and Reporting Requirements.

~~(1) The Board's decisions for MOST program funding are final.~~

~~(2)(a) A grant recipient shall provide requested data or information related to its [USTAR]MOST [Funding]programming to the Superintendent each year by June 30.~~

~~(b) The Superintendent may request additional information[; data or budget information] if annual reports or student assessments indicate that [USTAR]MOST funding is being used ineffectively, for ineligible employees, or inconsistent with the [LEA's]-proposal or the intent of the law or this rule.~~

~~(3) The [USOE]Superintendent may interrupt [USTAR]MOST funding to [school districts/charter schools]LEAs or RESAs that do not meet the timelines [required by this rule]or [that]do not provide complete information or evaluations required under this rule.~~

KEY: science, technology, research, [USTAR]MOST
Date of Enactment or Last Substantive Amendment: ~~[August 7, 2018]~~2020
Notice of Continuation: July 13, 2018
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-401(4); 53F-2-505

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Repeal		
Utah Admin. Code Ref (R no.):	R277-525	Filing No. 53028

Agency Information

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

General Information

2. Rule or section catchline:
R277-525. Special Educator Stipends
3. Purpose of the new rule or reason for the change:
The language in Board Rule R277-525 have been adopted into the new Board Rule R277-319. (EDITOR'S NOTE: The proposed new Rule R277-319 is under Filing No. 53026 in this issue, September 1, 2020, of the Bulletin.)
4. Summary of the new rule or change:
Board Rule R277-525 is being repealed in its entirety. This rule is no longer necessary.

Fiscal Information

5. 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. Rule R277-525 is being repealed and the language governing the programs contained in this rule are now covered by the new Rule R277-319.
B) Local governments:
This rule change is not expected to have fiscal impact on local governments' revenues or expenditures. Rule R277-525 is being repealed and the language governing the programs contained in this rule are now covered by the new Rule R277-319.

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. Rule R277-525 is being repealed and the language governing the programs contained in this rule are now covered by the new Rule R277-319.

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

There are no non-small businesses in the industry in question, Elementary and Secondary Schools (North American Industry Classification System (NAICS) 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. This proposed repeal 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. Rule R277-525 is being repealed and the language governing the programs contained in this rule are now covered by the new Rule R277-319.

F) Compliance costs for affected persons:

There are no compliance costs for affected persons. Rule R277-525 is being repealed and the language governing the programs contained in this rule are now covered by the new Rule R277-319.

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	FY2021	FY2022	FY2023
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0

NOTICES OF PROPOSED RULES

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

H) Department head approval of regulatory impact analysis:

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

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

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

B) Name and title of department head commenting on the fiscal impacts:

Sydnee Dickson, State Superintendent

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Article X, Section 3	Subsection 53F-2-310(2)	Subsection 53E-3-401(4)
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Public Notice Information

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

A) Comments will be accepted until: 10/01/2020

10. This rule change MAY become effective on: 10/08/2020

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	Angie Stallings, Deputy Superintendent	Date:	08/14/2020
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R277. Education, Administration.

~~**R277-525. Special Educator Stipends.**~~

~~**R277-525-1. Authority and Purpose.**~~

- ~~(1) This rule is authorized by:~~
 - ~~(a) Utah Constitution Article X, Section 3, which vests general control and supervision of public education in the Board;~~
 - ~~(b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and~~
 - ~~(c) Subsection 53F-2-310(2), which requires the Board to distribute money appropriated for stipends for special educators for additional days of work.~~
- ~~(2) The purpose of this rule is provide standards and procedures for distributing money appropriated for stipends for special educators for additional days of work, recognizing:~~
 - ~~(a) the added duties and responsibilities assumed by special educators to comply with federal law and Board special education rules regulating the education of students with disabilities; and~~
 - ~~(b) the need to attract and retain qualified special educators.~~

~~**R277-525-2. Definitions.**~~

- ~~(1)(a) "After the school year" means two weeks after the final day of the required contract period, as determined by the employer.~~
- ~~(b) For year round schools, "after the school year" includes off track periods, but not vacation periods.~~
- ~~(2) "Before the school year" means two weeks before the first day of the required contract period, as determined by the employer.~~
- ~~(3) "Comprehensive Administration of Credentials for Teachers in Utah Schools" or "CACTUS" means the electronic file~~

maintained on all licensed Utah educators, which includes information such as:

- ~~(a) personal directory information;~~
- ~~(b) educational background;~~
- ~~(c) endorsements;~~
- ~~(d) employment history; and~~
- ~~(e) a record of disciplinary action taken against the educator.~~
- ~~(4)(a) "Duties related to the IEP process" means;~~
- ~~(i) duties/responsibilities provided in Subsection 53(4)F-2-310(4);~~
- ~~(ii) preparing paperwork related to the implementation of IDEA; and~~
- ~~(iii) other duties or responsibilities related to the IEP process, as determined by the special educator.~~
- ~~(b) "Duties related to the IEP process" do not include:~~
- ~~(i) professional development;~~
- ~~(ii) district level planning; and~~
- ~~(iii) direct student instruction.~~
- ~~(5) "Special educator" means:~~
- ~~(a) a licensed "special education teacher;" or~~
- ~~(b) a licensed speech language pathologist.~~
- ~~(6) "Special education teacher" has the same meaning as described in Subsection 53F-2-310(1)(b).~~
- ~~(7) "Speech language pathologist" means:~~
- ~~(a) an individual who has a Utah educator license with a speech language pathologist area of concentration; or~~
- ~~(b) a speech language pathologist license; and~~
- ~~(c) whose primary assignment is the instruction of students with disabilities who are eligible for special education services.~~
- ~~(8) "Work day for special educator" means the special educator's contract day as determined by the employer.~~

R277-525-3. LEA Responsibilities.

- ~~(1) An LEA shall contract with individual special educators and request in writing from the special educators:~~
- ~~(a) the number of days that the special educator commits to work consistent with Subsection 53F-2-310(4)(b); and~~
- ~~(b) whether the special educator will work the additional contract days before the school year begins or after the school year ends.~~
- ~~(2) A special educator hired by an LEA after October 15 may receive funding for extra days to the extent of funds available.~~
- ~~(3) An LEA shall report to the Superintendent the number of days worked by a special educator on UPIPS as follows:~~
- ~~(a) no later than October 1 for a special educator who worked before the school year began; and~~
- ~~(b) no later than June 30 for a special educator who worked after the school year ended.~~
- ~~(4) An LEA may only pay special educator stipend under this rule for actual days worked.~~
- ~~(5) An LEA may not transfer stipend work days under this rule among teachers.~~
- ~~(6) An LEA shall submit a final report to the Superintendent no later than June 30 annually that provides:~~
- ~~(a) the number of contract days worked by designated special educators; and~~
- ~~(b) other assessment or evaluation information requested by the Superintendent.~~

R277-525-4. Superintendent Responsibilities.

- ~~(1) The Superintendent shall annually review this program and recommend to the Board, based upon the annual appropriation, the number of special education days to be funded.~~

~~(2) To simplify accounting and evaluation requirements for LEAs, the Superintendent shall:~~

- ~~(a) provide model tracking and accounting materials to LEAs;~~
- ~~(b) provide a checklist of appropriate duties or tasks for special educators consistent with Subsection R277-525-2(4);~~
- ~~(c) distribute funds to participating LEAs for eligible special educators on a semiannual basis; and~~

KEY: special educators, stipends

Date of Enactment or Last Substantive Amendment: August 7, 2018

Notice of Continuation: June 7, 2018

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-401(3); 53A-17a-158]

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R277-750	Filing No. 53029

Agency Information

1. Department:	Education
Agency:	Administration
Building:	Board of Education
Street address:	250 E 500 S
City, state:	Salt Lake City, UT 84111
Mailing address:	PO Box 144200
City, state, zip:	Salt Lake City, UT 84114-4200

Contact person(s):

Name:	Phone:	Email:
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov

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

General Information

2. Rule or section catchline:
R277-750. Education Programs for Students with Disabilities
3. Purpose of the new rule or reason for the change:
Due to the passage of H.B. 29 from the 2019 General Session, Rule R277-750 is being amended per legislative requests.
4. Summary of the new rule or change:
Rule R277-750 is amended to incorporate by reference a new edition of the Board's special education rule manual.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

This rule change is not expected to have independent fiscal impact on state government revenues or expenditures. H.B. 29 (2019) required the board to incorporate the Special Education Rules Manual by reference. This amendment was delayed due to multiple iterations of updating the Special Education Rules Manual.

B) Local governments:

This rule change is not expected to have independent fiscal impact on local governments' revenues or expenditures. H.B. 29 (2019) required the board to incorporate the Special Education Rules Manual by reference. This amendment was delayed due to multiple iterations of updating the Special Education Rules Manual.

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

This rule change is not expected to have independent fiscal impact on small businesses' revenues or expenditures. H.B. 29 (2019) required the board to incorporate the Special Education Rules Manual by reference. This amendment was delayed due to multiple iterations of updating the Special Education Rules Manual.

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

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

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

This rule change is not expected to have independent fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities. H.B. 29 (2019) required the board to incorporate the Special Education Rules Manual by reference. This amendment was delayed due to multiple iterations of updating the Special Education Rules Manual.

F) Compliance costs for affected persons:

There are no independent compliance costs for affected persons. H.B. 29 (2019) required the board to incorporate the Special Education Rules Manual by reference. This amendment was delayed due to multiple iterations of updating the Special Education Rules Manual.

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	FY2021	FY2022	FY2023
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head approval of regulatory impact analysis:

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

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

There are no non-small businesses in the industry in question, Elementary and Secondary Schools (NAICS 611110). Because there are no non-small businesses,

they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. This rule change is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses and it does not require any expenditures of, or generate revenue for non-small businesses. This rule change has no fiscal impact on local education agencies and will not have a fiscal impact on small businesses either.

B) Name and title of department head commenting on the fiscal impacts:

Sydnee Dickson, State Superintendent

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Article X, Section 3	Subsection 53E-3-401(4)	Title 53E, Chapter 7, Part 2
Subsection 53E-3-501(1)		

Incorporations by Reference Information

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

	First Incorporation
Official Title of Materials Incorporated (from title page)	Special Education Rules Manual
Publisher	Utah State Board of Education
Date Issued	July 2020
Issue, or version	Version 1

Public Notice Information

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

A) Comments will be accepted until: 10/01/2020

10. This rule change MAY become effective on: 10/08/2020

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	Angie Stallings, Deputy Superintendent	Date:	08/14/2020
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R277. Education, Administration.

R277-750. Education Programs for Students with Disabilities.

R277-750-1. 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-3-501(1), which directs the Board to adopt rules regarding services for persons with disabilities;
 - (c) Title 53E, Chapter 7, Part 2, Education of Children with Disabilities, which requires the Board to adopt rules regarding educational services to students with disabilities; and
 - (d) Subsection 53E-3-401(4) which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.
- (2) The purpose of this rule is to specify standards and procedures for special education programs.

R277-750-2. Incorporation of Special Education Rules Manual by Reference.

- (1) This rule incorporates by reference the Special Education Rules manual dated ~~October~~ July 20~~16~~20, which establishes policies and procedures for:
 - (a) appropriate and timely identification of a student with a disability;
 - (b) evaluation and classification of a student with a disability by qualified personnel;
 - (c) standards for services provided to a student with a disability;
 - (d) provision for multi-district programs for a student with a disability;
 - (e) provision for delivery of service responsibilities;
 - (f) certification and qualifications for instructional staff; and
 - (g) the state's implementation of federal special education programs, including IDEA.
- (2) A copy of the manual is located at:
 - (a) <https://www.schools.utah.gov/specialeducation/resources/lawsrulesregulations/> and
 - (b) the Utah State Board of Education.

R277-750-3. Standards and Procedures.

- (1) The Board adopts and hereby incorporates by reference the ~~Individuals with Disabilities Education Improvement Act of~~

NOTICES OF PROPOSED RULES

~~2004, 20 U.S.C., 1400]IDEA~~ as the Board's rules for students with disabilities.

(2) The Superintendent and LEAs shall provide services to a student with a disability in accordance with:

(a) Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. ~~[A.] 794~~, ~~incorporated by reference in R277-112~~;

(b) this rule;

(c) the Special Education Rules, ~~[August]June 20~~~~[+6]20~~, included in the Special Education Rules manual described in Section R277-750-2; and

(d) the annual Utah State Federal Application under Part B of the ~~[Individuals with Disabilities Education Act as amended in 2004]IDEA~~.

KEY: special education

Date of Enactment or Last Substantive Amendment: ~~[October 11, 2016]2020~~

Notice of Continuation: August 15, 2016

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; Title 53E, Chapter 7, Part 2; 53E-3-501(1); 53E-3-401(4)

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R277-925	Filing No. 53030

Agency Information

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

General Information

2. Rule or section catchline:
R277-925. Effective Teachers in High Poverty Schools Incentive Program
3. Purpose of the new rule or reason for the change:
Board Rule R277-925 has been amended due to H.B. 107 from the 2020 General Session and for prior recodification process.

4. Summary of the new rule or change:
Board Rule R277-925 includes changes from the recodification process and more recent legislative changes from H.B. 107 (2020) affecting who is eligible for the program.

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
This rule change is not expected to have material fiscal impact on state government revenues or expenditures. The amendments reflect changes made by H.B. 107 (2020).
B) Local governments:
This rule change is not expected to have material fiscal impact on local governments' revenues or expenditures. The amendments reflect changes made by H.B. 107 (2020).
C) Small businesses ("small business" means a business employing 1-49 persons):
This rule change is not expected to have fiscal impact on small businesses' revenues or expenditures. The amendments reflect changes made by H.B. 107 (2020).
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 Insutry Classification System (NAICS) 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. This proposed rule change is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses and it does not require any expenditures of, or generate revenue for non-small businesses.
E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency):
This rule change is not expected to have fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities. The amendments reflect changes made by H.B. 107 (2020).
F) Compliance costs for affected persons:
There are no independent compliance costs for affected persons. The amendments reflect changes made by H.B. 107 (2020).

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	FY2021	FY2022	FY2023
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head approval of regulatory impact analysis:

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

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

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

rule change has no fiscal impact on local education agencies and will not have a fiscal impact on small businesses either.

B) Name and title of department head commenting on the fiscal impacts:

Sydnee Dickson, State Superintendent

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Article X, Section 3	Subsection 53F-2-513(2)(b)	Subsection 53E-3-401(4)
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Public Notice Information

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

A) Comments will be accepted until: 10/01/2020

10. This rule change MAY become effective on: 10/08/2020

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	Angie Stallings, Deputy Superintendent	Date:	08/14/2020
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R277. Education, Administration.

R277-925. Effective Teachers in High Poverty Schools Incentive Program.

R277-925-1. 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 53[A-1-401]E-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

NOTICES OF PROPOSED RULES

(c) ~~[Section 53A-17a-173]~~Subsection 53F-2-513(2)(b), which requires the Board to make rules for the administration of the Effective Teachers in High Poverty Schools Incentive Program.

(2) The purpose of this rule is to provide standards and procedures for the administration of the Effective Teachers in High Poverty Schools Incentive Program.

R277-925-2. Definitions.

(1) "Benchmark assessment" means the assessment described in Section 53E-4-307.

~~(1)2~~ "Eligible teacher" means the same as that term is defined in Section ~~[53A-17a-173]~~53F-2-513.

~~(2)3~~ "High poverty school" means the same as that term is defined in Section ~~[53A-17a-173]~~53F-2-513.

~~(3)4~~ "Local education agency" or "LEA" includes, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

~~(4)5~~ "Median growth percentile" or "MGP" means the same as that term is defined in Section ~~[53A-17a-173]~~53F-2-513.

~~(5)6~~ "Program" means the Effective Teachers in High Poverty Schools Incentive Program.

~~(6)7~~ "Standards assessment" means the ~~[same as that term is defined in Section 53A-1-604]~~assessment described in Section 53E-4-303.

~~(7)8~~ "State-assessed subject" means English language arts, mathematics, ~~[and]~~or science.

R277-925-3. Administration of the Program.

(1) On or before December 1, the Superintendent shall:

(a) identify high poverty schools and eligible teachers in accordance with Subsection (2);

(b) distribute a list of eligible teachers to LEAs; and

(c) inform LEAs of program requirements and the timeline for applying on behalf of an eligible teacher.

(2) The Superintendent shall identify:

(a) high poverty schools based on the proportion of students who:

(i) qualify for free or reduced lunch in the current school year, based on the October 1 enrollment headcounts; and

(ii) are classified as children affected by intergenerational poverty, as determined by the Utah Department of Workforce Services, for the most recent year data is available; and

(b) eligible teachers by determining:

(i) whether the teacher's MGP was greater than or equal to 70;

~~(i)A~~ for at least one state-assessed subject taught by the teacher;

~~(ii)B~~ as measured by student performance on a standards assessment;

~~(iii)C~~ two years before the current school year; and

~~(iv)D~~ excluding subjects or teachers with less than 10 tested students~~[-]; or~~

(ii) for a teacher in grades 1-3, whether at least 85% of the teacher's students assess as typical or better on an end of year benchmark assessment.

(3) To receive matching funds for the program, on or before January 15, an LEA shall:

(a) apply on behalf of an eligible teacher; and

(b) provide assurances that the LEA will pay half of the:

(i) teacher salary bonus; and

(ii) employer-paid benefits described in Section ~~[53A-17a-173]~~53F-2-513.

(4)(a) Subject to legislative appropriations, ~~[On]~~on or before June 1, the Superintendent shall:

(i) ensure that a teacher who was determined eligible under Subsection (1) and (2) taught at a high poverty school for the full school year; and

(ii) distribute to an LEA that meets the criteria described in Subsection (3) half of the:

(A) teacher salary bonus; and

(B) employer-paid benefits described in Section ~~[53A-17a-173]~~53F-2-513.

(b) Consistent with Section ~~[53A-17a-173]~~53F-2-513, the Superintendent may distribute the funds on a pro rata basis if the number of eligible applicants exceeds the amount of available funds.

(5)(a) An LEA or an eligible teacher may appeal eligibility to the Superintendent on the basis that the teacher:

(i) is teaching at a high poverty school;

(ii) is an eligible teacher; or

(iii) has less than 10 tested students, but can demonstrate extenuating circumstances that merit an exception.

(b) An LEA or eligible teacher shall provide documentation to the Superintendent to assist the Superintendent in deciding on the appeal.

KEY: teachers, poverty schools, incentives

Date of Enactment or Last Substantive Amendment: ~~[September 21, 2017]~~2020

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; ~~53[A-1-401]E-3-401(4); [53A-17a-173]~~53F-2-513

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R307-230	Filing No. 53003

Agency Information

1. Department:	Environmental Quality	
Agency:	Air Quality	
Room no.:	Fourth Floor	
Building:	Multi Agency State Office Building	
Street address:	195 N 1950 W	
City, state:	Salt Lake City, UT 84116	
Mailing address:	PO Box 144820	
City, state, zip:	Salt Lake City, UT 84116-4820	
Contact person(s):		
Name:	Phone:	Email:
Liam Thrailkill	801-536-4419	lthrailkill@utah.gov

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

General Information

2. Rule or section catchline:
R307-230. NOx Emission Limits for Natural Gas-Fired Water Heaters
3. Purpose of the new rule or reason for the change:
The Utah State Legislature passed H.B. 374 passed in the 2020 General Session which amended the State Construction and Fire Codes Act, which caused the Division of Air Quality (Division) to amend Rule R307-230 to align this rule with state code, maintain the efficacy of this rule, and to assist affected parties in finding compliant water heater models.
4. Summary of the new rule or change:
The amendment incorporates the updated language in state code. Additionally, the amendment requires written approval from the Division Director on a form provided by the Division. The form would request the heat input rating of the water heater being replaced, and Division staff would use the information to compare to the South Coast Air Quality Management District (SCAQMD) List of Certified Units to identify whether an ultra-low NOx model is available for a given heat rating. If a certified ultra-low NOx water heater is found to be unavailable for the BTU rating of the unit being replaced, the exemption would then be approved.

