

# 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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# EXECUTIVE DOCUMENTS

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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.

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## EXECUTIVE ORDER 2020-75

### Temporary Statewide COVID-19 Restrictions

**WHEREAS**, on November 8, 2020, I issued Executive Order 2020-72, declaring a state of emergency Due to Rising COVID-19 Case Counts Creating a Shortage of Hospital Beds;

**WHEREAS**, COVID-19 has been characterized by the World Health Organization as a worldwide pandemic caused by Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2), a virus that spreads easily from person to person and can cause serious illness or death;

**WHEREAS**, the number of COVID-19 cases in Utah has sharply increased, causing serious illness and death to Utah residents, threatening public health and wellness throughout the state;

**WHEREAS**, Utah is experiencing a significant increase in the use of medical resources;

**WHEREAS**, new minimum standards are needed to prevent and control the rapidly changing consequences of COVID-19 throughout the state;

**WHEREAS**, the Centers for Disease Control (CDC) has called on Americans to wear face coverings, with the CDC director stating that "[c]loth face coverings are one of the most powerful weapons we have to slow and stop the spread of the virus--particularly when used universally within a community setting," and that "[a]ll Americans have a responsibility to protect themselves, their families, and their communities";

**WHEREAS**, analysis by Brigham Young University researchers reviewing more than 115 studies on the effectiveness of masks in controlling COVID-19 found that "[t]here is clear evidence that face coverings reduce the spray of droplets produced during speaking, coughing, and sneezing" and that "masks could be one of the most powerful and cost-effective tools to stop COVID-19 and accelerate the economic recovery";

**WHEREAS**, published scientific research has shown that the probability of transmission during exposure between a person infected with COVID-19 to an uninfected person is 17.4% if face coverings are not worn, and 3.1% if face coverings are worn;

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

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

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

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

1. **Definitions.** As used in this Order:

- a. "COVID-19" means Novel Coronavirus Disease 2019 caused by Severe Acute Respiratory Syndrome Coronavirus 2, also known as SARS-CoV-2.
- b. "Department" means the Department of Health created in Utah Code § 26-1-8.
- c. "Event host" means a person that owns, operates, provides facilities for, or has formal oversight over any of the following where a social gathering occurs: an amusement or water park, arena, aquarium, aviary, botanical garden, ceremony, cinema, comedy club, commercial event venue, commercial party venue, concert or concert hall, conference, convention or convention center, dance or dance hall, driver's education training, fair or fairground, museum, organized athletic or sporting event, recital, stadium, theater, or zoo.
- d. "Extracurricular activity" means an activity, a course, or a program that is:
  - i. not directly related to delivering instruction;
  - ii. not a curricular activity or co-curricular activity as those terms are defined in Utah Code § 53G-7-501; and
  - iii. provided, sponsored, or supported by a school or a public or private institution of higher education, including a degree-granting institution and a technical college.
- e. "Face mask" means a mask that completely covers the nose and mouth, is made of synthetic or natural fabrics, and fits snugly against the nose and sides of the face and under the chin. "Face mask" does not include a mask with an exhalation valve, vent, or other hole or opening, or a mask that is crocheted or made of lace, mesh, or similar open weblike construction or material.
- f. "Face shield" means a shield that covers the entire face—including the eyes, nostrils, and mouth of the wearer—is made of clear plastic or similar nonpermeable transparent material, and can be used in conjunction with a face mask for enhanced protection.
- g. "Household" means an individual or a group of individuals who reside in the same residence.
- h. "Local Education Agency" or "LEA" means a school district or a charter school.
- i. "Person" means the same as that term is defined in Utah Code § 68-3-12.5(18).
- j. "School" means an LEA or private school that provides any kindergarten through grade-12 program or service, including a residential treatment center that provides any kindergarten through grade-12 program or service.
- k. "Social gathering" means an in-person gathering of individuals from separate households. "Social gathering" does not include a gathering for a primarily educational or religious purpose, a business service provided at a place of residence, a physical custody exchange of a child, the exercise of parent-time pursuant to Utah Code § 30-3-32, or a childcare service, including a daycare, nanny, or babysitting service, regardless of whether the childcare service is provided as part of a financial transaction.

