

UTAH STATE BULLETIN

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

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

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

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

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

Office of Administrative Rules, Salt Lake City 84114

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EDITOR'S NOTES

Notice of a Public Hearing for Proposed Rule R414-12

On November 16, 2020, from 9:00 AM - 11:00 AM, the Utah Department of Health will hold a public hearing on Medicaid's proposed new Rule R414-12, Laboratory Services, that was published in the October 15, 2020, Utah State Bulletin under Filing No. 53099 on page 27.

The public hearing will be held as a virtual meeting and can be accessed by:

Phone: +1 641-569-8627

PIN: 691 187 565#

Google Meet:

Meeting ID: meet.google.com/wmh-yong-ida

Processing Error for the Effective Date for Rule R501-22

There was a processing error in the publication of the notice of effective date for Rule R501-22, DAR No. 44034. The effective date, which is 01/16/2020, was not published, but it was appropriately filed by the agency. The notice should have been:

Human Services

Administration, Administrative Services, Licensing

No. 44034 (Repeal and Reenact): R501-22. Residential Support Programs

Published: 10/01/2019

Effective: 01/16/2020

If you have any questions about the issues addressed in this editor's note, please contact the Office of Administrative Rules by telephone at 801-957-7110, or by email 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.

PROCLAMATION 2020/09/E

WHEREAS, since the close of the 2020 General Session of the 63rd Legislature of the State of Utah, certain matters have arisen which require immediate legislative attention; and

WHEREAS, Article VII, Section 6 of the Constitution of the State of Utah provides that the Governor may, by proclamation, convene the Senate into Extraordinary Session; and

NOW, THEREFORE, I, Gary R. Herbert, Governor of the State of Utah, by virtue of the authority vested in me by the Constitution and Laws of the State of Utah, do by this Proclamation call the Senate only of the 63rd Legislature of the State of Utah into the Ninth Extraordinary Session at the Utah State Capitol in Salt Lake City, Utah, on the 21st day of October 2020, at 4:30 p.m., for the following purpose:

For the Senate to consent to appointments made by the Governor to positions within state government of the State of Utah since the close of the 2020 General Session of the Legislature of the State of Utah.

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

(State Seal)

Gary R. Herbert
Governor

ATTEST:

Spencer J. Cox
Lieutenant Governor

2020/09/E

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 October 02, 2020, 12:00 a.m., and October 15, 2020, 11:59 p.m. are included in this, the November 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 December 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 March 01, 2021, the agency may notify the Office of Administrative Rules that it wants to make the **PROPOSED RULE** effective. The agency sets the effective date. The date may be no fewer than seven calendar days after the close of the public comment period nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file a **CHANGE IN PROPOSED RULE** in response to comments received. If the Office of Administrative Rules does not receive a **NOTICE OF EFFECTIVE DATE** or a **CHANGE IN PROPOSED RULE**, the **PROPOSED RULE** lapses.

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

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

The Proposed Rules Begin on the Following Page

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R68-29	Filing No. 53103

Agency Information

1. Department:	Agriculture and Food	
Agency:	Plant Industry	
Street address:	350 N Redwood Road	
City, state:	Salt Lake City, UT 84115	
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
Brandon Forsyth	801-710-9945	bforsyth@utah.gov
Kelly Pehrson	801-982-2202	kwpehrson@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R68-29. Quality Assurance Testing on Cannabis
3. Purpose of the new rule or reason for the change:
The reason for the amendment is to remove Greek symbols from the rule, consistent with Utah rulewriting requirements. A change is also needed to add units to the mycotoxin table.
4. Summary of the new rule or change:
Greek symbols are removed and replaced with non-special characters that represent the same value. Units are added to values in the mycotoxin table in Section R58-29-12 which were inadvertently removed in a previous filing. Two other typos in the rule are also fixed.

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
There are no cost or savings to the state budget because the changes are to make this rule consistent with state requirements and correct typos and do not affect cannabis testing requirements.

B) Local governments:
There are no cost or savings to local governments because the changes are to make this rule consistent with state requirements and correct typos and do not affect cannabis testing requirements.

C) Small businesses ("small business" means a business employing 1-49 persons):
There are no cost or savings to small businesses because the changes are to make this rule consistent with state requirements and correct typos and do not affect cannabis testing requirements or fees charged.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons):
There are no cost or savings to non-small businesses because the changes are to make this rule consistent with state requirements and correct typos and do not affect cannabis testing requirements or fees charged.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <i>agency</i>):
There are no cost or savings to other persons because the changes are to make this rule consistent with state requirements and correct typos and do not affect cannabis testing requirements or fees charged.

F) Compliance costs for affected persons:
There are no compliance costs for affected persons because the changes will have no effect on compliance costs for cannabis production establishments who must comply with 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 Department of Agriculture and Food, R. Logan Wilde, has reviewed and approved the regulatory impact analysis.

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

The changes to this rule will not have a fiscal impact on businesses.

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 4-41a-701(3)		
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Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. 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: 12/01/2020

10. This rule change MAY become effective on: 12/08/2020

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:	10/06/2020
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R68. Agriculture and Food, Plant Industry.

R68-29. Quality Assurance Testing on Cannabis.

R68-29-3. Required Cannabis and Cannabis Product Tests.

1) Prior to the transfer of cannabis biomass from a cannabis cultivation facility to a cannabis processing facility, the cultivation facility must make a declaration to the department that the biomass to be transferred is either a cannabis plant product or a cannabis cultivation byproduct.

2) A cannabis cultivation facility may not transfer a cannabis plant product to a cannabis processing facility unless an independent cannabis testing laboratory has tested a representative sample of the cannabis to determine:

- a) the water activity of the sample;
- b) the amount of total delta-9-THC and total CBD present in the sample; and
- c) the presence of adulterants in the sample, as specified in table 1.

3) Cannabis cultivation byproduct shall either be:

- a) chemically or physically processed to produce a cannabis concentrate for incorporation into cannabis derivative product; or
- b) destroyed pursuant to Section 4-41a-405.

4) Prior to its incorporation into a cannabis derivative product, cannabis concentrate shall be tested by an independent cannabis testing laboratory to determine:

- a) the amount of total THC and total CBD present in the sample; and
- b) the presence of adulterants in the sample, as specified in table 1.

5) Prior to the transfer of a cannabis product to a medical cannabis pharmacy a representative sample of the product shall be tested by an independent cannabis testing laboratory to determine:

- a) the water activity of the sample, as determined applicable by the department;
- b) the quantity of any cannabinoid or terpene to be listed on the product label; and
- c) the presence of adulterants in the sample, as specified in table 1.

6) Testing results for cannabis plant product and cannabis concentrate may be applied to cannabis product derived therefrom, provided that the processing steps used to produce the product are unlikely to change the results of the test, as determined by the department.

7) Mycotoxin testing of a cannabis plant product, cannabis concentrate, or cannabis product may be required if the department has reason to believe that mycotoxins may be present.

NOTICES OF PROPOSED RULES

8) A cannabis plant product, cannabis concentrate, or cannabis product that fails any of the required adulterant testing standards may be remediated by a cannabis cultivation facility or cannabis processing facility after submitting and gaining approval for a remediation plan from the department.

9) A remediation plan shall be submitted to the department within 15 days of the receipt of a failed testing result.

10) A remediation plan shall be carried out and the cannabis plant product or cannabis concentrate shall be prepared for resampling within 60 days of department approval of the remediation plan.

11) Resampling or retesting of a cannabis lot or batch that fails any of the required testing standards is not allowed until the lot or batch has been remediated.

12) A cannabis lot or cannabis product batch that is not or cannot be remediated in the specified time period shall be destroyed pursuant to Section 4-41a-405.

13) In the event that tests results cannot be retained in the Inventory Control System, the laboratory shall:

- a) keep a record of [aH]test results;
- b) issue a certificate of analysis for [aH]required tests; and
- c) retain a copy of the certificate of analysis on the laboratory premises.

14) Industrial hemp waste purchased by a cannabis cultivation facility in the form of a plant product or a concentrate must meet department cannabis testing standards as determined by an independent cannabis testing laboratory prior to its transfer to a cannabis cultivation facility.

15) Industrial hemp waste that is transferred to a cannabis cultivation facility shall be considered to be cannabis for all testing and regulatory purposes of the department.

Aldicarb	116-06-3	0.4
Azoxystrobin	131860-33-8	0.2
Bifenazate	149877-41-8	0.2
Bifenthrin	82657-04-3	0.2
Boscalid	188425-85-6	0.4
Carbaryl	63-25-2	0.2
Carbofuran	1563-66-2	0.2
Chlorantraniliprole	500008-45-7	0.2
Chlorfenapyr	122453-73-0	1
Chlorpyrifos	2921-88-2	0.2
Clofentezine	74115-24-5	0.2
Cyfluthrin	68359-37-5	1
Cypermethrin	52315-07-8	1
Daminozide	1596-84-5	1
DDVP (Dichlorvos)	62-73-7	0.1
Diazinon	333-41-5	0.2
Dimethoate	60-51-5	0.2
Ethoprophos	13194-48-4	0.2
Etofenprox	80844-07-1	0.4
Etoxazole	153233-91-1	0.2
Fenoxycarb	72490-01-8	0.2
Fenpyroximate	134098-61-6	0.4
Fipronil	120068-37-3	0.4
Flonicamid	158062-67-0	1
Fludioxonil	131341-86-1	0.4
hexythiazox	78587-05-0	1
imazalil	35554-44-0	0.2
Imidacloprid	138261-41-3	0.4
Kresoxim-methyl	143390-89-0	0.4
Malathion	143390-89-0	0.2
Metalaxyl	57837-19-1	0.2
Methiocarb	2032-65-7	0.2
Methomyl	16752-77-5	0.4
Methyl parathion	298-00-0	0.2
MGK-264	113-48-4	0.2
Myclobutanil	88671-89-0	0.2
Naled	300-76-5	0.5
Oxamyl	23135-22-0	1
Paclobutrazol	76738-62-0	0.4
Permethrins	52645-53-1	0.2
Phosmet	732-11-6	0.2
Piperonyl butoxide	51-03-6	2
Prallethrin	23031-36-9	0.2
Propiconazole	60207-90-1	0.4
Propoxur	114-26-1	0.2
Pyrethrins	8003-34-7	1
Pyridaben	96489-71-3	0.2
Spinosad	168316-95-8	0.2
Spiromesifen	283594-90-1	0.2
Spirotetramat	203313-25-1	0.2
Spiroxamine	118134-30-8	0.4
Tebuconazole	80443-41-0	0.4
Thiacloprid	11988-49-9	0.2
Thiamethoxam	153719-23-4	0.2
Trifloxystrobin	141517-21-7	0.2

TABLE 1
Required Tests by Sample Type

Test	Cannabis Plant Product	Cannabis Concentrate	Cannabis Product
Moisture Content	Required	X	X
Water Activity	Required	X	X
Foreign Matter	Required	Required	Required
Potency	Required	Required	Required
Microbial	Required	Required	Required
Pesticides	Required	Required	Required
Residual Solvents	X	Required	Required
Heavy Metals	Required	Required	Required
Mycotoxins	X	Required	X

R68-29-9. Pesticide Standards.

1) Only pesticides allowed by the department may be used in the cultivation of cannabis.

2) If an independent cannabis laboratory identifies a pesticide that is not allowed under Subsection R68-29-5(1) and is above the action levels provided in Subsection R68-29-5(3) that lot or batch from which the sample was taken has failed quality assurance testing.

3) A sample and related lot or batch of cannabis, cannabis product, or cannabinoid product fail quality assurance testing for pesticides if the results exceed the limits as set forth in Table 3.

TABLE 3
Pesticide Analytes and Action Levels

Analyte	Chemical Abstract Service (CAS) Registry number	Action Level ppm
Abamectin	71751-41-2	0.5
Acephate	30560-19-1	0.4
Acequinocyl	57960-19-7	2
Acetamiprid	135410-20-7	0.2

4) Permethrins should be measured as cumulative residue of cis- and trans-permethrin isomers (CAS numbers 54774-45-7 and 51877-74-8).

5) Pyrethrins should be measured as the cumulative residues of pyrethrin 1 (CAS 121-21-1), cinerin 1 (CAS 25402-06-6), and jasmolin 1 (CAS 4466-14-2).

6) Aba[a]mectin is a composite of the amounts of avermectin B1a and avermectin B1b.

R68-29-10. Residual Solvent Standards.

1) A sample and related lot or batch of cannabis plant product, cannabis concentrate, or cannabis product fails quality assurance testing for residual solvents if the results exceed the limits provided in Table 4 unless the solvent is:

- a) a component of the product formulation;
- b) listed as an ingredient; and

c) generally considered to be safe for the intended form of use.

Aflatoxin G2 <20 ppb [9/4g] of substance
 Ochratoxin A. <20 ppb [9/4g] of substance

TABLE 4
 List of Solvents and Action Levels

Solvent	Chemical Abstract Service (CAS) Registry number	Action level [±] ppm
1,2 Dimethoxyethane	110-71-4	100
1,4 Dioxane	123-9	380
1-Butanol	71-36-3	5000
1-Pentanol	71-41-0	5000
1-Propanol	71-23-8	5000
2-Butanol	78-92-2	5000
2-Butanone 78-93-3		5000
2-Ethoxyethanol	110-80-5	160
2-methylbutane	78-78-4	5000
2-Propanol (IPA)	67-63-0	5000
Acetone	67-64-1	5000
Acetonitrile	75-05-8	410
Benzene	71-43-2	2
Butane	106-97-8	5000
Cumene	98-82-8	70
Cyclohexane	110-82-7	3880
Dichloromethane	75-09-2	600
2,2-dimethylbutane	75-83-2	290
2,3-dimethylbutane	79-29-8	290
1,2-dimethylbenzene	95-47-6	See Xylenes
1,3-dimethylbenzene	108-38-3	See Xylenes
1,4-dimethylbenzene	106-42-3	See Xylenes
Dimethyl sulfoxide	67-68-5	5000
Ethanol	64-17-5	5000
Ethyl acetate	141-78-6	5000
Ethylbenzene	100-41-4	See Xylenes
Ethyl ether	60-29-7	5000
Ethylene glycol	107-21-1	620
Ethylene Oxide	75-21-8	50
Heptane	142-82-5	5000
n-Hexane	110-54-3	290
Isopropyl acetate	108-21-4	5000
Methanol	67-56-1	3000
Methylpropane	75-28-5	5000
2-Methylpentane	107-83-5	290
3-Methylpentane	96-14-0	290
N,N-dimethylacetamide	127-19-5	1090
N,N-dimethylformamide	68-12-2	880
Pentane	109-66-0	5000
Propane	74-98-6	5000
Pyridine	110-86-1	100
Sulfolane	126-33-0	160
Tetrahydrofuran	109-99-9	720
Toluene	108-88-3	890
Xylenes	1330-20-7	2170

- 2) Xylenes is a combination of the following:
 a) 1,2-dimethylbenzene;
 b) 1,3-dimethylbenzene;
 c) 1,4-dimethylbenzene; and
 d) ethyl benzene.

R68-29-12. Mycotoxin Standards.

A sample and related lot or batch of cannabis plant product, cannabis concentrate, or cannabis product fail quality assurance testing for mycotoxin if the results exceed the limits provided in Table 6.

TABLE 6
 Mycotoxin

Test	Specification
The total of Aflatoxin B1, Aflatoxin B2, Aflatoxin G1, and	

KEY: cannabis testing, quality assurance, cannabis laboratory
Date of Enactment or Last Substantive Amendment: ~~August 10, 2020~~

Authorizing, and Implemented or Interpreted Law: 4-41a-701(3)

NOTICE OF PROPOSED RULE		
TYPE OF RULE: New		
Utah Admin. Code Ref (R no.):	R68-32	Filing No. 53110

Agency Information

1. Department:	Agriculture and Food	
Agency:	Plant Industry	
Building:	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
Cody James	801-982-2376	codyjames@utah.gov
Kelly Pehrson	801-982-2202	kwpehrson@utah.gov

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

General Information

2. Rule or section catchline:
R68-32. Sale and Transfer of Industrial Hemp Waste Material to Medical Cannabis Cultivators
3. Purpose of the new rule or reason for the change:
This new rule provides guidelines governing the sale of industrial hemp waste to medical cannabis cultivators, which was allowed by S.B. 121 from the 2020 General Session.
4. Summary of the new rule or change:
This new rule provides guidelines governing the sale of industrial hemp waste to medical cannabis cultivators, including related to Department of Agriculture and Food pre-approval of sales, sale requirements, and record keeping and transportation requirements.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

There is no anticipated cost or savings to the state budget because sales would occur under existing licenses of industrial hemp processors and cultivators and medical cannabis cultivators. No additional inspections will be required. Industrial hemp waste will be tested in the same way as other cannabis products and testing fees cover the cost of testing.

B) Local governments:

There is no anticipated cost or savings to local governments because local governments are not industrial hemp or cannabis cultivators or processors and do not participate in the sale or regulation of the sale of industrial hemp waste.

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

There are no anticipated additional costs to small businesses (industrial hemp cultivators and processors and cannabis cultivators) because the testing and licensing required would be the same as for other cannabis products. Those who are able to sell industrial hemp waste will benefit from the sale although it is difficult to know at the outset of this program how many sales will occur.

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

There are no anticipated additional costs to non-small businesses (industrial hemp cultivators and processors and cannabis cultivators) because the testing and licensing required would be the same as for other cannabis products. Those who are able to sell industrial hemp waste will benefit from the sale although it is difficult to know at the outset of this program how many sales will occur.

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

There are no anticipated cost or benefits to persons other than small businesses, non-small businesses, or state or local government entities because other persons are not regulated as industrial hemp cultivators or processors or cannabis cultivators and do not participate in the sale of industrial hemp waste under this program.

F) Compliance costs for affected persons:

Compliance costs would not change for cannabis cultivators as the industrial hemp waste products would be subject to the same testing requirements as other

cannabis products. Industrial hemp cultivators and processors would be subject to the same licensing requirements as prior to the new rule.

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

Regulatory Impact Table

Fiscal Cost	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 Department of Agriculture and Food, R. Logan Wilde, has reviewed and approves this regulatory impact analysis.

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

This rule is necessary to allow for the sale of industrial hemp waste into the medical cannabis marketplace to cultivators as allowed under recently passed legislation. This rule is not associated with an anticipated fiscal impact on businesses.

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)	Subsection 4-41a-603(3)	Title 4, Chapter 41a
Section 4-41a-102		

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: 12/01/2020

10. This rule change MAY become effective on: 12/08/2020

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:	10/14/2020
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R68. Agriculture and Food, Plant Industry.

R68-32. Sale and Transfer of Industrial Hemp Waste to Medical Cannabis Cultivators.

R68-32-1. Authority and Purpose.

1) Pursuant to Section 4-41a, 4-41a-102, and Subsections 4-2-103(1)(i) and 4-41a-603(3), this rule establishes the procedures governing the sale of industrial hemp waste by an industrial hemp cultivator or processing facility to a cannabis cultivation facility, including procedures for sale approval, extraction, transportation, recordkeeping, testing, and inspection and recall.

R68-32-2. Definitions.

1) "Batch" means a quantity of:

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

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

c) cannabis flower from a single strain and growing cycle packaged on a particular date and time, following clean up until the next clean up during which lots of cannabis are being used.

2) "Cannabinoid" means any:

a) naturally occurring derivative of cannabigerolic acid (CAS 25555-57-1); or

b) any chemical compound that is both structurally and chemically similar to a derivative of cannabigerolic acid.

3) "Cannabis" means any part of the marijuana plant.

4) "Cannabis cultivation facility" means a person that:

a) possesses cannabis;

b)i) grows or intends to grow cannabis; or

ii) acquires or intends to acquire industrial hemp waste from a holder of an industrial hemp cultivator license under Title 4, Chapter 41, Hemp and Cannabinoid Act, or an industrial hemp processor; and

c) sells or intends to sell cannabis to a cannabis cultivation facility or a cannabis processing facility.

5) "Cannabis product" means a product that:

a) is intended for human use; and

b) contains cannabis or tetrahydrocannabinol.

6) "Certificate of analysis" (COA) means a document produced by a testing laboratory listing the quantities of the various analytes for which testing was performed.

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

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

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

10) "Industrial hemp product" means a cannabinoid extract derived from industrial hemp with a THC concentration of less than 0.3% by dry weight.

11) "Industrial hemp waste" means a cannabinoid extract derived from industrial hemp with greater than 0.3% THC by mass.

12) "Inventory Control System" means the system described in Section 4-41a-103.

12) "Lot" means the quantity of:

a) flower produced on a particular date and time, following clean up until the next clean up during which the same materials are used; or

b) trim, leaves, or other plant matter from cannabis plants produced on a particular date and time, following clean up until the next clean up.

R68-32-3. Sale of Industrial Hemp Requirements.

1) Industrial hemp, industrial hemp product, or industrial hemp waste may be sold by an industrial hemp cultivator or industrial hemp processing facility to a cannabis cultivation facility if:

a) the industrial hemp waste is derived from industrial hemp biomass that has been certified as industrial hemp by a state department of agriculture or the U.S. Department of Agriculture;

b) the industrial hemp cultivator or industrial hemp processing facility has records to substantiate the certification; and

c) the records are available for inspection by the department.

NOTICES OF PROPOSED RULES

2) If an industrial hemp cultivator or industrial hemp processing facility intends to sell industrial hemp, industrial hemp waste, or industrial hemp product that is derived from industrial hemp biomass that was purchased out of state:

a) the out of state seller shall provide proof that the biomass was certified as industrial hemp by a state department of agriculture or the U.S. Department of Agriculture to the industrial hemp cultivator or industrial hemp processing facility; and

b) the industrial hemp cultivator or industrial hemp processing facility shall keep record of the certification.

R68-32-4. Sale of Industrial Hemp - Notification and Approval.

1) Prior to the sale of industrial hemp, industrial hemp product, or industrial hemp waste by an industrial hemp cultivator or industrial hemp processing facility to a cannabis cultivation facility, the industrial hemp cultivator or processing facility shall:

a) notify the department of the potential sale in writing within 10 days of the sale; and

b) provide the department with a certificate of analysis showing that the biomass from which the industrial hemp, industrial hemp product, or industrial hemp waste was derived was certified industrial hemp by a state department of agriculture or the U.S. Department of Agriculture.

2) The department will approve the sale following review of the records of the industrial hemp cultivator or industrial hemp processing facility to ensure compliance with this rule.

3) Upon approval of the sale, the department will issue a certificate to the industrial hemp cultivator or industrial hemp processing facility allowing the sale to proceed.

4) No industrial hemp waste, industrial hemp product, or industrial hemp may be sold by an industrial hemp cultivator or industrial hemp processing facility unless they have a license in good standing with the department.