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
There will be very minimal to no cost for the state budget as a result of this rule amendment. The minimal costs would be in setting up the online application and receiving the applications, both of which will fall into the duties of currently employed staff.
B) Local governments:
There will be no costs or savings to local governments as this rule amendment is not applicable to them.
C) Small businesses ("small business" means a business employing 1-49 persons):
Anticipated costs or savings to small businesses may come from filling out an application, although the anticipated application will be short and easily accessible, so there will be no major commitments from small businesses to complete this process.
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):
Anticipated costs or savings to non-small businesses may come from filling out an application, although the anticipated application will be short and easily accessible,

so there will be no major commitments from small businesses to complete this process.

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

Anticipated costs or savings to persons other than small businesses, non-small businesses, state, or local government entities may come from filling out an application, although the anticipated application will be short and easily accessible, so there will be no major commitments from small businesses to complete this process.

F) Compliance costs for affected persons:

There are no anticipated compliance costs for affected persons as the rule amendment simply incorporates state statute and adds the provision of filling out an application for the exemption, of which the application will be easily accessible and short.

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	FY2021	FY2022	FY2023
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0

NOTICES OF PROPOSED RULES

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

H) Department head approval of regulatory impact analysis:

The Executive Director of the Department of Environmental Quality, L. Scott Baird, has reviewed and approved this fiscal analysis.

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

The amendment to Rule R307-230 incorporates state statute as amended by H.B. 374 (2020), and adds a provision for an application to be sent to the Director of the Division, neither of which are anticipated to have a fiscal impact on businesses.

B) Name and title of department head commenting on the fiscal impacts:

L. Scott Baird, Executive Director

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Section 19-2-101	Section 19-2-104	Section 19-2-107.7
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Incorporations by Reference Information

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

	First Incorporation
Official Title of Materials Incorporated (from title page)	15A-6-102 Nitrogen Oxide emission limits for natural gas-fired water heaters
Publisher	Utah State Code
Issue, or version	07/01/2020

Public Notice Information

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

A) Comments will be accepted until:	10/01/2020
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10. This rule change MAY become effective on:	11/05/2020
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NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	Bryce Bird, Director	Date:	07/14/2020
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R307. Environmental Quality, Air Quality.

R307-230. NO_x Emission Limits for Natural Gas-Fired Water Heaters.

R307-230-1. Purpose.

The purpose of Rule R307-230 is to reduce emissions of nitrogen oxides (NO_x) from natural gas-fired water heaters.

R307-230-2. Applicability.

Rule R307-230 applies to the sale or installation of natural gas-fired water heaters on or after July 1, 2018.

R307-230-3. Emission Limits and Requirements.

(1) The State Construction and Fire Codes Act, Subsection 15A-6-102, ~~Enacted~~ amended by Chapter ~~2~~136, 2020~~47~~ General Session, is hereby incorporated by reference.

(2) Manufacturers shall use South Coast Air Quality Management District Method 100.1 to comply with the NO_x emission limits.

(3) Persons seeking to sell or install a natural gas-fired water heater with an emission rate greater than the limits established under Subsection 15A-6-102(2)(a) as allowed under Subsection 15A-6-102(6) must first obtain written approval using a form provided by the Division from the Director appointed under 19-2-107 verifying that a water heater model does not exist that has an input of equal BTUs per hour as the water heater being replaced that meets the limits established under Subsection 15A-6-102(2)(a).

KEY: water heaters, natural gas, NO_x, air quality

Date of Enactment or Last Substantive Amendment: ~~August 3, 2017~~ 2020

Authorizing, and Implemented or Interpreted Law: 19-2-101; 19-2-104; 19-2-107.7

NOTICE OF PROPOSED RULE		
TYPE OF RULE: New		
Utah Admin. Code Ref (R no.):	R307-240	Filing No. 53004

Agency Information

1. Department:	Environmental Quality	
Agency:	Air Quality	
Room no.:	Fourth Floor	
Building:	Multi Agency State Office Building	
Street address:	195 N 1950 W	
City, state:	Salt Lake City, UT 84116	
Mailing address:	PO Box 144820	
City, state, zip:	Salt Lake City, UT 84116-4820	
Contact person(s):		
Name:	Phone:	Email:
Liam Thrailkill	801-536-4419	lthrailkill@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R307-240. Prescribed Burning
3. Purpose of the new rule or reason for the change:
This new rule comes in response to H.B. 92 being passed and enacted during the 2020 General Session. Rule R307-240 incorporates Section 19-2a-105 into the air quality rules.
4. Summary of the new rule or change:
This new rule incorporates by reference Section 19-2a-105 and reiterates the need for Director approval of an application before allowing prescribed burning or pile burning when the clearing index is below 500.

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
There is anticipated to be very minimal or no cost to the state budget as a result of this new rule. The minimal costs would be in setting up and creating the application along with staff time directed at receiving and considering the applications. The duties will be assigned to existing staff and will be placed into current duties, resulting in no additional hires.
B) Local governments:
There will be no costs or savings to local governments as this rule is not applicable to them.
C) Small businesses ("small business" means a business employing 1-49 persons):

Small businesses are not expected to incur any costs from this new rule as the application is not anticipated to be strenuous or time consuming and should not require any additional hires to complete. Additionally, this rule is incorporating by reference existing state statute, so no new provisions are being imposed.

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

Non-small businesses are not expected to incur any costs from this new rule as the application is not anticipated to be strenuous or time consuming and should not require any additional hires to complete. Additionally, this rule is incorporating by reference existing state statute, so no new provisions are being imposed.

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**):

Anticipated costs to persons other than small businesses, non-small businesses, state, or local government entities is expected to be negligible as the only possibility comes from filling out an application, which will not be strenuous.

F) Compliance costs for affected persons:

There are no anticipated compliance costs for affected persons as the rule amendment simply incorporates state statute and reiterates the need to fill out an application and receive approval from the Director before conducting a prescribed burn or pile fire burn when the clearing index is below 500.

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	FY2021	FY2022	FY2023
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			

NOTICES OF PROPOSED RULES

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

H) Department head approval of regulatory impact analysis:

The Executive Director of the Department of Environmental Quality, L. Scott Baird, has reviewed and approved this fiscal analysis.

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

New Rule R307-240 incorporates state statute as amended by H.B. 92 (2020) and reiterates the need for approval from the Director to be granted an exemption to conduct a prescribed burn or pile fire burn when the clearing index is below 500. This new rule is not anticipated to have any fiscal impact on businesses.

B) Name and title of department head commenting on the fiscal impacts:

L. Scott Baird, Executive Director

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Section 19-2-101	Section 19-2-104	Section 19-2a-105
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Incorporations by Reference Information

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

	First Incorporation
Official Title of Materials Incorporated (from title page)	19-2a-105. Prescribed fires, pile burns, and nonfull suppression events
Publisher	Utah State Code
Issue, or version	07/01/2020

Public Notice Information

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

A) Comments will be accepted until:	10/01/2020
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10. This rule change MAY become effective on: 10/08/2020

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	Bryce Bird, Director	Date:	07/15/2020
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R307. Environmental Quality, Air Quality.

R307-240. Prescribed Burning.

R307-240-1. Purpose.

The purpose of Rule R307-240 is to permit prescribed burning and pile burning under the conditions outlined in the May 12, 2020 version of Subsections 19-2a-105(3) through 19-2a-105(5), which is hereby incorporated by reference.

R307-240-2. Applicability.

Rule R307-240 applies to land managers who conduct prescribed burns and pile burns in wildland and non-wildland areas.

R307-240-3. Definitions.

The definitions in the May 12, 2020 version of Utah Code 19-2a-105 apply to Rule R307-240.

R307-240-4. Special Condition Burn Permit.

(1) Land managers who request a burn permit when the clearing index is below 500 shall submit to the Director an application that demonstrates that the conditions in Subsections 19-2a-105(3) through 19-2a-105(5) are met.

(2) Land managers shall not conduct prescribed burning or pile burning when the clearing index is below 500 until the Director approves the application required in Subsection R307-240-3(1).

KEY: air quality, prescribed burning

Date of Enactment or Last Substantive Amendment: 2020

Authorizing, and Implemented or Interpreted Law: 19-2-101; 19-2-104; 19-2a-105

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R539-5	Filing No. 53010

Agency Information

1. Department:	Human Services	
Agency:	Services for People with Disabilities	
Building:	MASOB	
Street address:	195 N 1950 W	
City, state, zip:	Salt Lake City, UT 84116	
Contact person(s):		
Name:	Phone:	Email:
Kelly Thomson	435-669-4855	kthomson@utah.gov
Jonah Shaw		jshaw@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R539-5. Self-Administered Services
3. Purpose of the new rule or reason for the change:
The reason for the change is to make the option of paying parents, guardians, and spouses possible during a declared emergency. Increase the budget limit of self-administered services to \$63,400 from \$50,000.
4. Summary of the new rule or change:
The amendment permits the Division of Services for People with Disabilities (DSPD) to maximize use of Appendix K emergency provisions when authorized by the Centers for Medicare and Medicaid Services. The exception will add flexibility that allows DSPD to rapidly respond to states of emergency. To keep up with cost of living, the individual budget limit for self-administered services is increased. Also, rule language was remediated to conform to the rule writing manual.

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
An emergency rule was concurrently submitted that contains the anticipated cost of paying parents, guardians, and spouses during the 120 day timeframe. (EDITOR'S NOTE: A corresponding emergency filing on Section R539-5-5 that was effective on 08/13/2020 is under Filing No. 53009 in this issue, September 1, 2020, of the Bulletin.)

This amendment does not have anticipated costs or savings associated with it. The added exception allows DSPD to use state and federal money when allocated for that purpose. State funding to pay parents, guardians, and spouses will end September 30, 2020, unless additional money is approved. The Self-Administered Services (SAS) budget limit increase would likely have little to no fiscal impact. The amended section of rule already allows the DSPD Director to waive the budget limitation. In FY 2020, 188 people were granted an exception to the SAS limit, and the amended amount increases the budget limit by the average amount spent.

B) Local governments:

There is no anticipated impact. Local governments do not contribute funds to state provided waiver services.

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

There is no anticipated impact. Small businesses do not contribute funds to state provided waiver services.

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

There is no anticipated impact. Non-small businesses do not contribute funds to state provided waiver services.

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

Persons other than small businesses, non-small businesses, state, or local government entities will not see a cost or savings. SAS budgets are funded by state and federal money.

F) Compliance costs for affected persons:

This amendment will not result in compliance costs for affected parties. The management of SAS budgets will not change.

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	FY2021	FY2022	FY2023
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0

NOTICES OF PROPOSED RULES

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

H) Department head approval of regulatory impact analysis:

The Executive Director of the Department of Human Services, Ann Williamson, has reviewed and approved this fiscal analysis.

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

After conducting a thorough analysis, it was determined that this proposed rule change will not result in a significant fiscal impact to small businesses.

B) Name and title of department head commenting on the fiscal impacts:

Ann Williamson, Executive Director

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Section 62A-5-102	Section 62A-5-103	
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Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency

not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until: 10/01/2020

10. This rule change MAY become effective on: 10/08/2020

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	Ann Williamson, Executive Director	Date:	08/13/2020
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R539. Human Services, Services for People with Disabilities.

R539-5. Self-Administered Services.

R539-5-1. Purpose.

(1) The purpose of this rule is to establish a procedure[s] and a standard[s] for a [P]person[s] and their family[ies] receiving [S]self-[A]administered [S]services.

R539-5-2. Authority.

(1) This rule establishes a procedure[s] and a standard[s] for [S]self-[A]administered [S]services as required by Subsection 62A-5-103(8).

R539-5-3. Definitions.

(1) Terms used in this rule are defined in Sections 62A-5-101 and R539-1-2.

~~(2) In addition:~~

~~(a)(2) "Direct Services" means any service[s] delivered by an employee in the physical presence of the [P]person.~~

~~(b)(3) "Employee" means any individual hired to provide services to a [P]person receiving [S]self-[A]administered [S]services.~~

~~(c)(4) "Fiscal Agent" means an individual or entity contracted by the [D]division to perform fiscal, legal, and management duties.~~

~~(d)(5) "Grant" means a budget allocated by the [D]division to the [P]person through which [S]self-[A]administered [S]services are purchased.~~

~~(e)(6) "Grant Agreement" means a written agreement between the [P]person and the [D]division that outlines each requirement[s] the [P]person must follow while receiving [S]self-[A]administered [S]services.~~

~~(f)(7) "Self-Administered Services" means [a structure for a Person or Representative to administer Division paid services. This program allows the Person to hire, train, and supervise employees who will provide direct services from selected services as outlined in the current State of Utah Home and Community Based Services Waivers (Medicaid 1915C). Once the Person is allocated a budget, a Grant is issued for the purpose of purchasing specific services. Grant funds are only disbursed to pay for actual services rendered. All payments are~~

made through a Fiscal Agent under contract with the Division. Payments are not issued to the Person, but to and in the name of the Employee, a structure for a person or representative to administer a service paid by the division. This program allows the person to hire, train, and supervise an employee who will provide a direct service from a service selection as outlined in the 1915c Medicaid home and community-based services waiver that the person is enrolled in. After the person is allocated a budget, a grant is issued for the purpose of purchasing a specific service. Grant funds are only disbursed to pay for a service rendered. Each payment is made through a contracted fiscal agent directly to the employee who provided the service.

R539-5-4. Participant Requirements.

(1) ~~In addition to Division Rule, a~~ [P]person receiving [S]self-[A]administered [S]services must adhere to the terms of their [G]grant [A]agreement.

(2) ~~If the Person does not meet the requirements in Rule and the Grant Agreement, t~~The [D]division may require the [P]person to use a contracted [P]provider[-] if the person fails to meet a requirement described in rule or the grant agreement.

(3) The [P]person shall ensure that each [E]employee completes ~~the~~each requirement[s] outlined in Section R539-5-5.

(4) The [P]person shall provide the [F]fiscal [A]agent with ~~the following~~ documentation[s] for each [E]employee hired to provide a service[s]:

(a) [O]original [F]form W-4;

(b) [O]original [F]form I-9 ~~(including supporting documentation)~~;

(c) original background screening application;

~~(e)~~(d) [C]copy of the signed [E]employment [A]agreement; and

~~(b)~~(c) each [O]original signed [T]timesheet[s] in order to verify~~ing~~ that the time worked is true and accurate.

(5) The [P]person or [R]representative shall complete a [M]monthly [S]summary of service[s] for each month ~~in which~~that a service[s] are is rendered, ~~and submit it to the Support Coordinator by the 15th of the month following the month of services.~~

(a) The person must submit the monthly summary to the support coordinator by the 15th of the month following the month of services.

~~(a)~~(b) If the [P]person ~~does not provide this information to the Division~~fails to provide a monthly summary to the support coordinator for a three month period, ~~then~~ the fourth month's payment shall be withheld until ~~the~~each monthly summary~~ies are~~ is submitted.

~~(b)~~(c) If the [P]person submits ~~all~~each required monthly summary~~ies within~~ during the fourth month[-] ~~then~~ payment will be reinstated.

~~(e)~~(d) If a monthly summary~~ies are~~ is not provided for the fifth month, then at the sixth month, the [D]division will require the [P]person to use a contracted [P]provider and not participate in [S]self-[A]administered [S]services.

(6) The [D]division may require the [P]person to use generally available~~some form of~~ technical assistance ~~including~~[-]if needed (i.e. Behaviorist, Accountant, Division Supervisor, etc.). Technical assistance is available to the Person, even if not required by the Division.]

(a) a behaviorist;

(b) an accountant; or

(c) a division supervisor.

(7) The [P]person[s] or [R]representative shall notify the [S]support [C]coordinator if any of the following occurs:

(a) ~~If~~the [P]person moves to another residence;

(b) ~~If~~the [P]person is ~~in~~admitted to a ~~the~~hospital or a nursing ~~home~~facility; or

(c) ~~the~~ [D]death of the [P]person.

R539-5-5. Employee Requirements.

(1) An~~H~~ [E]employee[s] hired by the [P]person must be 16 years of age or older.~~Employees under age 18 must have the Employee Agreement co-signed by their parent/Guardian.]~~

(a) An employee younger than age 18 must have the employee agreement co-signed by their parent or guardian.

~~(2) Parents, Guardians, or step-parents shall not be paid to provide services to the Person, nor shall an individual be paid to provide services to a spouse with the exception that spouses who were approved by the Division to provide reimbursed support for a Person in a non-Medicaid funded program prior to May 17, 2005 may continue to be reimbursed. This exception is only valid for support of the current spouse receiving Division services and shall not be allowed by the Division in the event that the spouses divorce or if one spouse dies. A spouse who is approved by the Division to provide support under this provision is limited to a maximum of \$15,000 during the State Fiscal year, which begins on July 1st and ends the following year on June 30th.]~~

(2) Except as provided in Subsection (2)(a) and (2)(b), a parent, guardian, step-parent, or spouse shall not be paid to provide a service to the person.

(a) In a non-Medicaid funded program the following apply.

(i) A spouse approved by the division before May 17, 2005, to provide paid support for a person in a non-Medicaid funded program may continue to be reimbursed.

(ii) Payment to an approved spouse shall not exceed \$15,000 in a fiscal year.

(iii) The exception terminates at the time of divorce or the death of one spouse.

(b) During a state of emergency declared by the state or federal government the following apply.

(i) A parent, step-parent, guardian, or spouse may be paid to provide services to a person when necessary to maintain access to support and no other provider is available.

(A) An approved Appendix K must authorize payment to a legally responsible caregiver and guardian.

(B) Additional state and federal funding must be available.

(ii) Any service provided must conform to the person's service plan.

(iii) A parent, step-parent, guardian, or spouse must obtain approval from the support coordinator before providing a service.

(3) ~~Employees must complete the following prior to working with the Person and receiving payment from the Fiscal Agent: An employee must complete each employment requirement in order to get authorization to work with the person and to receive payment from the fiscal agent.~~

(a) Complete and sign a [F]form W-4.[-]

(b) Complete and sign a [F]form I-9.~~(including supporting documentation)~~;

(c) Complete a background check.

~~(e)~~(d) Complete and sign the [E]employee [A]agreement, [Form;]

~~(b)~~(c) [Read and sign the Department and Division Code of Conduct (Department Policy 05-03 and Division Directive 1.20); and] Read and sign the Department of Human Services Policy and Procedure, Code of Ethics, 02-03 (January 2013) and the Division of Services for People with Disabilities Directive, Code of Conduct, 1.20 (January 2000), both incorporated by reference.

NOTICES OF PROPOSED RULES

~~(e)(f)~~ ~~Review the approved and prohibited Behavior Supports as identified in R539-3-10, the Support Book, and other best practice sources recommended by the Division, if applicable. Behavior Supports shall not violate R495-876, R512-202, Sections 62A-3-301 through 62A-3-321, and Sections 62A-4a-402 through 62A-4-412 prohibiting abuse.]~~ Review the approved and prohibited behavior support as described in Section R539-3-10. Behavior support shall not violate Sections R495-876, R512-202, 62A-3-301 through 62A-3-321, and 62A-4a-402 through 62A-4-412.

~~(f)(g)~~ Review the [P]person's [S]support [B]book.

~~(h)~~ Review any other best practice material recommended by the division.

~~(g)(i)~~ Complete any screening[s] and training[s] necessary to provide for the health and safety of the [P]person ~~(i.e., training for any specialized medical needs of the Person).~~

~~(h)(j)~~ ~~If applicable, be~~ Complete training[ed] on the [P]person's [B]behavior [S]support [P]plan.

~~(i)(k)~~ Complete and sign the [A]application for [C]certification [F]form.