2. **Restrictions.** The following restrictions apply statewide:

- a. *Individuals.* An individual:
  - i. shall wear a face mask while within six feet of any individual from a separate household;
  - ii. may not eat or drink within six feet of an individual from a separate household while at a bar or restaurant; and
  - iii. may not attend a social gathering unless:
    - A. the social gathering has an event host or occurs at a business, including a bar or restaurant;
    - B. the individual complies with all face mask and physical distancing requirements.
- b. *Event hosts.* An event host of a social gathering shall:
  - i. require each individual attending the social gathering to wear a face mask, including in an area of ingress or egress;
  - ii. require at least six feet of physical distance between individuals from separate households who attend the social gathering, including in an area of ingress or egress, unless the event host received a waiver pursuant to State Public Health Order 2020-19 or State Public Health Order 2020-20;
  - iii. post conspicuous signage at the social gathering that:
    - A. lists COVID-19 symptoms;
    - B. asks individuals experiencing COVID-19 symptoms to stay home; and
    - C. provides notice of face mask and physical distancing requirements; and
  - iv. complete and implement the Event Management Template provided by the Department.
- c. *Businesses.*
  - i. A business, including a bar or restaurant, whether or not acting as an event host, shall:
    - A. require each employee and contractor to wear a face mask while at work;
    - B. require each patron that enters the premises of the business to wear a face mask, including in an area of ingress or egress;

C. except as provided in Subsection (2)(c)(iii), require at least six feet of physical distance, including in an area of ingress or egress, between each:

1. separate household group at a business other than a bar or restaurant; or
2. separate party at a bar or restaurant; and

D. post conspicuous signage at each entrance to the business that:

1. lists COVID-19 symptoms;
2. asks employees and customers experiencing COVID-19 symptoms to stay home; and
3. provides notice of face mask and physical distancing requirements.

ii. An on-premise licensee of the Department of Alcoholic Beverage Control shall not sell, offer to sell, or furnish liquor or beer after 10:00 p.m.

iii. Notwithstanding Subsection (2)(c)(i)(C), a business that provides a childcare service may permit a child, parent, or care provider to be within six feet of another child, parent, or care provider while in the course of providing or receiving the childcare service.

d. *Athletic and Extracurricular Social Gatherings.*

i. Except as provided in Subsection (2)(d)(ii), a person may not participate in or be an event host for a social gathering that is an organized athletic or sporting event or extracurricular activity.

ii. Subsection (2)(d)(i) does not apply to:

- A. an intercollegiate or professional athletic event; or
- B. a high school football practice or competition if the following conditions are met:

1. in-person attendance is limited to only participating athletes—including football players, cheerleaders, and drill team members—and their coaches, trainers, staff members, and no more than two additional individuals per attending coach, trainer, athlete, or staff member;

2. each attending athlete, coach, trainer, and staff member, wears a face mask, except as provided in Subsection (3)(a)(viii);

3. each attending spectator wears a face mask and maintains at least six feet of physical distance from any other individual from a separate household;

4. an athlete, coach, trainer, or staff member is permitted to participate in a competition only if the coach, trainer, staff member, or athlete receives a negative test result from a diagnostic test approved by the United States Food and Drug Administration to determine current COVID-19 infection within 72 hours before the game; and

5. an Event Management Template provided by the Department is completed and implemented for the practice or competition.