R68-32-5. Industrial Hemp Waste and Industrial Hemp Product Extraction.

1) Extraction of cannabinoid extract by an industrial hemp processing facility to be sold under this rule shall take place in Utah.

2) The industrial hemp processing facility shall keep records of the extraction, including:

a) how much industrial hemp biomass was processed by the industrial hemp processing facility;

b) how much cannabinoid extract was extracted during processing; and

c) proof that the extraction took place in Utah.

3) The industrial hemp processing facility shall make any extraction records available for inspection by the department.

4) A cannabis cultivation facility shall not take possession of cannabinoid extract that qualifies as industrial hemp waste without verifying that it has been extracted in Utah.

R68-32-6. Transportation.

1) Only an agent of a cannabis cultivation facility may transport industrial hemp waste.

2) A printed transport manifest shall accompany every transport of industrial hemp waste.

3) The manifest shall contain the following information:

a) the industrial hemp cultivator or industrial hemp processing facility address and license number of the departure location;

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

c) amount of industrial hemp waste that is being transported;

d) date and time of departure;

e) estimated date and time of arrival; and

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

4) The transport manifest may not be voided or changed after departing from the original industrial hemp cultivator or industrial hemp processing facility.

5) The receiving cannabis cultivation facility shall ensure they are given a copy of the transport manifest.

6) The receiving cannabis cultivation facility shall ensure that the industrial hemp waste received is as described in the transport manifest and shall record the amounts received into the inventory control system.

7) The receiving cannabis cultivation facility shall document at the time of receipt any differences between the quantity specified in the transport manifest and the quantities received in the inventory control system.

8) During transport, the industrial hemp waste shall be:

a) shielded from the public view;

b) in a secure container; and

c) temperature controlled if perishable.

9) A cannabis cultivation facility shall contact the department within 24 hours if a vehicle transporting industrial hemp waste is involved in an accident that involves product loss.

R68-32-7. Recordkeeping Requirements.

1) A cannabis cultivation facility shall ensure that each lot or batch of industrial hemp waste previously purchased from an industrial hemp cultivator or industrial hemp processing facility has a unique identification number in the inventory control system.

2) Following purchase of industrial hemp waste from an industrial hemp cultivator or industrial hemp processing facility, a cannabis cultivation facility shall ensure that each lot or batch of industrial hemp waste has a unique identification number in the inventory control system.

3) By November 1, 2020 an industrial hemp cultivator shall ensure that each lot of industrial hemp waste sold to a cannabis cultivation facility shall have a unique identification number in the inventory control system.

4) By November 1, 2020, an industrial hemp processing facility shall ensure that each batch or lot of industrial hemp waste that is sold to a cannabis cultivation facility shall have a unique identification number in the inventory controls system.

5) A cannabis cultivation facility shall maintain a record of each purchase of industrial hemp waste, including:

a) a copy of the certification that the industrial hemp waste is derived from certified industrial hemp; and

b) if applicable, a copy of the record documenting that the extraction of the cannabinoid extract that qualifies as industrial hemp waste took place Utah.

6) Records shall be available for inspection by the department.

R68-32-8. Testing Requirements.

1) Each lot or batch of industrial hemp, industrial hemp product, or industrial hemp waste purchased by a cannabis cultivation facility shall be tested by an independent cannabis laboratory pursuant to the requirements of Section R68-29-3:

a) when the cannabis cultivation facility takes possession of the industrial hemp, industrial hemp product, or industrial hemp waste; and

- b) when the industrial hemp, industrial hemp product, or industrial hemp waste is processed into its final product form.
- 2) Testing shall be documented on a certificate of analysis and recorded in the inventory control system.
- 3) Industrial hemp, industrial hemp product, or industrial hemp waste is subject to the same testing requirements as other cannabis product.

R68-32-9. Inspection and Recall.

- 1) The department has the right to conduct a random inspection of industrial hemp processing facilities, industrial hemp cultivators, and medical cannabis cultivators that are subject to this rule, including an audit of the following to ensure compliance with Utah state law, rules, and this rule:
 - a) the records of an industrial hemp processing facility that has sold industrial hemp waste;
 - b) the records of an industrial hemp cultivator that has sold industrial hemp waste; and
 - c) the records of a cannabis cultivation facility that has purchased industrial hemp waste.
- 2) Inspection may take place at any time during normal business hours.
- 3) A product that is identified as out of compliance may be subject to recall and destruction by the department.

R68-32-10. Violations.

- 1) Violations of this rule include:
 - a) sale or transfer industrial hemp, industrial hemp product or industrial hemp waste without notifying the department;
 - b) sale of industrial hemp biomass with a THC level greater than 0.3% by dry weight;
 - c) a medical cannabis facility allowing industrial hemp waste into the facility without entering it into the inventory control system;
 - d) a medical cannabis facility allowing industrial hemp waste product into the facility without testing;
 - e) a facility not keeping and maintaining each record required by this rule;
 - f) a facility denying the department access to the records;
 - g) transporting industrial hemp, industrial hemp product, or industrial hemp waste to a facility without a manifest; and
 - h) anyone other than a cannabis cultivation agent transporting industrial hemp, industrial hemp product, or industrial hemp waste to a cannabis cultivation facility.
- 2) The department shall assess fines of:
 - a) \$3,000 - \$5,000 for public safety violations;
 - b) \$1,000 - \$5,000 for regulatory violations; and
 - c) \$500 - \$5,000 for licensing violations.
- 3) The department shall calculate fines based on the level of violation and the adverse effect or potential adverse effect at the time of the incidents giving rise to the violation.
- 4) The department may enhance or reduce the penalty based on the seriousness of the violation.

KEY: industrial hemp waste, industrial hemp processing facility, cannabis cultivation facility
Date of Enactment or Last Substantive Amendment: 2020
Authorizing, and Implemented or Interpreted Law: 4-2-103(1)(i); 4-41a; 4-41a-102; 4-41a-603(3)

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R156-11a	Filing No. 53108

Agency Information

1. Department:	Commerce	
Agency:	Occupational and Professional Licensing	
Building:	Heber M. Wells Building	
Street address:	160 E 300 S	
City, state:	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:
Allyson Pettley	801-530-6179	apettley@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R156-11a. Cosmetology and Associated Professions Licensing Act Rule
3. Purpose of the new rule or reason for the change:
The amendments are proposed in accordance with S.B. 23 and S.B. 201 passed in the 2020 General Session.
4. Summary of the new rule or change:
Minor grammatical changes and formatting changes are made throughout for clarity.
Subsection R156-11a-102(25) is amended to maintain consistency by referring to Section 15A-3-402 and to delete unnecessary language.
Section R156-11a-301 is amended to delete an obsolete statutory reference.
Section R156-11a-302 is amended to delete subsections (3) and (4) in compliance with statutory changes made by S.B.201 (2020). The remaining subsection is renumbered.
Sections R156-11a-302b, R156-11a-302c, and R156-11a-303 are amended to correct and update references.
Subsections R156-11a-502(5) and (7) are updated to include the hair designer profession to the unprofessional conduct provisions, in compliance with S.B. 23 (2020).

Subsection R156-11a-503 is amended to update the rule per new citation rules and policy.

Subsection R156-11a-603(1)(c) is amended to make a minor numbering correction.

Section R156-11a-607 is amended to make minor formatting corrections for clarity.

Subsection R156-11a-609 is amended as follows: Subsection (1) references are updated to Section 58-11a-102 for instructors. Subsection (2) is amended to clarify the areas in which a cosmetologist/barber instructor may teach -- Subsection (2)(a) adds nail technology which was unintentionally omitted from previous rule filings and Subsection (2)(b) adds hair design in accordance with S.B. 23 (2020).

Section R156-11a-610 is amended to update references.

Sections R156-11a-611 and -612 are amended to update references.

Section R156-11a-800 is amended to add hair design school, which was unintentionally omitted from previous rule filings, and to make minor formatting changes for clarity.

Sections R156-11a-801 through (newly renumbered) R156-11a-805 are amended to make minor formatting changes for clarity.

New Section R156-11a-804 is added to establish hair design apprenticeship standards to comply with S.B. 23 (2020). Sections R156-11a-804 and -805 are renumbered with minor formatting changes for clarity.

Public hearing information:

Join with Google Meet: meet.google.com/khv-eoxr-sxm
Join by phone: (US) +1 402-772-0160 (PIN: 825629334)

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

No impact is expected to the state budget. Any costs or savings to comply with these changes are a result of the statutory requirements of S.B. 23 and S.B. 201 (2020) that permitted hair design licenses through apprenticeship and consideration of criminal history, respectively. Costs and savings were calculated as part of the fiscal notes. These rule changes do not create additional cost or savings beyond what was anticipated during the legislative process. All other amendments are nonsubstantive and do not create any additional costs or savings.

B) Local governments:

No impact is expected to local governments. Any costs or savings to comply with these changes are a result of the statutory requirements of S.B. 23 and S.B. 201 (2020) that permitted hair design licenses through apprenticeship and consideration of criminal history, respectively. Costs and savings were calculated as part of the fiscal notes. These rule changes do not create additional cost or savings beyond what was anticipated during the legislative process. All other amendments are nonsubstantive and do not create any additional costs or savings.

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

No impact is expected to small businesses. Any costs or savings to comply with these changes are a result of the statutory requirements of S.B. 23 and S.B. 201 (2020) that permitted hair design licenses through apprenticeship and consideration of criminal history, respectively. Costs and savings were calculated as part of the fiscal notes. These rule changes do not create additional cost or savings beyond what was anticipated during the legislative process. All other amendments are nonsubstantive and do not create any additional costs or savings.

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

No impact is expected to non-small business. Any costs or savings to comply with these changes are a result of the statutory requirements of S.B. 23 and S.B. 201 (2020) that permitted hair design licenses through apprenticeship and consideration of criminal history, respectively. Costs and savings were calculated as part of the fiscal notes. These rule changes do not create additional cost or savings beyond what was anticipated during the legislative process. All other amendments are nonsubstantive and do not create any additional costs or savings.

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

No impact is expected to other persons. Any costs or savings to comply with these changes are a result of the statutory requirements of S.B. 23 and S.B. 201 (2020) that permitted hair design licenses through apprenticeship and consideration of criminal history, respectively. Costs and savings were calculated as part of the fiscal notes. These rule changes do not create additional cost or savings beyond what was anticipated during the legislative process. All other amendments are nonsubstantive and do not create any additional costs or savings.

F) Compliance costs for affected persons:			
No impact is expected to any affected persons. Any costs or savings to comply with these changes are a result of the statutory requirements of S.B. 23 and S.B. 201 (2020) that permitted hair design licenses through apprenticeship and consideration of criminal history, respectively. Costs and savings were calculated as part of the fiscal notes. These rule changes do not create additional cost or savings beyond what was anticipated during the legislative process. All other amendments are nonsubstantive and do not create any additional costs or savings.			
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 Executive Director of the Department of Commerce, Chris Parker, 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 Division of Occupational and Professional Licensing proposes amendments to update Cosmetology and Associated Professions Licensing Act Rule to conform to S.B. 23 (2020). Further, the revisions are for minor grammatical changes, formatting changes for clarity, deleting unnecessary language, and updating statutory and rule section references.
Small Businesses (less than 50 employees): There are no anticipated costs or savings for small businesses to comply with the changes as a result of the statutory requirements of S.B. 23 and S.B. 201 (2020) that now require hair designers to have a criminal history report for apprenticeships. Thus, all amendments as a whole should allow for greater efficiency in documentation. Accordingly, no fiscal impact is expected for small business over and above any fiscal impact described in the Legislative fiscal notes for S.B. 23 and S.B. 201 (2020) as these costs are either inestimable or there is no fiscal impact.
Regulatory Impact to Non-Small Businesses (50 or more employees): These amendments will have no expected fiscal impact for non-small businesses in the cosmetology and associated professional fields in Utah for the same reasons as described above for small businesses. These costs are either inestimable, for the reasons stated, or there is no fiscal impact.
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 58-11a-101	Subsection 58-1-106(1)(a)	Subsection 58-1-202(1)(a)

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:	12/08/2020
B) A public hearing (optional) will be held:	

On:	At:	At:
12/07/2020	9:00 AM	See details in Box 4 above.

10. This rule change MAY become effective on:	12/15/2020
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:	Mark B. Steinagel, Division Director	Date:	10/13/2020
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R156. Commerce, Occupational and Professional Licensing. R156-11a. Cosmetology and Associated Professions Licensing Act Rule.

R156-11a-102. Definitions.

In addition to the definitions as used in Title 58, Chapter[s] 1, Division of Occupational and Professional Licensing Act, and Title 58, Chapter 11a, the Cosmetology and Associated Professions Licensing Act, or this rule, the following rule definitions supplement the statutory definitions[as used in Title 58, Chapters 1 and 11a or this rule]:

(1) "Acrylic nail₂"[₇] as used in Section 15A-3-402 and Subsection R156-11a-102(25), means an extension for natural nails molded out of a polymer powder and a liquid monomer buffed to a shine.

(2) "Advanced pedicures₂"[₇] as used in Subsection 58-11a-102(~~39~~40)(a)(i)(D), means any of the following while caring for the nails, cuticles or calluses of the feet:

(a) utilizing manual instruments, implements, advanced electrical equipment, tools, or microdermabrasion for cleaning, trimming, softening, smoothing, or buffing;

(b) utilizing blades, including corn or callus planer or rasp, for smoothing, shaving or removing dead skin from the feet as defined in Section R156-11a-611; or

(c) utilizing topical products and preparations for chemical exfoliation as defined in Subsection R156-11a-610(4).

(3) "Aroma therapy" means the application of essential oils [which]that are applied directly to the skin, undiluted or in a misted dilution with a carrier oil or lotion. for varied applications such as massage, hot packs, cold packs, compress, inhalation, steam or air diffusion, or in hydrotherapy services.

(4) "BCA acid" means bicloroacetic acid.

(5) "Body wraps₂"[₇] as used in Subsection 58-11a-102(~~39~~40)(a)(i)(A), means body treatments utilizing products or equipment to enhance and maintain the texture, contour, integrity and health of the skin and body.

(6) "Chemical exfoliation₂"[₇] as defined in Subsections 58-11a-102(~~39~~40)(a)(i)(C) and R156-11a-610(4), means a resurfacing procedure performed with a chemical solution or product to remove [for the purpose of removing]superficial layers of the epidermis to a point no deeper than the stratum corneum.

(7) "Dermabrasion or open dermabrasion" means the surgical application of a wire or diamond frieze for deep skin resurfacing by a physician to abrade the skin to the epidermis and possibly down to the papillary dermis.

(8) "Dermaplane" means the use of a scalpel or bladed instrument under the general supervision of a health care practitioner to shave the upper layers of the stratum corneum.

(9) "Direct supervision by a licensed health care practitioner" means a health care practitioner who, acting within the scope of the licensee's license, authorizes and directs the work of a licensee pursuant to this chapter as defined under Subsection R156-1-102a(4)(a).

(10) "Equivalent number of credit hours" means:

- (a) the following conversion table if on a semester basis:
 - (i) theory - 1 credit hour - 30 clock hours;
 - (ii) practice - 1 credit hour - 30 clock hours; and
 - (iii) clinical experience - 1 credit hour - 45 clock hours;

and

(b) the following conversion table if on a quarter basis:

- (i) theory - 1 credit hour - 20 clock hours;
- (ii) practice - 1 credit hour - 20 clock hours; and
- (iii) clinical experience - 1 credit hour - 30 clock hours.

(11) "Exfoliation" means the sloughing off of non-living skin cells "corneocytes" by superficial and non-invasive means.

(12) "Extraction" means the following:

(a) "Advanced extraction₂"[₇] as used in Subsections 58-11a-102(~~39~~40)(a)(i)(~~F~~D) and R156-11a-611(2)(b), means to perform extraction with a lancet or device that removes impurities from the skin.

(b) "Manual extraction₂"[₇] as used in Subsection 58-11a-102(31)(a), means to remove impurities from the skin with protected fingertips, cotton swabs or a loop comedone extractor.

(13) "Galvanic current" means a constant low-voltage direct current.

(14) "General supervision by a licensed health care practitioner" means a health care practitioner who, acting within the scope of the licensee's license, authorizes and directs the work of a licensee pursuant to this chapter as defined under Subsection R156-1-102a(4)(c).

(15) "Health care practitioner" means:

(a) a physician[~~7~~] and surgeon licensed under Title 58, Chapter 67, Utah Medical Practice Act, or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act[₇];

(b) an advanced practice registered nurse licensed under Title 58, Chapter 31b, Nurse Practice Act[₇];

(c) a podiatrist under Title 58, Chapter 5A, Podiatric Physician Licensing Act[₇]; or

(d) a physician assistant licensed under Title 58, Chapter 70a, Physician Assistant Practice Act, acting within the supervisor's scope of practice.

(16) "Hydrotherapy₂"[₇] as used in Subsection 58-11a-102(~~39~~40)(a)(i)(B), means the use of water for cosmetic purposes or beautification of the body.

(17) "Indirect supervision" means the supervising instructor who, acting within the scope of the licensee's license, authorizes and directs the work of a licensee pursuant to this chapter as defined under Subsection R156-1-102a(4)(b).

(18) "Limited chemical exfoliation" means a non-invasive chemical exfoliation and is further defined in Subsection R156-11a-610(3).

(19) "Lymphatic massage₂"[₇] as used in Subsections 58-11a-102(~~39~~40)(a)(ii) and 58-11a-302(11)(e), means a method using

a light rhythmic pressure applied by manual or other means to the skin using specific lymphatic maneuvers to promote drainage of the lymphatic fluid through the tissue.

(20) "Manipulating₂"[~~7~~] as used in Subsection 58-11a-102(31)(a), means applying a light pressure by the hands to the skin.

(21) "Microdermabrasion₂"[~~7~~] as used in Subsection 58-11a-102(~~39~~40)(a)(i)(E), means a gentle, progressive, superficial, mechanical exfoliation of the uppermost layers of the stratum corneum using a closed-loop vacuum system.

(22) "Microneedling" means the use of multiple tiny solid needles designed to pierce the skin to ~~stimulate~~~~for the purpose of stimulating~~ collagen production or cellular renewal. Devices used may be in the form of rollers, stamps or electronic "pens."~~7~~ [~~#~~] Microneedling is also known as:

- (a) dermal needling;
- (b) Collagen Induction Therapy (CIT);
- (c) dermal rolling;
- (d) cosmetic dry needling;
- (e) multitrepanned collagen actuation; or
- (f) percutaneous collagen induction.

(23) "Patch test" or "predisposition test" means applying a small amount of a chemical preparation to the skin of the arm or behind the ear to determine possible allergies of the client to the chemical preparation.

(24) "Pedicure" means any of the following:

- (a) cleaning, trimming, softening, or caring for the nails, cuticles, or calluses of the feet;
- (b) the use of manual instruments or implements on the nails, cuticles, or calluses of the feet;
- (c) callus removal by sanding, buffing, or filing; or
- (d) massaging of the feet or lower portion of the leg.

(25) "Source capture system₂"[~~7~~] as used in ~~Section 15A-3-402 and~~ Subsection 58-11a-502(~~7~~6), means the source capture system required under Section 15A-3-402.~~[an air filtration and recirculation system that shall be:~~

- ~~(a) maintained and cleaned according to the manufacturer's instructions; and~~
- ~~(b) capable of:~~
 - ~~(i) filtering and recirculating air to inside space not less than 50 cubic feet per minute (cfm) per acrylic nail station; or~~
 - ~~(ii) exhausting not less than 50 cubic feet per minute (cfm) per acrylic nail station.]~~

(26) "TCA acid" means trichloroacetic acid.

(27) "Unprofessional conduct" is further defined, in accordance with Section 58-1-501, in Section R156-11a-502.

R156-11a-301. Change of Legal Entity.

In accordance with Section 58-11a-301, a school shall ~~be required to~~ submit a new application for licensure upon any change of legal entity status. The new legal entity may not engage in practice as a licensed school~~, pursuant to Subsections 58-11a-102(16) through (19).~~ until the application is approved and a license issued.

R156-11a-302. Disqualifying Convictions.

When reviewing an application to determine whether the applicant has engaged in unprofessional conduct as set forth in Subsection 58-1-501(2)(c), the Division and the Board shall consider the applicant's criminal record as follows:

- (1) ~~¶~~ Δ criminal conviction for the following crimes may disqualify an applicant from becoming licensed:
 - (a) a sex offense as defined in:
 - (i) Title 76, Chapter 5, Part 4;~~7~~

- (ii) Title 76, Chapter 5a; and
- (iii) Title 76, Chapter 10, Part 12 and 13;
- (b) crimes against a person as defined in Title 76, Chapter 5, Parts 1, 2, and 3;
- (c) crimes against property as defined in Title 76, Chapter 6, Parts 1 through 6;
- (d) any offense involving controlled substances; or
- (e) conspiracy to commit or any attempt to commit any of the above offenses.

(2) An applicant who has a criminal conviction for a felony crime of violence may be considered ineligible for licensure for a period of seven years from the termination of parole, probation, judicial proceeding₂ or date of incident, whichever is later.~~7~~

~~—————(3) An applicant who has a criminal conviction for a felony involving a controlled substance may be considered ineligible for licensure for a period of five years from the termination of parole, probation, judicial proceeding or date of incident, whichever is later.~~

~~—————(4) An applicant who has a criminal conviction for any misdemeanor crime of violence or the use of a controlled substance may be considered ineligible for licensure for a period of three years from the termination of parole, probation, judicial proceeding or date of incident, whichever is later.]~~

(~~5~~3) Each application for licensure or renewal of licensure shall be considered in accordance with the requirements of Section R156-1-302.

R156-11a-302b. Qualifications for Licensure - Equivalency of Foreign School Education.

In accordance with Subsection 58-11a-302(~~17~~20):

(1) An applicant shall submit documentation of education equivalency from a foreign school education to a Utah licensed barber school, cosmetology/barber school, hair design school, esthetics school, electrology school, or nail technology school.

(2) The documentation shall be an education or credential evaluation from one of the following approved credential evaluation services:

- (a) Josef Silny and Associates Incorporated, International Education Consultants;
- (b) Educational Credential Evaluators Incorporated; or
- (c) National Association of State Boards of Accountancy (NASBA).

R156-11a-302c. Qualifications for Licensure - Acceptance of Credit Hours.

In accordance with Subsection 58-11a-302(21), a licensed school shall accept credit hours toward graduation as follows:

(1) The school shall accept credit hours toward ~~the~~ any curriculum ~~set forth in Sections R156-11a-700 through R156-11a-707,~~ R156-11a-701, R156-11a-702, R156-11a-703, R156-11a-704, R156-11a-705, and R156-11a-706.