R539-5-6. Incident Reports.

(1) The [P]person or [R]representative shall notify ~~the Division]~~ their support coordinator by phone, email, or fax within 24 hours of any reportable incident that occurs while the [P]person is in the care of an [E]employee ~~within 24 hours of the occurrence.~~

(2) The support coordinator shall notify the division by phone, email, or fax within 24 hours of any reportable incident that occurs while the person is in the care of an employee.

~~(2)(3)~~ Within five business days of ~~the occurrence of]~~ an incident, the ~~Person or Representative]~~ support coordinator shall complete a Form 1-8[s] Incident Report[s] and file it with the [D]division.

~~(3)(4)~~ Reportable incidents include: ~~The following incidents require the filing of a report:]~~

(a) [A]actual ~~or~~ and suspected incident[s] of abuse, neglect, exploitation, or maltreatment as described in the Division of Services for People with Disabilities Directive 1.20 incorporated by reference in Subsection R539-5-5(3)(e), Sections 62A-3-301 through 62A-3-321 for adults, and Sections 62A-4a-401 through 62A-4a-412 for children; ~~per the DHS/DSPD Code of Conduct and Sections 62 A 3 301 through 321 for adults and Sections 62-4a-401 through 412 for children;~~

(b) [D]drug or alcohol abuse;

(c) [M]medication overdose[s] or error[s] that requires ~~reasonably requiring]~~ medical intervention;

(d) [M]missing [P]person;

(e) [E]vidence of seizure in a [P]person with no seizure diagnosis;

(f) ~~Significant]~~ property destruction totaling \$500 or more in damage ~~(Damage totaling \$500.00 or more is considered significant);~~

(g) [P]physical injury that requires ~~reasonably requiring a]~~ medical intervention;

(h) [L]law enforcement involvement;

(i) [U]use of mechanical restraint[s], time-out room[s], or highly noxious stimuli that is not outlined in the [B]behavior [S]support [P]plan[s] as defined in Section R539-4; ~~and~~ ~~or]~~

(j) [A]any other instance[s] that the [P]person or [R]representative determine[s] should be reported.

~~(4) After receiving an incident report, the Support Coordinator shall review the report and determine if further review is warranted.]~~

R539-5-7. Service Delivery Methods.

(1) A [P]person[s] authorized to receive [S]self-[A]administered [S]services may also use the provider agency service delivery method ~~receive services through a Provider Agency]~~ in order to obtain a ~~the array of]~~ service[s] that best meets the [P]person's needs.

R539-5-8. Limitation.

~~(1) The amount allowed for direct services (all self-administered services are allowed other than Fiscal Management) is limited to no more than \$50,000 for each fiscal year. If a Self-Administered Services program exceeds this amount the method of service delivery must change to either a contracted provider service delivery method or a combination of Self Administered Services and contracted provider service delivery method. If it is determined by the Division that a contracted provider service delivery method is not possible, the Division Director can grant a waiver to the cost limit for a Self Administered method of service delivery.]~~

(1) The direct service portion of a self-administered services budget shall not exceed \$63,400 in a fiscal year.

(a) Fiscal management service is not a direct service.

(2) If a person's self-administered direct service budget exceeds \$63,400 in a fiscal year, the service delivery method must change to either:

(a) the provider agency service delivery method; or

(b) a combination of the self-administered services method and provider agency method.

(3) The division director may waive the person's self-administered services budget limitation, if use of the provider agency method is not possible.

KEY: disabilities, self administered services

Date of Enactment or Last Substantive Amendment: ~~June 29, 2009~~ 2020

Notice of Continuation: July 15, 2019

Authorizing, and Implemented or Interpreted Law: 62A-5-102; 62A-5-103

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code Ref (R no.):	R602-2-1	Filing No.	53008
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Agency Information

1. Department:	Labor Commission	
Agency:	Adjudication	
Room no.:	Third Floor	
Building:	Heber M Wells	
Street address:	160 E 300 S	
City, state:	Salt Lake City, UT	
Mailing address:	PO Box 146600	
City, state, zip:	Salt Lake City, UT 84114-6600	
Contact person(s):		
Name:	Phone:	Email:
Aurora Holley	801-530-6865	auroraholley@utah.gov

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

General Information

2. Rule or section catchline:

R602-2-1. Pleadings and Discovery

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

This rule is an amendment to change the title (catchline) and to include a new section addressing abstracts and the process to obtain an abstract.

4. Summary of the new rule or change:

The title of the rule is being changed to better describe the content of the rule. An injured worker may request an abstract. The judge may hold a hearing if the abstract is contested. Different processes apply to cases involving permanent total disability benefits.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

There is anticipated no cost or savings as a result of this rule change. This rule change simply creates a formalized process for obtaining an abstract.

B) Local governments:

There is anticipated no cost or savings as a result of this rule change. This rule change simply creates a formalized process for obtaining an abstract.

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

There is anticipated no cost or savings as a result of this rule change. This rule change simply creates a formalized process for obtaining an abstract.

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

There is anticipated no cost or savings as a result of this rule change. This rule change simply creates a formalized process for obtaining an abstract.

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 anticipated no cost or savings as a result of this rule change. This rule change simply creates a formalized process for obtaining an abstract.

F) Compliance costs for affected persons:

There are no compliance costs for affected persons. The compliance cost of seeking an abstract would be the same for both parties before and after the rule change.

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	FY2021	FY2022	FY2023
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head approval of regulatory impact analysis:

The Commissioner of the Labor Commission, Jaceson R Maughan, has reviewed and approved this fiscal analysis.

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

There should be no fiscal impact on businesses by this rule change, as it merely outlines a process for requesting an abstract from a Labor Commission decision.

B) Name and title of department head commenting on the fiscal impacts:
Jacson R. Maughan, Commissioner

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):		
Section 34A-1-301 et seq.	Section 63G-4-102 et seq.	Subsection 34A-1-304(2)
Section 34A-2-212		

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	10/01/2020

10. This rule change MAY become effective on:	10/08/2020
NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.	

Agency Authorization Information

Agency head or designee, and title:	Jacson R. Maughan, Commissioner	Date:	08/12/2020
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R602. Labor Commission, Adjudication.
R602-2. Adjudication of Workers' Compensation and Occupational Disease Claims.

R602-2-1. ~~Pleadings and Discovery.~~ Adjudicative Process.

- A. Definitions.
 - 1. "Commission" means the Labor Commission.
 - 2. "Division" means the Division of Adjudication within the Labor Commission.
 - 3. "Application for Hearing" means Adjudication Form 001 Application for Hearing Industrial Accident Claim, Adjudication Form 026 Application for Hearing Occupational Disease Claim, Adjudication Form 025 Application for Dependent's Benefits and ~~for~~ Burial Benefits Industrial Accident, Adjudication Form 027 Application for Dependent's Benefits Occupational Disease, ~~of~~ other request for

agency action complying with ~~the Utah Administrative Procedures Act Utah Code~~ Section 63G-4-102 et seq. filed by an employer ~~of~~ or insurance carrier regarding a workers' compensation claim.

4. "Supporting medical documentation" means Adjudication Form 113 Summary of Medical Record or other medical report or treatment note completed by a physician that indicates the presence or absence of a medical causal connection between benefits sought and the alleged industrial injury or occupational disease.

5. "Authorization to Release Medical Records" is Adjudication Form 308 Authorization to Disclose, Release and Use Protected Health Information authorizing the injured workers' medical providers to provide medical records and other medical information to the commission or a party.

6. "Supporting documents" means supporting medical documentation, Adjudication Form 307 Medical Treatment Provider List, Adjudication Form 308 Authorization to Disclose, Release and Use Protected Health Information and, when applicable, Adjudication Form 152 Appointment of Counsel.

7. "Petitioner" means the person or entity who has filed an Application for Hearing.

8. "Respondent" means the person or entity against whom the Application for Hearing was filed.

9. "Discovery motion" includes a motion to compel or a motion for protective order.

10. "Designated agent" is the agent authorized to receive all notices and orders in workers' compensation adjudications pursuant to ~~Utah Code~~ Section 34A-2-113. ~~All~~ Designated agents shall provide the Adjudication Division an electronic address to receive delivery of documents from the Adjudication Division.

B. Application for Hearing.

1. Whenever a claim for compensation benefits is denied by an employer or insurance carrier, the burden rests with the injured worker, authorized representative of a deceased worker's estate, dependent of a deceased worker or medical provider, to initiate agency action by filing an appropriate Application for Hearing with the Division. Applications for hearing shall include an original, Adjudication Form 308 Authorization to Disclose, Release and Use Protected Health Information.

2. An employer, insurance carrier, or any other party with standing under the Workers' Compensation Act may obtain a hearing before the Adjudication Division by filing a request for agency action with the Division complying with the ~~Utah Administrative Procedures Act Utah Code~~ Section 63G-4-102 et seq.

3. ~~All~~ An Application[s] for Hearing shall include supporting medical documentation of the claim where there is a dispute over medical issues. Applications for Hearing without supporting documentation and a properly completed Adjudication Form 308 Authorization to Disclose, Release and Use Protected Health Information may not be mailed to the employer or insurance carrier for answer until the appropriate documents have been provided. In addition to respondent's answer, a respondent may file a motion to dismiss the Application for Hearing where there is no supporting medical documentation filed to demonstrate medical causation when such is at issue between the parties.

4. When an Application for Hearing with appropriate supporting documentation is filed with the Division, the Division shall mail to the respondents a copy of the Application for Hearing, supporting documents and Notice of Formal Adjudication and Order for Answer.

5. In cases where the injured worker is represented by an attorney, a completed and signed Adjudication Form 152 Appointment

of Counsel form shall be filed with the Application for Hearing or upon retention of the attorney.

C. Answer.

1. The respondent~~(s)~~ shall have 30 days from the date of mailing the Order for Answer to file a written answer to the Application for Hearing.

2. The answer shall admit or deny liability for the claim and shall state the reasons liability is denied. The answer shall state all affirmative defenses with sufficient accuracy and detail that the petitioner and the Division may be fully informed of the nature and substance of the defenses asserted.

3. ~~All~~An answer~~s~~ shall include a summary of benefits which have been paid to date on the claim, designating such payments by category, ~~ie~~such as medical expenses, temporary total disability, permanent partial disability~~etc~~.

4. When liability is denied based upon medical issues, copies of reasonably available, admissible medical reports sufficient to support the denial of liability shall be filed with the answer.

5. If the answer filed by the respondents fails to sufficiently explain the basis of the denial, fails to include medical reports or records to support the denial, or contains affirmative defenses without sufficient factual detail to support the affirmative defense, the Division may strike the answer filed and order the respondent to file within 20 days a new answer which conforms with the requirements of this rule.

6. ~~All~~An answer~~s~~ must state whether the respondent is willing to mediate the claim.

7. Petitioners are allowed to timely amend the Application for Hearing, and respondents are allowed to timely amend the answer, as newly discovered information becomes available that would warrant the amendment. The parties shall not amend their pleadings later than 45 days prior to the scheduled hearing without leave of the Administrative Law Judge.

8. Responses and answers to amended pleadings shall be filed within ten days of service of the amended pleading without further order of the Labor Commission.

D. Default.

1. If a respondent fails to file an answer as provided in Subsection ~~C above~~(c), the Division may enter a default against the respondent.

2. If default is entered against a respondent, the Division may conduct any further proceedings necessary to take evidence and determine the issues raised by the Application for Hearing without the participation of the party in default pursuant to Subsection 63G-4-209(4)~~Utah Code~~.

3. A default of a respondent shall not be construed to deprive the Employer's Reinsurance Fund or Uninsured Employers' Fund of any appropriate defenses.

4. The defaulted party may file a motion to set aside the default under the procedures ~~set forth~~in Subsection 63G-4-209(3)~~Utah Code~~. The Adjudication Division shall set aside defaults upon written and signed stipulation of ~~all~~parties to the action.

E. Waiver of Hearing.

1. The parties may, with the approval of the administrative law judge, waive their right to a hearing and enter into a stipulated set of facts, which may be submitted to the administrative law judge. The administrative law judge may use the stipulated facts, medical records and evidence in the record to make a final determination of liability or refer the matter to a Medical Panel for consideration of the medical issues pursuant to Section R602-2-2.

2. Stipulated facts shall include sufficient facts to address ~~all~~the issues raised in the Application for Hearing and answer.

3. In cases where Medical Panel review is required, the administrative law judge may forward the evidence in the record, including ~~but not limited to,~~ medical records, fact stipulations, radiographs and deposition transcripts, to a medical panel for assistance in resolving the medical issues.

F. Discovery.

1. Upon filing the answer, the respondent and the petitioner may commence discovery. Discovery documents may be delivered by electronic transmittal. Discovery allowed under this rule may include interrogatories, requests for production of documents, depositions, and medical examinations. Discovery shall not include requests for admissions. Appropriate discovery under this rule shall focus on matters relevant to the claims and defenses at issue in the case. ~~All~~Discovery requests are deemed continuing and shall be promptly supplemented by the responding party as information becomes available.

2. Without leave of the administrative law judge, or written stipulation, any party may serve upon any other party written interrogatories, not exceeding 25 in number, including ~~all~~discrete subparts, to be answered by the party served. The frequency or extent of use of interrogatories, requests for production of documents, medical examinations ~~and~~or depositions shall be limited by the administrative law judge if it is determined that:

a. ~~The~~the discovery sought is unreasonably cumulative or duplicative, or is obtainable from another source that is more convenient, less burdensome, or less expensive;

b. ~~The~~the party seeking discovery has had ample opportunity by discovery in the action to obtain the discovery sought; or

c. ~~The~~the discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the adjudication.

3. Upon reasonable notice, the respondent may require the petitioner to submit to a medical examination by a physician of the respondent's choice.

a. Petitioner may seek relief from the medical examination detailed ~~above~~in subsection 3,this subsection, and the administrative law judge may provide such relief, upon the showing by ~~the~~a petitioner of an unreasonable demand by respondent related to such medical examination.

b. Respondent shall send any questionnaire, consent or release forms requested by the examining physician or insurance carrier to the petitioner at least 14 days prior to the scheduled medical examination.

c. After a reasonable attempt between the parties to resolve any issues which may arise due to the forms in ~~subpart~~subsection (b)~~above~~, a petitioner shall file ~~any~~objections to any questionnaire, consent or release forms requested by the examining physician or insurance carrier~~;~~ with the administrative law judge at least seven days prior to the scheduled medical examination.

4. ~~All p~~Parties may conduct depositions pursuant to the Utah Rules of Civil Procedure and Section 34A-1-308~~Utah Code~~.

5. Requests for production of documents are allowed, but limited to matters relevant to the claims and defenses at issue in the case, and shall not include requests for documents provided with the petitioner's Application for Hearing, nor the respondents' answer.

6. Parties shall diligently pursue discovery so as not to delay the adjudication of the claim. If a hearing has been scheduled, discovery motions shall be filed no later than 45 days prior to the hearing unless leave of the administrative law judge is obtained.

7. Discovery motions shall contain copies of ~~all~~relevant documents pertaining to the discovery at issue, such as mailing certificates and follow up requests for discovery. The responding party

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shall have 10 days from the date the discovery motion is mailed to file a response to the discovery motion.

8. Parties conducting discovery under this rule shall maintain mailing certificates and follow up letters regarding discovery to submit in the event Division intervention is necessary to complete discovery. Discovery documents shall not be filed with the Division at the time they are forwarded to opposing parties.

9. Any party who fails to obey an administrative law judge's discovery order shall be subject to the sanctions available under ~~Rule 37,~~ the Utah Rules of Civil Procedure, Rule 37.

10. Notwithstanding the disclosures required under Section ~~Rule~~ R602-2-1, parties shall remain obligated to respond timely and appropriately to discovery requests.

G. Subpoenas.

1. Commission subpoena forms shall be used in ~~all~~ discovery proceedings to compel the attendance of witnesses. ~~All~~ Subpoenas shall be signed by the administrative law judge assigned to the case, or the duty judge where the assigned judge is not available. Subpoenas to compel the attendance of witnesses shall be served at least 14 days prior to the hearing consistent with the Utah Rules of Civil Procedure, Rule 45. Witness fees and mileage shall be paid by the party which subpoenas the witness.

2. A subpoena to produce records shall be served on the holder of the record at least 14 days prior to the date specified in the subpoena as provided in the Utah Rule of Civil Procedure, Rule 45. ~~All~~ Fees associated with the production of documents shall be paid by the party which subpoenas the record.

H. Medical Records Exhibit.

1. The parties are expected to exchange medical records during the discovery period.

2. Petitioner shall submit all relevant medical records contained in his ~~her~~ possession to the respondent for the preparation of a joint medical records exhibit at least twenty ~~(20)~~ working days prior to the scheduled hearing.

3. The respondent shall prepare a joint medical record exhibit containing all relevant medical records. The medical record exhibit shall include all relevant treatment records that tend to prove or disprove a fact in issue. Hospital nurses' notes, duplicate materials, and other non-relevant materials need not be included in the medical record exhibit.

4. The medical records shall be indexed, paginated, arranged by medical care provider in chronological order and bound. The medical records may not be filed via electronic transmittal.

5. The medical record exhibit prepared by the respondent shall be delivered to the Division and the petitioner or petitioner's counsel at least ten ~~(10)~~ working days prior to the hearing. Late-filed medical records may or may not be admitted at the discretion of the administrative law judge by stipulation or for good cause shown.

6. The administrative law judge may require the respondent to submit an additional copy of the joint medical record exhibit in cases referred to a medical panel.

7. The petitioner is responsible to obtain radiographs and diagnostic films for review by the medical panel. The administrative law judge shall issue subpoenas where necessary to obtain radiology films.

I. Hearing.

1. Notices of hearing shall be mailed to the addresses of record of the parties. The parties shall provide current addresses to the Division for receipt of notices or risk the entry of default and loss of the opportunity to participate at the hearing.

2. Judgment may be entered without a hearing after default is entered or upon stipulation and waiver of a hearing by the parties.

3. No later than 45 days prior to the scheduled hearing, ~~all~~ parties shall file a signed pretrial disclosure form that identifies: ~~(1)~~ a) fact witnesses the parties actually intend to call at the hearing; ~~(2)~~ b) expert witnesses the parties actually intend to call at the hearing; ~~(3)~~ c) language translator the parties intend to use at the hearing; ~~(4)~~ d) exhibits, including reports, the parties intend to offer in evidence at the hearing; ~~(5)~~ e) the specific benefits or relief claimed by the petitioner; ~~(6)~~ f) the specific defenses that the respondent actually intends to litigate; ~~(7)~~ g) whether, or not, a party anticipates that the case will take more than two hours of hearing time; ~~(8)~~ h) the job categories or titles the respondents claim the petitioner is capable of performing if the claim is for permanent total disability, and; ~~(9)~~ i) any other issues that the parties intend to ask the administrative law judge to adjudicate. The administrative law judge may exclude witnesses, exhibits, evidence, claims, or defenses as appropriate of any party who fails to timely file a signed pre-trial disclosure form as set forth above. The parties shall supplement the pre-trial disclosure form with information that newly becomes available after filing the original form. The pre-trial disclosure form does not replace other discovery allowed under these rules.

4. If the petitioner requires the services of language translation during the hearing, the petitioner has the obligation of providing a person who can translate between the petitioner's native language and English during the hearing. If the respondents are dissatisfied with the proposed translator identified by the petitioner, the respondents may provide a qualified translator for the hearing at the respondent's expense.

5. The petitioner shall appear at the hearing prepared to outline the benefits sought, such as the periods for which compensation and medical benefits are sought, the amounts of unpaid medical bills, and a permanent partial disability rating, if applicable. If mileage reimbursement for travel to receive medical care is sought, the petitioner shall bring documentation of mileage, including the dates, the medical provider seen and the total mileage.

6. The respondent shall appear at the hearing prepared to address the merits of the petitioner's claim and provide evidence to support any defenses timely raised.