C. an athletic event held by a private business or organization, that is not a school, including a fitness facility or athletic club, if the following conditions are met:

1. in-person attendance is limited to only participating athletes and their coaches, trainers, staff members, and no more than two additional individuals per attending coach, trainer, athlete, or staff member;

2. each attending athlete, coach, trainer, and staff member maintains six feet physical distance from any individual from a separate household;

3. each attending spectator wears a face mask and maintains at least six feet of physical distance from an individual from a separate household; and

4. an Event Management Template provided by the Department is completed and implemented for the athletic event.

iii. A person that owns, operates, provides facilities for, or has formal oversight over an athletic event, including a practice or competition, authorized under Subsection (2)(d)(ii) is not subject to the requirements of Subsection (2)(b) for that event.

e. *Institutions of Higher Education.* Beginning as soon as possible, but no later than January 1, 2021, a public or private institution of higher education, including a degree-granting institution or technical college, shall require each individual age 18 years or older who is enrolled as a student of the institution of higher education and who lives in on-campus housing or attends at least one in-person class provided by the institution of higher education to obtain a diagnostic test approved by the United States Food and Drug Administration to determine current COVID-19 infection each week.

3. **Face mask exceptions.**

a. Notwithstanding any other provision of this Order, an individual who is otherwise required by this Order to wear a face mask may remove the face mask in the following situations:

i. while actively eating or drinking;

ii. while as the sole occupant of a room, cubicle, or similar enclosure;

iii. when communicating with an individual who is deaf or hard of hearing if:

A. communication cannot be achieved through other means; and

B. the speaker wears a face shield or uses alternative protection such as a plexiglass barrier;

iv. while obtaining or providing a service that requires the temporary removal of the face mask, such as dental services or speech therapy services;

v. while sleeping;

EXECUTIVE DOCUMENTS

- vi. while exercising or engaging in athletic training while:
  - A. outdoors; or
  - B. indoors and maintaining at least six feet of physical distance from any other individual from a separate household;
- vii. while swimming or on duty as a lifeguard;
- viii. while actively performing as an athlete at an organized athletic event authorized under Subsection (2)(d)(ii);
- ix. while giving a religious, political, media, educational, artistic, cultural, musical, or theatrical presentation or performance for an audience;
  - x. when engaging in work where wearing a face mask would create a risk to the individual, as determined by government safety guidelines;
  - xi. when necessary to confirm the individual's identity, including when entering a bank, credit union, or other financial institution; and
  - xii. when federal or state law or regulations prohibit wearing a face mask.
- b. The following individuals are exempt from the face mask requirements in Section (2):
  - i. a child who is younger than three years old;
  - ii. an individual who is unconscious, incapacitated, or otherwise unable to remove the face mask without assistance; and
  - iii. an individual with a medical condition, mental health condition, or intellectual or developmental disability, that prevents the individual from wearing a face mask; and
  - iv. an individual who is incarcerated.
- 4. **Local education agencies.**
  - a. An LEA is not subject to the provisions of Section (2)(b) and (2)(c).
  - b. An LEA shall comply with the requirements of the "Planning Requirements and Recommendations for K-12 School Reopening," created by the Utah State Board of Education.
- 5. **Religious services.** This Order does not apply to a religious service. Faith-based organizations are strongly encouraged to implement protocols to mitigate the spread of COVID-19.
- 6. **Effect on other laws.**
  - a. This Order supersedes Executive Order 2020-74.
  - b. To the extent that any provision of this Order conflicts with a provision of a State Public Health Order issued by the Department on or after November 10, 2020, the provision of the State Public Health Order shall control, otherwise this Order shall control.
  - c. Nothing in this Order may be construed to prohibit a local health department from issuing a health order that is more stringent than this Order.
- 7. **Severability.** If a provision of this Order or the application of a provision to any person or circumstance is held invalid, the remainder of this Order shall be given effect without the invalid provision or application. The provisions of this Order are severable.

This Order is effective immediately and shall remain in effect through November 23, 2020, unless otherwise modified, amended, rescinded, or superseded.

**IN WITNESS WHEREOF**, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done in Salt Lake City, Utah, on this, the 12th day of November, 2020.