(2) The credit hours accepted ~~shall~~ may not exceed the number of hours required in Subsections 58-11a-302(1)(d)(i), 58-11a-302(4)(~~4~~ c)(i), 58-11a-302(7)(d), 58-11a-302(10)(~~4~~ c)(i), 58-11a-302(11)(d)(i), 58-11a-302(14)(d)(i), and 58-11a-302(17)(~~4~~ c)(i) for that professional license in Utah.

R156-11a-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two year renewal cycle applicable to licenses and certificates under Title 58, Chapter 11a is established by rule in Section R156-1-308a.

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(2) Renewal procedures shall be in accordance with Sections R156-1-308c through R156-1-308l.

R156-11a-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

- (1) failing to provide direct supervision of:
 - (a) an apprentice~~[- or of]~~;
 - (b) a student attending a barber, cosmetology/barber, esthetics, electrology, hair design, or nail technology school~~[-]~~; or
 - (c) ~~of~~ a student instructor;
- (2) failing to obtain accreditation as a barber, cosmetology/barber, esthetics, electrology, hair design, or nail technology school in accordance with Section R156-11a-601;
- (3) failing to maintain accreditation as a barber, cosmetology/barber, esthetics, electrology, hair design, or nail technology school after having been approved for accreditation;
- (4) failing to comply with the standards of accreditation applicable to barber, cosmetology/barber, esthetics, electrology, hair design, or nail technology schools;
- (5) failing to provide adequate instruction or training as applicable to a student of a barber, cosmetology/barber, esthetics, electrology, hair design or nail technology school, or in an approved barber, cosmetology/barber, esthetics, or nail technology apprenticeship;
- (6) failing to comply with Title 26, Utah Health Code;
- (7) failing to comply with the apprenticeship requirements applicable to barber, cosmetologist/barber, basic esthetician, master esthetician, hair designer, or nail technician apprenticeships as set forth in Sections R156-11a-800 through R156-11a-804;
- (8) failing to comply with the standards for curriculums applicable to barber, cosmetology/barber, esthetics, electrology, hair design, or nail technology schools as set forth in Sections R156-11a-700 through R156-11a-707;
- (9) using any device classified by the Food and Drug Administration as a prescriptive medical device without the appropriate level of supervision by a licensed health care practitioner acting within the licensed health care practitioner's scope of practice;
- (10) performing services within the scope of practice as a basic esthetician, or a master esthetician without having been adequately trained to perform such services;
- (11) failing as a supervisor to provide the appropriate level of supervision while a basic esthetician, an electrologist or a master esthetician under supervision is performing service within the scope of practice as set forth in Subsections 58-11a-102(31), 58-11a-102(34) and 58-11a-102(39);
- (12) performing services within the scope of practice as a basic esthetician, a master esthetician or an electrologist without having the appropriate level of supervision as required by Subsection 58-11a-102(31), 58-11a-102(34) and 58-11a-102(39);
- (13) violating any standard established in Sections R156-11a-601 through R156-11a-612;
- (14) performing a procedure while the licensee has a known contagious disease of a nature that may be transmitted by performing the procedure, unless the licensee takes medically approved measures to prevent transmission of the disease; and
- (15) performing a procedure on a client who has a known contagious disease of a nature that may be transmitted by performing the procedure, unless the licensee takes medically approved measures to prevent transmission of the disease.

R156-11a-503. Administrative Penalties - Unlawful Conduct.

(1) In accordance with Subsection 58-11a-503(4), unless otherwise ordered by the presiding officer, the following fine schedule shall apply to citations issued under Title 58, Chapter 11a:

TABLE FINE SCHEDULE		
VIOLATION	FIRST OFFENSE	SECOND OFFENSE
58-11a-502(1)	\$ 500	\$1,000
58-11a-502(2)	\$ 800	\$1,600
58-11a-502(4)	\$ 500	\$1,000
58-11a-502(5)	\$1,000	\$2,000
58-11a-502(6)	\$ 500	\$1,000
58-11a-502(7)	\$ 500	\$1,000

(~~1~~2) Citations ~~shall~~ may not be issued for third offenses, except in extraordinary circumstances approved by the ~~investigative~~ investigation supervisor or chief investigator. If a citation is issued for a third offense, the fine is double the second offense amount, with a maximum amount not to exceed the maximum fine allowed under Subsection 58-11a-503(4)(h).

(~~2~~3) ~~If multiple offenses are cited on the same citation, the fine shall be determined by evaluating the most serious offense.] Multiple offenses may be cited on the same citation, if the citation clearly indicates each offense and the fine that is allocated to each offense.~~

(~~3~~4) An ~~investigative~~ investigation supervisor or the chief investigator may authorize a deviation from the fine schedule based upon the aggravating or mitigating circumstances.

(~~4~~5) The presiding officer ~~for a contested citation]~~ shall have the discretion, after a review of the aggravating and mitigating circumstances, to increase or decrease the fine amount imposed by an investigator based upon the evidence reviewed.

R156-11a-603. Standards for a Student Kit.

(1) In accordance with Subsections 58-11a-302(3)(c)(iv), 58-11a-302(6)(c)(iv), 58-11a-302(9)(c)(iv), 58-11a-302(13)(c)(iv), 58-11a-302(16)(c)(iv), and 58-11a-302(19)(c)(~~iii~~iv), barber, cosmetology/barber, electrology, esthetics, hair design, and nail technology schools shall provide to each student a list of ~~all~~ basic kit supplies needed by that student.

(2) The basic kit may be supplied by the school or purchased independently by the student.

R156-11a-607. Standards for a Written Contract.

(1) In accordance with Subsections 58-11a-302(3)(c)(iv), 58-11a-302(6)(c)(iv), 58-11a-302(9)(c)(iv), 58-11a-302(13)(c)(iv), 58-11a-302(16)(c)(iv), and 58-11a-302(17)(c)(iv), barber, cosmetology/barber, electrology, esthetics, hair design and nail technology schools shall complete a written contract with each student prior to admission.

(2) Each contract shall include specifically, or by reference to the school's catalogue or handbook, or both, the following:

- (a) the current status of the school's accreditation;
- (b) rules of conduct;
- (c) attendance requirements;
- (d) provisions for make-up work;
- (e) grounds for probation, suspension or dismissal; and
- (f) a detailed fee schedule which shall include the student's financial responsibility upon voluntarily leaving the school or upon being suspended from the school.

(3) The school shall maintain on file for each student a copy of the contract and of any referenced catalogue or handbook, ~~[for each student]~~ and shall provide a copy of the contract and any catalogue or handbook to the Division upon request.

R156-11a-609. Standards for Instructors.

(1) In accordance with Subsections ~~[58-11a-302(2)(e) and (f), 58-11a-302(5)(e) and (f), 58-11a-302(8)(e) and (f), 58-11a-302(12)(e) and (f), 58-11a-302(15)(e) and (f), and 58-11a-302(18)(e) and (f)]~~ 58-11a-102(31), 58-11a-102(34), 58-11a-102(36), 58-11a-102(37), 58-11a-102(39), and 58-11a-102(42), a barber, cosmetology/barber, electrolysis, esthetics, hair design, ~~[and]~~ or nail technology instructors may ~~[only]~~ teach:

(a) only in ~~[these]~~ practice areas for which they have received training and are qualified to teach; and

(b) the use of a mechanical or electrical apparatus only if they are trained and qualified in its use.

(2) In accordance with Subsection 58-11a-102(~~[44]~~12), an individual licensed as a cosmetology/barbering instructor may teach:

(a) barbering, basic esthetics, ~~[and]~~ hair design, and nail technology as part of the cosmetology/barbering or nail technology curriculums in a licensed barber school, a licensed cosmetology/barber school, a licensed hair design school, or a licensed nail technology school; and

(b) barbering, hair design, and basic esthetics in an approved barber, cosmetology/barber, hair design, or nail technology apprenticeship ~~[, provided the individual can demonstrate the same experience as required in Subsection (1)].~~

~~(3) An instructor may only teach the use of a mechanical or electrical apparatus for which the instructor is trained and qualified].~~

R156-11a-610. Standards for the Use of Acids.

In accordance with Subsections 58-11a-102(32)(b), 58-11a-102(40)(a)(i)(C), and 58-11a-501(17), the standards for the use of any acid or concentration of acids, shall be:

(1) The use of any acid or acid solution ~~[which]~~ that would exfoliate the skin below the stratum corneum, including those listed in Subsections (3) and (4), is prohibited unless used under the supervision of a licensed health care practitioner~~[-]~~;

(2) ~~[T]~~ the following acids are prohibited unless used under the supervision of a licensed health care practitioner:

- (a) phenol;
- (b) bichloroacetic acid;
- (c) resorcinol, except as provided in Subsection (4)(b); and
- (d) any acid in any concentration level that requires a prescription~~[-]~~;

(3) ~~[L]~~ limited chemical exfoliation for a basic esthetician does not include the mixing, combining, or layering of skin exfoliation products or services, but does include:

(a) alpha hydroxy acids of 30% or less, with a pH of not less than 3.0; and

(b) salicylic acid of 15% or less~~[-]~~;

(4) ~~[C]~~ chemical exfoliation for a master esthetician includes:

(a) acids allowed for a basic esthetician;

(b) modified jessner solution on the face and the tissue immediately adjacent to the jaw line;

(c) alpha hydroxy acids with a pH of not less than 1.0 and at a concentration of 50% shall include partially neutralized acids, and any acid above the concentration of 50% is prohibited;

(d) beta hydroxy acids with a concentration of not more than 30%;

(e) trichloroacetic acid, in accordance with Subsection 58-11a-501(17)(c), in a concentration of not more than 15%, but no manual, mechanical, or acid exfoliation can be used prior to treatment unless under the general supervision of a licensed health care practitioner; and

(f) vitamin-based acids~~[-]~~;

(5)(a) ~~[A]~~ a licensee shall prepare and maintain current documentation of the licensee's cumulative experience in chemical exfoliation, including:

(i) courses of instruction;

(ii) specialized training;

(iii) on-the-job experience; and

(iv) the approximate percentage that chemical exfoliation represents in the licensee's overall business~~[-]~~;

(b) ~~[A]~~ a licensee shall provide the documentation required by Subsection (5)(a) to the Division upon request~~[-]~~;

(6) ~~[A]~~ a licensee may not use an acid or perform a chemical exfoliation that the licensee is not competent to use or perform through training and experience, and as documented in accordance with Subsection (5)~~[-]~~;

(7) ~~[O]~~ only commercially available products utilized in accordance with manufacturers' instructions may be used for chemical exfoliation purposes~~[-]~~; or

(8) ~~[A]~~ a patch test shall be administered to each client prior to beginning any chemical exfoliation series.

R156-11a-611. Standards for Approval of Mechanical or Electrical Apparatus.

In accordance with Subsections 58-11a-102(~~[39]~~40)(a)(i)(G)(II) and (H), the standards for approval of mechanical or electrical apparatus are:

(1) ~~[N]~~ ~~[A]~~ a licensee may use a mechanical or electrical apparatus that is considered a prescription medical device by the FDA ~~[may be used by a licensee, unless such use is completed]~~ only under the appropriate level of supervision by a licensed health care practitioner acting within the licensed health care practitioner's scope of practice.

(2) Dermaplane procedures, dermabrasion procedures, blades, knives, and lancets are prohibited except for:

(a) advanced pedicures;

(b) advanced extraction of impurities from the skin; and

(c) dermaplane procedures for advanced exfoliation as defined in Subsection R156-11a-102(7) by a master esthetician under general supervision of a health care practitioner.

(3) The use of any procedure in which human tissue is cut or altered by laser energy or ionizing radiation is prohibited for ~~[all]~~ individuals licensed under this chapter unless it is within the scope of practice for the licensee and under the appropriate level of supervision by a licensed health care practitioner acting within the licensed health care practitioner's scope of practice.

(4) To be approved, a microdermabrasion machine shall:

(a) be specifically labeled for cosmetic or esthetic purposes;

(b) be a closed-loop vacuum system that uses a tissue retention device; and

(c) the normal and customary use of the machine does not result in the removal of the epidermis beyond the stratum corneum.

(5) To be approved, a microneedling device shall:

(a) be used only by a master esthetician;

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- (i) without supervision if needle penetration does not exceed 1.5 mm; or
- (ii) with general supervision by a licensed health care practitioner if needle penetration exceeds 1.5 mm; and
- (b) be used specifically for cosmetic or esthetic purposes.

R156-11a-612. Standards for Disclosure.

(1) In accordance with Subsections 58-11a-102(~~[31]~~[32])(b) and (~~[39]~~[40])(a)(i)(C) and (E), a licensee acting within the licensee's scope of practice shall inform a client of the following before applying a chemical exfoliant, using a microneedling device, or using a microdermabrasion machine:

- (a) the procedure may only be performed for cosmetic and not medical purposes, unless the licensee is working under the supervision of a licensed health care practitioner, who is working within the scope of the practitioner's license; and
- (b) the benefits and risks of the procedure.

R156-11a-800. Approved Barber Apprenticeship Requirements.

In accordance with Subsection 58-11a-102(1), the requirements for an approved barber apprenticeship shall include the following:

(1)(a) In accordance with Subsection 58-11a-306(1)(b)(ii), an instructor ~~[is required to]~~shall provide one-on-one direct supervision of their apprentice during the apprenticeship program. This does not preclude an instructor from having more than one apprentice.~~[; however, if]~~

- (b) If an instructor has more than one apprentice~~[;]~~:
 - (i) the instructor may not simultaneously supervise the apprentices~~[;]~~; and
 - (ii) the same hour or hours of instruction may not be credited toward more than one apprentice.

(2) The apprentice shall register with the Division by submitting a form prescribed by the Division.

(3) The instructor shall be approved by the Division for the apprenticeship. The instructor may not have had any disciplinary action in the preceding three years.

(4) There shall be a conspicuous sign near the work station of the apprentice stating "Apprentice in Training."~~[;]~~

(5)(a) The instructor and apprentice shall keep a daily record~~[; which shall]~~ that documents the total number of hours of training, to include:

- (i) ~~[include]~~ the hours of theory instruction~~[;]~~;
- (ii) the hours of practical instruction~~[;]~~; and
- (iii) the number and type of client services performed, and other services performed~~[which will document the total number of hours of training].~~

(b) The daily record shall be available to the Division immediately upon request.

(6) A complete set of barber texts shall be available to the apprentice.

(7) An apprentice may be compensated for services performed.

(8) The instructor shall provide training and technical instruction of 1,250 hours using the curriculum defined in Section R156-11a-700.

(9) The instructor shall limit the training of the apprentice to not more than 40 hours per week and not more than five days out of every seven consecutive days.

(10) An apprentice may not perform work on the public until the apprentice has received at least 10% of the hours of technical

training, with at least a portion of that time devoted to each of the subjects specified in Section R156-11a-700.

(11) Any hours obtained while enrolled in a barber school or a cosmetology/barber school, or hair design school may ~~[shall]~~ not be used to satisfy the required 1,250 hours of apprentice training.

(12) If an apprentice completes the apprenticeship and fails the NIC Barber Theory Examination or NIC Barber Practical Examination three times, the apprentice and instructor shall:

- (a) meet with the Board at the next appropriate Board meeting;
- (b) explain to the Board why the apprentice is not able to pass the examination; and
- (c) provide to the Board a plan of study in the appropriate subject matter to assist the apprentice in passing the examination.

R156-11a-801. Approved Cosmetologist/Barber Apprenticeship Requirements.

In accordance with Subsection 58-11a-102(1), the requirements for an approved cosmetologist/barber apprenticeship include the following:

(1)(a) In accordance with Subsection 58-11a-306(2)(b)(ii), an instructor ~~[is required to]~~shall provide one-on-one direct supervision of their apprentice during the apprenticeship program. This does not preclude an instructor from having more than one apprentice.~~[; however, if]~~

- (b) If an instructor has more than one apprentice~~[;]~~:
 - (i) the instructor may not simultaneously supervise the apprentices~~[;]~~; and
 - (ii) the same hour or hours of instruction may not be credited toward more than one apprentice.

(2) The apprentice shall be registered with the Division by submitting a form prescribed by the Division.

(3) The instructor shall be approved by the Division for the apprenticeship. The instructor may not have had any disciplinary action in the preceding three years.

(4) There shall be a conspicuous sign near the work station of the apprentice stating "Apprentice in Training."~~[;]~~

(5)(a) The instructor and apprentice shall keep a daily record that documents the total number of hours of training, to ~~[which shall]~~ include the following:

- (i) the hours of theory instruction~~[;]~~;
- (ii) the hours of practical instruction~~[;]~~; and
- (iii) the number and type of client services performed, and other services performed~~[which will document the total number of hours of training].~~

(b) The daily record shall be immediately available to the Division upon request.

(6) A complete set of cosmetology/barber texts shall be available to the apprentice.

(7) An apprentice may be compensated for services performed.

(8) The instructor shall provide training and technical instruction of 2,500 hours using the curriculum defined in Section R156-11a-705.

(9) The instructor shall limit the training of the apprentice to not more than 40 hours per week and not more than five days out of every seven consecutive days.

(10) An apprentice may not perform work on the public until the apprentice has received at least 10% of the hours of technical training, with at least a portion of that time devoted to each of the subjects specified in Section R156-11a-705.

(11) Hours obtained while enrolled in a cosmetology/barber school ~~[shall]may~~ not be used to satisfy the required 2,500 hours of apprentice training.

(12) If an apprentice completes the apprenticeship and fails the NIC Barber/Cosmetology Theory Examination or NIC Barber/Cosmetology Practical Examination three times, the apprentice and instructor shall:

- (a) meet with the Board at the next appropriate Board meeting;
- (b) explain to the Board why the apprentice is not able to pass the examination; and
- (c) provide to the Board a plan of study in the appropriate subject matter to assist the apprentice in passing the examination.

R156-11a-802. Approved Basic Esthetician Apprenticeship Requirements.

In accordance with Subsection 58-11a-102(2), the requirements for an approved basic esthetician apprenticeship include the following:

(1)(a) In accordance with Subsection 58-11a-306(3)(b)(ii), an instructor ~~[is required to]shall~~ provide one-on-one direct supervision of their apprentice during the apprenticeship program. This does not preclude an instructor from having more than one apprentice ~~[; however, if]~~.

- (b) If an instructor has more than one apprentice~~[;]~~:
 - (i) the instructor may not simultaneously supervise the apprentices~~[;]~~ and
 - (ii) the same hour or hours of instruction may not be credited toward more than one apprentice.

(2) The apprentice shall be registered with the Division by submitting a form prescribed by the Division.

(3) The instructor shall be approved by the Division for the apprenticeship. The instructor may not have had any disciplinary action in the preceding three years.

(4) There shall be a conspicuous sign near the workstation of the apprentice stating, "Apprentice in Training."~~[;]~~

(5)(a) The instructor and apprentice shall keep a daily record~~[, which shall]~~ that documents the total number of hours of training, to include:

- (i) the hours of theory instruction~~[;]~~;
- (ii) the hours of practical instruction~~[;]~~; and
- (iii) the number and type of client services performed, and other services performed~~[, which will document the total number of hours of training]~~.

(b) The daily record shall be immediately available to the Division upon request.

(6) A complete set of esthetics texts shall be available to the apprentice.

(7) An apprentice may be compensated for services performed.

(8) The instructor shall provide training and technical instruction of 800 hours using the curriculum defined in Section R156-11a-702.

(9) The instructor shall limit the training of the apprentice to not more than 40 hours per week and not more than five days out of every seven consecutive days.

(10) An apprentice may not perform work on the public until the apprentice has received at least 10% of the hours required in technical training, with at least a portion of that time devoted to each of the subjects specified in Section R156-11a-702.

(11) Hours obtained while enrolled in an esthetics school or a cosmetology/barber school ~~[shall]may~~ not be used to satisfy the required 800 hours of apprentice training.

(12) If an apprentice completes the apprenticeship and fails the NIC Esthetics Theory Examination or NIC Esthetics Practical Examination three times, the apprentice and instructor shall:

- (a) meet with the Board at the next appropriate Board meeting;
- (b) explain to the Board why the apprentice is not able to pass the examination; and
- (c) provide to the Board a plan of study in the appropriate subject matter to assist the apprentice in passing the examination.

R156-11a-803. Approved Master Esthetician Apprenticeship Requirements.

In accordance with Subsection 58-11a-102(3), the requirements for an approved master esthetician apprenticeship include the following:

(1)(a) In accordance with Subsection 58-11a-306(4)(b)(ii), an instructor ~~[is required to]shall~~ provide one-on-one direct supervision of their apprentice during the apprenticeship program. This does not preclude an instructor from having more than one apprentice ~~[; however, if]~~.

- (b) If an instructor has more than one apprentice~~[;]~~:
 - (i) the instructor may not simultaneously supervise the apprentices~~[;]~~ and
 - (ii) the same hour or hours of instruction may not be credited toward more than one apprentice.

(2) The apprentice shall be registered with the Division by submitting a form prescribed by the Division.

(3) The instructor shall be approved by the Division for the apprenticeship. The instructor may not have had any disciplinary action in the preceding three years.

(4) There shall be a conspicuous sign near the workstation of the apprentice stating, "Apprentice in Training."

(5)(a) The instructor and apprentice shall keep a daily record that documents the total number of hours of training, to include:~~[, which shall include]~~

- (i) the hours of theory instruction~~[;]~~;
- (ii) the hours of practical instruction~~[;]~~;
- (iii) the number and type of client services performed, and other services performed~~[, which will document the total number of hours of training]~~.

(b) The daily record shall be immediately available to the Division upon request.

(6) A complete set of esthetics texts shall be available to the apprentice.

(7) An apprentice may be compensated for services performed.

(8) The instructor shall provide training and technical instruction of 1,500 hours using the curriculum defined in Section R156-11a-703.

(9) The instructor shall limit the training of the apprentice to not more than 40 hours per week and not more than five days out of every seven consecutive days.

(10) An apprentice may not perform work on the public until the apprentice has received at least 10% of the required hours of technical training, with at least a portion of that time devoted to each of the subjects specified in Section R156-11a-703.

(11) Hours obtained while enrolled in an esthetics school or a cosmetology/barber school ~~shall~~ may not be used to satisfy the required 1,500 hours of apprentice training.

(12) If an apprentice completes the apprenticeship and fails the NIC Master Esthetics Theory Examination or NIC Master Esthetics Practical Examination three times, the apprentice and instructor shall:

- (a) meet with the Board at the next appropriate Board meeting;
- (b) explain to the Board why the apprentice is not able to pass the examination; and
- (c) provide to the Board a plan of study in the appropriate subject matter to assist the apprentice in passing the examination.