7. Parties are expected to be prepared to present their evidence on the date the hearing is scheduled. Requests for continuances may be granted or denied at the discretion of the administrative law judge for good cause shown. Lack of diligence in preparing for the hearing shall not constitute good cause for a continuance.

8. Subject to the continuing jurisdiction of the Labor Commission, the evidentiary record shall be deemed closed at the conclusion of the hearing, and no additional evidence will be accepted without leave of the administrative law judge.

J. Motions-Time to Respond.

Responses to all motions shall be filed within 10 days from the date the motion was filed with the Division. Reply memoranda shall be filed within 5 days from the date a response was filed with the Division.

K. Motions - Length and Type

1. Without prior leave of the Administrative Law Judge, supporting memorandum shall not exceed a total of 10 pages, opposing memorandum shall not exceed 7 pages and reply memorandum shall not exceed 3 pages. ~~All~~ Pleadings shall be double spaced.

a. The page limitations ~~herein~~ are inclusive of headings, table of contents, introduction ~~and/or~~, background, conclusion, statement of issues and facts, ~~and~~ arguments ~~etc~~.

b. The text of motions and memoranda shall be typeset in 12-point.

c. The Administrative Law Judge shall not consider anything contained on pages which exceed the page limits.

d. If a memorandum is to exceed the page limitations set forth in this rule, leave of the Administrative Law Judge must first be obtained. A motion for leave to file a lengthy memorandum must include a statement of the reasons why additional pages are needed and specify the number required. The Administrative Law Judge will approve such requests only for good cause and a showing of exceptional circumstances that justify the need for an extension of the specified page limitations. Absent such a showing by the requesting party, such requests will not be approved. A lengthy memorandum must not be filed with the Division prior to an entry of an order authorizing its filing.

2. Other than one supporting and one opposing and one reply memoranda, no other memoranda shall be considered by the Administrative Law Judge.

L. Orders on Continuances.

The Administrative Law Judge may rule, ex parte, on requests for continuances.

M. Notices.

1. Orders and notices mailed by the Division to the last address of record provided by a party are deemed served on that party.

2. Where an attorney appears on behalf of a party, notice of an action by the Division served on the attorney is considered notice to the party represented by the attorney.

N. Form of Decisions.

Decisions of the presiding officer in any adjudicative proceeding shall be issued in accordance with the provisions of Section 63G-4-203 or 63G-4-208[~~Utah Code~~].

O. Motions for Review.

1. Any party to an adjudicative proceeding may obtain review of an Order issued by an Administrative Law Judge by filing a written request for review with the Adjudication Division in accordance with the provisions of Section 63G-4-301 and Section 34A-1-303[~~Utah Code~~]. Unless a request for review is properly filed, the Administrative Law Judge's Order is the final order of the Commission. If a request for review is filed, other parties to the adjudicative proceeding may file a response within 15 calendar days of the date the request for review was filed. If such a response is filed, the party filing the original request for review may reply within 5 calendar days of the date the response was filed. Thereafter the Administrative Law Judge shall:

a. [R]reopen the case and enter a Supplemental Order after holding such further hearing and receiving such further evidence as may be deemed necessary;

b. [A]amend or modify the prior Order by a Supplemental Order; or

c. [R]refer the entire case for review under Section 34A-2-801[~~Utah Code~~].

2. Motions for Review shall not exceed a total of 15 pages. Response briefs shall not exceed a total of 12 pages. Reply briefs shall not exceed a total of 5 pages. All motions and briefs shall be double spaced.

a. The page limitations herein are inclusive of headings, table of contents, introduction[~~and/or~~], background, conclusion, statement of issues and facts, and arguments[~~etc~~].

b. The text of motions and memoranda shall be typeset in 12-point font.

c. The Commission and the Appeals Board may disregard argument or other writing contained on pages which exceed the page limits.

3. If the Administrative Law Judge enters a Supplemental Order, as provided in this subsection, it shall be final unless a request for review of the same is filed.

P. Procedural Rules.

In formal adjudicative proceedings, the Division shall generally follow the Utah Rules of Civil Procedure regarding discovery and the issuance of subpoenas, except as the Utah Rules of Civil Procedure are modified by the express provisions of Section 34A-2-802[~~Utah Code~~] or as may be otherwise modified by these rules.

Q. Requests for Reconsideration and Petitions for Judicial Review.

A request for reconsideration of an Order on Motion for Review may be allowed and shall be governed by the provisions of Section 63G-4-302[~~Utah Code~~]. Any petition for judicial review of final agency action shall be governed by the provisions of Section 63G-4-401[~~Utah Code~~].

R. Request for Abstract.

1. Timing of Request.

a. A petitioner who seeks an abstract relative to an award of benefits other than permanent total disability benefits shall file the request after the order of the commission becomes final.

b. A petitioner who seeks an abstract relative to an award of permanent total disability benefits may file the request:

i. after the order of the commission becomes final; or

ii. where the award has been subject to agency review, after a preliminary determination is issued by the commissioner or the appeals board affirming that the petitioner is permanently and totally disabled, unless that preliminary decision is stayed under Subsection 34A-2-212(3), Section 63G-4-405 or set aside by the Utah Court of Appeals.

c. A motion to stay a preliminary permanent total disability determination shall be filed with the body that conducted agency review pursuant to Sections R612-200-5(C)(1)(d) and R612-200-5(e).

2. Content of Filing. A request for abstract shall:

a. set forth verbatim the language of the final order or preliminary decision that awards the benefits at issue.

b. set forth the specific monetary sums claimed for each benefit that has been awarded and that is at issue.

c. include evidence available to the petitioner that corroborates the specific monetary sums claimed, including but not limited to:

i. billing statements;

ii. RBRVS calculations;

iii. interest calculations; and

iv. evidence of amounts paid.

d. Include an exact copy, in its entirety, of each order that awards benefits for which the abstract is sought.

3. Adjudication of Contest.

a. A request for abstract may be adjudicated by the administrative law judge who issued the order awarding the benefits at issue, unless reassigned to another judge.

b. Any objection to the request for abstract shall be filed within ten days of the filing date of the request.

c. If an objection is filed, any reply shall be filed within five days of the filing date of the objection.

d. If a proffer of conflicting evidence demonstrates a need to clarify or modify the abstract, the administrative law judge may schedule a hearing. Any such hearing may be held using electronic means.

e. The administrative law judge shall issue an order adjudicating the request for abstract within 20 days of:

i. the respondent's objection deadline, if the respondent does not object to the abstract;

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- ii. the petitioner's reply deadline, if the briefing does not demonstrate a need to clarify or modify the abstract; or
- iii. the date on which the administrative law judge conducts a hearing on the abstract.
- f. The administrative law judge's decision regarding the request for abstract shall be subject to agency review only if agency review is requested before the abstract is filed with the district court.

KEY: workers' compensation, administrative procedures, hearings, ~~settlements~~ **abstract of judgment**
 Date of Enactment or Last Substantive Amendment: ~~May 8, 2019~~ **2020**
 Notice of Continuation: May 9, 2017
 Authorizing, and Implemented or Interpreted Law: 34A-1-301 et seq.; 63G-4-102 et seq.; 34A-1-304(2); 34A-2-212

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R884-24P-33	Filing No. 53011

Agency Information

1. Department:	Tax Commission	
Agency:	Property Tax	
Building:	Utah State Tax Commission	
Street address:	210 N 1950 W	
City, state:	Salt Lake City, UT 84134	
Mailing address:	210 N 1950 W	
City, state, zip:	Salt Lake City, UT 84134	
Contact person(s):		
Name:	Phone:	Email:
Chantay Asper	801-297-3901	casper@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R884-24P-33. 2020 Personal Property Valuation Guides and Schedules Pursuant to Utah Code Ann. Section 59-2-107
3. Purpose of the new rule or reason for the change:
The valuation guides and schedules contained in this rule are reviewed and updated annually by the Property Tax Division. The personal property guides and schedules are used for property tax valuation and assessment of business personal property and certain motor vehicles.
4. Summary of the new rule or change:
Section 59-2-107 authorizes the State Tax Commission to promulgate rules that define classes of items considered

to be personal property and provide valuation percent good schedules to value personal property. County assessors must use the percent good schedules as contained in this rule. Any deviation which affects an entire class or type of personal property requires a written report documenting the schedule change to be submitted to the Tax Commission for approval prior to use.

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
The amount of savings or cost to state government is not affected by this rule. Tax revenue generated by taxing personal property is distributed to local governments to finance public services, programs, school districts, and local districts. No tax revenues generated by taxation of personal property will be retained by state government.
B) Local governments:
The amount of saving or cost to local government is undetermined. Local governmental entities receive tax revenue based on increased or decreased personal property values and the change in the annual property tax rate. Increases or decreases in 2021 property tax revenue cannot be determined, even if there were no changes in the percent good tables, because taxpayer acquisitions and deletions of personal property during 2021 are unknown. The proposed personal property schedules in this amendment are raised, lowered, or remain the same for 2021 based upon the type and age of the personal property assessed. Schedules used to value business personal property increase or decrease based upon the calculation of economic trends from cost indexes published by the Marshall Valuation Service. It is anticipated that the change in the annual property tax rate will have a larger impact on revenue than will the proposed amendments to this rule.
C) Small businesses ("small business" means a business employing 1-49 persons):
In the aggregate, the amount of savings or cost to small businesses is undetermined. Affected businesses pay property taxes based on increased or decreased personal property values and the change in the annual property tax rate. The proposed personal property schedules in this rule are raised, lowered or remain the same for 2021 based upon the type and age of the property. Since some schedules are increased and some decreased, it is not possible to determine the change to affected persons without knowing the 2021 personal property mix compared to the previous year.
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):
In the aggregate, the amount of savings or cost to non-small businesses is undetermined. Affected non-small businesses pay property taxes based on increased or

decreased personal property values and the change in the annual property tax rate. The proposed personal property schedules in this rule are raised, lowered or remain the same for 2021 based upon the type and age of the property. Since some schedules are increased and some decreased, it is not possible to determine the change to affected persons without knowing the 2021 personal property mix compared to the previous year.

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

In the aggregate, the amount of savings or cost to persons other than small businesses, non-small businesses, and state or local government entities is undetermined. Affected persons pay property taxes based on increased or decreased personal property values and the change in the annual property tax rate. The proposed personal property schedules in this rule are raised, lowered, or remain the same for 2021 based upon the type and age of the property. Since some schedules are increased and some decreased, it is not possible to determine the change to affected persons without knowing the 2021 personal property mix compared to the previous year.

F) Compliance costs for affected persons:

Local business owners and property tax practitioners will be required to be aware of new percent good figures. This is an annual occurrence; therefore, the ongoing compliance cost to complete this assessment process will not change. The change in taxes charged for these persons depends entirely on the owner's mix of personal property since some percent good schedules are increasing and others decreasing. For example, the owner of a business may discard some personal property items and add new equipment or replace equipment which may increase or decrease personal property values. In addition, the personal property percent good schedule percentages often change from the previous year due to current economic conditions.

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	FY2021	FY2022	FY2023
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0

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

H) Department head approval of regulatory impact analysis:

Commissioner Rebecca L. Rockwell of the Utah State Tax Commission has reviewed and approved this fiscal analysis.

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

The fiscal impact on businesses is undetermined. Some personal property schedules are raised, some are lowered, and some remain the same. Without knowing the 2021 personal property mix compared to the previous year, it is not possible to determine the impact on affected businesses.

B) Name and title of department head commenting on the fiscal impacts:

Rebecca Rockwell, Commissioner

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Section 59-2-107

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it

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receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:	10/01/2020
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10. This rule change MAY become effective on:	10/08/2020
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NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	Rebecca L. Rockwell, Commissioner	Date:	08/11/2020
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R884. Tax Commission, Property Tax.

R884-24P. Property Tax.

R884-24P-33. ~~2020~~2021 Personal Property Valuation Guides and Schedules Pursuant to Utah Code Ann. Section 59-2-107.

(1) Definitions.

(a)~~(f)~~ "Acquisition cost" means the same as that term is defined in Section 59-2-102.~~[does not include indirect costs such as debugging, licensing fees and permits, insurance, or security.]~~

~~(ii) Acquisition cost may correspond to the cost new for new property, or cost used for used property.]~~

(b)(i) "Actual cost" includes the value of components necessary to complete the vehicle, such as tanks, mixers, special containers, passenger compartments, special axles, installation, engineering, erection, or assembly costs.

(ii) Actual cost does not include sales or excise taxes, maintenance contracts, registration and license fees, dealer charges, tire tax, freight, or shipping costs.

(c) "Cost new" means the actual cost of the property when purchased new.

(i) Except as otherwise provided in this rule, the Tax Commission and assessors shall rely on the following sources to determine cost new:

(A) documented actual cost of the new or used vehicle; or

(B) recognized publications that provide a method for approximating cost new for new or used vehicles.

(ii) For the following property purchased used, the taxing authority may determine cost new by dividing the property's actual cost by the percent good factor for that class:

(A) class 6 heavy and medium duty trucks;

(B) class 13 heavy equipment;

~~(C) class 14 motor homes;~~

~~(D)~~(C) class 17 vessels equal to or greater than 31 feet in length; and

~~(E)~~(D) class 21 commercial trailers.

(d) For purposes of Sections 59-2-108 and 59-2-1115, "item of taxable tangible personal property" means a piece of equipment, machinery, furniture, or other piece of tangible personal property that is functioning at its highest and best use for the purpose it was designed and constructed and is generally capable of performing that function without being combined with other items of personal property. An item of taxable tangible personal property is not an individual component part of a piece of machinery or equipment, but the piece of machinery or equipment. For example, a fully functioning computer is an item of taxable tangible personal property, but the motherboard, hard drive, tower, or sound card are not.

(e) "Percent good" means an estimate of value, expressed as a percentage, based on a property's acquisition cost or cost new, adjusted for depreciation and appreciation of all kinds.

(i) The percent good factor is applied against the acquisition cost or the cost new to derive taxable value for the property.

(ii) Percent good schedules are derived from an analysis of the Internal Revenue Service Class Life, the Marshall and Swift Cost index, other data sources or research, and vehicle valuation guides such as Penton Price Digests.

(2) Each year the Property Tax Division shall update and publish percent good schedules for use in computing personal property valuation.

(a) Proposed schedules shall be transmitted to county assessors and interested parties for comment before adoption.

(b) A public comment period will be scheduled each year and a public hearing will be scheduled if requested by ten or more interested parties or at the discretion of the Commission.

(c) County assessors may deviate from the schedules when warranted by specific conditions affecting an item of personal property. When a deviation will affect an entire class or type of personal property, a written report, substantiating the changes with verifiable data, must be presented to the Commission. Alternative schedules may not be used without prior written approval of the Commission.

(d) A party may request a deviation from the value established by the schedule for a specific item of property if the use of the schedule does not result in the fair market value for the property at the retail level of trade on the lien date, including any relevant installation and assemblage value.

(3) The provisions of this rule do not apply to:

(a) a vehicle subject to the age-based uniform fee under Section 59-2-405.1;

(b) the following personal property subject to the age-based uniform fee under Section 59-2-405.2:

(i) an all-terrain vehicle;

(ii) a camper;

(iii) an other motorcycle;

(iv) an other trailer;

(v) a personal watercraft;

(vi) a small motor vehicle;

(vii) a snowmobile;

(viii) a street motorcycle;

(ix) a tent trailer;

(x) a travel trailer; and

(xi) a vessel, including an outboard motor of the vessel, that is less than 31 feet in length;

(c) a motorhome subject to the uniform statewide fee under Section 59-2-405.3; and

(d) an aircraft subject to the uniform statewide fee under Section 72-10-110.5.

(4) Other taxable personal property that is not included in the listed classes includes:

(a) Supplies on hand as of January 1 at 12:00 noon, including office supplies, shipping supplies, maintenance supplies, replacement parts, lubricating oils, fuel and consumable items not held for sale in the ordinary course of business. Supplies are assessed at total cost, including freight-in.

(b) Equipment leased or rented from inventory is subject to ad valorem tax. Refer to the appropriate property class schedule to determine taxable value.

(c) Property held for rent or lease is taxable, and is not exempt as inventory. For entities primarily engaged in rent-to-own, inventory on hand at January 1 is exempt and property out on rent-to-own contracts is taxable.

(5) Personal property valuation schedules may not be appealed to, or amended by, county boards of equalization.

(6) All taxable personal property, other than personal property subject to an age-based uniform fee under Section 59-2-405.1 through 59-2-405.3, [or 59-2-405.2,] or a uniform statewide fee under Section [59-2-404,] 59-2-405, is classified by expected economic life as follows:

(a) Class 1 - Short Life Property. Property in this class has a typical life of more than one year and less than four years. It is fungible in that it is difficult to determine the age of an item retired from service.

(i) Examples of property in the class include:

- (A) barricades/warning signs;
- (B) library materials;
- (C) patterns, jigs and dies;
- (D) pots, pans, and utensils;
- (E) canned computer software;
- (F) hotel linen;
- (G) wood and pallets;
- (H) video tapes, compact discs, and DVDs; and
- (I) uniforms.

(ii) With the exception of video tapes, compact discs, and DVDs, taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

(iii) A licensee of canned computer software shall use one of the following substitutes for acquisition cost of canned computer software if no acquisition cost for the canned computer software is stated:

- (A) retail price of the canned computer software;
- (B) if a retail price is unavailable, and the license is a nonrenewable single year license agreement, the total sum of expected payments during that 12-month period; or
- (C) if the licensing agreement is a renewable agreement or is a multiple year agreement, the present value of all expected licensing fees paid pursuant to the agreement.

(iv) Video tapes, compact discs, and DVDs are valued at \$15.00 per tape or disc for the first year and \$3.00 per tape or disc thereafter.

TABLE 1

Year of Acquisition	Percent Good of Acquisition Cost
[19] 20	[75%] 76%
[18] 19	44%
[17] 18 and prior	11%

(b) Class 2 - Computer Integrated Machinery.

(i) Machinery shall be classified as computer integrated machinery if all of the following conditions are met:

(A) The equipment is sold as a single unit. If the invoice breaks out the computer separately from the machine, the computer must be valued as Class 12 property and the machine as Class 8 property.

(B) The machine cannot operate without the computer and the computer cannot perform functions outside the machine.

(C) The machine can perform multiple functions and is controlled by a programmable central processing unit.

(D) The total cost of the machine and computer combined is depreciated as a unit for income tax purposes.

(E) The capabilities of the machine cannot be expanded by substituting a more complex computer for the original.

(ii) Examples of property in this class include:

- (A) CNC mills;
- (B) CNC lathes;
- (C) high-tech medical and dental equipment such as MRI equipment, CAT scanners, and mammography units.

(iii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 2

Year of Acquisition	Percent Good of Acquisition Cost
[19] 20	[95%] 96%
[18] 19	[85%] 86%
[17] 18	[73%] 74%
[16] 17	[61%] 62%
[15] 16	[50%] 51%
[14] 15	[39%] 40%
[13] 14	26%
[12] 13 and prior	13%

(c) Class 3 - Short Life Trade Fixtures. Property in this class generally consists of electronic types of equipment and includes property subject to rapid functional and economic obsolescence or severe wear and tear.

(i) Examples of property in this class include:

- (A) office machines;
- (B) alarm systems;
- (C) shopping carts;
- (D) ATM machines;
- (E) small equipment rentals;
- (F) rent-to-own merchandise;
- (G) telephone equipment and systems;
- (H) music systems;
- (I) vending machines;
- (J) video game machines; and
- (K) cash registers.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 3

Year of Acquisition	Percent Good of Acquisition Cost
[19] 20	[89%] 90%
[18] 19	[73%] 74%
[17] 18	55%
[16] 17	37%
[15] 16 and prior	18%

(d) Class 5 - Long Life Trade Fixtures. Class 5 property is subject to functional obsolescence in the form of style changes.