(State Seal)

**Gary R. Herbert**  
Governor

ATTEST:

**Spencer J. Cox**  
Lieutenant Governor

2020/075/EO

**End of the Executive Documents Section**



## NOTICES OF PROPOSED RULES

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A state agency may file a **PROPOSED RULE** when it determines the need for a substantive change to an existing rule. With a **NOTICE OF PROPOSED RULE**, an agency may create a new rule, amend an existing rule, repeal an existing rule, or repeal an existing rule and reenact a new rule. Filings received between November 03, 2020, 12:00 a.m., and November 16, 2020, 11:59 p.m. are included in this, the December 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 31, 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 31, 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.

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

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R13-2	Filing No. 53213

**Agency Information**

<b>1. Department:</b>	Administrative Services	
<b>Agency:</b>	Administration	
<b>Street address:</b>	4315 S 2700 W, FLOOR 3	
<b>City, state:</b>	Taylorsville, UT	
<b>Mailing address:</b>	PO Box 141002	
<b>City, state, zip:</b>	Salt Lake City, UT 84114-1002	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Kenneth A. Hansen	801-957-7171	khansen@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R13-2. Management of Records and Access to Records
<b>3. Purpose of the new rule or reason for the change:</b>
Amendments are required to Rule R13-2 because the Department of Administrative Services (Department) moved its physical offices earlier in 2020. Upon review, staff identified other changes that were needed to update the rule to reflect changes in assignments or changes in technology.
<b>4. Summary of the new rule or change:</b>
This proposed amendment does the following: clarify statutory authority; provides definitions; indicates duties required of divisions in the Department; provides that records requests be made through the state's Open Records Portal; describes an appeal process; indicates where fees may be found; and describes access to records maintained by the Division of Archives and Records Service.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
The proposed amendments clarify definitions and procedures but impose no new burdens on divisions within the Department. There is no cost or savings to the state budget.

<b>B) Local governments:</b>
The proposed amendments clarify definitions and procedures but impose no new burdens on persons who may make records requests. There is no cost or savings to local governments.

<b>C) Small businesses ("small business" means a business employing 1-49 persons):</b>
The proposed amendments clarify definitions and procedures but impose no new burdens on persons who may make records requests. There is no cost or savings to small businesses.

<b>D) Non-small businesses ("non-small business" means a business employing 50 or more persons):</b>
The proposed amendments clarify definitions and procedures but impose no new burdens on persons who may make records requests. There is no cost or savings to non-small businesses.

<b>E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <i>agency</i>):</b>
The proposed amendments clarify definitions and procedures but impose no new burdens on persons who may make records requests. There is no cost or savings to other persons.

<b>F) Compliance costs for affected persons:</b>
The proposed amendments clarify definitions and procedures but impose no new burdens on divisions within the Department. The infrastructure to respond to records requests already exists. There are no compliance costs for the divisions. Persons making records requests will be required to create a Utah-ID account to use the Open Records Portal. Account creation is free. There are no compliance costs for persons making records requests.

**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
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**H) Department head approval of regulatory impact analysis:**

The Executive Director of the Department of Administrative Services, Tani Downing, has reviewed and approved this fiscal analysis.

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

This amendment will have no impact on business.

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

Tani Downing, 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 63A-1-105.5	Section 63A-12-104	Section 63G-2-204
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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:** 12/31/2020

**10. This rule change MAY become effective on:** 01/07/2021

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**

<b>Agency head or designee, and title:</b>	Tani Downing, Executive Director	<b>Date:</b>	11/04/2020
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**R13. Administrative Services, Administration.**

**R13-2. Management of Records and Access to Records.**

**R13-2-1. Authority, ~~and~~ Purpose, and Scope.**

(1) This rule is authorized by ~~Under authority of~~ Subsection ~~63A-12-104 and~~ 63G-2-204~~(2)(d)~~(3), and Sections 63A-12-104 and 63A-1-105.5.