R156-11a-804. Approved Hair Designer Apprenticeship Requirements.

In accordance with Subsection 58-11a-102(3), the requirements for an approved hair designer apprenticeship include the following:

(1)(a) In accordance with Subsection 58-11a-306(3)(b)(ii), an instructor shall provide one-on-one direct supervision of their apprentice during the apprenticeship program. This does not preclude an instructor from having more than one apprentice.

(b) If an instructor has more than one apprentice:
(i) the instructor may not simultaneously supervise the apprentices; and

(ii) the same hour or hours of instruction may not be credited toward more than one apprentice.

(2) The apprentice shall be registered with the Division by submitting a form prescribed by the Division.

(3) The instructor shall be approved by the Division for the apprenticeship. The instructor may not have had any disciplinary action in the preceding three years.

(4) There shall be a conspicuous sign near the work station of the apprentice stating "Apprentice in training."

(5)(a) The instructor and apprentice shall keep a daily record that documents the total number of hours of training to include:

- (i) the hours of theory instruction;
- (ii) the hours of practical instruction; and
- (iii) the number and type of client services performed, and other services performed.

(b) The daily record shall be available to the Division immediately upon request.

(6) A complete set of hair designer texts shall be available to the apprentice.

(7) An apprentice may be compensated for services performed.

(8) The instructor shall provide training and technical instruction of 1,600 hours using the curriculum defined in Section R156-11a-705.

(9) The instructor shall limit the training of the apprentice to not more than 40 hours per week, and not more than five days out of every seven consecutive days.

(10) An apprentice may not perform work on the public until the apprentice has received at least 10% of the hours of technical training, with at least a portion of that time devoted to each of the subjects specified in Section R156-11a-706.

(11) Hours obtained while enrolled in a barber, cosmetology/barber, or hair design school may not be used to satisfy the required 1,600 hours of apprentice training.

(12) If an apprentice completes the apprenticeship and fails the NIC Hair Designer Theory Examination or NIC Hair Designer Practical Examination three times, the apprentice and instructor shall:

- (a) meet with the Board at the next appropriate Board meeting;
- (b) explain to the Board why the apprentice is not able to pass the examination; and
- (c) provide to the Board a plan of study in the appropriate subject matter to assist the apprentice in passing the examination.

R156-11a-~~804~~805. Approved Nail Technician Apprenticeship Requirements.

In accordance with Subsection 58-11a-102(4), the requirements for an approved nail technician apprenticeship include the following:

(1) In accordance with Subsection 58-11a-306(5)(b)(iii), an instructor is required to provide one-on-two direct supervision of their apprentices during the apprenticeship program. This does not preclude an instructor from having more than two apprentices; however, if an instructor has more than two apprentices, the instructor may not simultaneously supervise more than two apprentices, and the same hour or hours of instruction may not be credited toward more than two apprentices.

(2) The apprentice shall be registered with the Division by submitting a form prescribed by the Division.

(3) The instructor shall be approved by the Division for the apprenticeship. The instructor may not have had any disciplinary action in the preceding three years.

(4) There shall be a conspicuous sign near the workstation of the apprentice stating, "Apprentice in Training."

(5)(a) The instructor and apprentice shall keep a daily record~~[-which shall]~~ that documents the total number of hours of training, to include:

- (i) the hours of theory instruction[-];
- (ii) the hours of practical instruction[-];
- (iii) the number and type of client services performed, and other services performed.[-which will document the total number of hours of training.]

(b) The daily record shall be immediately available to the Division upon request.

(6) A complete set of nail technician texts shall be available to the apprentice.

(7) An apprentice may be compensated for services performed.

(8) The instructor shall provide training and technical instruction of 375 hours using the curriculum defined in Section R156-11a-704.

(9) The instructor shall limit the training of the apprentice to not more than 40 hours per week and not more than five days out of every seven consecutive days.

(10) An apprentice may not perform work on the public until the apprentice has received at least 10% of the hours of technical training, with at least a portion of that time devoted to each of the subjects specified in Section R156-11a-704.

(11) Hours obtained while enrolled in a nail technology school or a cosmetology/barber school ~~shall~~ may not be used to satisfy the required 375 hours of apprentice training.

(12) If an apprentice completes the apprenticeship and fails the NIC Nail Technology Theory Examination or NIC Nail Technology Practical Examination three times, the apprentice and instructor shall:

- (a) meet with the Board at the next appropriate Board meeting;
- (b) explain to the Board why the apprentice is not able to pass the examination; and
- (c) provide to the Board a plan of study in the appropriate subject matter to assist the apprentice in passing the examination.

R156-11a-~~805~~806. Conflicts of Interest.

An apprentice instructor may not be an employee of an apprentice or be involved in any relationship with an apprentice or others that would interfere with the instructor's ability to teach and train the apprentice.

KEY: cosmetologists/barbers, estheticians, electrologists, nail technicians

Date of Enactment or Last Substantive Amendment: ~~March 24, 2020~~

Notice of Continuation: January 19, 2017

Authorizing, and Implemented or Interpreted Law: 58-11a-101; 58-1-106(1)(a); 58-1-202(1)(a)

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R156-46a	Filing No. 53102

Agency Information

1. Department:	Commerce	
Agency:	Occupational and Professional Licensing	
Building:	Heber M. Wells Building	
Street address:	160 E 300 S	
City, state:	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 or section catchline:
R156-46a. Hearing Instrument Specialist Licensing Act Rule
3. Purpose of the new rule or reason for the change:
The proposed amendments update this rule in accordance with statutory changes made by S.B. 23 and H.B. 10 in the 2020 General Session.

4. Summary of the new rule or change:

Section R156-46a-102 is amended to update a citation.

In Sections R156-46a-302b and R156-46a-304, the proposed amendments remove references to the Hearing Instrument Specialists Licensing Act Board, in accordance with H.B. 10 (2020), which repealed Section 58-46a-201 and disbanded the Board.

In Section R156-46a-302a, the proposed amendments add clarification to exam requirements.

In Section R156-46a-302b, the proposed amendments make formatting changes, grammatical changes, and clarifies supervision requirements for interns.

In Section R156-46a-303, the proposed amendments update citations to renewal procedures in Rule R156-1.

In Section R156-46a-304, the proposed amendments make grammatical changes and clarify continuing education provisions.

In Section R156-46a-502a, the proposed amendments make grammatical changes and clarify unprofessional conduct provisions.

In Section R156-46a-502b, the proposed amendments make grammatical changes.

In Section R156-46a-502c, the proposed change is a formatting change.

In Section R156-46a-502d, the proposed change is a formatting change.

Public Hearing Information:
 Rule hearing will be held before the Division electronically only.
 Join with Google Meet: meet.google.com/aip-ypgz-njr
 Join by phone: (US) +1 216-352-4359 (PIN: 857010725)

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

No state agencies will be directly or indirectly affected by this filing because the proposed amendments merely update and clarify provisions and conform this rule to statutory changes. Accordingly, the amendments are not expected to impact the state.

B) Local governments:

No local governments will be directly or indirectly affected by this filing because the proposed amendments merely update and clarify provisions and conform this rule to statutory changes.

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

There are approximately 96 small businesses in Utah owned by individuals in the hearing aid dispensing industries (North American Industry Classification System (NAICS) 446199). No small businesses are expected to be impacted by this filing because the proposed amendments merely update and clarify provisions and conform this rule to statutory changes.

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

There are approximately three non-small businesses in Utah owned by individuals in the hearing aid dispensing industries (NAICS 446199). No non-small businesses are expected to be impacted by this filing because the proposed amendments merely update and clarify provisions and conform this rule to statutory changes.

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

In Utah there are 125 licensed hearing instrument specialists and 27 licensed hearing instrument interns, but these persons are not expected to be impacted by filing because the proposed amendments merely update and clarify provisions and conform this rule to statutory changes.

F) Compliance costs for affected persons:

These amendments are not expected to impose any compliance costs on any affected persons.

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

Regulatory Impact Table			
Fiscal Cost	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 Executive Director of the Department of Commerce, Chris Parker, 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 Division of Occupational and Professional Licensing proposes amendments to update the Hearing Instrument Specialist Licensing Act Rule in accordance with S.B. 23 and H.B. 10 (2020). The revisions remove references to the now disbanded Hearing Instrument Specialist Licensing Board, clarify licensing requirements in concern to exams and obtaining hours toward licensure, and make grammatical changes relating to unprofessional conduct. Amendments are also made to update section references and make nonsubstantive formatting changes for clarity.

Small Businesses (less than 50 employees):

In Utah, there are approximately 96 small businesses owned by individuals in the hearing aid dispensing industries (NAICS 446199). No costs or benefits are expected for small businesses by this filing because the proposed amendments merely update and clarify provisions and conform the rule to statutory changes. Accordingly, no fiscal impact is expected for small business over and above any fiscal impact described in the Legislative fiscal notes for S.B. 23 and H.B. 10 (2020) as these costs are either inestimable or there is no fiscal impact.

Regulatory Impact to Non-Small Businesses (50 or more employees)

In Utah, there are approximately three non-small businesses owned by individuals in the hearing aid dispensing industries (NAICS 446199). For the same reasons as for small businesses, this filing is not expected to generate costs or benefits as these are merely updating amendments to harmonize the rules with the statute. Any fiscal impact beyond those described in the Legislative

fiscal notes for S.B. 23 and H.B. 10 (2020) are either inestimable or there is simply no fiscal impact.

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):

Subsection 58-1-106(1)(a)	Subsection 58-1-202(1)(a)	Section 58-46a-101
Section 58-46a-304		

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:		12/01/2020
B) A public hearing (optional) will be held:		
On:	At:	At:
11/16/2020	9:00 a.m.	See details in Box 4 above.

10. This rule change MAY become effective on: 12/08/2020

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:	Mark B. Steinagel, Division Director	Date:	10/06/2020
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R156. Commerce, Occupational and Professional Licensing. R156-46a. Hearing Instrument Specialist Licensing Act Rule. R156-46a-102. Definitions.

In addition to the definitions as used in Title 58, Chapter[s] 1, Division of Occupational and Professional Licensing, and Title 58, Chapter 46a, Hearing Instrument Specialist Licensing Act, or this rule, [as used in Title 58, Chapters 1 and 46a or this rule,] "unprofessional conduct," [as defined in Title 58 Chapters 1 and 46a,] is further defined[, in accordance with] in Subsection 58-1-203(1)(e), in Section R156-46a-502a.

R156-46a-302a. Qualifications for Licensure - Examination Requirements.

(1)(a) In accordance with Subsections 58-46a-302(1)(~~f~~)d and [~~58-46a-302.5(2)(a)~~]58-46a-302(2)(c), the requirements for the examination of a hearing instrument specialist and of a hearing instrument intern are defined to require a minimum score of [~~85~~]75% on [each section of]the Utah Law and Rules Examination for Hearing Instrument Specialists.

(b) If an individual's license as a hearing instrument intern expires before the individual becomes licensed as a hearing instrument specialist, the individual shall retake and pass the Utah Law and Rules Examination before the individual may reapply for licensure as a hearing instrument intern.

(2)(a) In accordance with Subsection 58-46a-302.5(1)(a), a hearing instrument intern shall obtain a passing score on each section of the International Hearing Society (IHS) Practical Examination for Hearing Instrument Interns.

(b) If a hearing instrument intern receives a failing score on any section of the exam, the intern may retake that section within 60 days. If the intern does not pass each failed section within the 60-day period, the intern shall retake the entire exam.

(3)(a) In accordance with Subsection 58-46a-302.5(2)(b), an applicant for licensure as a hearing instrument specialist shall obtain a passing score on the International Hearing Society's (IHS) International Licensing Exam (ILE).

(b) If a hearing instrument intern fails the ILE three times:

(i) the intern shall request from the Division an authorization to test before each subsequent retake of the ILE; and

(ii) the Division shall require as a condition for approval of an authorization to test that the intern and the intern's supervisor submit to the Division a written plan of study that includes appropriate subject matter to assist the intern in passing the ILE.

R156-46a-302b. Qualifications for Licensure - Internship Supervision Requirements.

In accordance with Subsection[s] 58-46a-102(7)[~~and 58-1-203(1)(b)~~], the requirements for supervision of a hearing instrument intern are defined [~~and clarified~~]as follows[-]:

(1) [~~The~~]A hearing instrument intern supervisor shall:

(~~1~~)a) supervise no more than one hearing instrument intern on direct supervision;

(~~2~~)b) supervise no more than two hearing instrument interns at one time;

(~~3~~)c) [~~not~~]begin an internship program [~~until~~]only after:

(~~a~~)i) the hearing instrument intern is properly licensed as a hearing instrument intern; and

NOTICES OF PROPOSED RULES

~~(b)ii~~ the supervisor is approved by the Division~~[in collaboration with the Board]~~; and

~~(4)d~~ notify the Division within ten working days if an internship program is terminated.

(2) If a supervised internship program is terminated, then within 60 days of termination, the hearing instrument intern shall:

(a) obtain a new supervisor and notify the Division of the new supervised internship program; or

(b) surrender their hearing instrument intern license.

R156-46a-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 46a is established by rule in Section R156-1-308a.

(2) Renewal procedures shall be in accordance with Sections R156-1-308c through R156-1 308l.

R156-46a-304. Continuing Education.

In accordance with Section 58-46a-304, the continuing education requirement for renewal of licensure as a hearing instrument specialist is defined~~[and clarified]~~ as follows:

(1) A hearing instrument specialist shall complete at least 16 hours of continuing education during each two-year renewal cycle.

(2) Continuing education courses shall be ~~offered~~ in one or more of the following ~~areas~~ topics:

- (a) acoustics;
- (b) nature of the ear such as ~~[(c)]~~ normal ear, hearing process, disorders of hearing~~];~~
- (c) hearing measurement;
- (d) hearing aid technology;
- (e) selection of hearing aids;
- (f) marketing and customer relations;
- (g) client counseling;
- (h) ethical practice;
- (i) state laws and regulations regarding the dispensing of hearing aids; and

(j) other ~~areas deemed appropriate~~ topics approved by the Division~~[in collaboration with the Board]~~.

~~(2)3~~ Continuing education courses ~~[required under this section]~~ shall be approved by:

(a) the American Speech-Language-Hearing Association (ASHA);

(b) the American Academy of Audiology (AAA); or

(c) the International Hearing Society (IHS)~~[Licensees shall retain copies of transcripts or certificates of completion from continuing education courses approved under this section for a period of four years, during which time the Division may audit the licensee's compliance with the requirements of this section].~~

(4) ~~[A minimum of 20 continuing education course hours shall be obtained by a hearing instrument specialist in order to have the license renewed every two years.]A licensee may fulfill continuing education requirements by maintaining current National Board for Certification in Hearing Instrument Sciences (NBC-HIS) board certification.~~

(5) A licensee shall maintain documentation showing compliance with the requirements of this section, such as copies of transcripts or certificates of completion or of board certification, for two years from the end of the renewal period for which the continuing education is due.

R156-46a-502a. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) violating any state or federal law applicable to persons practicing as a hearing instrument specialist or hearing instrument intern;

(2) failing to perform the minimum components of an evaluation for a hearing aid as set forth in Section R156-46a-502b;

(3) dispensing a hearing aid without~~[the purchaser having]:~~

(a) the patient having received a medical evaluation as required by Subsection 58-46-502(5) within the six-month period prior to the purchase of ~~[a]the~~ hearing aid; or

(b) a document signed by the purchaser being a fully informed adult waiving the medical evaluation in accordance with Food and Drug Administration (FDA) required disclosures in CFR Title 21, Section 801.421, except a person under the age of 18 years may not waive the medical evaluation;

(4) engaging in unprofessional conduct specified in Subsection 58-1-501(2)(h), including:

(a) quoting prices of competitive hearing instruments or devices without disclosing that they are not the current prices;~~[or to show, demonstrate, or represent]~~

(b) showing, demonstrating, or representing competitive models as being current when ~~[such is not the fact]~~they are not; ~~[and]or~~

~~[(b)c]~~ using stalling tactics, excuses, arguing or attempting to dissuade the ~~[purchaser]consumer,~~ to ~~[avoid]prevent~~ or delay the ~~[customer]consumer~~ from exercising the 30-day right to cancel a hearing aid purchase pursuant to Subsection 58-46a-503(1); and

(5) failing to conform to the generally accepted and recognized standards and ethics of the profession including those established in the Code of Ethics of the International Hearing Society, adopted March 2009, which is hereby incorporated by reference.

R156-46a-502b. Minimum Components of an Evaluation for a Hearing Aid and Dispensing of a Hearing Aid.

(1) The minimum components of a hearing aid examination include~~[are the following]:~~

(a) air conduction tests at frequencies of 250, 500, 1000, 2000, and 4000 Hertz;

(b) appropriate masking if the air conduction threshold at any one frequency differs from the bone conduction threshold of the contralateral or non-test ear by 40 decibels at the same frequency;

(c) bone conduction tests at 500, 1000, and 2000 Hertz ~~[on every client]~~ with proper masking;

(d) speech audiometry by live voice or recorded voice, including speech discrimination testing, most comfortable loudness (MCL) measurements, and ~~[measurements of]uncomfortable levels of loudness (UCL) measurements;~~ and

(e) recording and interpretation of audiograms and speech audiometry and other appropriate tests for the sole purpose of determining proper selection and adaptation of a hearing aid.

(2) Only ~~if~~when the ~~[above-]procedures in Subsection (1)a~~ are clearly impractical, may the licensee select~~[the selection of]~~ the best instrument to compensate for the loss ~~[be made-]by~~ trial of one or more instruments.

(3) Tests performed by a physician specializing in diseases of the ear, a clinical audiologist, or another licensed hearing instrument specialist shall be accepted if they were performed within six months prior to the dispensing of the hearing aid.

R156-46a-502c. Calibration of Technical Instruments.

The requirement in Subsection 58-46a-303(3)(~~e~~)^b for calibration of ~~all~~^{each} appropriate technical instruments used in practice is defined~~[-clarified, and established]~~ as follows:

- (1) ~~any~~^{each} audiometer used in the fitting of hearing aids shall be calibrated when necessary, but not less than annually;
- (2) the calibration shall include to ANSI standards calibration of frequency accuracy, acoustic output, attenuator linearity, and harmonic distortion; and
- (3) calibration shall be accomplished by the manufacturer, or a properly trained person, or an institution of higher learning equipped with proper instruments for calibration of an audiometer.

R156-46a-502d. Form of Written Informed Consent.

In accordance with Subsection 58-46a-502(4)(c), an agreement to provide hearing instrument specialist goods and services shall include the patient's informed consent in substantially the following form.

TABLE

ACKNOWLEDGEMENT OF INFORMED CONSENT

As a consumer of hearing instrument specialist goods or services, you are required to be informed of certain information as provided in Utah Code ~~[Ann.]~~ Sections 58-46a-502 and 503.

1. The list of goods and services to be provided to you include the following: (add additional lines as required)
 Services: Charge:
 Goods (circle as applicable: new, used, reconditioned): Charge:
 These goods (circle as applicable: are, are not) covered by a warranty or guarantee. Additional information about any warranty or guarantee is attached.
2. The licensees providing these goods and services are: (add additional lines as required)
 hearing instrument specialist:
 name: license number:
 hearing instrument specialist intern
 name: license number:
3. The expected results of the goods and services are:
4. If the goods to be provided include a hearing instrument:
 - (a) Additional information is attached about hearing instruments that work with assisted listening systems that are compliant with ADA Standards for Accessible Design adopted by the United States Department of Justice in accordance with the American with Disabilities Act, 42 U.S.C. Sec. 12101 et seq.
 - (b) You have the right to receive a written receipt or written contract, which includes notice to you that you have a 30-day right to cancel the purchase and obtain a refund if you find the hearing aid does not function adequately for you.
 - (i) The 30-day right to cancel shall commence from either the date the hearing aid is originally delivered to you or the date the written receipt or contract is delivered to you, whichever is later. The 30-day period shall be tolled for any period during which the hearing aid seller, dealer, or fitter has possession or control of the hearing aid after its original delivery.
 - (ii) Upon exercise of the 30-day right to cancel a hearing aid purchase, the seller of the hearing aid is entitled to a cancellation fee not to exceed 15% of all fees charged to the consumer, including testing, fitting, counseling, and the purchase price of the hearing aid. The exact amount of the cancellation fee shall be stated in the written receipt or contract provided to the consumer.
5. If the goods and services provided do not substantially enhance your hearing as stated in the expected results, you are entitled to:
 - (a) necessary intervention to produce satisfactory recovery results consistent with the representations made above at no additional cost; or

(b) refund of the fees you paid for the hearing instrument within a reasonable period of time after finding that the hearing instrument does not substantially enhance your hearing. I hereby acknowledge being informed of the above and consent to ~~the~~ receive the goods and services.
 Patient's Signature and Date

KEY: licensing, hearing aids, hearing instrument specialist, hearing instrument intern

Date of Enactment or Last Substantive Amendment: ~~August 17, 2015~~2020

Notice of Continuation: November 8, 2018

Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-202(1)(a); 58-46a-101; 58-46a-304

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R277-462	Filing No. 53111

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:
R277-462. School Counseling Program
3. Purpose of the new rule or reason for the change:
The Utah State Board of Education (USBE), Law and Licensing Committee, directed USBE School Counseling staff to update Appendix C of the Utah College and Career Readiness School Counseling Program Model to align with the language in the Rule R277-464: School Counselor Direct and Indirect Services Incorporation of School Counselor Services document.
4. Summary of the new rule or change:
This rule change will provide consistency concerning direct and indirect school counselor services among all school counseling programs (those that receive CTE add-on funding and those who do not). The addition of Appendix C and revisions for Americans with Disabilities

Act (ADA) compliance resulted in a third edition of the model.

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. It provides for greater consistency for direct and indirect school counselor services among school counseling programs.

B) Local governments:

This rule change is not expected to have independent fiscal impact on local governments' revenues or expenditures. It provides for greater consistency for direct and indirect school counselor services among school counseling programs.

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. It provides for greater consistency for direct and indirect school counselor services among school counseling programs.

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. It provides for greater consistency for direct and indirect school counselor services among school counseling programs.

F) Compliance costs for affected persons:

There are no significant compliance costs for affected persons. This rule change provides for greater consistency for direct and indirect school counselor services among school counseling programs.

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-2-304(2)(b)	Section 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.)