(i) Examples of property in this class include:

- (A) furniture;
- (B) bars and sinks;
- (C) booths, tables and chairs;
- (D) beauty and barber shop fixtures;

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- (E) cabinets and shelves;
- (F) displays, cases and racks;
- (G) office furniture;
- (H) theater seats;
- (I) water slides;
- (J) signs, mechanical and electrical; and
- (K) LED component of a billboard.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 5

Year of Acquisition	Percent Good of Acquisition Cost
[19] 20	96%
[18] 19	[87%] 88%
[17] 18	[77%] 78%
[16] 17	[66%] 67%
[15] 16	[57%] 58%
[14] 15	47%
[13] 14	35%
[12] 13	24%
[11] 12 and prior	[12%] 13%

(e) Class 6 - Heavy and Medium Duty Trucks.

(i) Examples of property in this class include:

- (A) heavy duty trucks;
- (B) medium duty trucks;
- (C) crane trucks;
- (D) concrete pump trucks; and
- (E) trucks with well-boring rigs.

(ii) Taxable value is calculated by applying the percent good factor against the cost new.

(iii) Cost new of vehicles in this class is defined as follows:

(A) the documented actual cost of the vehicle for new vehicles; or

(B) 75 percent of the manufacturer's suggested retail price.

(iv) For state assessed vehicles, cost new shall include the value of attached equipment.

(v) The ~~[2020]~~2021 percent good applies to ~~[2020]~~2021 models purchased in ~~[2019]~~2020.

(vi) Trucks weighing two tons or more have a residual taxable value of \$1,750.

TABLE 6

Model Year	Percent Good of Cost New
[20] 21	90%
[19] 20	[73%] 77%
[18] 19	[68%] 73%
[17] 18	[63%] 68%
[16] 17	[59%] 64%
[15] 16	[54%] 59%
[14] 15	[49%] 54%
[13] 14	[44%] 48%
[12] 13	[40%] 42%
[11] 12	[36%] 37%
[10] 11	[29%] 23%
[09] 10	[15%] 18%
[08] 09	[10%] 14%
[07] 08 and prior	[4%] 7%

(f) Class 7 - Medical and Dental Equipment. Class 7 has been merged into Class 8.

(g) Class 8 - Machinery and Equipment and Medical and Dental Equipment.

(i) Machinery and equipment is subject to considerable functional and economic obsolescence created by competition as technologically advanced and more efficient equipment becomes available. Examples of machinery and equipment include:

- (A) manufacturing machinery;
- (B) amusement rides;
- (C) bakery equipment;
- (D) distillery equipment;
- (E) refrigeration equipment;
- (F) laundry and dry cleaning equipment;
- (G) machine shop equipment;
- (H) processing equipment;
- (I) auto service and repair equipment;
- (J) mining equipment;
- (K) ski lift machinery;
- (L) printing equipment;
- (M) bottling or cannery equipment;
- (N) packaging equipment; and
- (O) pollution control equipment.

(ii) Medical and dental equipment is subject to a high degree of technological development by the health industry. Examples of medical and dental equipment include:

- (A) medical and dental equipment and instruments;
- (B) exam tables and chairs;
- (C) microscopes; and
- (D) optical equipment.

(iii) Except as provided in Subsection (6)(g)(iv), taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

(iv)(A) Notwithstanding Subsection (6)(g)(iii), the taxable value of the following oil refinery pollution control equipment required by the federal Clean Air Act shall be calculated pursuant to Subsection (6)(g)(iv)(B):

- (I) VGO (Vacuum Gas Oil) reactor;
- (II) HDS (Diesel Hydrotreater) reactor;
- (III) VGO compressor;
- (IV) VGO furnace;
- (V) VGO and HDS high pressure exchangers;
- (VI) VGO, SRU (Sulfur Recovery Unit), SWS (Sour Water Stripper), and TGU; (Tail Gas Unit) low pressure exchangers;
- (VII) VGO, amine, SWS, and HDS separators and drums;
- (VIII) VGO and tank pumps;
- (IX) TGU modules; and
- (X) VGO tank and VGO tank air coolers.

(B) The taxable value of the oil refinery pollution control equipment described in Subsection (6)(g)(iv)(A) shall be calculated by:

(I) applying the percent good factor in Table 8 against the acquisition cost of the property; and

(II) multiplying the product described in Subsection (6)(g)(iv)(B)(I) by 50%.

TABLE 8

Year of Acquisition	Percent Good of Acquisition Cost
[19] 20	97%
[18] 19	[91%] 92%
[17] 18	[82%] 83%
[16] 17	[74%] 75%
[15] 16	[66%] 67%
[14] 15	59%
[13] 14	[48%] 49%
[12] 13	40%
[11] 12	31%

[10] 11 22%
 [09] 10 and prior [11] 12%

(h) Class 9 - Off-Highway Vehicles. Because Section 59-2-405.2 subjects off-highway vehicles to an age-based uniform fee, a percent good schedule is not necessary.

(i) Class 10 - Railroad Cars. The Class 10 schedule was developed to value the property of railroad car companies. Functional and economic obsolescence is recognized in the developing technology of the shipping industry. Heavy wear and tear is also a factor in valuing this class of property. Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 10

Year of Acquisition	Percent Good of Acquisition Cost
[19] 20	97%
[18] 19	[94%] 95%
[17] 18	[88%] 89%
[16] 17	[81%] 82%
[15] 16	[76%] 77%
[14] 15	[70%] 71%
[13] 14	[62%] 63%
[12] 13	[56%] 57%
[11] 12	50%
[10] 11	44%
[09] 10	37%
[08] 09	[29%] 30%
[07] 08	[20%] 21%
[06] 07 and prior	[9%] 10%

(j) Class 11 - Street Motorcycles. Because Section 59-2-405.2 subjects street motorcycles to an age-based uniform fee, a percent good schedule is not necessary.

(k) Class 12 - Computer Hardware.

(i) Examples of property in this class include:

- (A) data processing equipment;
- (B) personal computers;
- (C) main frame computers;
- (D) computer equipment peripherals;
- (E) cad/cam systems; and
- (F) copiers.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 12

Year of Acquisition	Percent Good of Acquisition Cost
[19] 20	62%
[18] 19	46%
[17] 18	21%
[16] 17	9%
[15] 16 and prior	7%

(l) Class 13 - Heavy Equipment.

(i) Examples of property in this class include:

- (A) construction equipment;
- (B) excavation equipment;
- (C) loaders;
- (D) batch plants;
- (E) snow cats; and
- (F) pavement sweepers.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

(iii) [2020]2021 model equipment purchased in [2019]2020 is valued at 100 percent of acquisition cost.

TABLE 13

Year of Acquisition	Percent Good of Acquisition Cost
[19] 20	51%
[18] 19	49%
[17] 18	[47%] 48%
[16] 17	[45%] 46%
[15] 16	[41%] 42%
[14] 15	[39%] 40%
[13] 14	[37%] 38%
[12] 13	[35%] 36%
[11] 12	[33%] 34%
[10] 11	[31%] 32%
[09] 10	29%
[08] 09	25%
[07] 08	23%
[06] 07 and prior	15%

(m) Class 14 - Motor Homes. Because Section 59-2-405.3 subjects motor homes to an age-based uniform fee, a percent good schedule is not necessary.

(n) Class 15 - Semiconductor Manufacturing Equipment. Class 15 applies only to equipment used in the production of semiconductor products. Equipment used in the semiconductor manufacturing industry is subject to significant economic and functional obsolescence due to rapidly changing technology and economic conditions.

(i) Examples of property in this class include:

- (A) crystal growing equipment;
- (B) die assembly equipment;
- (C) wire bonding equipment;
- (D) encapsulation equipment;
- (E) semiconductor test equipment;
- (F) clean room equipment;
- (G) chemical and gas systems related to semiconductor manufacturing;
- (H) deionized water systems;
- (I) electrical systems; and
- (J) photo mask and wafer manufacturing dedicated to semiconductor production.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 15

Year of Acquisition	Percent Good of Acquisition Cost
[19] 20	47%
[18] 19	34%
[17] 18	24%
[16] 17	15%
[15] 16 and prior	6%

(o) Class 16 - Long-Life Property. Class 16 property has a long physical life with little obsolescence.

(i) Examples of property in this class include:

- (A) billboard (excluding LED component);
- (B) sign towers;
- (C) radio towers;
- (D) ski lift and tram towers;
- (E) non-farm grain elevators;
- (F) bulk storage tanks;

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- (G) underground fiber optic cable;
- (H) solar panels and supporting equipment; and
- (I) pipe laid in or affixed to land.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 16

Year of Acquisition	Percent Good of Acquisition Cost
[19] 20	97%
[18] 19	96%
[17] 18	[93%] 94%
[16] 17	[88%] 89%
[15] 16	[85%] 86%
[14] 15	[82%] 83%
[13] 14	[76%] 77%
[12] 13	[72%] 73%
[11] 12	65%
[10] 11	64%
[09] 10	59%
[08] 09	58%
[07] 08	[53%] 54%
[06] 07	47%
[05] 06	[39%] 40%
[04] 05	[31%] 32%
[03] 04	24%
[02] 03	16%
[01] 02 and prior	8%

(p) Class 17 - Vessels Equal to or Greater Than 31 Feet in Length.

- (i) Examples of property in this class include:
 - (A) houseboats equal to or greater than 31 feet in length;
 - (B) sailboats equal to or greater than 31 feet in length; and
 - (C) yachts equal to or greater than 31 feet in length.
- (ii) A vessel, including an outboard motor of the vessel, under

31 feet in length:

- (A) is not included in Class 17;
- (B) may not be valued using Table 17; and
- (C) is subject to an age-based uniform fee under Section 59-

2-405.2.

(iii) Taxable value is calculated by applying the percent good factor against the cost new of the property.

(iv) The Tax Commission and assessors shall rely on the following sources to determine cost new for property in this class:

- (A) the following publications or valuation methods:
 - (I) the manufacturer's suggested retail price listed in the ABOS Marine Blue Book;
 - (II) for property not listed in the ABOS Marine Blue Book but listed in the NADA Marine Appraisal Guide, the NADA average value for the property divided by the percent good factor; or
 - (III) for property not listed in the ABOS Marine Blue Book or the NADA Appraisal Guide:
 - (aa) the manufacturer's suggested retail price for comparable property; or
 - (bb) the cost new established for that property by a documented valuation source; or
- (B) the documented actual cost of new or used property in this class.

(v) The ~~[2020]~~2021 percent good applies to ~~[2020]~~2021 models purchased in ~~[2019]~~2020.

(vi) Property in this class has a residual taxable value of \$1,000.

TABLE 17

Model Year	Percent Good of Cost New
[20] 21	90%
[19] 20	[70%] 72%
[18] 19	[68%] 69%
[17] 18	[66%] 67%
[16] 17	[63%] 65%
[15] 16	[61%] 63%
[14] 15	[59%] 60%
[13] 14	[57%] 58%
[12] 13	[54%] 56%
[11] 12	[52%] 54%
[10] 11	[50%] 51%
[09] 10	[47%] 49%
[08] 09	[45%] 47%
[07] 08	[43%] 44%
[06] 07	[41%] 42%
[05] 06	[38%] 40%
[04] 05	[36%] 38%
[03] 04	[34%] 35%
[02] 03	[32%] 33%
[01] 02	[29%] 31%
[00] 01	[27%] 28%
[99] 00 and prior	22%

(q) Class 17a - Vessels Less Than 31 Feet in Length. Because Section 59-2-405.2 subjects vessels less than 31 feet in length to an age-based uniform fee, a percent good schedule is not necessary.

(r) Class 18 - Travel Trailers and Class 18a - Tent Trailers/Truck Campers. Because Section 59-2-405.2 subjects travel trailers and tent trailers/truck campers to an age-based uniform fee, a percent good schedule is not necessary.

(s) Class 20 - Petroleum and Natural Gas Exploration and Production Equipment. Class 20 property is subject to significant functional and economic obsolescence due to the volatile nature of the petroleum industry.

(i) Examples of property in this class include:

- (A) oil and gas exploration equipment;
- (B) distillation equipment;
- (C) wellhead assemblies;
- (D) holding and storage facilities;
- (E) drill rigs;
- (F) reinjection equipment;
- (G) metering devices;
- (H) cracking equipment;
- (I) well-site generators, transformers, and power lines;
- (J) equipment sheds;
- (K) pumps;
- (L) radio telemetry units; and
- (M) support and control equipment.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 20

Year of Acquisition	Percent Good of Acquisition Cost
[19] 20	[97%] 95%
[18] 19	[90%] 88%
[17] 18	[84%] 82%
[16] 17	[76%] 74%
[15] 16	[69%] 67%
[14] 15	[63%] 61%
[13] 14	[57%] 55%
[12] 13	[48%] 46%
[11] 12	[42%] 40%
[10] 11	35%

[09] 10	28%
[08] 09	20%
[07] 08 and prior	11%

(t) Class 21 - Commercial Trailers.

(i) Examples of property in this class include:

- (A) dry freight van trailers;
- (B) refrigerated van trailers;
- (C) flat bed trailers;
- (D) dump trailers;
- (E) livestock trailers; and
- (F) tank trailers.

(ii) Taxable value is calculated by applying the percent good factor against the cost new of the property. For state assessed vehicles, cost new shall include the value of attached equipment.

(iii) The [2020]2021 percent good applies to [2020]2021 models purchased in [2019]2020.

(iv) Commercial trailers have a residual taxable value of \$1,000.

TABLE 21

Model Year	Percent Good of Cost New
[20] 21	95%
[19] 20	[86%] 80%
[18] 19	[82%] 77%
[17] 18	[78%] 74%
[16] 17	[74%] 71%
[15] 16	[68%] 67%
[14] 15	[66%] 64%
[13] 14	[62%] 61%
[12] 13	58%
[11] 12	54%
[10] 11	51%
[09] 10	[47%] 48%
[08] 09	[42%] 45%
[07] 08	[37%] 42%
[06] 07	[34%] 38%
[05] 06	[30%] 35%
[04] 05 and prior	[20%] 25%

(u) Class 21a - Other Trailers (Non-Commercial). Because Section 59-2-405.2 subjects this class of trailers to an age-based uniform fee, a percent good schedule is not necessary.

(v) Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans.

(i) Class 22 vehicles fall within four subcategories: domestic passenger cars, foreign passenger cars, light trucks, including utility vehicles, and vans.

(ii) Because Section 59-2-405.1 subjects Class 22 property to an age-based uniform fee, a percent good schedule is not necessary.

(w) Class 22a - Small Motor Vehicles. Because Section 59-2-405.2 subjects small motor vehicles to an age-based uniform fee, a percent good schedule is not necessary.

(x) Class 23 - Aircraft Required to be Registered With the State. Because Section 59-2-404 subjects aircraft required to be registered with the state to a statewide uniform fee, a percent good schedule is not necessary.

(y) Class 24 - Leasehold Improvements on Exempt Real Property.

(i) The Class 24 schedule is to be used only for those leasehold improvements where the underlying real property is owned by an entity exempt from property tax under Section 59-2-1101. See Tax Commission rule R884-24P-32. Leasehold improvements include:

- (A) walls and partitions;

- (B) plumbing and roughed-in fixtures;
- (C) floor coverings other than carpet;
- (D) store fronts;
- (E) decoration;
- (F) wiring;
- (G) suspended or acoustical ceilings;
- (H) heating and cooling systems; and
- (I) iron or millwork trim.

(ii) Taxable value is calculated by applying the percent good factor against the cost of acquisition, including installation.

(iii) The Class 3 schedule is used to value short life leasehold improvements.

TABLE 24

Year of Installation	Percent of Installation Cost
[19] 20	94%
[18] 19	88%
[17] 18	82%
[16] 17	77%
[15] 16	71%
[14] 15	65%
[13] 14	59%
[12] 13	54%
[11] 12	48%
[10] 11	42%
[09] 10	36%
[08] 09 and prior	30%

(z) Class 25 - Aircraft Parts Manufacturing Tools and Dies. Property in this class is generally subject to rapid physical, functional, and economic obsolescence due to rapid technological and economic shifts in the airline parts manufacturing industry. Heavy wear and tear is also a factor in valuing this class of property.

(i) Examples of property in this class include:

- (A) aircraft parts manufacturing jigs and dies;
- (B) aircraft parts manufacturing molds;
- (C) aircraft parts manufacturing patterns;
- (D) aircraft parts manufacturing taps and gauges; and
- (E) aircraft parts manufacturing test equipment.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 25

Year of Acquisition	Percent Good of Acquisition Cost
[19] 20	[89%] 90%
[18] 19	[73%] 74%
[17] 18	56%
[16] 17	38%
[15] 16	20%
[14] 15 and prior	4%

(aa) Class 26 - Personal Watercraft. Because Section 59-2-405.2 subjects personal watercraft to an age-based uniform fee, a percent good schedule is not necessary.

(bb) Class 27 - Electrical Power Generating Equipment and Fixtures

(i) Examples of property in this class include:

- (A) electrical power generators; and
- (B) control equipment.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

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TABLE 27

Year of Acquisition	Percent Good of Acquisition Cost
[19] 20	97%
[18] 19	95%
[17] 18	92%
[16] 17	90%
[15] 16	87%
[14] 15	84%
[13] 14	82%
[12] 13	79%
[11] 12	77%
[10] 11	74%
[09] 10	71%
[08] 09	69%
[07] 08	66%
[06] 07	64%
[05] 06	61%
[04] 05	58%
[03] 04	56%
[02] 03	53%
[01] 02	51%
[00] 01	48%
[99] 00	45%
[98] 99	43%
[97] 98	40%
[96] 97	38%
[95] 96	35%
[94] 95	32%
[93] 94	30%
[92] 93	27%
[91] 92	25%
[90] 91	22%
[89] 90	19%
[88] 89	17%
[87] 88	14%
[86] 87	12%
[85] 86 and prior	9%

(cc) Class 28 - Noncapitalized Personal Property. Property shall be classified as noncapitalized personal property if the following conditions are met:

(i) the property is an item of taxable tangible personal property with an acquisition cost of \$1,000 or less; and

(ii) the property is eligible as a deductible expense under Section 162 or Section 179, Internal Revenue Code, in the year of acquisition, regardless of whether the deduction is actually claimed.

TABLE 28

Year of Acquisition	Percent Good of Acquisition Cost
[19] 20	75%
[18] 19	50%
[17] 18	25%
[16] 17 and prior	0%

The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, [2020]2021.

KEY: taxation, personal property, property tax, appraisals

Date of Enactment or Last Substantive Amendment: ~~May 17, 2019~~2020

Notice of Continuation: November 10, 2016

Authorizing, and Implemented or Interpreted Law: Art. XIII, Sec 2; 9-2-201; 11-13-302; 41-1a-202; 41-1a-301; 59-1-210; 59-2-102; 59-2-103; 59-2-103.5; 59-2-104; 59-2-201; 59-2-210; 59-2-211; 59-2-301; 59-2-301.3; 59-2-302; 59-2-303; 59-2-303.1; 59-2-305; 59-2-306; 59-2-401; 59-2-402; 59-2-404; 59-2-405; 59-2-405.1; 59-2-406; 59-2-508; 59-2-514; 59-2-515; 59-2-701; 59-2-702; 59-2-703; 59-2-704; 59-2-704.5; 59-2-705; 59-2-801; 59-2-918 through 59-2-924; 59-2-1002; 59-2-1004; 59-2-1005; 59-2-1006; 59-2-1101; 59-2-1102; 59-2-1104; 59-2-1106; 59-2-1107 through 59-2-1109; 59-2-1113; 59-2-1115; 59-2-1202; 59-2-1202(5); 59-2-1302; 59-2-1303; 59-2-1308.5; 59-2-1317; 59-2-1328; 59-2-1330; 59-2-1347; 59-2-1351; 59-2-1365; 59-2-1703

End of the Notices of Proposed Rules Section

NOTICES OF 120-DAY (EMERGENCY) RULES

An agency may file a **120-DAY (EMERGENCY) RULE** when it finds that regular rulemaking procedures would:

- (a) cause an imminent peril to the public health, safety, or welfare;
- (b) cause an imminent budget reduction because of budget restraints or federal requirements; or
- (c) place the agency in violation of federal or state law (Subsection 63G-3-304(1)).