(2) ~~this~~ This rule specifies how permanent and historical records in the custody of the Division of Archives and Records Service may be accessed, at what level the requirements of Title 63A, Chapter 12, Public Records Management Act are undertaken, and where and to whom requests for access to records shall be directed.

(3) This rule does not apply to the Office of the Inspector General of Medicaid Services, the Independent Executive Branch Ethics Commission, the Political Subdivisions Ethics Review Commission, or other entities established within the department that are not under the supervision, direction, or control of the department, or the executive director.

**R13-2-2. Definitions.**

Terms used in this rule are defined in Sections 63A-1-103 and 63G-2-103, and as interpreted by Section 46-4-502. Additional terms are defined as follows:

(1) ["Department" means the Department of Administrative Services created by Section 63A-1-104.

(2) "Division" means a division or office of the Department of Administrative Services listed in Section 63A-1-109, and the Executive Director's Office.

(2) "URL" means the uniform resource locator for a website on the Internet or a web address at which information may be found or through which requests may be submitted.

**R13-2-3. Public Records Management Duties.**

~~The department shall undertake the duties specified in Section 63A-12-103 at the division level, and at the department level by the executive director's office for areas not otherwise under the function of a division.~~ Each division shall undertake the duties specified in Section 63A-12-103.

**R13-2-4. Requests for Access.**

(1) Except as provided by Section R13-2-8 regarding access to permanent or historical records in the custody of the Division of

NOTICES OF PROPOSED RULES

Archives and Records Service, a request for access to records shall be made in accordance with Subsection (2).

(2) A request for records shall be submitted through the Open Records Portal [in writing, include the information required by Section 63G-2-204,] and be directed to the [records officer of the-]division which the requester believes possesses the records using the corresponding URL listed below and clicking on the blue "Request Records" button:[-]

[- (2) Requests may be submitted to:

(a) Administrative Services, including the Executive Director's Office, and the Office of Child Welfare Parental Defense, 3120 State Office Building, Salt Lake City, UT 84114.

(b) Administrative Rules, PO Box 141007, Salt Lake City, UT 84114-1007.

(c) Archives and Records Service, 346 S. Rio Grande Street, Salt Lake City, UT 84101-1106.

(d) Facilities Construction and Management, 4110 State Office Building, Salt Lake City, UT 84114.

(e) Finance, including the Office of State Debt Collection, and Consolidated Budget and Accounting, 2110 State Office Building, Salt Lake City, UT 84114.

(f) Fleet Operations, 4120 State Office Building, Salt Lake City, UT 84114.

(g) Purchasing and General Services, including the Surplus Property Program, 3150 State Office Building, Salt Lake City, UT 84114.

(h) Risk Management, 5120 State Office Building, Salt Lake City, UT 84114.]

(a) Administrative Services: <https://openrecords.utah.gov/GRAMA/agencyDetail.php?270>;

(b) Executive Director's Office: <https://openrecords.utah.gov/GRAMA/agencyDetail.php?270>;

(c) Administrative Rules: <https://openrecords.utah.gov/GRAMA/agencyDetail.php?29>;

(d) Archives and Records Service: <https://openrecords.utah.gov/GRAMA/agencyDetail.php?11>;

(e) Facilities Construction and Management: <https://openrecords.utah.gov/GRAMA/agencyDetail.php?375>;

(f) Finance: <https://openrecords.utah.gov/GRAMA/agencyDetail.php?388>;

(g) Fleet Operations: <https://openrecords.utah.gov/GRAMA/agencyDetail.php?245>;

(h) Purchasing and General Services: <https://openrecords.utah.gov/GRAMA/agencyDetail.php?753>;

(i) Risk Management: <https://openrecords.utah.gov/GRAMA/agencyDetail.php?846>;

(j) State Debt Collection: <https://openrecords.utah.gov/GRAMA/agencyDetail.php?2791>; and

(k) Surplus Property: <https://openrecords.utah.gov/GRAMA/agencyDetail.php?1107>.