	12/01/2020
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10. This rule change MAY become effective on: 12/08/2020

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:	10/15/2020
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**R277. Education, Administration.
R277-462. School Counseling Program.
R277-462-1. Authority and Purpose.**

(1) This rule is authorized by:

- (a) Utah Constitution Article X, Section 3 which vests general control and supervision over public education in the Board;
 - (b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and
 - (c) Subsection 53E-2-304(2)(b) which directs local boards to develop policies for the implementation of student Plan for College and Career Readiness.
- (2) The purpose of this rule is to establish:
- (a) standards and procedures for an LEA applying for funds appropriated for the School Counseling Program;
 - (b) the minimum counselor to student ratios within an LEA; and
 - (c) provisions for an LEA not meeting the minimum counselor to student ratios;

R277-462-2. Definitions.

- (1) "LEA" means, for purposes of this rule, an LEA that serves students any of in grades 7-12.
- (2) "Program" means an LEA's school counseling program that shall be consistent with the program model described in Section R277-462-3.
- (3) "School Counselor" means an educator licensed as a school counselor consistent with R277-506 and assigned to provide direct and indirect services to students consistent with the program.
- (4) "Student" means, for purposes of this rule, only students in grades 7-12.

R277-462-3. Incorporation of College and Career Readiness School Counseling Program Model.

- (1) This rule incorporates by reference the College and Career Readiness School Counseling Model [Second]Third Edition, 2020[16].
- (2) A copy of the current College and Career Readiness School Counseling Program Model is located at:
 - (a) <https://schools.utah.gov/file/5ff1f145-c2e4-4fe5-b8be-61e744a27f51> <https://www.schools.utah.gov/file/058ab549-0d27-437e-be6e-4cc7c6421b7d>
 - (b) the Utah State Board of Education -- 250 East 500 South, Salt Lake City, Utah 84111.

R277-462-4. School Counseling Program Approval and Qualifying Criteria.

- (1) To qualify for a funding distribution outlined in subsection (2), an LEA shall:
 - (a) have a plan for college and career readiness consistent with Section 53E-2-304 and R277-462-5;
 - (b) have an approved student success framework described in Section 53G-7-1304;
 - (c) participate in an on-site program review conducted by the Superintendent which shall:
 - (i) at least once every six years, be conducted with an LEA's accreditation review described in R277-410; and
 - (ii) assess the following components of the program:
 - (A) collaborative classroom instruction;
 - (B) implementation of the plan for college and career readiness;
 - (C) program contribution to achieving the student success framework;
 - (D) systemic dropout prevention; and
 - (E) overall administration of the program.

NOTICES OF PROPOSED RULES

(d) at least once every three years conduct an internal on-site review consistent with elements of the on-site review conducted by the Superintendent;

(e) ensure school's program is self-evaluated annually;

(f) participate in statewide trainings provided by the Superintendent;

(g) provide adequate resources and program management to each program within the LEA;

(h) conduct a program needs assessment with relevant stakeholders at least once every three years including school-based data projects demonstrating program or intervention effectiveness;

(i) provide evidence of LEA governing board approval of the program;

(j) demonstrate parental involvement in the program including advisory committee participation;

(k) integrate collaborative classroom instruction consistent with student success framework and standards identified by the program model;

(l) maintain the required school counselor to student ratio described in Section R277-462-6;

(m) design a program that includes the needs of diverse students; and

(n) provide assistance for students in career literacy and future decision-making skills.

(2) An LEA that meets the requirements in subsection (1) may receive a funding distribution as follows:

(a) a WPU base for the first 400 students; and

(b) a per student distribution for each additional student beyond 400 students, up to 1200 students.

(3) An LEA shall use the October 1 enrollment count of the previous fiscal year when determining the distribution amount to request.

R277-462-5. Plan for College and Career Readiness.

(1) To qualify for funding described in Section R277-462-4 an LEA shall ensure each student within the LEA has a plan for college and career readiness.

(2) A student, student's parent, and school counselor shall collaboratively develop the student's plan for college and career readiness.

(3) A plan for college and career readiness shall:

(a) be a four-year plan and completed either:

(i) initiated at the beginning of a student's seventh grade year; or

(ii) within the first year the student is enrolled in grades 7-12;

(b) include parents in the individual planning meetings with a student;

(c) be maintained by the counseling department in each school;

(d) follow a student as the student progresses through each grade; and

(e) when applicable, transfer with a student between LEAs.

(4) An LEA shall ensure that a student's course registration and class schedule is consistent with the student's plan for college and career readiness.

(5) An LEA shall require all schools with the LEA to document parental involvement and participation in a student's planning meetings.

~~(5)~~(6) An LEA shall ensure the implementation for a plan for college and career readiness is consistent with the LEA's program goals and includes the following conference meetings:

(a) at least one individual and one group conference meeting with a parent, school counselor and student during the student's:

(i) grades 7 and 8;

(ii) grades 9 and 10; and

(iii) grades 11 and 12.

(b) other meetings as needed.

R277-462-6. School Counselor to Student Ratios.

(1) To qualify for funding described in Section R277-462-4 an LEA shall have at least one school counselor for every 350 students.

(2) For purposes of counting toward fulfillment of this ratio, a school counselor shall be:

(a) a full-time equivalent within an LEA; and

(b) Board certified and licensed.

(3) An LEA may be considered compliant with subsection (1) if less than .25 school counselors would be needed for the LEA to meet the required ratio.

(4) No later than October 1 of each year an LEA shall certify to the Superintendent the school counselor to student ratio.

(5) No later than June 1 from submitting the LEA's certified ratio, an LEA that does not meet the required ratio in subsection (1) shall submit to the Board a plan outlining a reasonable timeline and method for achieving compliance.

(6) If an LEA fails to fulfill the plan described in subsection (5), the LEA may be placed on a corrective action plan described in R277-114.

(7) If an LEA fails to complete the corrective action plan described in subsection (6), the LEA shall be referred to the Board for further corrective action including loss of distributed funds.

R277-462-7. Allowable Use of Distributed Funds.

(1) An LEA shall ensure all funds distributed are used for any of the following purposes:

(a) a school collaborative classroom curriculum;

(b) personnel costs including clerical positions that support the plan for college and career readiness process;

(c) career center equipment or materials such as computers, media equipment, computer software, or occupational information;

(d) professional development for personnel involved in the program;

(e) expenses of extended hours which are required to run the program; and

(f) membership in the American School Counselor Association (ASCA) for one or more school counselors per school per year.

(2) An LEA may not use funds to supplant currently existing personnel or programs.

R277-462-8. Variances, Accountability, and Reporting.

(1) A new LEA or existing LEA with a new program, may receive funding under R277-462 if the new LEA:

(a) has received accreditation pursuant to R277-410; and

(b) has an approved program pursuant to R277-462.

(2) A new LEA or existing LEA with a new program, that does not meet the school counselor to student ratio described in Section R277-462-6 may receive a funding distribution after two years of planning, training and program implementation.

(3) No later than October 1, an LEA shall certify annually all previously qualified schools continue to meet the program criteria.

(4) An LEA shall provide data and information about the LEA's program as requested by the Superintendent.

KEY: public education, counselors
Date of Enactment or Last Substantive Amendment: ~~July 31, 2019~~ 2020
Notice of Continuation: May 23, 2019
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-2-304(2)(b); 53E-3-401(4)

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R277-494	Filing No. 53112

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:
R277-494. Charter, Online, Home, and Private School Student Participation in Extracurricular or Co-curricular School Activities
3. Purpose of the new rule or reason for the change:
The rule was amended and updated to reflect recent changes in the Utah Code under H.B. 80 passed in the 2020 General Session.
4. Summary of the new rule or change:
The amendments are mostly technical in nature and include two amendments to defined terms that were recently added to the Utah Code. The amended definitions direct the reader to defined terms in the Utah Code.

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 changes are technical and clarifying in nature.
B) Local governments:
This rule change is not expected to have independent fiscal impact on local governments' revenues or expenditures. The changes are technical and clarifying in nature.
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 changes are technical and clarifying in nature.
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 independent fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities. The changes are technical and clarifying in nature.
F) Compliance costs for affected persons:
There are no compliance costs for affected persons. The changes to this rule are technical and clarifying in nature.

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

Regulatory Impact Table			
Fiscal Cost	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 53G-6-705(6)	Subsection 53G-6-704(6)(a)
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: 12/01/2020

10. This rule change MAY become effective on: 12/08/2020

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:	10/15/2020
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R277. Education, Administration.

R277-494. Charter, Online, Home, and Private School Student Participation in Extracurricular or Co-curricular School Activities.

R277-494-1. 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 in accordance with its responsibilities;

(c) Subsection 53G-6-704(6)(a), which directs the Board to make rules establishing fees for a charter school student's participation in extracurricular or co-curricular activities at certain public schools; and

(d) Subsection 53G-6-705(6), which directs the Board to make rules establishing fees for an online student's participation in extracurricular or co-curricular activities at certain public schools.

(2) The purpose of this rule is to inform school districts, charter and online schools, and parents of:

(a) school participation fees; and

(b) state-determined requirements for a charter school or a public online school student to participate in an extracurricular activity at a student's boundary school.

R277-494-2. Definitions.

(1) "Activity fee" means a fee that:

(a) is approved by a local school board or public school;

(b) is charged to all students to participate in an extracurricular or co-curricular activity sponsored by or through the public school; and

(c) entitles a public school student to:

(i) participate in a school activity;

(ii) try out for an extracurricular or co-curricular school activity;

(iii) receive transportation to an activity; and

(iv) attend a regularly scheduled public school activity.

(2) "Co-curricular activity" means the same as that term is defined in Section 53G-7-501~~[a school district or school activity, course, or experience that includes a required regular school day component and an after school component, including a special program or activity such as a program for a gifted and talented student, a summer program, and a science or history fair].~~

(3) "Extracurricular activity" means the same as that term is defined in Section 53G-7-501~~[an athletic program or activity sponsored by a public school and offered, competitively or otherwise, to a public school student outside of the regular school day or program].~~

(4) "Online school" means a formally constituted public school that offers full-time education delivered primarily over the internet.

(5) "Qualifying school" means:

(a) for purposes of a charter school student, a school described in Subsection 53G-6-704(1);

(b) for purposes of an online school student, a school described in Subsection 53G-6-705(2); and

(c) for purposes of a private or home school student, a school described in Subsection 53G-6-703(2)(c).

(6) "School of enrollment" means the public school that maintains the student's cumulative file, enrollment information and transcript for purposes of high school graduation.

(7) "School participation fee" means the fee paid by a charter or online school to a qualifying school consistent with Subsections R277-494-3(2) or R277-494-4(2) for the charter or online school student's participation in an extracurricular or co-curricular activity.

(8) "Student activity specific fee" means the activity fee charged to all participating students by a qualifying school for a designated extracurricular or co-curricular activity consistent with Rule R277-407.

R277-494-3. Charter and Online School Student Participation in Extracurricular Activities at Another Public School.

(1) A charter or online school student may participate in an extracurricular activity at a qualifying school if:

(a) the extracurricular activity is not offered by the student's charter or online school;

(b) the student satisfies:

(i) for a charter school student, the requirements of Subsection 53G-6-704(3);

(ii) for an online school student, the requirements of Subsection 53G-6-705(3); and

(iii) the requirements of this rule;

(c) the student meets the qualifying school's standards and requirements; and

(d) the student's parent agrees to provide the student transportation to the qualifying school for the extracurricular activity.

(2)(a) A charter or online school student's school of enrollment shall pay a one-time annual school participation fee of \$75.00 per student to the qualifying school at which the charter or online school student desires to participate.

(b) Upon annual payment of the school participation fee, the student may participate in all extracurricular or co-curricular school activities at the school during the school year for which the student is qualified and eligible.

(3) The school participation fee described in Subsection (2)(a) is in addition to:

(a) a student activity specific fee for a specific extracurricular activity; and

(b) the activity fee charged to all students in a qualifying school to supplement a school activity as assessed by the school consistent with this rule.

(4) Except as provided in Subsection (7), a charter or online school student who participates in an extracurricular activity at a qualifying school shall pay all required student activity specific fees to the qualifying school in accordance with deadlines set by the qualifying school.

(5) All fees, including school participation fees and student activity specific fees shall be paid prior to a charter or online school student's participation in an activity at the qualifying school.

(6) A charter or online school of enrollment shall cooperate fully with all qualifying schools:

(a) regarding students' participation in try-outs, practices, pep rallies, team fund raising efforts, scheduled games, and required travel; and

(b) by providing complete and prompt reports of student academic and citizenship progress or grades, upon request.

(7)(a) If a participating charter or online school student qualifies for a fee waiver, in accordance with Rule R277-407, the charter or online student's school of enrollment shall pay the school participation fee described in Subsection (2)(a) and any waived student activity specific fees to the qualifying school.

(b) A charter or online school that is required to pay a fee waiver student's participation fee or student activity specific fee as described in Subsection (7)(a) shall pay the student participation fee and any student activity specific fees to the qualifying school before the charter or online school student may begin to participate in the extracurricular activity at the qualifying school.

R277-494-4. Charter or Online School Student Participation in Co-Curricular Activities.

(1)(a) A charter or online school student may participate in a co-curricular activity at a qualifying school if:

NOTICES OF PROPOSED RULES

(i) the co-curricular activity is not offered by the student's charter or online school;

(ii) the student satisfies:

(A) for a charter school student, the requirements of Subsection 53G-6-704(3);

(B) for an online school student, the requirements of Subsection 53G-6-705(3); and

(C) the requirements of this rule;

(iii) the student meets the qualifying school's standards and requirements; and

(iv) the student's parent agrees to provide the student transportation to the qualifying school for the co-curricular activity.

(b) A charter or online school may negotiate with a public school other than a school described in Subsection (1) to participate in a co-curricular activity at the other public school, including:

(i) a debate, drama, or choral program;

(ii) a specialized course or program offered during the regular school day; and

(iii) a school's sponsored enrichment program or activity.

(c) A student who participates in a co-curricular activity described in Subsection (1)(b) shall meet:

(i) the same attendance, discipline, and course requirements expected of the public school's full-time students;

(ii) for a charter school student, the requirements of Subsection 53G-6-704(3); and

(iii) for an online school student, the requirements of Subsection 53G-6-705(3).

(2)(a) A charter or online school of enrollment shall determine if the school will allow students to participate in co-curricular school activities at qualifying schools.

(b) If a charter or online school allows one student to participate in a co-curricular activity at a qualifying school, the charter or online school shall allow all interested students to participate.

(3)(a) A charter or online school student's school of enrollment shall pay a one-time annual school participation fee of \$75.00 per student to the qualifying school at which the charter or online school student desires to participate.

(b) If a charter or online school of enrollment pays a \$75.00 school participation fee to a qualifying school as described in Subsection R277-494-3(2)(a), the charter or online school of enrollment is not required to pay an additional \$75.00 school participation fee described in Subsection (3)(a) to the qualifying school in the same year.

(4) A charter or online school student participating under this rule shall:

(a) pay the required student activity specific fees for each co-curricular activity; and

(b) meet all eligibility requirements and timelines of the public school.

(5)(a) If a participating charter or online school student qualifies for a fee waiver, in accordance with Rule R277-407, the charter or online student's school of enrollment shall pay any waived student activity specific fees to the qualifying school.

(b) A charter or online school that is required to pay a fee waiver student's activity specific fees as described in Subsection (5)(a), shall pay the student activity specific fees to the qualifying school before the charter or online school student may begin to participate in the co-curricular activity at the qualifying school.

R277-494-5. Private or Home School Student Participation in Extracurricular Activities.

(1) In accordance with Section 53G-6-703, a private or home school student may participate in an extracurricular activity at a qualifying school if:

(a) for a private school student, the extracurricular activity is not offered by the student's private school;

(b) the student satisfies the requirements of:

(i) Section 53G-6-703; and

(ii) this rule; and

(c) the student meets the qualifying school's standards and requirements.

(2) Except as provided in Subsection (3), a private or home school student shall pay the required student activity specific fees for each extracurricular activity to the qualifying school:

(a) before the student may participate in the extracurricular activity at the qualifying school; and

(b) in accordance with deadlines set by the qualifying school.

(3) If a private or home school student qualifies for a fee waiver in accordance with Rule R277-407, the qualifying school shall waive any required student activity specific fees in accordance with the requirements of Rule R277-407, School Fees.

R277-494-6. Private or Home School Student Participation in Co-curricular Activities.

A private or home school student may participate in a co-curricular activity at a public school in accordance with the dual enrollment provisions of rule R277-438.

KEY: extracurricular, co-curricular, activities, student participation

Date of Enactment or Last Substantive Amendment: ~~March 9, 2016~~ 2020

Notice of Continuation: October 15, 2015

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-401(4); 53G-6-704(5); 53G-6-705(6)

NOTICE OF PROPOSED RULE

TYPE OF RULE: Repeal

Utah Admin. Code Ref (R no.): R277-508

Filing No.: 53107

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:
R277-508. Employment of Substitute Teachers
3. Purpose of the new rule or reason for the change:
The Utah State Board of Education (USBE) reviewed rule requirements for substitute teachers.
4. Summary of the new rule or change:
The USBE felt the existing rule for substitute teachers is obsolete and poses undue burdens on schools and districts in a time where it's difficult to find substitutes, therefore, this rule is being repealed in its entirety.

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 rule repeal removes a rule that is not current or necessary. The change may create savings for school districts, but it will not likely impact programs and processes at USBE.
B) Local governments:
This rule change is not expected to have independent fiscal impact on local governments' revenues or expenditures. The rule repeal removes a rule that is not current or necessary. The change may create savings for school districts, but it will not likely impact programs and processes at USBE.
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 rule repeal removes a rule that is not current or necessary. The change may create savings for school districts, but it will not likely impact programs and processes at USBE.
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):
There are no non-small businesses in the industry in question, Elementary and Secondary Schools (North American Industry Classification System (NAICS) 611110). Because there are no non-small businesses, they do not

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

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

This rule change is not expected to have independent fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities. The rule repeal removes a rule that is not current or necessary. The change may create savings for school districts, but it will not likely impact programs and processes at USBE.

F) Compliance costs for affected persons:

There are no compliance costs for affected persons. The rule repeal removes a rule that is not current or necessary. The change may create savings for school districts, but it will not likely impact programs and processes at USBE.

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

NOTICES OF PROPOSED RULES

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-3-501(1)(a)	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:	12/01/2020
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10. This rule change MAY become effective on:	12/08/2020
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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:	10/13/2020
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R277. Education, Administration.

~~**R277-508. Employment of Substitute Teachers.**~~

~~**R277-508-1. 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 53E-3-501(1)(a), which directs the Board to make rules regarding the qualifications of educators and ancillary personnel providing direct student services.~~
- ~~(2) The purpose of this rule is to establish eligibility requirements and employment procedures for substitute teachers.~~

~~**R277-508-2. Definitions.**~~

- ~~(1) "Comprehensive Administration of Credentials for Teachers in Utah Schools" or "CACTUS" means the electronic file maintained on all licensed Utah educators, which includes:~~
 - ~~(a) personal directory information;~~
 - ~~(b) educational background;~~
 - ~~(c) endorsements;~~
 - ~~(d) employment history;~~
 - ~~(e) professional development information; and~~
 - ~~(f) a record of disciplinary action taken against the educator.~~
- ~~(2) "LEA" includes, for purposes of this rule, the Utah Schools for the Deaf and the Blind.~~
- ~~(3) "License" means an authorization issued by the Board which permits the holder to serve in a professional capacity in a Utah public school.~~
- ~~(4) "Substitute teacher" means an individual employed to take the place of a regular teacher who is temporarily absent.~~

~~**R277-508-3. Hiring Priorities and Eligibility.**~~

- ~~(1) An LEA shall give first priority in hiring substitute teachers to those who hold a valid license in the subject matter they will be teaching as a substitute.~~
- ~~(2) An LEA shall give second priority in hiring substitute teachers to persons who have a valid license in a field commonly taught in public schools.~~
- ~~(3) An LEA shall give third priority in hiring substitute teachers to persons with a college degree.~~
- ~~(3) An LEA shall evaluate prospective substitute teachers to ensure that they are capable of managing a class and carrying out the instructional program.~~

~~(4) A person seeking employment as a substitute teacher shall furnish evidence as requested from the hiring LEA that the person is physically and mentally fit to work.~~

~~(5)(a) An LEA may not employ any individual as a substitute teacher whose license has been revoked or is currently suspended by the Board or the licensing entity of another jurisdiction.~~

R277-508-4. Employment Procedures.

~~(1) An LEA shall establish policies for hiring substitute teachers, which shall include a requirement:~~

~~(a) that the LEA's staff obtain verification from CACTUS that an applicant's license has not been revoked or suspended; and~~

~~(b) for substitute teachers to have criminal background checks consistent with Rule R277-516.~~

~~(2) An LEA shall have a policy, which includes:~~

~~(a) periodic evaluation of substitute teachers; and~~

~~(b) a salary schedule to pay substitute teachers according to their training, experience, and competency.~~

~~(3) A regular teacher shall have lesson plans immediately available for use by substitute teachers.~~

~~(4) A student teacher may substitute in a class consistent with the instructions and policies from the higher education institution which the student attends.~~

~~A paraprofessional may substitute in a class consistent with LEA policies.~~

~~KEY: teachers, professional competency, school personnel~~

~~Date of Enactment or Last Substantive Amendment: May 8, 2018~~

~~Notice of Continuation: April 2, 2018~~

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

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Repeal		
Utah Admin. Code Ref (R no.):	R277-611	Filing No. 53113

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:
R277-611. Certified Volunteer Instructors and Material Approval Requirements and Process for Firearm Safety in the Public Schools
3. Purpose of the new rule or reason for the change:
The authorizing statute has been repealed by the legislature and this rule's relevant portions are being considered as an addition to a forthcoming rule related to a new program. The repeal of Section 53F-6-201 was removed in H.B. 327 passed in the 2018 General Session.
4. Summary of the new rule or change:
Rule R277-611 is obsolete; therefore, the Utah State Board of Education is repealing this rule in its entirety.

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. Statute related to the program was repealed and relevant portions of this rule will be added to a forthcoming rule.
B) Local governments:
This rule change is not expected to have independent fiscal impact on local governments' revenues or expenditures. Statute related to the program was repealed and relevant portions of this rule will be added to a forthcoming rule.
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. Statute related to the program was repealed and relevant portions of this rule will be added to a forthcoming rule.
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. Statute related to the program was repealed and relevant portions of this rule will be added to a forthcoming rule.

F) Compliance costs for affected persons:

There are no independent compliance costs for affected persons. Statute related to the program was repealed and relevant portions of this rule will be added to a forthcoming 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 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 53F-6-201	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: 12/01/2020

10. This rule change MAY become effective on: 12/08/2020

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:	10/15/2020
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R277. Education, Administration.