As with a **PROPOSED RULE**, a **120-DAY RULE** is preceded by a **RULE ANALYSIS**. This analysis provides summary information about the **120-DAY RULE** including the name of a contact person, justification for filing a **120-DAY RULE**, anticipated cost impact of the rule, and legal cross-references.

Following the **RULE ANALYSIS**, the text of the **120-DAY RULE** is printed. New text is underlined (example) and text to be deleted is struck out with brackets surrounding the deleted text (~~example~~). An emergency rule that is new is entirely underlined. Likewise, an emergency rule that repeals an existing rule shows the text completely struck out. A row of dots in the text (.) indicates that unaffected text was removed to conserve space.

A **120-DAY RULE** is effective when filed with the Office of Administrative Rules, or on a later date designated by the agency. A **120-DAY RULE** is effective for 120 days or until it is superseded by a permanent rule. Because of its temporary nature, a **120-DAY RULE** is not codified as part of the *Utah Administrative Code*.

The law does not require a public comment period for **120-DAY RULES**. However, when an agency files a **120-DAY RULE**, it may file a **PROPOSED RULE** at the same time, to make the requirements permanent.

Emergency or **120-DAY RULES** are governed by Section 63G-3-304, and Section R15-4-8.

NOTICE OF EMERGENCY (120-DAY) RULE		
Utah Admin. Code Ref (R no.):	R277-419	Filing No. 53006

Agency Information

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

General Information

2. Rule or section catchline:
R277-419. Pupil Accounting

3. Effective Date:
08/07/2020

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

Relying on student attendance as a measurement for state funding is not reliable when student learning takes place out of the classroom or out of the presence of a teacher. Due to the impacts of COVID-19 on in-classroom learning, the Utah State Board of Education (USBE) has been asked whether they will: 1) provide waivers from the 180 day/990 hour requirements for the 2020-21 school year; or 2) amend the 180 day/990 hour requirements. USBE received feedback from stakeholders requesting USBE waive the 990 instructional hour requirement for the 2020-21 school year to provide more flexibility to local education agencies (LEAs) to provide learner based educational services.

5. Summary of the new rule or change:

This rule change waives the existing requirement for a LEA to provide 990 hours of instruction of educational services a year, based on certain conditions being met. This updated rule also: changes the terminology around the 990 hour requirement by basing the 990 on hours of providing "educational services" rather than instruction; eliminates the minimum school day hour requirements; eliminates prescriptive language about what may or may

not be counted as hours of instruction or educational services; and changes terminology of "continuing enrollment measurement" to "learner validated enrollment measurement."

6. Regular rulemaking would:

- X cause an imminent peril to the public health, safety, or welfare;
- cause an imminent budget reduction because of budget restraints or federal requirements; or
- place the agency in violation of federal or state law.

Specific reason and justification:

This rule change waives the existing requirement for an LEA to provide 990 hours of instruction of educational services a year, based on certain conditions being met. The flexibility for LEAs is necessary to implement immediately to alleviate the pressure LEAs feel to require students return to in-person or at-school instruction for 6-7 hours per day. The language included will allow LEAs flexibility to support distance and blended learning models for students beginning in August 2020. Without the change, LEAs have less flexibility to provide different educational models to mitigate against the spread of COVID-19 in advance of the traditional school year.

Fiscal Information

7. Aggregate anticipated cost or savings to:

A) State budget:

This rule change is not expected to have material fiscal impact on state government revenues or expenditures. It should not require USBE to significantly change operations or practices but provides LEAs with the flexibility necessary to account for student enrollments during the COVID-19 Pandemic.

B) Local governments:

This rule change is not expected to have material fiscal impact on local governments' revenues or expenditures. It should not require LEAs to significantly change operations or practices but provides them with the flexibility necessary to account for student enrollments during the COVID-19 Pandemic.

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. It should not require LEAs to significantly change operations or practices but provides them with the flexibility necessary to account for student enrollments during the COVID-19 Pandemic.

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

This rule change is not expected to have fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities. It should not require LEAs to significantly change operations or practices but provides them with the flexibility necessary to account for student enrollments during the COVID-19 Pandemic.

8. Compliance costs for affected persons:

There are no independent compliance costs for affected persons. This rule change should not require LEAs to significantly change operations or practices but provides them with the flexibility necessary to account for student enrollments during the COVID-19 Pandemic.

9. A) Comments by the department head on the fiscal impact this rule may have on businesses:

There are no non-small businesses in the industry in question, Elementary and Secondary Schools (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 rule change is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses and it does not require any expenditures of, or generate revenue for non-small businesses. This rule change has no fiscal impact on LEAs and will not have a fiscal impact on small businesses either.

B) Name and title of department head commenting on the fiscal impacts:

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

Citation Information

10. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Article X, Section 3	Subsection 53E-3-602(2)	Subsection 53G-5-404(4)
Subsection 53E-3-401(4)	Subsection 53E-3-301(3)(d)	Subsection 53E-3-501(1)(e)
Section 53G-4-404		

Incorporations by Reference Information

11. A) This rule adds, updates, or removes the following title of materials incorporated by references:	
	First Incorporation
Official Title of Materials Incorporated (from title page)	Continuity of Education Plan
Publisher	Utah State Board of Education
Date Issued	July 23, 2020
Issue, or version	Version 1

B) This rule adds, updates, or removes the following title of materials incorporated by references :	
	Second Incorporation
Official Title of Materials Incorporated (from title page)	School Reopening Requirements Template
Publisher	Utah State Board of Education
Date Issued	July 23, 2020
Issue, or version	Version 1

Agency Authorization Information

Agency head or designee, and title:	Angie Stallings, Deputy Superintendent	Date:	08/06/2020
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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 all 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) Pathway areas of study.
- (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 some 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) "Competency based learning program" means an education program that provides instruction through competency-based education as defined in Section 53F-5-501.
- ~~(7) "Continuing enrollment measurement" means a methodology used to establish a student's continuing membership or enrollment status for purposes of generating membership days.~~
- ~~(8)~~(7) "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.
- ~~(9)~~(8) "Early graduation student" means a student who has an early graduation student education plan as described in Section R277-703-4.
- (9) "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.
- (10) "Eligible student" means a student who satisfies the criteria for enrollment in an LEA, set forth in Section R277-419-~~(6)~~7.
- (11) "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.
- (12)(a) "Home school" means the formal instruction of children in their homes instead of in an LEA.
 - (b) The differences between a home school student and an online student include:

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(i) an online student may receive 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;

(iii) an online student receives instruction under the direction of a highly qualified, licensed teacher who is subject to the licensure requirements of R277-502 and fingerprint and background checks consistent with R277-~~516~~214 and R277-520;

(iv) instruction delivered in a home school course is not eligible to be claimed in membership of an LEA and does not qualify for funding under the Minimum School Program in Title 53F, Chapter 2, Minimum School Program Act.

(13) "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.

(14)(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.

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

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

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

~~(17)~~(18) "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 competency based learning program.

~~(18)~~(19)(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.

~~(19)~~(20) "Minimum School Program" means the same as that term is defined in Section 53F-2-102.

~~(20)~~(21) "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.

~~(21)~~(22) "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)~~(23) "Program" means a course of instruction within a school that is designed to accomplish a predetermined curricular objective or set of objectives.

(24) "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;

(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.

~~(23)~~(25) "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.

~~(24)~~ "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;~~

~~(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.]~~

~~(25)~~(26) "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 year(s) 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)~~(27) "S1" means the record maintained by the Superintendent containing individual student demographic and school membership data in a Data Clearinghouse file.

~~(27)~~(28) "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)~~(29) "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)~~(30) "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 Section R277-502;

(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)~~(31) "School day" means a day where an LEA provides educational services to students~~[minimum of two hours per day per session in kindergarten and a minimum of four hours per day in grades one through twelve,]~~ subject to the requirements described in Section R277-419-5.

~~(31)~~(32) "School membership" means membership other than in a special education or YIC program in the context of the Data Clearinghouse.

~~[(32)]~~(33) "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)]~~(34) "School reopening requirements template" means the template LEAs are required to submit to Superintendent as an assurance that the LEA has addressed state requirements for reopening schools for in person learning for the 2020-21 school year.

~~[(33)]~~(35) "School year" means the 12 month period from July 1 through June 30.

~~[(34)]~~(36) "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)]~~(37) "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)]~~(38) "SSID" means Statewide Student Identifier.

~~[(37)]~~(39) "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-~~[6]~~7(4); 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.

~~[(38)]~~(40) "Year end upload" means the Data Clearinghouse file due annually by July 15 from LEAs to the Superintendent for the prior school year.

~~[(39)]~~(41) "Youth in custody (YIC)" means a person under the age of 21 who is:

- (a) in the custody of the Department of 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. Incorporation by Reference of Continuity of Education Plan Form and School Reopening Requirements Template.

(1) This rule incorporates by reference:

- ~~_____~~(a) the Continuity of Education Plan form created by the Superintendent, which requires planning for services in the event of a school closure, including:

- ~~[(a)]~~(i) e-learning;
- ~~[(b)]~~(ii) special education services;
- ~~[(c)]~~(iii) student meals;
- ~~[(d)]~~(iv) event planning; and
- ~~[(e)]~~(v) staffing.

- ~~_____~~(b) the School Reopening Requirements Template created by the Superintendent and based on the K-12 School Reopening Requirements and Recommendations approved by the Board, which an LEA is required to submit to the Superintendent as an assurance that the LEA has addressed state requirements for safely reopening schools for the 2020-21 school year.

(2) A copy of Continuity of Education Plan the form is located at:

- (a)

<https://schools.utah.gov/administrativerules/documentsincorporated/>; and

- (b) the Utah State Board of Education.

~~_____~~(3) A copy of the School Reopening Requirements template is located at:

- ~~_____~~(a) <https://schools.utah.gov/file/a5eba09a-42b8-45c0-b8fa-9adeca879fcd>; and

- ~~_____~~(b) the Utah State Board of Education.

R277-419-4. 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) All schools shall submit a Clearinghouse report to the Superintendent.

- (c) All schools 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.

R277-419-5. Minimum School Days.

(1)(a) Except as provided in Subsection (1)(b), Section R277-419-6, [-]and Subsection 53F-2-102(4), an LEA shall conduct school for at least 90 [instructional-]hours of educational services over a minimum of 180 school days each school year.

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

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

- (ii) for a school closure due to snow, inclement weather, or other emergency as described in Section R277-419-14; or

- (iii) for an individual student as described in Section R277-419-13.

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

~~_____~~(b) All school day calculations shall:

- ~~_____~~(i) exclude lunch periods and pass time between classes;

- ~~_____~~(ii) include recess periods; and

- ~~_____~~(iii) include alternative breakfast models where breakfast is consumed in class.

- ~~_____~~(c) Each school day that satisfies the minimum hourly instruction time described in Subsection R277-419-2(31), shall count as a school day, regardless of the number or length of class periods or whether or not particular classes meet.]

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

~~_____~~(b) If school is closed for any reason, the school shall make up the instructional time missed under the emergency or activity time as part of the minimum required time to qualify for full Minimum School Program funding.]

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

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

(6)(a) In addition to the allowance to use up to 32 ~~[instructional]~~ hours of educational services or four school days for professional learning described in Subsection 53F-2-102(4), to provide planning and professional development time for staff, an LEA may hold school longer some days of the week and shorter other days so long as minimum school day requirements, as provided for in this Section R277-419-5 ~~and Subsection R277-419-2(32)~~, are satisfied.

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

(c) Parent-teacher and college and career readiness conferences may only be held for a total of the equivalent of three full school days or a maximum of 16.5 hours for the school year.

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

(e) An LEA may designate no more than a total of 12 ~~[instructional]~~ educational service days at the beginning of the school year, at the end of the school year, or both for the assessment of students entering or completing kindergarten.

(f) If ~~[instruction]~~ educational service days are designated for kindergarten assessment:

- (i) an LEA shall designate the days in an open meeting;
- (ii) an LEA shall provide adequate notice and explanation to kindergarten parents well in advance of the assessment period;
- (iii) qualified school employees shall conduct the assessment consistent with Section 53G-7-205; and
- (iv) assessment time per student shall be adequate to justify the forfeited instruction time.

(g) The final decision and approval regarding planning time, parent-teacher and SEP conferences rests with an LEA, consistent with Utah law and Board administrative rules.

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

R277-419-6. Waiver of the 990 Hour Requirement For the 2020-21 School Year.

Notwithstanding the requirements of Section R277-419-5, for the 2020-21 school year, an LEA is not subject to the requirement to conduct school for at least 990 hours of educational services if, by August 1, 2020, the LEA includes in the LEA's reopening requirements template, how the LEA will ensure continuity of teaching and learning by providing high quality instruction that includes blended learning and formative assessment strategies.

R277-419-~~6~~7. Student Membership Eligibility and ~~[Continuing]~~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) In order to generate membership for funding through the Minimum School Program ~~for any clock hour of instruction~~ 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 ~~[continuing]~~ 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 period of time, due to:

- (I~~II~~) injury;
- (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(s) 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(14); and

(C) a course consistent with the student's SEOP/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 SEOP/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 ~~[continuing]~~ 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 all of 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 ~~[continuing]~~ learner validated enrollment measurement to document the ~~[continuing]~~ learner validated membership or enrollment status for each student enrolled in the learner validated program consistent with Subsection (3)(c);

(ii) document each student's continued enrollment status in compliance with the ~~[continuing]~~ 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 ~~[continuing]~~ learner validated enrollment measurement, consistent with Subsection (3)(c).

~~(c) For a student enrolled in an learner validated program, the LEA may not count a student as an eligible student if the LEA has not personally engaged with the student during the prior ten consecutive school days.~~

(5) The ~~[continuing]~~ learner validated enrollment measurement described in Subsection (4)(b) may include some or all of 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.

~~[(6) For a student enrolled in both attendance validated and learner validated programs, an LEA shall measure a student's continuing enrollment status using the methodology for the program in which the student earns the majority of their membership days.]~~

(6)(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(s) 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-[7]8. 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) An early graduation student may be counted for more than 180 days of regular membership in accordance with the student's early graduation student education plan.

(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 R277-419-5(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 all 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 4 periods each day in a 7 period school day for all 180 school days, the student's aggregate membership would be 4/7 of 180 days or 103 days.

(b) If the student was enrolled for 7 periods each day in a 7 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 ~~[instruction]~~ 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 SEOP/Plan for College and Career Readiness; or

(ii) participating in one or more extracurricular 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 SEOP/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 all the criteria of Rule R277-713;

(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 Subsection 53G-6-707(7); 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.

R277-419-[8]9. Student Membership Calculation During the 2020 Covid-19 Pandemic.

Notwithstanding the requirements of Sections R277-419-[6]7 and R277-419-[7]8, the Superintendent shall calculate an LEA's

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membership for days of instruction from March 16, 2020 to June 30, 2020, based on the LEA's average rate of membership between July 1, 2019 and March 13, 2020 if:

- (1) the LEA has submitted a continuity of education plan on or before June 1, 2020; and
- (2) the LEA provides educational services through the end of the LEA's regular school year calendar.

R277-419-[9]10. 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-[40]11. Reporting Requirements, LEA Records, and Agreed-Upon Procedures Engagements.

- (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
 - (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 classification of instructional program (CIP) 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 instructional/educational service activities throughout required calendared instruction days.
- (7) An LEA shall employ an independent auditor, under contract, to:
 - (a) perform an annual agreed-upon procedures engagement; and

- (b) report any findings of the engagement to:
 - (i) the LEA board; and
 - (ii) the Financial Operations Section of the Board.
- (8) Reporting dates, forms, and procedures are found in the Guide for Agreed-Upon Procedures Engagements for Local Education Agencies, published by the Office of the State Auditor, in collaboration with the Superintendent.
- (9) 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 the laws and this rule.

R277-419-[44]12. High School Completion Status.

- (1) An LEA shall account for the final status of all 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 Subsection R277-705-4(2) or out-of-school youths of school age who complete adult education secondary diploma requirements consistent with 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 Section R277-705-4;
 - (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 (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-[6]7(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 related to the Agreed-Upon Procedures Engagement.

(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 Section R277-484-3.

(d) An LEA with an alternative school year schedule where all of 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 Section R277-484-3.

(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 their 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.

R277-419-1[2]3. 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) 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.

(a) 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;

(b) 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

(c) 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.

R277-419-1[3]4. 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 shall be considered to be in compliance with this rule if the school's schedule includes a minimum of 990 hours of ~~instruction time in~~ time the LEA will provide educational services over a minimum of 172 days.

R277-419-15. Student Enrollment Count Polls for 2020-21 School Year.

(1) The Superintendent shall take a poll of UTREx LEA student enrollment data on the following dates:

(a) September 9, 2020; and

(b) on another date determined by the Superintendent in December 2020 or January 2021.

(2) The Superintendent shall notify LEAs of the date described in Subsection (1)(b) at least 15 days before taking the poll.

R277-419-16. Effective Date.

This rule is effective for the 2020-21 school year.

KEY: education finance, school enrollment, pupil accounting
Date of Enactment or Last Substantive Amendment: August 7, 2020

Notice of Continuation: August 14, 2017

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 EMERGENCY (120-DAY) RULE		
Utah Admin. Code Ref (R no.):	R305-7-104	Filing No. 53002

Agency Information

1. Department:	Environmental Quality	
Agency:	Administration	
Room no.:	Fourth Floor	
Building:	Multi Agency State Office Building	
Street address:	195 N 1950 W	
City, state, zip:	Salt Lake City, UT 84116	
Contact person(s):		
Name:	Phone:	Email:
Liam Thrailkill	801-536-4419	lthrailkill@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R305-7-104. Filing and Service of Notices, Orders, Motions, and Other Papers
3. Effective Date:
08/17/2020
4. Purpose of the new rule or reason for the change:
The Utah Department of Environmental Quality (UDEQ) has rulemaking authority under Subsection 19-1-201(1)(d)(ii) to make procedural rules that govern adjudicative proceedings under Section 19-1-301, and special adjudicative proceedings under Section 19-1-301.5. UDEQ has promulgated those rules, codified under Rule R305-7. Among these rules is Subsection R305-7-104(5), which in part governs the form and timeliness of filings to initiate adjudicative proceedings regarding agency actions. Filing to initiate an adjudication on an agency decision must occur within 30 days of that decision, see Subsections R305-7-203(5) (for petitions for review); and R305-7-303(5) (for requests for agency action). The current rule expressly states that email submission is insufficient to initiate an adjudicative proceeding, Subsection R305-7-104(5)(a). Therefore, paper submissions that must be filed in person or by mail are currently the only filing option to initiate new adjudicative proceedings.
The UDEQ offices are located in the Multi-Agency State Office Building (MASOB). The MASOB is now closed to the public due to the COVID-19 Pandemic. Few agency employees currently staff the agency offices. Consequently, although the current rule requires that

those wishing to initiate an adjudicative proceeding must file a paper copy in person, or via an overnight courier service, at MASOB, they cannot do so at this time because the building is closed to the public. Although filing by U.S. Mail is still an option under the rule, processing of mail may be delayed due to reduced on-site staffing. Nothing in this rule requires a filer to use mail if personal filing is not available and hand-delivery, either in person or via an overnight courier service, are still allowed under this rule.

The closing of the MASOB to the public and both Salt Lake City and Salt Lake County shelter in place orders suggest that allowing people to enter the MASOB and have contact with the limited staff onsite is a threat to public health, safety, or welfare as it might contribute to further spreading of COVID-19. The reason for this closing is to prevent the spread of the virus. Even if the MASOB were open to the public for the limited purposes of complying with the filing requirements of Section R305-7-105 raises the risk that, for example, an asymptomatic carrier of COVID-19 could unwittingly spread the virus to others in MASOB.

UDEQ divisions continue to function and make final agency actions through limited on-site staff and telework. Those final agency decisions trigger the right to seek a legal remedy by initiating adjudicative proceedings. Because the MASOB is currently closed and agency actions issued by DEQ must provide notice as to how appeals are to be filed, a standard 120-day rulemaking process to allow for electronic submission would be too long and may impair the right of interested members of the public or industry to initiate adjudicative proceedings based on agency decisions made in the interim. Because such decisions are made routinely by all divisions of UDEQ, the lack of an immediate ability to file to initiate adjudicative proceedings presents an imminent threat to public health, safety, and welfare that must be addressed immediately. Therefore, an emergency rule is necessary to allow, on a temporary basis, electronic filing of Requests for Agency Action and Petitions for Review to avoid impairing the ability to initiate an adjudicative proceeding.

This is the second emergency filing for this rulemaking. UDEQ was unaware of how long COVID-19 would be closing down regular operating business at the time of the first filing, but it is apparent this needs to be extended for the well-being of staff and citizens.

5. Summary of the new rule or change:
These changes will allow temporary electronic filing of requests for agency action and petitions for review to initiate adjudicative proceedings contesting UDEQ actions.
6. Regular rulemaking would:
X cause an imminent peril to the public health, safety, or welfare;
cause an imminent budget reduction because of budget restraints or federal requirements; or

place the agency in violation of federal or state law.
Specific reason and justification:
The MASOB is closed to the public due to the COVID-19 Pandemic, which is currently the only place allowed by rule to file contests to agency decisions. The legal right to contest agency decisions is provided under the Utah Administrative Procedures Act and Title 19 of the Environmental Quality Code, and impairment of the ability to exercise that right is an imminent peril to the public welfare. Therefore, a rule amendment that allows for electronic filing of new administrative adjudications, in lieu of personal filing at the MOSAB, is necessary. As agency decisions are currently being made daily or weekly and the standard 120-day rulemaking would exceed the standard 30-day deadline for filing to initiate an adjudicative proceeding, an emergency rule is necessary to temporarily address this situation until the pandemic ends and MASOB reopens to the public.

Fiscal Information

7. Aggregate anticipated cost or savings to:
A) State budget:
There is no anticipated cost or savings to the state budget, as the state will simply be receiving electronically-filed requests for agency action or petitions for review.
B) Local governments:
None anticipated, as the state is the governmental entity that receives petitions for review or requests for agency action. Should a local government seek to initiate an adjudication, it will result in the marginal savings of not having to send an employee to file in person.
C) Small businesses ("small business" means a business employing 1-49 persons):
Any savings to small businesses will be to those who do not have to incur expenses to travel to MASOB to file to initiate an adjudicative proceeding.
D) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency):
Any savings will be to those who do not have to incur expenses to travel to MASOB to file to initiate an adjudicative proceeding.
8. Compliance costs for affected persons:
There are no anticipated compliance costs for affected persons, as compliance with the rule requires minimal work.

9. A) Comments by the department head on the fiscal impact this rule may have on businesses:
This emergency rulemaking is not expecting to have any fiscal impacts on businesses, as the amendment relates to administrative procedures in which compliance is not burdensome.
B) Name and title of department head commenting on the fiscal impacts:
L. Scott Baird, Executive Director

Citation Information

10. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):		
Subsection	Section	
19-1-201(1)(d)(ii)	63G-3-304	

Agency Authorization Information

Agency head or designee, and title:	L. Scott Baird, Executive Director	Date:	08/03/2020
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R305. Environmental Quality, Administration.

R305-7. Administrative Procedures.

R305-7-104. Filing and Service of Notices, Orders, Motions, and Other Papers.

(1) (a) The rules governing service of Initial Orders and Notices of Violation are provided in R305-7-302.

(b) Filing and service of all papers in adjudicative proceedings shall be made by email except as otherwise provided in this R305-7-104 and in R305-7-309(2)(b), R305-7-309(7)(b)(ii), and R305-7-313. Adjudicative proceedings ~~may[shall not]~~ be initiated by U.S. Mail or by email, in accordance with ~~Initiation of adjudicative proceedings through traditional (paper) filing is governed by~~ subsection (5), below.

(c) In the event the ALJ determines that it is inappropriate in a specific case to file and serve all papers by email, the requirements of R305-7-104(4) will govern. Those requirements may be modified by the ALJ.

(d) The provisions of R305-7-104(2) will also apply regardless of whether filing and service are done by email (R305-7-104(3)) or by traditional service methods (R305-7-104(4)).

(e) A party seeking to have filing and service requirements governed by R305-7-104(4), such as a person who does not have access to email, shall file and serve that request as provided in R305-7-104(4). Once a request to proceed under R305-7-104(4) is filed and served, the provisions of that section shall apply to all future filing and service unless otherwise ordered by the ALJ.

(2) General Provisions Governing Filing and Service.

(a) Every submission shall be filed with:

- (i) the ALJ or, if no ALJ has been appointed, the Director; and
- (ii) the Administrative Proceedings Records Officer.

(b) In addition, every submission shall be served upon:

- (i) the Director, if a submission is not filed with the Director under paragraph (2)(a)(i);

NOTICES OF 120-DAY (EMERGENCY) RULES

(ii) the assistant attorney general representing the Director;
(iii) the permittee or the person who was the recipient of the Permit Order, or other order or notice of violation being challenged;

(iv) any other party.

(c) A person, other than the Director, who is represented by an attorney or other representative, as provided in R305-7-106, shall be served through the attorney or other representative.

(d) Every submission shall include a certificate of service that shows the date and manner of filing with and service on the persons identified in R305-7-104(2)(a) and (b).

(e) Service on a regulated person at the person's Designated Address shall be deemed to be service on that person.

(3) Provisions governing electronic filing and service.

(a) A submission following the initiation of an adjudicative proceeding shall be filed with the Administrative Proceedings Records Officer by emailing it to DEQAPRO@utah.gov. Initiation of adjudicative proceedings is governed by subsection (5).

(b) Filing or service on all other parties shall be by email at addresses provided by those persons. If the person filing or serving the submission is unable, after due diligence, to determine an email address for a party, the person shall file or provide service by traditional means, as provided in R305-7-104(4).

(c) (i) A text document served by email shall be submitted as a searchable PDF document.

(ii) A person filing a submission may electronically file and serve a document without a signature if the person indicates that the document was signed (e.g., "signed by (name)" or "/s/ (name)").

(d) The ALJ may order any other submission to be provided in a searchable format.

(e) Large emails (5 Mb or more) may not be accepted by some email systems. It shall be the responsibility of a person sending a large email to ensure that it has been received by all parties, e.g., by telephoning or by sending a separate notification email and requesting a response.

(f) Photographic or other illustration documents filed and served by email shall be submitted as:

(i) a PDF document; or

(ii) a JPEG document.

(g) Documents that are difficult to file and serve by email because of their size or form may be filed and served on a CD, DVD, USB flash drive or other commonly used digital storage medium. A document may also be provided in paper form if it is impracticable to copy the document electronically. Filing and service of such documents shall be as provided in R305-7-104(4).

(h) A party shall provide a paper copy of any document, including signed documents, upon request by the ALJ.

(4) Provisions governing traditional filing and service of paper documents to the extent that filing and service of paper documents is allowed or required by this Rule.

(a) Filing and service of paper documents shall be made:

(i) by United States mail, postage pre-paid;

(ii) by hand[-] delivery; or

(iii) by overnight courier delivery; ~~or~~

~~(iv) by the Utah State Building Mail system, if the sender and receiver are both state employees.]~~

(b) Documents to be filed with or served on the Director shall be filed and served at the address specified in Part 6.

(c) Documents to be filed with the Administrative Proceedings Records Officer shall be submitted to one of these addresses:

(i) By U.S. Mail: Administrative Proceedings Records Officer, Environment Division, Utah Attorney General's Office, PO Box 140873, Salt Lake City Utah 84114-0873; or

(ii) By hand or commercial delivery: Administrative Proceedings Records Officer, Environment Division, Utah Attorney General's Office, 195 North 1950 West, Second Floor, Salt Lake City Utah 84116.

(d) ~~[(i) Except as provided in R305-7-104(5)(b), a]~~ A document that is filed or served by U.S. Mail or overnight delivery service shall be considered filed or served on the date it is mailed or picked up by the overnight delivery service. A document that is filed or served by email shall be considered filed or served on the date that it is sent, subject to the service requirements set forth in subsection (5)(a) or provided to the overnight delivery service. A document that is filed or served by Utah State Building Mail shall be considered filed or served on the date it is placed in a Utah State Building Mail bin.]

(5)(a) After August 17, 2020, adjudicative proceedings before the Department may be initiated by service upon the Administrative Proceedings Hearing Officer via email at DEQAPRO@utah.gov, or by service of paper documents upon the applicable Director and the Administrative Proceedings Hearing Officer, in accordance with subsection (4)(c)(i) or (ii). If an adjudicative proceeding [Email does not constitute filing and is not adequate to initiate an adjudicative proceeding] under this Rule, Section 19-1-301, or a special adjudicative proceeding under Section 19-1-301.5 is initiated via email at DEQAPRO@utah.gov, a [-A] paper copy [paper, signed original] of any Request for Agency Action, Petition for Review, Notice of Agency Action, or Petition to Intervene that is filed by email shall be [filed traditionally and] served as provided in R305-7-104(2) and (4).

(b) The filing of [To be timely,] a Request for Agency Action, Petition for Review, or a Petition to Intervene in accordance with subsection (5)(a) shall be deemed to be timely [must be received by the Director and the Administrative Proceedings Records Officer] as provided in:

(i) R305-7-203(5) and R305-7-205 (for a Petition for Review, filed and served in a special adjudicative proceeding);

(ii) R305-7-303(5) (for a Request for Agency Action filed and served in a proceeding other than a special adjudicative proceeding);

(iii) R305-7-204(2) and R305-7-205 (for a Petition to Intervene filed and served in a special adjudicative proceeding); and

(iv) R305-7-304 (which incorporates the requirements of R305-7-204(2)) for a Petition to Intervene filed and served in a proceeding other than a special adjudicative proceeding).

KEY: administrative procedures, adjudicative procedures, hearings

Date of Enactment or Last Substantive Amendment: August 17, 2020

Notice of Continuation: October 26, 2017

Authorizing, and Implemented or Interpreted Law: 19-1-301; 19-1-301.5; 63G-4-102; 63G-4-201; 63G-4-202; 63G-4-203; 63G-4-205; 63G-4-503

NOTICE OF EMERGENCY (120-DAY) RULE		
Utah Admin. Code Ref (R no.):	R539-5-5	Filing No. 53009

Agency Information

1. Department:	Human Services	
Agency:	Services for People with Disabilities	
Building:	MASOB	
Street address:	195 N 1950 W	
City, state, zip:	Salt Lake City, UT 84116	
Contact person(s):		
Name:	Phone:	Email:
Kelly Thomson	435-669-4855	kthomson@utah.gov
Jonah Shaw	801-538-4219	jshaw@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R539-5-5. Employee Requirements
3. Effective Date:
08/13/2020
4. Purpose of the new rule or reason for the change:
The Centers for Medicare and Medicaid Services will waive restrictions on payment to legally responsible caregivers and guardians when requested by the state through Appendix K. The Division of Services for People with Disabilities (DSPD) received Appendix K approval between January 27, 2020 and January 26, 2021 and requests a temporary rule change to permit payment. DSPD must also revise a current rule that restricts payment. An amendment was concurrently submitted.
5. Summary of the new rule or change:
This change is an addition of an exception that allows legally responsible caregivers and spouses to be paid support staff during the COVID-19 emergency. (EDITOR'S NOTE: A corresponding amendment to the entire Rule R539-9 is under Filing No. 53010 in this issue, September 1, 2020, of the Bulletin.)
6. Regular rulemaking would:
<input checked="" type="checkbox"/> cause an imminent peril to the public health, safety, or welfare;
<input type="checkbox"/> cause an imminent budget reduction because of budget restraints or federal requirements; or
<input type="checkbox"/> place the agency in violation of federal or state law.

Specific reason and justification:
The COVID-19 emergency has reduced the provider network available to people with intellectual/developmental disabilities, acquired brain injuries, and physical disabilities. The people served by DSPD services rely on those services to complete daily tasks, care for themselves, and stay safe. Current state and federal guidance encourage people to stay home and limit contact in order to slow the spread of the virus. Many people receiving services live with a family member who can provide care but may need to reduce other employment to do so. As the virus spreads, direct support professionals may become ill and unable to work, which will reduce the availability of support staff.

Fiscal Information

7. Aggregate anticipated cost or savings to:
A) State budget:
DSPD estimates that the temporary rule will cost \$1,638,550.43 over 120 days. At least 70% of the estimated funds will come from federal funding.
B) Local governments:
No fiscal impact to local governments because DSPD services are operated at the state level.
C) Small businesses ("small business" means a business employing 1-49 persons):
No fiscal impact to small businesses. Family members will be paid by the state.
D) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <i>agency</i>):
Family members will be paid by the state through this change. It is estimated that over 120 days, a \$1,638,550.43 fiscal benefit will be distributed to persons other than small businesses, non-small businesses, state, or local government entities.
8. Compliance costs for affected persons:
The exception is permissive and lacks a compliance component. No compliance costs for the person.
9. A) Comments by the department head on the fiscal impact this rule may have on businesses:
After conducting a thorough analysis, it was determined that this proposed emergency rule amendment will not result in a fiscal impact to businesses.

B) Name and title of department head commenting on the fiscal impacts:

Ann Williamson, Executive Director

Citation Information

10. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Section 62A-5-102 | Section 62A-5-103

Agency Authorization Information

Agency head or designee, and title:	Ann Williamson, Executive Director	Date:	08/13/2020
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R539. Human Services, Services for People with Disabilities.

R539-5. Self-Administered Services.

R539-5-5. Employee Requirements.

(1) All Employees hired by the Person must be 16 years of age or older. Employees under age 18 must have the Employee Agreement co-signed by their parent/Guardian.

(2) Parents, Guardians, or step-parents shall not be paid to provide services to the Person, nor shall an individual be paid to provide services to a spouse with the exception that spouses who were approved by the Division to provide reimbursed support for a Person in a non-Medicaid funded program prior to May 17, 2005 may continue to be reimbursed. This exception is only valid for support of the current spouse receiving Division services and shall not be allowed by the Division in the event that the spouses divorce or if one spouse dies. A spouse who is approved by the Division to provide support under this provision is limited to a maximum of \$15,000 during the State Fiscal year, which begins on July 1st and ends the following year on June 30th.

(a) Except during the COVID-19 emergency.

(i) A legally responsible caregiver, guardian, or spouse may be paid to provide services to a person when necessary to prevent the spread of COVID-19 or no other provider is available.

(ii) Any service provided must conform to the person's service plan.

(iii) A legally responsible caregiver, guardian, or spouse must obtain approval from the support coordinator before providing services.

(3) Employees must complete the following prior to working with the Person and receiving payment from the Fiscal Agent:

(a) Complete and sign Form W-4;

(b) Complete and sign Form I-9 (including supporting documentation);

(c) Complete and sign the Employee Agreement Form;

(d) Read and sign the Department and Division Code of Conduct (Department Policy 05-03 and Division Directive 1.20); and

(e) Review the approved and prohibited Behavior Supports as identified in R539-3-10, the Support Book, and other best practice sources recommended by the Division, if applicable. Behavior Supports shall not violate R495-876, R512-202, Sections 62A-3-301 through 62A-3-321, and Sections 62A-4a-402 through 62A-4-412 prohibiting abuse.

(f) Review the Person's Support Book.

(g) Complete any screenings and trainings necessary to provide for the health and safety of the Person (i.e., training for any specialized medical needs of the Person).

(h) If applicable, be trained on the Person's Behavior Support Plan.

(i) Complete and sign the Application for Certification Form.

KEY: disabilities, self administered services

Date of Enactment or Last Substantive Amendment: August 13, 2020

Notice of Continuation: July 15, 2019

Authorizing, and Implemented or Interpreted Law: 62A-5-102; 62A-5-103

End of the Notices of 120-Day (Emergency) Rules Section

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the agency is required to review the rule. This review is intended to help the agency determine, and to notify the public, that the administrative rule in force is still authorized by statute and necessary. Upon reviewing a rule, an agency may: repeal the rule by filing a **PROPOSED RULE**; continue the rule as it is by filing a **FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (REVIEW)**; or amend the rule by filing a **PROPOSED RULE** and by filing a **REVIEW**. By filing a **REVIEW**, the agency indicates that the rule is still necessary.

A **REVIEW** is not followed by the rule text. The rule text that is being continued may be found in the online edition of the *Utah Administrative Code* available at <https://rules.utah.gov/>. The rule text may also be inspected at the agency or the Office of Administrative Rules. **REVIEWS** are effective upon filing.

REVIEWS are governed by Section 63G-3-305.

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R156-50	Filing No. 50286

Agency Information

1. Department:	Commerce	
Agency:	Occupational and Professional Licensing	
Building:	Heber M. Wells Building	
Street address:	160 E 300 S	
City, state, zip:	Salt Lake City, UT 84111-2316	
Mailing address:	PO Box 146741	
City, state, zip:	Salt Lake City, UT 84114-6741	
Contact person(s):		
Name:	Phone:	Email:
Jana Johansen	801-530-6621	janajohansen@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R156-60. Private Probation Provider Licensing Act Rule
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Title 58, Chapter 50, provides for the licensure and regulation of private probation providers. Subsection 58-1-106(1)(a) provides that the Division of Occupational and Professional Licensing (Division) may adopt and enforce rules to administer Title 58. Subsection 58-1-202(1)(a)

provides that the Private Probation Provider's Licensing Board's duties, functions, and responsibilities includes recommending to the director appropriate rules. This rule was enacted to clarify the provisions of Title 58, Chapter 50, with respect to private probation providers.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

Since this rule was last reviewed in September 2015, the rule has been amended one time in July/August 2019. With regards to the proposed rule filing under DAR No. 43779, the Division received numerous written comments. A July 29, 2019, form with four names/signatures on the form indicated "objection to proposed rule change – DAR File No. 43779"; however, nothing was provided on the form as to what amendments the four persons were objecting to. Numerous written comments were received in July 2019 with regards to the proposed amendments in the referenced DAR file number. Some of the written comments agreed with the proposed rule amendments and some comments disagreed with the proposed rule amendments. Based on Division review of the comments, it was determined some of the comments were vague and some of the comments were the same "canned" comment sent by multiple persons via email. In response to the written comments, the Division indicates the governing statute for private probation providers provided that probation services and therapy services could be within the same private probation provider company. The proposed amendments to the rule were just clarifying what disclosures are needed for both types of services. The proposed rule amendments became effective on August 8, 2019. The Private Probation Provider also reviewed the written comments at their August 2019 board meeting and determined no additional rule amendments would be filed based on the written comments.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule should be continued as it provides a mechanism to inform potential licensees of the requirements for licensure as allowed under statutory authority provided in Title 58, Chapter 50. This rule should also be continued as it provides information to ensure applicants for licensure are adequately trained and meet minimum licensure requirements, and provides licensees with information concerning unprofessional conduct, definitions, and ethical standards relating to the profession.