~~[R277-611. Certified Volunteer Instructors and Material Approval Requirements and Process for Firearm Safety in the Public Schools.~~

~~R277-611-1. Authority and Purpose.~~

- ~~(1) This rule is authorized by:~~
 - ~~(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;~~
 - ~~(b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and~~
 - ~~(c) Section 53F-6-201, which creates a Firearms Safety and Violence Prevention Pilot Program for implementation in the public schools.~~
- ~~(2) The purpose of this rule is to:~~
 - ~~(a) provide a definition of certified volunteer for purposes of providing firearm safety training in a public school;~~
 - ~~(b) direct LEAs to designate public school areas that may be used for firearm safety training for adults or students or both; and~~
 - ~~(c) provide for voluntary firearm safety training of public school district employees or school community members or both on public school property at times determined by the local school board or local governing board.~~

~~R277-611-2. Definitions.~~

- ~~(1) "Certified volunteer" means an individual who:~~
 - ~~(a) volunteers to teach an LEA employee or student in a public school about firearm safety; and~~
 - ~~(b) is certified as required by Section R277-611-3.~~
- ~~(2) "Public school classroom or auditorium" means a classroom or auditorium in a public school:~~
 - ~~(a) identified as available and appropriate; and~~
 - ~~(b) designated by an LEA, superintendent, or director as available for firearm safety instruction.~~

~~R277-611-3. Firearm Safety and Violence Prevention Pilot Program.~~

- ~~(1) A local school board or charter school governing board may choose to participate in a pilot program established in accordance with the standards and limitations set forth in Section 53F-6-201.~~
- ~~(2) An LEA may designate anyone identified in Subsection 53F-6-201(5)(b)(ii) to provide instruction under a pilot program approved in accordance with Subsection (1).~~
 - ~~(3)(a) A "certified firearms safety instructor" as identified in Subsection 53F-6-201(5)(b)(ii)(D) means a volunteer who is certified by the Utah Bureau of Criminal Identification to teach firearm safety on public school property consistent with LEA policy and direction.~~
 - ~~(b) A list of certified firearms instructors by county is available through the Utah Department of Public Safety.~~
 - ~~(4) A certified volunteer shall provide documentation of required training to the designated school administrator prior to the advertisement or notice of available training.~~

~~(5) In addition to obtaining certification through the Bureau of Criminal Identification, prior to volunteering in the pilot program identified in Section 53F-6-201, a certified firearms safety instructor shall:~~

- ~~(a) complete a fingerprint background check and submit to ongoing monitoring consistent with the requirements of Title 53G, Chapter 11, Part 4, Background Checks; and~~
- ~~(b) have the background check reviewed by an LEA administrator prior to instructing a public school age student.~~

~~R277-611-4. Voluntary Training of Adults and Public Education Employees on Public School Property.~~

- ~~(1) An LEA may allow a community group to use public school property for voluntary firearm safety training for a public school employee or interested community member under conditions used to approve public school buildings for non-curriculum uses.~~
- ~~(2) An LEA shall give the greatest consideration to availability of space and the safety of school age children and school employees in the approval of a request to use public education property for voluntary firearm safety training and instruction.~~
- ~~(3) Live ammunition may not be brought on public school property as a part of firearm safety instruction under this R277-611-4.~~

~~R277-611-5. Use of Public School Property for Firearm Safety Instruction.~~

- ~~(1) An LEA may designate which classroom or auditorium or other appropriate public school area may be used for firearm safety instruction.~~
- ~~(2) An LEA shall give first priority to curriculum related groups in allowing firearm safety instruction to be held on public school property.~~
- ~~(3) An LEA shall give the safety of all students and community patrons the greatest consideration in allowing for firearm safety instruction or training on public school property.~~
- ~~(4) If appropriate or necessary, at the LEA's discretion, the LEA may post notice in and around a public school area designated for firearm instruction and training.~~

~~KEY: firearms, instruction~~

~~Date of Enactment or Last Substantive Amendment: November 7, 2016~~

~~Notice of Continuation: October 15, 2015~~

~~Authorizing, and Implemented or Interpreted Law: Art X, Sec 3; 53F-6-201; 53E-3-401(4)]~~

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R277-616	Filing No. 53114

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

NOTICES OF PROPOSED RULES

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:
R277-616. Education for Homeless and Emancipated Students
3. Purpose of the new rule or reason for the change:
This rule is being amended to include language that brings this rule into compliance with federal requirements for a state education agency to have a policy regarding fee waivers for homeless students.
4. Summary of the new rule or change:
The amendment adds that a student the qualifies as homeless under the McKinney-Vento Act have all fee's waived pursuant to process outlined in Section R277-407-5. The amendments also make technical corrections to numbering and citations.

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. It brings this rule into compliance with federal requirements under the McKinney-Vento Act.
B) Local governments:
This rule change is not expected to have independent fiscal impact on local governments' revenues or expenditures. It brings this rule into compliance with federal requirements under the McKinney-Vento Act.
C) Small businesses ("small business" means a business employing 1-49 persons):
This rule change is not expected to have independent fiscal impacts on small businesses' revenues or expenditures. It brings this rule into compliance with federal requirements under the McKinney-Vento Act.
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. It brings this rule into compliance with federal requirements under the McKinney-Vento Act.

F) Compliance costs for affected persons:

There are no independent compliance costs for affected persons. This rule change brings this rule into compliance with federal requirements under the McKinney-Vento Act.

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 53F-6-201	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:	12/01/2020
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10. This rule change MAY become effective on:	12/08/2020
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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:	10/15/2020
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R277. Education, Administration.

R277-616. Education for Homeless and Emancipated Students.

R277-616-1. 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 adopt rules in accordance with its responsibilities;
 - (c) Section 53G-6-202, which requires that minors between the ages of 6 and 18 attend school during the school year;
 - (d) Subsection 53G-6-302(6), which makes each school district or charter school responsible for providing educational services for all children of school age who reside in the school district or attend the school; and
 - (e) the McKinney-Vento Homeless Assistance Act of 1987, Title VII, Subtitle B, as amended, 42 U.S.C. 11431 through 11435.
- (2) The purpose of this rule is to ensure that homeless children or youth have the opportunity to attend school with as little disruption as reasonably possible.

R277-616-2. Definitions.

- (1) "Domicile" means the place which a person considers to be the permanent home, even though temporarily residing elsewhere.
- (2) "Emancipated minor" means:
 - (a) a child under the age of 18 who has become emancipated through marriage or by order of a court consistent with Section 78A-6-801 et seq.; or
 - (b) a child recommended for school enrollment as an emancipated or independent or homeless child or youth by an authorized representative of the Utah State Department of Social Services.
- (3) "Enrolled" for purposes of this rule means a student has the opportunity to attend classes and participate fully in school and extracurricular activities based on academic and citizenship requirements of all students.
- (4) "Homeless child" or "homeless youth" means a child who:
 - (a) lacks a fixed, regular, and adequate nighttime residence;
 - (b) has primary nighttime residence in a homeless shelter, welfare hotel, motel, congregate shelter, domestic violence shelter, car, abandoned building, bus or train station, trailer park, or camping ground;
 - (c) sleeps in a public or private place not ordinarily used as a regular sleeping accommodation for human beings;

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(d) is, due to loss of housing or economic hardship, or a similar reason, living with relatives or friends usually on a temporary or emergency basis due to lack of housing; or

(e) is a runaway, a child or youth denied housing by his family, or school-age unwed mother living in a home for unwed mothers, who has no other housing available.

(5) "School district of residence for a homeless child or youth" means the school district in which the student or the student's legal guardian or both currently resides or the charter school that the student is attending for the period that the student or student's family satisfies the homeless criteria.

R277-616-3. Criteria for Determining Where a Homeless or Emancipated Student Shall Attend School.

(1) Under the McKinney-Vento Homeless Assistance Act of 1987, Title VII, Subtitle B, as amended, 42 U.S.C. 11431 through 11435, homeless children are entitled to immediate enrollment and full participation even if they are unable to produce records which may include medical records, birth certificates, school records, or proof of residency normally required for enrollment.

(2) A homeless child or homeless youth shall:

(a) be immediately enrolled even if the homeless youth does not have documentation required under Sections 53G-9-402, 302, 303, 304 and Title 53G, Chapter 6, Part 3, District of Residency;

(b) be allowed to continue to attend his school of origin, to the extent feasible, unless it is against the parent's wishes;

(c) be permitted to remain in the student's school of origin for the duration of the homelessness and until the end of any academic year in which the student moves into permanent housing; or

(d) transfer to the school district of residence for a homeless child or youth or charter school if space is available as defined under Section R277-616-1(5)~~(4)~~; and

(e) have all fees waived as described in Section R277-407-5 and in accordance with McKinney-Vento Homeless Assistance Act of 1987, Title VII, Subtitle B, as amended, 42 U.S.C. 11431(1).

~~(2)~~ A determination of a residence or domicile for a homeless youth or emancipated minor may include consideration of the following criteria:

(a) the place, however temporary, where the child actually sleeps;

(b) the place where an emancipated minor or an unaccompanied youth or accompanied youth's family keeps the family's belongings;

(c) the place which an emancipated minor or an unaccompanied youth or accompanied youth's parent considers to be home; or

(d) such recommendations concerning a child's domicile as made by the State Department of Human Services.

~~(3)~~ Determination of a residence or domicile for a homeless youth or emancipated minor may not be based upon:

- (a) rent or lease receipts for an apartment or home;
- (b) the existence or absence of a permanent address; or
- (c) a required length of residence in a given location.

~~(4)~~ If there is a dispute as to the residence or the status of an emancipated minor or an unaccompanied youth, the issue may be referred to the Superintendent for resolution.

~~(5)~~ The purpose of federal homeless education legislation is to ensure that a child's education is not needlessly disrupted because of homelessness.

~~(6)~~ If a child's residence or eligibility is in question, the child shall be admitted to school until the issue is resolved.

R277-616-4. Transfer of Guardianship.

(1) If guardianship of a minor child is awarded to a resident of a school district by action of a court or through appointment by a school district under Section 53G-6-303, the child becomes a resident of the school district in which the guardian resides.

(2) If a child's residence has been established by transfer of legal guardianship, no tuition may be charged by the new school district of residence.

KEY: compulsory education, students' rights

Date of Enactment or Last Substantive Amendment: ~~November 23, 2015~~ 2020

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-401(4); 53G-6-302(6); 53G-6-303

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R277-706	Filing No. 53106

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:
R277-706. Public Education Regional Service Centers
3. Purpose of the new rule or reason for the change:
This rule needs to be updated due to the passage of S.B. 79, Regional Education Service Agencies, passed in the 2020 General Session. S.B. 79 renamed what were formerly known as Regional Education Service Centers and directed the Utah State Board of Education to make rules establishing a coordinating council and further establishing the powers and duties of what are now known as Regional Education Service Agencies.
4. Summary of the new rule or change:
The amendments update the terminology consistent with the statutory changes, outline Regional Education Service

Agency (RESA) powers, and establish a RESA statewide coordinating council. The amendments further clarify when RESAs can seek grant funding beyond what is allocated for the RESA's member schools.

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 changes align this rule with statutory changes found in S.B. 79 (2020).

B) Local governments:

This rule change is not expected to have independent fiscal impact on local governments' revenues or expenditures. The changes align this rule with statutory changes found in S.B. 79 (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 changes align this rule with statutory changes found in S.B. 79 (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 changes align this rule with statutory changes found in S.B. 79 (2020).

F) Compliance costs for affected persons:

There are no independent compliance costs for affected persons. The changes align this rule with statutory changes found in S.B. 79 (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 53G-4-410	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: 12/01/2020

10. This rule change MAY become effective on: 12/08/2020

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:	10/13/2020
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R277. Education, Administration.

R277-706. [~~Public Education~~]Regional Education Service [Centers]Agencies.

R277-706-1. Authority and Purpose.

(1) This rule is authorized by:

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

(b) S[ub]section 53G-4-410(~~6~~), which directs the Board to make rules regarding [~~eligible~~]regional education service [center's]agencies; and

(c) Subsection 53E-3-401(4), which permits the Board to adopt rules in accordance with the Board's responsibilities.

(2) The purpose of this rule is:

(a) to provide definitions and procedures for school districts to form interlocal agreements; and

(b) to provide for distribution of legislative funds to eligible regional education service [center's]agencies by the Board.

R277-706-2. Definitions.

(1) "Eligible Regional education service agency" or "Eligible RESA" has the same meaning as the term is defined in Section 53G-4-410.

(2) "~~[Eligible~~]Regional education service [center]agency" or "RESA" has the same meaning as the term is defined in Section 53G-4-410.

R277-706-3. [~~Eligible~~]Regional Education Service [Centers]Agencies.

(1) Two or more school districts may enter into an interlocal agreement and form [~~an eligible~~]regional education service [center]agency as described in Section 53G-4-410.

(2) An interlocal agreement described in Subsection (1) shall confirm or formalize a [~~regional service center~~]RESA as described in Subsection 53G-4-410(4) as of the effective date of the agreement.

(3) A RESA may provide services and participate in programs consistent with state law and Board rule, including:

(a) apply for any grant or program in which an LEA may participate on behalf of its LEAs if the RESA has written consent from the LEAs that the RESA serves;

(b) apply for any grant or program in addition to its LEAs in accordance with the Board rule implementing the grant or program;

(c) recommend educators to USBE for licensing;

(d) provide student services as approved by the RESA's board;

(e) access, Board systems, on behalf of member LEAs, as approved by the Superintendent;

(f) elect to participate as an employer for retirement programs in the Public Employees Contributory retirement program; and

(g) may receive services from or partner with any department, division, or agency of the state, including coverage through the Division of Risk Management in accordance with Subsection 53G-4-410(3)(c).

(4) A RESA does not have authority over the LEAs which the RESA serves.

R277-706-4. Distribution of Funds.

(1) The Superintendent shall distribute funds, if provided by the Legislature, in equal amounts to each eligible regional education service [center]agency if the [~~eligible regional service center~~]RESA:

(a) submits a request for funds; and

(b) satisfies all requirements established by the Board.

(2) The Superintendent shall provide notice to an eligible ~~[regional service center]~~RESA of the deadlines and requirements for a request for funds described in Subsection (1).

(3) Subject to legislative appropriation, the Superintendent shall distribute funds to an eligible ~~[regional service center]~~RESA after July 1 annually.

(4) The Board may provide additional funding, if available, to a RESA without prejudice to existing legislative appropriations to eligible RESAs.

(5) The Superintendent shall review the funding the legislature appropriates to support eligible RESAs by October 1 annually and make recommendations for consideration by the Board.

R277-706-5. Eligible Regional Education Service ~~Center~~Agency Responsibilities.

(1) An eligible regional education service ~~center~~agency shall submit an annual application for available funds to the Superintendent.

(2) An eligible ~~[regional service center's]~~RESA's application for funds shall include:

(a) a copy of the eligible ~~[regional service center's]~~RESA's completed interlocal agreement;

(b) a proposed budget and request for funds;

(c) a current external audit of the eligible ~~[regional service center's]~~RESA's assets and liabilities;

(d) assurance, signed by all parties to the interlocal agreement, that the eligible ~~[regional service center]~~RESA will provide the eligible ~~[regional service center's]~~RESA's records to the Superintendent upon request;

(e) an annual financial report from the previous fiscal year; and

(f) a plan for the use and distribution of the eligible ~~[regional service center's]~~RESA's funds for the applicable fiscal year with specific attention to:

(i) the delivery of Utah Education Network and Telehealth services to the LEAs within the eligible ~~[regional service center]~~RESA; and

(ii) the delivery of education-related services.

(3) An eligible regional service center shall provide an annual performance report to the Superintendent and the Board[-], including the following information:

(a) the eligible regional service center's delivery of Utah Education and Telehealth Network services;

(b) the eligible regional service center's type, amount, and effectiveness of delivery of public and higher education related services; and

(c) the eligible regional service center's coordination of public and higher education related services.

R277-706-6. Regional Education Service Agency Coordinating Council.

(1) There is hereby created a regional education service agency coordinating council.

(2) The council is an advisory body, which shall consist of the following members:

(a) the executive director of each RESA;

(b) the board chair of each RESA's governing board;

(c) A member of the Board appointed by the Board chair; and

(d) the Superintendent.

(3) The council created in Subsection (1) shall be chaired by one of the RESA board chairs as selected by the council's members.

(4) The regional education service agency coordinating council shall meet at least biannually, but may meet more often if necessary, to coordinate with the Superintendent on implementing state initiatives in the areas the RESAs cover.

KEY: eligible regional service ~~centers~~agencies
Date of Enactment or Last Substantive Amendment: ~~[October 8, 2019]~~2020

Notice of Continuation: August 6, 2019

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53G-4-410~~(6)~~; 53E-3-401(4)

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R277-752	Filing No. 53109

Agency Information

1. Department:	Education	
Agency:	Administration	
Building:	Board of Education	
Street address:	250 E 500 S	
City, state:	Salt Lake City, UT 84114	
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:
R277-752. Special Education Intensive Services Fund
3. Purpose of the new rule or reason for the change:
This rule is amended to address carry forward and application requirements for the special education intensive services fund appropriation.
4. Summary of the new rule or change:
This rule updates provisions for local education agencies (LEAs) with excessive carry forward balances and their eligibility to receive an allocation of funds in the Special Education Intensive Services Fund. This rule also requires the Utah State Board of Education (USBE) to recoup special education carry forward funds in excess of 20% of

an LEA's budget for all the LEA's special education programs.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

This rule change may impact state government revenues and/or expenditures. It requires the USBE to recoup special education intensive service carry forward funds in excess of 20% of an LEA's special education budget. These revenues are not retained by the state but go into the special education intensive services program, allowing the USBE to fund additional requests from other LEAs. This rule change redistributes funding provided to LEAs and does not increase revenues retained by the USBE.

B) Local governments:

This rule change may impact local governments' revenues and/or expenditures. It requires the USBE to recoup special education intensive service carry forward funds in excess of 20% of an LEA's special education budget. These revenues are not retained by the state but go into the special education intensive services program, allowing the USBE to fund additional requests from other LEAs. The net benefit/cost to LEAs is zero as the rule only redistributes funding amongst LEAs.

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

This rule change is not expected to have material fiscal impact on small businesses' revenues or expenditures. The amendments in this rule change directly impact only state and local governments.

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 material fiscal impact on revenues or expenditures for persons other than

small businesses, businesses, or local government entities. The amendments in this rule change directly impact only state and local governments.

F) Compliance costs for affected persons:

There are no compliance costs for affected persons.

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

Regulatory Impact Table

Fiscal Cost	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:

Sydney 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 53F-2-309	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:	12/01/2020
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10. This rule change MAY become effective on:	12/08/2020
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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:	10/13/2020
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R277. Education, Administration.

R277-752. Special Education Intensive Services Fund.

R277-752-1. 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) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; ~~and~~

- ~~(c) Section 53F-2-309, which requires the Board to make rules establishing a distribution formula to allocate money appropriated to the board for the special education intensive services fund.]~~

- (2) The purpose of this rule is to establish:

- (a) an application process for the special education intensive services fund; and

- (b) a formula to distribute the funds.

R277-752-2. Definitions.

- (1) "Budget" means the total expenditures reported on an LEA's Annual Program Report, "APR."

- (2) "Cost of setting" means the cost of a student's educational environment, including:

- (a) for a preschool student, the cost of services provided in an early childhood setting;

- (b) for a general education student, the cost of services provided in a general education classroom by special education personnel;

- (c) for resource students, the cost of services provided in a special education classroom by pull-out from the general education classroom;

- (d) for a student in a special class, the cost of services provided in a special education classroom for all or most of the day; and

- (e) for a student in a special school, the cost of services provided in a separate school where all students have disabilities.

- (3) "Highest impacted LEA cost ratio" means the quotient of, for a fiscal year:

- (a) an LEA's unreimbursed expenses remaining after allocations are made from the high cost student fund described in R277-752-3; and

- (b) an LEA's total state special education revenues from the prior fiscal year.

- (4) "Local education agency" or "LEA" includes, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

- (5) "Special education intensive services fund" means funding available to offset the costs of students whose educational program exceeds three times the state average per pupil expenditures.

R277-752-3. Application Process - Distribution Formula.

- (1) To receive an annual allocation from the special education intensive services fund, an LEA shall annually submit to the Superintendent an application by March 1 claiming:

- (a) prior fiscal year expenses that:

- (i) are associated with providing direct special education and related services identified in a student's IEP; and

- (ii) exceed three times the state average per pupil expenditures using data from the most recently published State Superintendent's Annual Report; and

- (b) any reimbursements received for the expenses described in Subsection (1)(a)(i) from private insurance or Medicaid.

- (2)(a) Except as provided in Subsection (2)(b), if the ~~prior year~~ carry forward balances of an LEA's state special education programs exceed 20% of the LEA's special education budget as of June 30 of the prior fiscal year as reported in the LEA's Annual

NOTICES OF PROPOSED RULES

Program Report, the LEA may not submit an application for an annual allocation or reimbursement under the intensive services fund.

(b) An LEA with prior fiscal year carry forward balances that exceed 20% as described in Subsection (2)(a) may [that] submit[s] an application for an annual allocation or reimbursement under the intensive services fund [shall]if the LEA:

(i) demonstrate the LEA's state special education carry forward balances do not exceed 20% of the LEA's special education current year budget as of December 31; and

(ii) submits a balance sheet, [letter] signed by the LEA's superintendent or charter school director certifying the LEA's state special education fund balances as of December 31 immediately prior to filing the application [March 1 of the year of application].

(3) From the special education intensive services fund, the Superintendent shall allocate:

(a) 50% of the appropriation to the high cost student fund to be distributed to LEAs based on the highest cost students with disabilities[;]

~~_____ (i) as described in Section 53F-2-309; and
 _____ (ii) in accordance with Subsection (4); and~~

(b) 50% of the appropriation to the highly impacted LEA fund to be distributed to LEAs based on the highest impact to an LEA due to high cost students with disabilities[;]

~~_____ (i) as described in Section 53F-2-309; and
 _____ (ii) in accordance with Subsection (5).~~

(4)(a) The Superintendent shall distribute funds to LEAs from the high cost student fund using a step down reimbursement process as described in this Subsection (4).

(b) The first step is to reimburse for the highest cost student equal to the difference between the highest cost student and the second highest cost student.

(c) The second step is to reimburse for the highest cost student and second highest cost student equal to the difference between the second highest cost student and the third highest cost student.

(d) Except as provided in Subsection (4)(e), the Superintendent shall continue the step down reimbursement process described in this subsection until funds are exhausted.

(e) If funding is insufficient to fully reimburse the cost for all students in a step, the Superintendent shall reallocate the remaining funds to the highly impacted LEA fund.