Agency Authorization Information

Agency head or designee, and title:	Mark B. Steinagel, Division Director	Date:	04/30/2020
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R307-122	Filing No. 50582
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Agency Information

1. Department:	Environmental Quality	
Agency:	Air Quality	
Room no.:	Fourth Floor	
Building:	Multi Agency State Office Building	
Street address:	195 N 1950 W	
City, state, zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 144820	
City, state, zip:	Salt Lake City, UT 84116-4820	
Contact person(s):		
Name:	Phone:	Email:
Liam Thrailkill	801-536-4419	lthrailkill@utah.gov

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

General Information

2. Rule catchline:
R307-122. General Requirements: Heavy Duty Vehicle Tax Credit
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Rule R307-122 establishes procedures to provide proof of a qualified purchase, in accordance with Subsections 59-7-618(6)(a) or 59-10-1033(6)(a), to the director for a

qualified heavy-duty vehicle for which an income tax credit is allowed under Sections 59-7-618 or 59-10-1033. As of July 20, 2020, the aforementioned subsections no longer exist in the Utah Code. However, this rule is still necessary for those who are completing their 2020 taxes, those who may amend their previous taxes, and for those who may apply in the future for when they were previously eligible. Section 19-2-104 states the "board may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act," which allows for the Board to have the authority to create and continue this rule.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

There have been no written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule should be continued because it can still be used for this current tax year, for those who may amend previous tax years, and for those who were previously qualified and may apply if there are credits still available. Additionally, staff would like to continue this rule with the chance that the Legislature may enact a similar statute in which this rule could apply, saving the Division of Air Quality from having to draft a new rule.

Agency Authorization Information

Agency head or designee, and title:	Bryce Bird, Director	Date:	07/20/2020
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R512-43	Filing No. 51220
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Agency Information

1. Department:	Human Services	
Agency:	Child and Family Services	
Building:	MASOB	
Street address:	195 N 1950 W	
City, state, zip:	Salt Lake City, UT 84116	
Contact person(s):		
Name:	Phone:	Email:
Carol Miller	801-557-1772	carolmiller@utah.gov

Jonah Shaw	801-538-4219	jshaw@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R512-43. Adoption Assistance
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Section 62A-4a-102 authorizes the Division of Child and Family Services to establish rules in order to provide programs and services that support the strengthening of family values, including services which preserve and enhance family life and relationships; protect children, youth, and families; and advocate and defend family values established by public policy and advocacy and education.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
No written comments were received.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
Continuation of this rule is necessary in order for the Division of Child and Family Services to continue to offer adoption assistance to qualifying families.

Agency Authorization Information

Agency head or designee, and title:	Diane Moore, Director	Date:	08/03/2020
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R512-205	Filing No. 51238

Agency Information

1. Department:	Human Services
Agency:	Child and Family Services
Building:	MASOB
Street address:	195 N 1950 W
City, state, zip:	Salt Lake City, UT 84116

Contact person(s):		
Name:	Phone:	Email:
Carol Miller	801-557-1772	carolmiller@utah.gov
Jonah Shaw	801-538-4219	jshaw@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R512-205. Child Protective Services, Investigation of Domestic Violence Related Child Abuse
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Section 62A-4a-102 authorizes the Division of Child and Family Services to establish rules in order to provide programs and services that support the strengthening of family values, including services which preserve and enhance family life and relationships; protect children, youth, and families; and advocate and defend family values established by public policy and advocacy and education.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
No written comments were received.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
Continuation of this rule is necessary in order for the Division of Child and Family Services to investigate an allegation of Domestic Violence Related Child Abuse.

Agency Authorization Information

Agency head or designee, and title:	Diane Moore, Director	Date:	08/03/2020
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R527-34	Filing No. 51273

Agency Information

1. Department:	Human Services
Agency:	Recovery Services

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Street address:	515 E 100 S	
City, state, zip:	Salt Lake City, UT 84102-4211	
Mailing address:	PO Box 45033	
City, state, zip:	Salt Lake City, UT 84145-0033	
Contact person(s):		
Name:	Phone:	Email:
Scott Weight	801-741-7435	sweigh2@utah.gov
Casey Cole	801-741-7523	cacole@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R527-34. Non-IV-A Services
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Section 62A-11-107 gives the Office of Recovery Services (ORS) the authority to adopt, amend, and enforce rules necessary to carry out its responsibilities under state law. Provisions found in Section 62A-11-104 require the office to provide child support services to those that are legally entitled to receive those services and requires that ORS collect money due the agency which could help offset state expenditures. This rule also summarizes the services available to recipient of Non-IV-A child support services, individual not receiving case assistance who are otherwise eligible for child support services. 45 CFR 302.33 states that ORS must provide that an application fee will be charged for each individual who applies for services, that ORS shall collect the application fee from the individual or pay the application fee out of state funds, and that ORS may elect to recover any costs incurred in excess of any fees collected to cover administrative costs.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
There have been no comments received since the last five-year review of this rule.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule should be continued because the Non-IV-A services outlined in this rule are still provided by ORS. In addition, this rule incorporates 45 CFR 302.33 by reference, which is still in effect. This federal regulation addresses costs that a state may elect to recover for providing Non-IV-A services, and it is still necessary to

specify the fees that ORS has elected to charge, or not charge, for child support services.

Agency Authorization Information

Agency head or designee, and title:	Liesa Stockdale, ORS Director	Date:	08/04/2020
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R527-231	Filing No. 51284

Agency Information

1. Department:	Human Services	
Agency:	Recovery Services	
Street address:	515 E 100 S	
City, state, zip:	Salt Lake City, UT 84102-4211	
Mailing address:	PO Box 45033	
City, state, zip:	Salt Lake City, UT 84145-0033	
Contact person(s):		
Name:	Phone:	Email:
Scott Weight	801-741-7435	sweigh2@utah.gov
Casey Cole	801-741-7523	cacole@utah.gov
Jonah Shaw	801-538-4225	jshaw@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R527-231. Review and Adjustment of Child Support Order
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Section 62A-11-107 gives the Office of Recovery Services (ORS) the authority to adopt, amend, and enforce rules necessary to carry out its responsibilities under state law. Section 78B-12-210 provides the guidelines for establishing or modifying a judicial or administrative child support order. Section 62A-11-320.5 requires ORS to review and adjust child support orders every three years, taking into account the best interest of the child involved. Section 62A-11-320.6 allows ORS to review a child support order at any time if there has been a substantial change in circumstances.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

There have been no comments received since the last five-year review of this rule.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule should be continued because the state and federal laws are still in effect which require review and adjustment processes for child support orders. In addition, this rule provides essential clarification by listing specific situations where a review and adjustment will or will not be pursued by ORS.

Agency Authorization Information

Agency head or designee, and title:	Liesa Stockdale, ORS Director	Date:	08/04/2020
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R527-800	Filing No. 51305
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Agency Information

1. Department:	Human Services	
Agency:	Recovery Services	
Street address:	515 E 100 S	
City, state, zip:	Salt Lake City, UT 84102-4211	
Mailing address:	PO Box 45033	
City, state, zip:	Salt Lake City, UT 84145-0033	
Contact person(s):		
Name:	Phone:	Email:
Scott Weight	801-741-7435	sweigh2@utah.gov
Casey Cole	801-741-7523	cacole@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R527-800. Acquisition of Real Property, and Medical Support Cooperation Requirements
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

Section 62A-11-104 gives the Office of Recovery Services (ORS) the authority to determine whether an applicant or recipient of cash assistance or Medicaid is cooperating in good faith. Section 62A-11-111 provides ORS with reasonable costs of sale and settlement of property or an estate when it becomes necessary to sell property or settle and estate. Section 59-2-1101 states that property owned by the state is tax exempt. 42 CFR 433.147-148 authorizes ORS to gather information from a recipient of medical assistance regarding Third Party Liability, establishment of paternity for children to establish medical support liability, and in utilizing all available third party resources to offset Medicaid expenditures, and by failing to provide this information, the recipient may be removed from the medical assistance case.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

There have been no comments received since the last five-year review of this rule.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule should be continued because the laws that require ORS to initiate enforcement actions against real property in order to satisfy financial obligations when other methods have failed or are unavailable are still in effect.

Agency Authorization Information

Agency head or designee, and title:	Liesa Stockdale, ORS Director	Date:	08/04/2020
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R527-936	Filing No. 51310
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Agency Information

1. Department:	Human Services	
Agency:	Recovery Services	
Street address:	515 E 100 S	
City, state, zip:	Salt Lake City, UT 84102-4211	
Mailing address:	PO Box 45033	
City, state, zip:	Salt Lake City, UT 84145-0033	
Contact person(s):		
Name:	Phone:	Email:
Scott Weight	801-741-7435	sweigh2@utah.gov

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Casey Cole	801-741-7523	cacole@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R527-936. Third Party Liability, Medicaid
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Title 26, Chapter 19; Section 26-18-8; and Subsection 26-18-10(4) require the Office of Recovery Services (ORS) to promulgate rules to administer the Third Party Liability Program.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
There have been no comments received since the last five-year review of this rule.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule should be continued because it is needed to continue the Third Party Liability program required by the Medical Benefits Recovery Act found in Title 26, Chapter 19.

Agency Authorization Information

Agency head or designee, and title:	Liesa Stockdale, ORS Director	Date:	08/04/2020
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R986-600	Filing No. 52201

Agency Information

1. Department:	Workforce Services
Agency:	Employment Development
Building:	Olene Walker Building
Street address:	140 E 300 S
City, state, zip:	Salt Lake City, UT 84111
Mailing address:	PO Box 45244
City, state, zip:	Salt Lake City, UT 84145-0244

Contact person(s):		
Name:	Phone:	Email:
Amanda B. McPeck	801-517-4709	ampeck@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R986-600. Workforce Innovation and Opportunity Act
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Subsection 35A-1-104(1) of the Employment Security Act authorizes the Department of Workforce Services (Department) to adopt rules as authorized by Title 35A. Section 35A-1-303 authorizes the Department to adopt rules governing adjudicative procedures. The Utah Administrative Procedures Act, Title 63G, Chapter 4, defines the procedures the Department must follow in administrative hearings. Subsection 35A-1-104(4) authorizes the Department to establish eligibility standards for its programs. Section 35A-3-103 directs the Department to administer public assistance programs assigned to the Department. Section 35A-5 et seq. directs the Department to administer the Workforce Innovation and Opportunity Act (WIOA).
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
No comments have been received in the last five years.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule is necessary to set eligibility standards for all WIOA programs and establishing factors used in determining priority for services. This rule is also necessary to establish the requirement for an employment plan. This rule also sets the standards for providers seeking approval for funding for students. Without this rule and standards, training providers and clients would not know the requirements for these programs or that the training providers are meeting those standards. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Jon Pierpont, Executive Director	Date:	08/14/2020
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End of the Five-Year Notices of Review and Statements of Continuation Section

NOTICES OF RULE EFFECTIVE DATES

State law provides for agencies to make their administrative rules effective and enforceable after publication in the *Utah State Bulletin*. In the case of **PROPOSED RULES** or **CHANGES IN PROPOSED RULES** with a designated comment period, the law permits an agency to make a rule effective no fewer than seven calendar days after the close of the public comment period, nor more than 120 days after the publication date. In the case of **CHANGES IN PROPOSED RULES** with no designated comment period, the law permits an agency to make a rule effective on any date including or after the thirtieth day after the rule's publication date, but not more than 120 days after the publication date. If an agency fails to file a **NOTICE OF EFFECTIVE DATE** within 120 days from the publication of a **PROPOSED RULE** or a related **CHANGE IN PROPOSED RULE** the rule lapses.

Agencies have notified the Office of Administrative Rules that the rules listed below have been made effective.

NOTICES OF EFFECTIVE DATE are governed by Subsection 63G-3-301(12), Section 63G-3-303, and Sections R15-4-5a and R15-4-5b.

Administrative Services

Archives and Records Service

No. 52792 (Amendment): R17-6 Records Storage and Disposal -- Archives Responsibility
Published: 06/16/2020
Effective: 08/07/2020

Records Committee

No. 52789 (Amendment): R35-1 State Records Committee Appeal Hearing Procedures
Published: 06/16/2020
Effective: 08/07/2020

No. 52791 (Amendment): R35-4 Compliance with State Records Committee Decisions and Orders
Published: 06/16/2020
Effective: 08/07/2020

Agriculture and Food

Administration

No. 52825 (New Rule): R51-7 Open and Public Meetings Act Electronic Meetings
Published: 07/01/2020
Effective: 08/10/2020

Horse Racing Commission (Utah)

No. 52824 (Amendment): R52-7 Horse Racing
Published: 07/01/2020
Effective: 08/10/2020

Plant Industry

No. 52822 (Amendment): R68-26 Industrial Hemp Product Registration and Labeling
Published: 07/01/2020
Effective: 08/10/2020

No. 52813 (Amendment): R68-28 Cannabis Processing
Published: 07/01/2020
Effective: 08/10/2020

No. 52808 (Amendment): R68-29 Quality Assurance Testing on Cannabis

Published: 07/01/2020
Effective: 08/10/2020

No. 52625 (New Rule): R68-33 Industrial Hemp Retailer Permit

Published: 06/15/2020
Effective: 08/10/2020

Commerce

Consumer Protection

No. 52858 (Amendment): R152-32a Pawnshop and Secondhand Merchandise Transaction Information Act Rule
Published: 07/01/2020
Effective: 08/10/2020

Education

Administration

No. 52839 (Amendment): R277-113 LEA Fiscal and Auditing Policies
Published: 07/01/2020
Effective: 08/12/2020

No. 52845 (Amendment): R277-303 Educator Preparation Programs

Published: 07/01/2020
Effective: 08/12/2020

No. 52811 (Amendment): R277-318 Teacher Salary Supplement Program

Published: 07/01/2020
Effective: 08/12/2020

No. 52870 (Amendment): R277-404 Requirements for Assessments of Student Achievement

Published: 07/15/2020
Effective: 08/24/2020

NOTICES OF RULE EFFECTIVE DATES

No. 52835 (Amendment): R277-409 Public School Membership in Associations
Published: 07/01/2020
Effective: 08/12/2020

No. 52846 (Amendment): R277-444 Distribution of Money to Arts and Science Organizations
Published: 07/01/2020
Effective: 08/12/2020

No. 52852 (Amendment): R277-460 Distribution of Substance Abuse Prevention Account
Published: 07/01/2020
Effective: 08/12/2020

No. 52912 (Amendment): R277-473 Utah Computer Science Grant
Published: 07/15/2020
Effective: 08/24/2020

No. 52853 (Repeal): R277-483 LEA Reporting and Accounting Requirements
Published: 07/01/2020
Effective: 08/12/2020

No. 52854 (Amendment): R277-497 School Accountability System
Published: 07/01/2020
Effective: 08/12/2020

No. 52855 (Repeal): R277-498 Grant for Math Teaching Training
Published: 07/01/2020
Effective: 08/12/2020

No. 52857 (Amendment): R277-550 Charter Schools - Definitions
Published: 07/01/2020
Effective: 08/12/2020

No. 52860 (Amendment): R277-607 Truancy Prevention
Published: 07/01/2020
Effective: 08/12/2020

No. 52861 (Amendment): R277-609 Standards for LEA Discipline Plans and Emergency Safety Interventions
Published: 07/01/2020
Effective: 08/12/2020

No. 52862 (Amendment): R277-615 Standards and Procedures for Student Searches
Published: 07/01/2020
Effective: 08/12/2020

No. 52871 (Repeal): R277-624 Electronic Cigarette Products in Schools
Published: 07/15/2020
Effective: 08/24/2020

No. 52873 (New Rule): R277-625 Mental Health Screening Program
Published: 07/01/2020
Effective: 08/12/2020

No. 52872 (Amendment): R277-752 Special Education Intensive Services Fund
Published: 07/15/2020
Effective: 08/24/2020

No. 52864 (Amendment): R277-910 Underage Drinking Prevention Program
Published: 07/01/2020
Effective: 08/12/2020

No. 52865 (Amendment): R277-924 Partnerships for Student Success Grant Program
Published: 07/01/2020
Effective: 08/12/2020

Environmental Quality

Air Quality

No. 52601 (Repeal and Reenact): R307-165 Emission Testing
Published: 07/01/2020
Effective: 08/10/2020

No. 52751 (Amendment): R307-410 Modeling of Criteria Pollutant Impacts in Attainment Areas
Published: 06/01/2020
Effective: 08/06/2020

Waste Management and Radiation Control, Waste Management

No. 52765 (Amendment): R315-270 Hazardous Waste Permit Program -- Permit Modification at the Request of the Permittee
Published: 06/15/2020
Effective: 08/17/2020

Governor

Criminal and Juvenile Justice (State Commission on), Indigent Defense Commission

No. 52660 (New Rule): R364-2 Indigent Defense Commission Complaint Rule
Published: 05/01/2020
Effective: 08/11/2020

Health

Child Care Center Licensing Committee

No. 52829 (Repeal and Reenact): R381-60 Hourly Child Care Centers
Published: 07/01/2020
Effective: 09/01/2020

No. 52830 (Repeal and Reenact): R381-70 Out of School Time Child Care Programs
 Published: 07/01/2020
 Effective: 09/01/2020

No. 52832 (Repeal and Reenact): R381-100 Child Care Centers
 Published: 07/01/2020
 Effective: 09/01/2020

Disease Control and Prevention, Environmental Services
 No. 52636 (Amendment): R392-302 Design, Construction and Operation of Public Pools
 Published: 04/15/2020
 Effective: 08/10/2020

Family Health and Preparedness, Child Care Licensing
 No. 52850 (Repeal and Reenact): R430-8 Exemptions From Child Care Licensing
 Published: 07/01/2020
 Effective: 09/01/2020

No. 52851 (Repeal and Reenact): R430-50 Residential Certificate Child Care
 Published: 07/01/2020
 Effective: 09/01/2020

No. 52849 (Repeal and Reenact): R430-90 Licensed Family Child Care
 Published: 07/01/2020
 Effective: 09/01/2020

Human Resource Management Administration

No. 52913 (Amendment): R477-7 Postpartum Recovery Leave Postponed
 Published: 07/15/2020
 Effective: 08/24/2020

Human Services

Child and Family Services
 No. 52801 (Amendment): R512-80 Definitions of Abuse, Neglect, and Dependency
 Published: 07/01/2020
 Effective: 08/10/2020

Substance Abuse and Mental Health
 No. 52826 (Amendment): R523-4 Certification Requirements for Screening, Assessment, Prevention, Treatment and Recovery Support Programs for Adults
 Published: 07/01/2020
 Effective: 08/13/2020

No. 52812 (New Rule): R523-22 Assertive Community Treatment Standards
 Published: 07/01/2020
 Effective: 08/13/2020

Insurance

Administration
 No. 52828 (Amendment): R590-102 Insurance Department Fee Payment Rule
 Published: 07/01/2020
 Effective: 08/10/2020

Lieutenant Governor

Elections
 No. 52758 (New Rule): R623-6 Verification of Requests to Withhold Voter Registration Information
 Published: 06/01/2020
 Effective: 08/01/2020

Natural Resources

Wildlife Resources
 No. 52840 (Amendment): R657-6 Taking Upland Game
 Published: 07/01/2020
 Effective: 08/10/2020

No. 52841 (Amendment): R657-9 Taking Waterfowl, Wilson's Snipe and Coot
 Published: 07/01/2020
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No. 52842 (Amendment): R657-54 Taking Wild Turkey
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Public Safety

Peace Officer Standards and Training
 No. 52730 (Amendment): R728-409 Suspension, Revocation, or Relinquishment of Certification
 Published: 05/15/2020
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Technology Services

Administration
 No. 52626 (Amendment): R895-14 Access to Information Technology for Users with Disabilities
 Published: 06/01/2020
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Workforce Services

Employment Development
 No. 52838 (Amendment): R986-700 Unearned Income, Pandemic
 Published: 07/01/2020
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Housing and Community Development
 No. 52888 (New Rule): R990-400 Pandemic Housing Assistance
 Published: 07/15/2020
 Effective: 08/26/2020

End of the Notices of Rule Effective Dates Section