(f) In determining student cost under this Subsection (4), the Superintendent shall sum expenses described in Subsection (1)(a)(i) less:

(i) the state average per pupil expenditures using data from the most recently published State Superintendent's Annual Report; and

(ii) reimbursements from private insurance or Medicaid.

(5)(a) The Superintendent shall distribute funds to LEAs from the highly impacted LEA fund by providing a reimbursement equal to the difference between:

(i) an LEA's unreimbursed expenses remaining after allocations are made from the high cost student fund; and

(ii) the product of:

(A) an LEA's total federal and state special education funding from the prior fiscal year; and

(B) the median of the highest impacted LEA cost ratios.

(b) The Superintendent shall provide a reimbursement described in Subsection (5)(a) starting with the LEA with the highest impacted LEA cost ratio until funds are exhausted.

(6)(a) The Superintendent shall maintain and publish a list of costs eligible for reimbursement under this rule along with the rate of reimbursement.

(b) The Superintendent shall exclude cost of setting from reimbursement calculations.

(7)(a) If an LEA's carry forward exceeds the LEA's special education budget by an amount greater than 20% of the special education budget, the Superintendent shall recoup funds in excess of the 20% carry forward and make the funds available for distribution in the next year's intensive services fund program.

(b) Notwithstanding the requirements of Subsection (7)(~~(b)~~)(a), an LEA has three years to spend carry forward fund balances incurred prior to June 30, 2019.

KEY: special education, intensive services fund

Date of Enactment or Last Substantive Amendment: [September 25,] 2020

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-401(4); 53F-2-309

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R384-415	Filing No. 53115

Agency Information

1. Department:	Health	
Agency:	Disease Control and Prevention, Health Promotion	
Building:	Cannon Health Building	
Street address:	288 N 1460 W	
City, state:	Salt Lake City, UT 84116	
Mailing address:	PO Box 142106	
City, state, zip:	Salt Lake City, UT 84114-2106	
Contact person(s):		
Name:	Phone:	Email:
Braden Ainsworth	801-538-6187	tobaccorulescomments@utah.gov
Christy Cushing	801-538-6260	tobaccorulescomments@utah.gov

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

General Information

2. Rule or section catchline:
R384-415. Electronic-Cigarette Substance Standards
3. Purpose of the new rule or reason for the change:
These changes revise this rule to align with changes in Section 26-57-103, which became effective 07/01/2020. The changes are needed due to the passage of H.B. 23 during the 2020 General Session, requiring the

Department of Health (Department) to establish labeling; nicotine content; packaging; and product quality standards for manufacturer sealed electronic cigarette substances. Between July and September 2020, the Department consulted with representatives from local health departments and members of the public to establish the language for this rule amendment.

4. Summary of the new rule or change:

The rule amendment to Rule R384-415 revises this rule to align with definition changes throughout Utah Code. In addition, the rule amendment establishes labeling; nicotine content; packaging; and product quality standards and requirements for retailers that sell manufacturer sealed electronic cigarette substances.

Public hearing information: Virtual Public Hearing via WexEx
<https://tscp.my.webex.com/tscp.my/j.php?MTID=m4855fc7f9d49cfb1517f6b5fbf07485>
 Join by phone: +1-510-338-9438 USA Toll. Access code: 126 477 2173
 Please contact Christy Cushing for questions or to sign up to provide public comment at 801-538-6260 or ccushing@utah.gov.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

Enactment of this rule amendment is not expected to have any fiscal costs to the state budget; however, there are costs to Utahns who use electronic cigarettes, especially to those who use them now during the COVID-19 pandemic.

An electronic cigarette with a higher concentration of nicotine has a greater likelihood of being a more addictive. Utahns who are addicted to nicotine products and want to quit are more likely to need tobacco cessation services to be able to quit successfully. Currently, tobacco cessation services are provided by the Utah Department of Health through the state tobacco quit line and through quit services covered by health insurance plans. The continued sale of addictive products results in higher cost to the state tobacco quit line and health insurance companies to cover treatment for nicotine dependence.

In 2018, 13.3% of Utah's Medicaid recipients used electronic cigarettes. Reducing the nicotine content in electronic cigarettes sold in Utah could reduce electronic cigarette use among this population and subsequently decrease nicotine dependence treatment and healthcare expenditures for Medicaid clients, both in the short and long term. The Utah Medicaid program currently spends an estimated \$125,900,000 each year to treat tobacco-related diseases.

The Utah state quit line budget is approximately \$1,000,000 annually and all of the tobacco cessation services provided is free and confidential for users. The average state cost for treating nicotine dependence using the Utah quit line ranges between \$273 - \$300 per user. The Utah youth tobacco cessation program "My Life My Quit" (for both vaping and smoking), offered by the Utah tobacco quit line for individuals between the ages of 13-17, cost per user (counseling calls, text messaging, email support) is \$273. The Utah adult cessation program provided by the Utah tobacco quit line, cost per user (counseling calls, text messaging, email support, NRT) is \$300.

In Utah, an estimated 30,000 youth currently use electronic cigarette products (12.4%). 44.5% of U.S. adolescents who vape are seriously interested in quitting, and 24.9% tried to quit in the past year (Smith, 2020). To offer tobacco cessation services to 44.5% of Utah youth who vape (13,350) would cost Utah an estimated \$3,600,000. To offer tobacco cessation services to 50% of young adults who vape (ages 18-34) (~55,000) would cost Utah an estimated \$16,600,000.

Enactment of the rule amendment would result in the sale of manufacturer sealed electronic cigarette substances with a nicotine concentration equal to, or less than 3% nicotine by weight per container, or that do not exceed a 36mg/mL concentration of nicotine, which conceivably is a less addictive product, being that "the amount of nicotine delivered and the way in which it is delivered influences the addictiveness of a tobacco product" (Eaton DL et al., 2018; HHS, 2010b). Reducing the nicotine content in electronic cigarettes sold in Utah can aid in preventing youth and adult initiation of electronic cigarette products among Utahans who do not already smoke or vape. Electronic cigarette use is more popular among Utah youth than all other tobacco products combined, therefore limiting youth access to highly addictive electronic cigarette products is critical for preventing a new epidemic of nicotine addiction.

A study of youth and young adults ages 13 - 24 argues that those who have ever used e-cigarettes are five times more likely to contract COVID-19 than those who do not use tobacco products. Dual users of cigarettes and e-cigarettes are nearly seven times more likely to contract the respiratory disease (Gaiha, S. M, et al., 2020).

B) Local governments:

Enactment of this rule amendment is not expected to have any fiscal impact on the local governments, as local health departments will continue to conduct retail observations and investigations in accordance with respective state tobacco control laws, state administrative rules and local health department regulations using existing allocated resources to enforce the amended rule.

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

The rule amendment may result in a direct cost to small businesses that employ fewer than 50 employees and choose to sell manufacturer sealed electronic cigarette substances. The rule amendment may result in a direct fiscal cost to small businesses that primarily rely on the sale of tobacco products (retail tobacco specialty businesses) and operate under the North American Industry Classification System (NAICS) codes of 453991, 424940. Other small businesses that sell electronic cigarette substances among other products they choose to sell include (445120) convenience stores, (447110) gas stations with convenience stores, (445110) supermarkets and other grocery stores, (452319) general merchandise and discount stores, (447190) other gasoline stations, (453991) tobacco stores, (424940) tobacco product merchant wholesalers, (453220) gift, novelty and souvenir stores, (721110) hotels, (813410) civic and social organizations.

A review of the Department combined local health department tobacco retail compliance check logs for fiscal year 2020 and cross-referenced with Utah Department of Workforce Services (DWS) Firm Find Data, shows that there are approximately 1,175 small businesses that sell some type of electronic cigarette substances in Utah, or approximately 88% of Utah tobacco retailers. The Department does not know how many of these 1,175 small businesses sell manufacturer sealed electronic cigarette substances with nicotine concentrations higher than 3% by weight per container or exceed 36 mg/ml concentration of nicotine. Approximately 168 small business tobacco retailers, or approximately 12% choose to not sell electronic cigarette substances and these businesses will not be affected by this rule amendment.

Effective July 1, 2021, the rule amendment prohibits a tobacco retailer that sells a manufacturer sealed electronic cigarette substance from selling a manufacturer sealed electronic cigarette substance with a nicotine concentration higher than 3% nicotine by weight per container, or exceeding a 36mg/mL concentration of nicotine. Only tobacco retailer that currently sell manufacturer sealed electronic cigarette substances that contains more than 3% nicotine by weight per container, or exceeds a 36mg/mL concentration of nicotine may experience a direct fiscal impact.

According to Statista's E-cigarette market share in the United States in 2020, by brand, 9/4/2020 report, five electronic cigarette manufacturer brands account for 97% of the U.S. market share: Juul (42%), Vuse (36%), blu (9%), Logic (8%) and Njoy (2%). Some of these electronic cigarette brands sell products with a nicotine concentration that is more than 3% nicotine by weight or 36mg/ml concentration of nicotine. Nevertheless, all of these brands also offer electronic cigarette products with less than a 3% nicotine by weight per container or 36 mg/ml concentration of nicotine. Utah tobacco retailers that sell manufacturer sealed electronic cigarette substances (or

prefilled pods or cartridges) will continue to have the option to sell manufacturer sealed electronic cigarette substances with a nicotine concentration equal to or less than 3% nicotine by weight per container, or that do not exceed a 36mg/mL concentration of nicotine. As indicated, the five electronic cigarette manufacturer brands listed above all offer manufacturer sealed electronic cigarette substances that meet this nicotine concentration requirement.

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

The rule amendment may result in a direct cost to non-small businesses that employ more than 50 employees and choose to sell manufacturer sealed electronic cigarette substances. The rule amendment may result in a direct fiscal cost to non-small businesses that sell electronic cigarette substances among other products they choose to sell include (445120) convenience stores, (447110) gas stations with convenience stores, (445110) supermarkets and other grocery stores, (452319) general merchandise and discount stores, (447190) other gasoline stations, and (453220) gift, novelty and souvenir stores. A review of the Department combined local health department tobacco retail compliance check logs for fiscal year 2020 and cross-referenced with Utah Department of Workforce Services (DWS) Firm Find Data, shows that there are approximately 208 non-small businesses that sell some type of electronic cigarette substances in Utah, or approximately 12% of Utah tobacco retailers. The Department does not know how many of these 208 non-small businesses sell manufacturer sealed electronic cigarette substances with nicotine concentrations higher than 3% by weight per container or exceed 36 mg/ml concentration of nicotine. Approximately 164 non-small business tobacco retailers, or approximately 9.6%, choose to not sell any electronic cigarette substances and these businesses will not be affected by this rule amendment.

Effective July 1, 2021, the rule amendment prohibits a tobacco retailer that sells a manufacturer sealed electronic cigarette substance from selling a manufacturer sealed electronic cigarette substance with a nicotine concentration higher than 3% nicotine by weight per container, or exceeding a 36mg/mL concentration of nicotine. A tobacco retailer that currently sells a manufacturer sealed electronic cigarette substance that contains more than 3% nicotine by weight per container, or that exceeds a 36mg/mL concentration of nicotine may experience a direct fiscal cost.

According to Statista's E-cigarette market share in the United States in 2020, by brand, 09/04/2020 report, 5 electronic cigarette manufacturer brands account for 97% of the U.S. market share: Juul (42%), Vuse (36%), blu (9%), Logic (8%) and Njoy (2%). Some of these electronic cigarette brands sell products with a nicotine concentration that is more than 3% nicotine by weight or 36mg/ml concentration of nicotine. Nevertheless, all of these brands also offer electronic cigarette products with less than a 3% nicotine by weight per container or 36 mg/ml

concentration of nicotine. Utah tobacco retailers that sell manufacturer sealed electronic cigarette substances (or prefilled pods or cartridges) will continue to have the option to sell manufacturer sealed electronic cigarette substances with a nicotine concentration equal to or less than 3% nicotine by weight per container, or that do not exceed a 36mg/mL concentration of nicotine. As indicated, the five electronic cigarette manufacturer brands listed above all offer manufacturer sealed electronic cigarette substances that meet this nicotine concentration requirement.

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 rule amendment to Rule R384-415 may result in an indirect cost or indirect benefit to persons, which can include both consumers who buy electronic cigarette substances and individuals who work for small businesses or non-small businesses that sell electronic cigarette substances.

F) Compliance costs for affected persons:

The rule amendment to Rule R384-415 may result in an indirect cost or indirect benefit to persons, which can include both consumers who buy electronic cigarette substances and individuals who work for small businesses or non-small businesses that sell electronic cigarette substances.

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 Interim Executive Director of the Department of Health, Richard Saunders, 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 amendment will not result in a fiscal impact to businesses is inestimable because retailers have the option to sell this product.

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

Richard Saunders, Interim 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):

Subsection 26-57-103(2)		
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Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. 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: 12/01/2020

B) A public hearing (optional) will be held: Virtual Public Hearing via WebEx

On:	At:	At:
11/19/2020	09:30 AM	See the details in Box 4 above.

10. This rule change MAY become effective on:	12/08/2020
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:	Richard Saunders, Interim Executive Director	Date:	10/15/2020
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R384. Disease Control and Prevention, Health Promotion. R384-415. Electronic[-] Cigarette Substance Standards.

R384-415-1. Authority and Purpose.

(1) This rule is authorized by Section 26-57-103[~~and Subsection 59-14-803(5)~~].

(2) The[is] purpose of this rule is to establish[es] standards for labeling, nicotine content, packaging, and product quality for electronic[-]cigarette substances and manufacturer sealed electronic cigarette substances for the regulation of selling electronic[-] cigarette[s] products.

(3) A person may only sell a non-manufacturer sealed electronic cigarette substance that is compliant with the established standards and requirements set forth in this rule.

(4) Beginning on July 1, 2021, a person may only sell a manufacturer sealed electronic cigarette substance that is compliant with the established standards and requirements set forth in this rule.

~~(3) This rule does not apply to a manufacturer sealed electronic cigarette substance.~~

(4)(5) A product in compliance with this rule is not endorsed as safe.

R384-415-2. Definitions.

As used in this rule:

~~(1) "Business" means any sole proprietorship, partnership, joint venture, corporation, association, or other entity formed for profit or non-profit purposes.~~

(2)(1) "Child resistant" means the same as the term "special packaging" is defined in 16 C.F.R 1700.1(a)(4) [~~January 1, 2015~~] and is tested in accordance with the method described in 16 C.F.R. 1700.20[~~(January 1, 2015)~~].

(3)(2) "Department" means the Utah Department of Health.

(4)(3) "Electronic[-]cigarette" means the same as ~~that[the]~~ term is defined in [Subs]Section[s 26-38-2(1) and 59-14-802(2)] 76-10-101.

(5)(4) "Electronic[-]cigarette [P]product" means the same as ~~that[the]~~ term is defined in [Subs]Section [59-14-802(3)]76-10-101.

~~(6)(5)~~ "Electronic[-]cigarette substance" means the same as ~~that[the]~~ term is defined in [Subs]Section [59-14-802(4)]76-10-101.

(7)(6) "Local health department" means the same as ~~that[the]~~ term is defined in Subsection 26A-1-102(5).

(7) "Industrial hemp product" means the same as that term defined is in Section 4-41-102.

(8) "Manufacture" means the same as ~~that[the]~~ term is defined in [Subs]Section 26-57-102[~~(5)~~].

(9) "Manufacturer" means the same as ~~that[the]~~ term is defined in [Subs]Section 26-57-102[~~(6)~~].

(10) "Manufacturer sealed electronic cigarette substance" means the same as that term defined is in Section 26-57-102.

(10)(11) "Mg/mL" means milligrams per milliliter, a ratio for measuring an ingredient, in liquid form, where accuracy is measured in milligrams per milliliter, or a percentage equivalent.

(12) "Nicotine" means the same as that term is defined in Section 76-10-101.

~~(11) "Nicotine" means the same as the term is defined in the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. Sec. 387(12) (2013-).~~

~~(12) "Manufacturer sealed electronic cigarette substance" means the same as the term defined is in Subsection 26-57-102(6-).~~

(13) "Non-manufacturer sealed electronic cigarette substance" means:

(a) an electronic cigarette substance that is not a manufacturer sealed electronic cigarette substance; and

(b) an electronic cigarette substance container the electronic cigarette manufacturer does intend for a consumer to open or refill.

(13)(14) "Package[-]" or "packaging" means a pack, box, carton, or container of any kind, or if no other container, any wrapping, in which an electronic cigarette substance or a manufacturer sealed electronic cigarette substance is offered for sale, sold, or otherwise distributed to consumers.

(15) "Permit" means the same as that term is defined in Section 26-62-101.

(14)(16) "Retailer" means any person who sells, offers for sale, exchanges, or offers to exchange for any form of consideration, an electronic[-]cigarette substance or a manufacturer sealed electronic cigarette substance to a consumer. This definition is without regard to the quantity of an electronic[-]cigarette substance or a manufacturer sealed electronic cigarette substance sold, offered for sale, exchanged, or offered for exchange.

~~(15) "Retailing" means involvement in any of the activities listed in Subsection R384-415-2(14). This definition is without regard to the quantity of an electronic cigarette substance sold, offered for sale, exchanged, or offered for exchange.~~

(16)(17) "Transaction statement" means a statement, in paper or electronic form, which the manufacturer transferring ownership of the product certifies that the electronic[-]cigarette substance or the manufacturer sealed electronic cigarette substance is in compliance with the standards in this rule.

R384-415-3. Labeling.

(1) The retailer shall ensure that nicotine containing electronic[-]cigarette substance or manufacturer sealed electronic cigarette substance offered for sale to the consumer features on the product package label the required safety warning stating "WARNING[!]: This product contains nicotine. Nicotine is an addictive chemical."

(2) Consistent with 21 C.F.R. 1143.3, the safety warning statements required in Subsection (1), the required safety warning statement must appear directly on the package and must be clearly visible underneath any cellophane or other clear wrapping as follows:

(a) be located in a conspicuous and prominent place on the two principal display panels of the package and the warning area must comprise at least 30 percent of each of the principal display panels;

(b) be printed in at least 12-point font size and ensures that the required warning statement occupies the greatest possible proportion of the warning area set aside for the required text;

(c) be printed in conspicuous and legible Helvetica bold or Arial bold type, or other sans serif fonts, and in black text on a white background or white text on a black background in a manner that contrasts by typography, layout, or color, with all other printed material on the package;

(d) be capitalized and punctuated as indicated in Subsection (1) of this Section; and

(e) be centered in the warning area in which the text is required to be printed and positioned such that the text of the required warning statement and the other information on the principal display panel have the same orientation.

~~(2)~~(3) The retailer shall ensure that an electronic[-] cigarette substance or a manufacturer sealed electronic cigarette substance marketed as nicotine-free and offered for sale to the consumer features a safety warning stating "WARNING: Keep away from children and pets."

(4) The safety warning statements required in Subsection (3), the required safety warning statement must appear directly on the package and must be clearly visible underneath any cellophane or other clear wrapping as follows:

(a) be located in a conspicuous and prominent place on the two principal display panels of the package and the warning area must comprise at least 30 percent of each of the principal display panels;

(b) be printed in at least 12-point font size and ensures that the required warning statement occupies the greatest possible proportion of the warning area set aside for the required text;

(c) be printed in conspicuous and legible Helvetica bold or Arial bold type, or other sans serif fonts, and in black text on a white background or white text on a black background in a manner that contrasts by typography, layout, or color, consistent with the other printed material on the package;

(d) be capitalized and punctuated as indicated in Subsection (3) of this Section; and

(e) be centered in the warning area in which the text is required to be printed and positioned such that the text of the required warning statement and the other information on the principal display panel have the same orientation.

~~(3) The retailer shall ensure that the required safety warning appear directly on the package and must be visible underneath any cellophane or other clear wrapping as follows:~~

~~(a) be located in a conspicuous and prominent place on the two principle display panels of the package and the warning area must comprise at least 30 percent of each of the principal display panels;~~

~~(b) is capitalized and punctuated as indicated in Subsection (1) or (2) of this Section;~~

~~(c) be printed in at least 12 point font size and ensure that the required warning statement occupies the greatest possible proportion of the warning area set aside for the required text;~~

~~(d) uses a conspicuous and legible Helvetica, Arial, or other san serif font;~~

~~(e) uses either a black font on a white background or a white font on a black background; and~~

~~(f) is centered in the warning area in which the text is required to be printed and positions such that the text of the required warning statement and the other information on the principal display panel have the same orientation.~~

~~(4)~~(5) A retailer [of an electronic cigarette substance] will not be in violation of this Section [when]for packaging that:

(a) contains a health warning;

(b) is supplied to the retailer by [a]the electronic cigarette substance manufacturer, importer, or distributor, who has the required state, local, or tobacco tax license or permit, if applicable; and

(c) is not altered by the retailer in a way that is material to the requirements of this [S]section.

~~(5)~~(6) An electronic[-] cigarette substance or a manufacturer sealed electronic cigarette substance package that would otherwise be required to bear the safety warning in Subsection (1) or (2) [of this Section -]but is too small or otherwise unable to accommodate a safety warning label with sufficient space to bear such information is exempt from compliance with the requirement provided that:

(a) the information and specifications required in Subsection (1) and ~~(2)~~(3) [of this Section -]appear on the carton or other outer container or wrapper if the carton, outer container, or wrapper has sufficient space to bear the information; or

(b) appear on a tag otherwise firmly and permanently affixed to the [packaged-]electronic[-] cigarette substance package or the manufacturer sealed electronic cigarette substance package.

(c) In the case of Subsection ~~(5)~~(6)(a) or (b), the carton, outer container, wrapper, or tag will serve as the location of the principal display panels.

(7) The retailer shall ensure that an industrial hemp product that is an electronic cigarette substance or an industrial hemp product that is a manufacturer sealed electronic cigarette substance is compliant with Title 4, Chapter 41, Part 1, Industrial Hemp and Rule R68-26-5, unless:

(a) an industrial hemp product that is an electronic cigarette substance marketed as containing nicotine and offered for sale or an industrial hemp product that is a manufacturer sealed electronic cigarette substance marketed as containing nicotine and offered for sale is in compliance with the safety warning requirements in Subsection (1) and (2) of this section; or

(b) an industrial hemp product that is an electronic cigarette substance marketed as nicotine-free and offered for sale or an industrial hemp product that is a manufacturer sealed electronic cigarette substance marketed as nicotine-free and offered for sale is exempt from the safety warning requirements in Subsection (3) and (4) of this section; if the product is compliant with Title 4, Chapter 41, Part 1, Industrial Hemp and Section R68-26-5.

R384-415-4. Prohibited Sales.

(1) The retailer shall be prohibited from selling an electronic[-] cigarette substance or a manufacturer sealed electronic cigarette substance [to the public] that is labeled [to the public -]as containing:

(a) additives that create the impression that an electronic[-] cigarette substance or a manufacturer sealed electronic cigarette substance has a health benefit;

(b) additives that are associated with energy and vitality;

NOTICES OF PROPOSED RULES

(c) illegal or controlled substances as identified in Section 58-37-3; and

(d) additives having coloring properties for emissions.

(2) The retailer shall ensure that an industrial hemp product that is an electronic cigarette substance or an industrial hemp product that is a manufacturer sealed electronic cigarette substance is compliant with Title 4, Chapter 41, Part 1, Industrial Hemp; Rule R68-26-5; and Rule R68-33-5.

R384-415-5. Nicotine Content.

(1) The retailer shall be prohibited from selling an electronic[-]cigarette substance or a manufacturer sealed electronic cigarette substance to the consumer ~~that~~ if the product is not compliant with the following:

(a) the nicotine concentration for a non-manufacturer sealed electronic cigarette substance is limited to 360 mg nicotine per container, ~~or~~ ~~and~~ does not exceed a 24mg/mL concentration of nicotine; and

(b) the nicotine concentration for a manufacturer sealed electronic cigarette substance is limited to 3% nicotine by weight per container, or does not exceed a 36mg/mL concentration of nicotine.

R384-415-6. Packaging.

(1) The retailer shall ensure that the packaging of an electronic[-]cigarette substance intended for sale to a consumer is certified as child resistant, and compliant with federal standards and law concerning child nicotine poisoning prevention.

(2) The retailer shall sell electronic cigarette substances and manufacturer sealed electronic cigarette substances in the product's original packaging.

(3) The retailer shall be prohibited from repackaging or dispensing any electronic cigarette substance or any manufacturer sealed electronic cigarette substance for retail sale.

(4) The retailer shall be prohibited from refilling a manufacturer sealed electronic cigarette substance that is not intended to be opened by a retailer or a consumer.

(5) The retailer shall ensure that an industrial hemp product that is an electronic cigarette substance or an industrial hemp product that is a manufacturer sealed electronic cigarette substance is compliant with Title 4, Chapter 41, Part 1, Industrial Hemp; and Rule R68-26.

R384-415-7. Product Quality.

~~When the United States Food and Drug Administration instituting its process to approve electronic cigarettes, the retailer shall only sell an electronic cigarette substance that has been approved for regulatory sale by the United States Food and Drug Administration through a Pre Market Tobacco application or Substantial Equivalent application.~~

(1) No manufacturer or retailer shall sell, offer for sale, or distribute an electronic cigarette, an electronic cigarette product, or an electronic cigarette substance unless the product complies with each of the relevant electronic cigarette product standards established by the U.S. Food and Drug Administration under 21 U.S.C. 387g(3).

(2) Notwithstanding Subsection (3), after September 9, 2021, no manufacturer or retailer shall sell, offer for sale, or distribute an electronic cigarette, an electronic cigarette product, or an electronic cigarette substance unless the product has received marketing authorization from the U.S. Food and Drug Administration (FDA) under 21 U.S.C. 387j(c)(1)(A)(i), 21 U.S.C. 387j(a)(2)(A)(i), or 21 U.S.C. 387j(a)(2)(A)(ii).

(3) This Section will take effect on the date that manufacturers are required to secure marketing orders from the FDA to continue marketing their products in the United States. Any delays in enforcement efforts by FDA due to litigation will not impact the effective date of this section.

R384-415-8. Record Keeping and Testing.

(1) The retailer shall provide the electronic[-]cigarette substance[s] transaction statements or manufacturer sealed electronic cigarette substance transaction statements to the Department or the local health department within 14 calendar~~five working~~ days of a request. The retailer shall ensure that the transaction statement includes manufacturer certifications that:

(a) the labeling standards are compliant with Section R384-415-3;

~~(b)~~(b) the nicotine content of an electronic[-]cigarette substance is compliant with Subsection R384-415-5(1)(a) for non-manufacturer sealed electronic cigarette substances and Subsection R384-415-5(1)(b) for manufacturer sealed electronic cigarette substances;

~~(c)~~(c) the packaging standards are compliant with Section R384-415-6~~of an electronic cigarette substance is child-resistant~~; and

~~(d)~~(d) the product quality standards are compliant with Section R384-415-7~~[An electronic cigarette substance that has been approved for regulatory sale by the United States Food and Drug Administration through a Pre Market Tobacco application or Substantial Equivalent application].~~

(2) The retailer shall provide evidence that supports the documents described in Subsection R384-415-8(1) to the Department or the local health department within 14 calendar~~5 working~~ days of a request.

(3) The retailer shall have access to the documents described in Subsections R384-415-8(1) and R384-415-8(2) for a period of two years after the retailer purchases the electronic[-]cigarette substance or the manufacturer sealed electronic cigarette substance.

R384-415-9. Enforcement.

(1) In enforcing or seeking penalties of any violation as set forth in this rule or Section 26-57-103, the Department and local health departments shall comply with the enforcement requirement in Title 26, Chapter 62, Part 3, Enforcement.

~~(1) The Department may enforce and seek penalties for the violation of public health rules including the standards for electronic cigarettes set forth in this rule as prescribed in Sections 26-23-1 through 26-23-10.~~

~~(2) A local health department may enforce and seek penalties for the violation of the standards for electronic cigarettes set forth in this rule. A local health department shall have authority to enforce and seek penalties for violations of public health law including this rule as is found in Sections 26-23-1 through 26-23-10, 26A-1-108, 26A-1-114(1) and 26A-1-123.~~

~~(3) The Department or local health department is responsible to make a determination as to if a person holding a Utah State Tax Commission license to sell electronic cigarettes has violated the standards of this rule. If the Department or local health department makes such a determination it shall notify the Utah State Tax Commission to revoke the person's license as provided in Subsection 59-14-803(5).~~

~~(4) Administrative or civil enforcement of this rule by the Department or local health departments does not preclude criminal enforcement by a law enforcement agency and prosecution of any violation of the standards in this rule that can constitute a criminal offense under state law.]~~

KEY: electronic cigarettes, nicotine, standards, Electronic Cigarette Regulation Act
Date of Enactment or Last Substantive Amendment: ~~December 1, 2019~~ 2020
Authorizing, and Implemented or Interpreted Law: 26-57-103; 59-14-803(5)

NOTICE OF PROPOSED RULE		
TYPE OF RULE: New		
Utah Admin. Code Ref (R no.):	R746-315	Filing No. 53104

Agency Information

1. Department:	Public Service Commission	
Agency:	Administration	
Building:	Heber M. Wells Building	
Street address:	160 E 300 S, Fourth Floor	
City, state:	Salt Lake City, UT 84111	
Mailing address:	PO Box 4558	
City, state, zip:	Salt Lake City, UT 84114-4558	
Contact person(s):		
Name:	Phone:	Email:
Michael Hammer	801-530-6729	michaelhammer@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R746-315. Wildland Fire Protection Plans
3. Purpose of the new rule or reason for the change:
The purpose of this rule is to comply with the recently enacted Wildland Fire Planning and Cost Recovery Act (Act) from H.B. 66 passed in the 2020 General Session. The Act requires the Public Service Commission (PSC) to initiate rulemaking proceedings to implement the Act and, specifically, to establish procedures for review and approval of a utility's wildland fire protection plans and attendant expenditures, Section 54-24-103.
4. Summary of the new rule or change:
This rule adopts procedures for the PSC's prompt review and approval of utilities' wildland fire protection plans and the expenditures utilities incur to implement such plans.

Fiscal Information

5. Aggregate anticipated cost or savings to:			
A) State budget:			
This rule is not anticipated to affect the state budget. This rule contemplates that the State Division of Forestry, Fire, and State Lands will have an opportunity to provide input in proceedings to review utilities' wildland fire protection plans, but it is not required to do so and its right to do so originates in the Act.			
B) Local governments:			
This rule does not pertain in any manner to local governments and is not anticipated to affect local governments.			
C) Small businesses ("small business" means a business employing 1-49 persons):			
This rule does not pertain to small businesses and is not anticipated to affect them.			
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):			
The only non-small businesses this rule may potentially affect are qualified utilities. Any expense or burden this rule imposes on such utilities, such as preparing and filing a wildland fire protection plan, are created and imposed by the Act itself, not this rule. This rule imposes no additional obligations on such entities but creates a process by which they may receive timely review from the PSC to recoup costs they incur in complying with the Act through utility rates.			
E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency):			
This rule does not pertain to and is not anticipated to affect any other individual, partnership, corporation, association, governmental entity, or public or private organization.			
F) Compliance costs for affected persons:			
This rule imposes no compliance costs on affected utilities, rather any costs for compliance stem from obligations expressly created in the Act.			
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

NOTICES OF PROPOSED RULES

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 Chair of the Public Service Commission, Thad LeVar, has reviewed and approved this fiscal analysis.			
6. A) Comments by the department head on the fiscal impact this rule may have on businesses:			
As discussed above, this rule merely complies with rulemaking the Act requires. The only businesses it stands to affect are qualified utilities and any expense or burden imposed on such utilities arises out of the Act, not the rule.			
B) Name and title of department head commenting on the fiscal impacts:			
Thad LeVar, PSC Chair			

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 54-24-103		

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:	12/01/2020
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10. This rule change MAY become effective on:	12/08/2020
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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:	Thad LeVar, PSC Chair	Date:	10/08/2020
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R746. Public Service Commission, Administration.

R746-315. Wildland Fire Protection Plans.

R746-315-1. Definitions.

(1) "Wildland fire protection plan" is defined at Section 54-24-102.

(2) "Qualified utility" is defined at Section 54-17-801.

(3) "Cost and compliance report" is the annual report submitted by a qualified utility under an approved wildland fire protection plan as further described under Subsection R746-315-3(1).

R746-315-2. Filing and Approval.

(1) A qualified utility shall submit a wildland fire protection plan that includes the items required by Subsection 54-24-201(2) to the Commission for approval on June 1, 2020 and each October 1 every third year thereafter.

(2) The Commission shall provide public notice of the wildland fire protection plan filing, solicit input on such plan from the State Division of Forestry, Fire, and State Lands, hold a scheduling conference, and set a schedule that allows time for a Commission decision within 120 days of a qualified utility's submittal of a wildland fire protection plan, unless the Commission determines that additional time is warranted and is in the public interest.

(i) The Commission shall enter any input received from the State Division of Forestry, Fire, and State Lands into the record after 45 days, or indicate on the record that no such input was received.

(ii) Within the 30 days following entry of input from the State Division of Forestry, Fire, and State Lands into the record, or entry that no such input was received, interested parties may file comments on the qualified utility's wildland fire protection plan.

(iii) The qualified utility shall have 15 days to respond to any comments.

(iv) Unless the Commission determines that another process or additional time is warranted and is in the public interest, the Commission will issue an order within 120 days of a qualified utility's submittal of a wildland fire protection plan.

(3) The Commission shall approve a qualified utility's wildland fire protection plan to the extent that the evidence in the record establishes that it:

(i) is reasonable and in the public interest; and

(ii) appropriately balances the costs of implementing the wildland fire protection plan with the risk of a potential wildland fire.

R746-315-3. Annual Cost and Compliance Report.

(1) No later than June 1, 2021, and each year after 2021, a qualified utility shall submit a cost and compliance report:

(i) detailing the qualified utility's compliance with the qualified utility's approved wildland fire protection plan;

(ii) identifying the actual capital investments and expenses made in the prior calendar year and a forecast of the capital investments and expenses for the present year to implement the wildland fire protection plan approved under Section R746-315-2; and

(iii) requesting the deferral and collection of the incremental revenue requirement for the capital investments and

expenses to implement its approved wildland fire protection plan that is not included in base rates.

(2) The Commission shall provide public notice of a qualified utility's filing of its cost and compliance report.

(3) Within 30 days following such public notice, interested parties may file comments on the qualified utility's cost and compliance report.

(4) The qualified utility shall respond to discovery requests within 10 days.

(5) The qualified utility shall have 15 days to respond to any initial comments filed with the Commission.

(6) Within 90 days of a qualified utility's submittal of its cost and compliance report, unless the Commission determines that another process or additional time is warranted and is in the public interest, the Commission will issue an order regarding the qualified utility's cost and compliance report, and, to the extent requested by the qualified utility, approving any deferral and collection of the incremental revenue requirement reasonably demonstrated by such report, provided the Commission finds the cost and compliance report satisfies statutory requirements and that the reported costs were prudently incurred.

KEY: public utilities; wildland fire protection plan

Date of Enactment or Last Substantive Amendment: December 8, 2020

Authorizing, and Implemented or Interpreted Law: 54-24-103

End of the Notices of Proposed Rules Section

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the agency is required to review the rule. This review is intended to help the agency determine, and to notify the public, that the administrative rule in force is still authorized by statute and necessary. Upon reviewing a rule, an agency may: repeal the rule by filing a **PROPOSED RULE**; continue the rule as it is by filing a **FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (REVIEW)**; or amend the rule by filing a **PROPOSED RULE** and by filing a **REVIEW**. By filing a **REVIEW**, the agency indicates that the rule is still necessary.

A **REVIEW** is not followed by the rule text. The rule text that is being continued may be found in the online edition of the *Utah Administrative Code* available at <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.):	R270-5	Filing No. 50379

Agency Information

1. Department:	Crime Victim Reparations	
Agency:	Administration	
Street address:	350 E 500 S, Suite 200	
City, state, zip:	Salt Lake City, UT 84111	
Contact person(s):		
Name:	Phone:	Email:
Connie Wettlaufer	801-238-2371	cwettlaufer@utah.gov
Gary Scheller	801-238-2362	garys@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R270-5. Electronic Meetings
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 52-4-207 requires any public body that convenes or conducts an electronic meeting to adopt a rule governing the use of electronic meetings. This Rule R270-5 establishes procedures for conducting Crime Victim Reparations and Assistance Board meetings by electronic means.

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.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
Perhaps now more than ever in the midst of the COVID-19 pandemic, it has been prudent and required that the Board meet electronically rather than in person. Additionally, electronic meetings allow for greater public attendance of the meetings rather than holding the meeting in only one accessible physical location. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Gary Scheller, Director	Date:	10/13/2020
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R277-494	Filing No. 50454

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

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

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 catchline:
R277-494. Charter, Online, Home, and Private School Student Participation in Extracurricular or Co-curricular School Activities
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
This rule is authorized by Utah Constitution Article X, Section 3, which vests general control and supervision of public education in the Board; Subsection 53E-3-401(4) which permits the Board to adopt rules in accordance with its responsibilities; Subsection 53G-6-704(6)(a) which directs the Board to make rules establishing fees for a charter school student's participation in extracurricular or co-curricular activities at certain public schools; and Subsection 53G-6-705(6), which directs the Board to make rules establishing fees for an online student's participation in extracurricular or co-curricular activities at certain public schools.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
There were no written comments received.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule continues to be necessary because it informs school districts, charter and online schools, and parents of: school participation fees; and state-determined requirements for a charter school or a public online school student to participate in an extracurricular activity at a student's boundary school. This rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Angie Stallings, Deputy Superintendent	Date:	10/15/2020
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R317-102	Filing No. 50791

Agency Information

1. Department:	Environmental Quality	
Agency:	Water Quality	
Room no.:	DEQ Third Floor	
Building:	Multi Agency State Office Building (MASOB)	
Street address:	195 N 1950 W	
City, state, zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 144870	
City, state, zip:	Salt Lake City, Utah 84114-4870	
Contact person(s):		
Name:	Phone:	Email:
Ken Hoffman	801-536-4313	kenhoffman@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R317-102. Utah Wastewater State Revolving Fund (SRF) Program
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Subsection 10-5-104(1)(f) authorizes the Utah Water Quality Board to adopt rules to implement awarding construction loans to political subdivisions and municipal authorities under Section 11-8-2. The authority for the Department of Environmental Quality, acting through the Utah Water Quality Board, to issue loans to finance all or part of wastewater project costs from the State Revolving Fund (SRF) is provided in Title VI of the Federal Clean Water Act and Section 73-10c-1.
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 during the last five-year review period for 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 establishes policies and procedures for implementing the Utah SRF Program. This rule contains definitions, eligibility requirements, application procedures, and prioritization procedures central to the Water Quality Board's implementation of their statutory charge. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Erica Brown Gaddis, Division Director	Date:	10/14/2020
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End of the Five-Year Notices of Review and Statements of Continuation Section

NOTICES OF FIVE-YEAR REVIEW EXTENSIONS

Rulewriting agencies are required by law to review each of their administrative rules within five years of the date of the rule's original enactment or the date of last review (Section 63G-3-305). If the agency finds that it will not meet the deadline for review of the rule (the five-year anniversary date), it may file a **NOTICE OF FIVE-YEAR REVIEW EXTENSION (EXTENSION)** with the Office of Administrative Rules. The **EXTENSION** permits the agency to file the review up to 120 days beyond the anniversary date.

Agencies have filed **EXTENSIONS** for the rules listed below. The "Extended Due Date" is 120 days after the anniversary date.

EXTENSIONS are governed by Subsection 63G-3-305(6).

NOTICE OF FIVE-YEAR REVIEW EXTENSION		
Utah Admin. Code Ref (R no.):	R277-611	Filing No. 50503

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.stallings@schools.utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R277-611. Certified Volunteer Instructors and Material Approval Requirements and Process for Firearm Safety in the Public Schools
3. Reason for requesting the extension and the new deadline date:
The Utah State Board of Education approved the repeal of Rule R277-611 on October 1, 2020. This extension will provide enough time for the repeal to be published in the November 1, 2020, Bulletin and be repealed on the first possible effective date in December 2020. (EDITOR'S NOTE: The proposed repeal of Rule R277-611 is under Filing No. 53113 in this issue, November 1, 2020, of the Bulletin.)

Agency Authorization Information

Agency head or designee, and title:	Angie Stallings, Deputy Superintendent	Date:	10/13/2020
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End of the Notices of Five-Year Review Extensions Section

NOTICES OF RULE EFFECTIVE DATES

State law provides for agencies to make their administrative rules effective and enforceable after publication in the *Utah State Bulletin*. In the case of **PROPOSED RULES** or **CHANGES IN PROPOSED RULES** with a designated comment period, the law permits an agency to make a rule effective no fewer than seven calendar days after the close of the public comment period, nor more than 120 days after the publication date. In the case of **CHANGES IN PROPOSED RULES** with no designated comment period, the law permits an agency to make a rule effective on any date including or after the thirtieth day after the rule's publication date, but not more than 120 days after the publication date. If an agency fails to file a **NOTICE OF EFFECTIVE DATE** within 120 days from the publication of a **PROPOSED RULE** or a related **CHANGE IN PROPOSED RULE** the rule lapses.

Agencies have notified the Office of Administrative Rules that the rules listed below have been made effective.

NOTICES OF EFFECTIVE DATE are governed by Subsection 63G-3-301(12), Section 63G-3-303, and Sections R15-4-5a and R15-4-5b.

Administrative Services

Records Committee

No. 52790 (Amendment) R35-2-2: Scheduling and Declining Requests for Hearings

Published: 09/15/2020

Effective: 10/16/2020

Records Management Committee

No. 52975 (New Rule) R36-1: Records Management Committee

Published: 08/15/2020

Effective: 10/16/2020

Agriculture and Food

Regulatory Services

No. 53005 (Amendment) R70-201: Compliance Procedures

Published: 09/01/2020

Effective: 10/14/2020

Alcoholic Beverage Control

Administration

No. 53013 (Amendment) R82-1: General

Published: 09/15/2020

Effective: 10/27/2020

No. 53014 (Amendment) R82-1-208: Percentage Lease Agreements

Published: 09/15/2020

Effective: 10/27/2020

No. 53015 (Amendment) R82-1-304: Background Checks for Resort Licenses

Published: 09/15/2020

Effective: 10/27/2020

No. 53016 (Amendment) R82-2-303: Non-Consignment Inventory

Published: 09/15/2020

Effective: 10/27/2020

No. 53017 (Amendment) R82-5-101: General Retail License Provisions

Published: 09/15/2020

Effective: 10/27/2020

No. 53018 (Amendment) R82-5-102: Licensing Ownership, and Transfer of License

Published: 09/15/2020

Effective: 10/27/2020

No. 53019 (Amendment) R82-5-104: Liquor Dispensing Systems

Published: 09/15/2020

Effective: 10/27/2020

No. 53020 (Amendment) R82-5-107: Identification

Published: 09/15/2020

Effective: 10/27/2020

No. 53021 (Amendment) R82-6-602: Reporting Requirement for Banquet Licensees

Published: 09/15/2020

Effective: 10/27/2020

No. 53022 (Amendment) R82-6-1005: Hospitality Amenity Licensee Notice and Records

Published: 09/15/2020

Effective: 10/27/2020

No. 53023 (Amendment) R82-7-102: Off-Premise Beer Retailer State License and Master Off-Premise Beer Retailer License

Published: 09/15/2020

Effective: 10/27/2020

NOTICES OF RULE EFFECTIVE DATES

Commerce

Consumer Protection
No. 53044 (Amendment) R152-49: Immigration
Consultants Registration Act Rule
Published: 09/15/2020
Effective: 10/26/2020

Occupational and Professional Licensing
No. 53041 (Amendment) R156-28: Veterinary Practice Act
Rule
Published: 09/15/2020
Effective: 10/23/2020

Real Estate
No. 52504 (Amendment) R162-2f: Real Estate Licensing
and Practices Rules
Published: 09/01/2020
Effective: 10/21/2020

Education

Administration
No. 53031 (Amendment) R277-552: Charter School
Timelines and Approval Processes
Published: 09/15/2020
Effective: 10/23/2020

Judicial Performance Evaluation Commission

Administration
No. 52954 (Amendment) R597-3: Judicial Performance
Evaluations
Published: 08/01/2020
Effective: 10/13/2020

No. 52955 (Amendment) R597-4: Mid-level Evaluation of
Justice Court Judges
Published: 08/01/2020
Effective: 10/13/2020

No. 52958 (Amendment) R597-5: Electronic Meetings
Published: 08/01/2020
Effective: 10/13/2020

Labor Commission

Adjudication
No. 53008 (Amendment) R602-2: Pleadings and Discovery
Published: 09/01/2020
Effective: 10/22/2020

Occupational Safety and Health
No. 53033 (Amendment) R614-1: Incorporation of Federal
Standards
Published: 09/15/2020
Effective: 10/23/2020

Tax Commission

Property Tax
No. 53011 (Amendment) R884-24P-33: 2020 Personal
Property Valuation Guides and Schedules Pursuant to Utah
Code Ann. Section 59-2-107
Published: 09/01/2020
Effective: 10/20/2020

End of the Notices of Rule Effective Dates Section