(3) The department provides staff support for the entities listed below. Requests for these entities shall be directed as follows:

(a) Administrative Services Rate Committee directed to the Executive Director's Office;

(b) Executive Residence Commission directed to Facilities Construction and Management;

(c) Procurement Policy Board directed to Purchasing and General Services;

(d) Purchasing from People with Disabilities Advisory Board directed to Purchasing and General Services;

(e) Records Management Committee directed to Archives and Records Service;

(f) State Building Board directed to Facilities Construction and Management;

(g) State Records Committee directed to Archives and Records Service; and

(h) Utah Transparency Advisory Board directed to the Executive Director's Office.

(4) The executive director may:

(a) designate a records officer within the department or any of its divisions to be the central contact for a request, or to coordinate responses across the divisions of the department that fall within the scope of this rule; and

(b) require a division records officer to forward a request from a requestor to a specified records officer to expedite, coordinate, or both for the fulfillment of requests.

**RI3-2-5. Appeal of a Fee Waiver Denial, Access Determination Decision, or Extraordinary Circumstances Claims or Dates.**

To appeal the decision of a records officer, a requester shall submit a written notice of appeal providing information required [by]under Subsection 63G-2-401(2) to the department's designated chief administrative officer for GRAMA appeals. An appeal shall be submitted to [dasinfo@utah.gov](mailto:dasinfo@utah.gov)[- DAS GRAMA Appeals Officer, Division of Administrative Rules, PO Box 141007, Salt Lake City, UT 84114-1007.]

**RI3-2-6. Fees.**

(1) [A schedule of fees that may be charged in response to a records request may be obtained by contacting the records officer.]The [fee-]schedule of fees approved by the Legislature[is also available] may be found in the annual [appropriations bill]State Agency Fees and Internal Service Fund Rate Authorization and Appropriations bill available at <https://le.utah.gov/>. Current fees are also [and-]posted on the department's website at [<http://www.das.utah.gov/>] <https://das.utah.gov/financials/>.

(2) [Fees]A fee for providing a record may be waived under certain circumstances described in Subsection 63G-2-203(4). A request for a fee waiver shall be made in writing to the records officer as part of the records request.

**RI3-2-7. Forms.**

(1) [Request and appeal forms are available at <http://archives.utah.gov/recordsmanagement/forms/forms-grama.html>, or from the records officer.]As required by Section R13-2-4, a request is submitted through the Open Records Portal. No other form is required.

(2) An appeal form may be acquired from <https://archives.utah.gov/rim/forms/forms-grama.html>. An appellant is not required to use an appeal form so [- (2) These forms are provided as a convenience, and a requester is not required to use these forms as ]long as information required [by]under [the statute]Subsection 63G-2-401(2) is provided.

**RI3-2-8. Access to Permanent or Historical Records in the Custody of the Division of Archives and Records Service.**

(1) An individual need not submit a formal records request to inspect public records of permanent or historical value stored at the [~~state archives~~]Archives and Records Service.

(2) An individual may request access to records that are noncurrent records of permanent or historical value in the custody of the [~~state archives~~]Archives and Records Service. The individual shall direct that request to the [~~state archives~~]Archives and Records Service [~~research center~~]Research Center, 346 S Rio Grande, Salt Lake City, UT 84101-1106.

(3) If the requester is dissatisfied with the initial decision rendered by the ~~[research center]~~Research Center, or if the ~~[state archives' research center]~~Research Center denies access to these records, the requester may appeal the decision to the ~~[state archivist]~~State Archivist under the procedures of Section 63G-2-401~~[et seq.]~~.

**KEY: public information, access to information, GRAMA requests, GRAMA appeals**

**Date of Enactment or Last Substantive Amendment:** ~~July 22, 2014~~**2021**

**Notice of Continuation:** May 29, 2019

**Authorizing, and Implemented or Interpreted Law:** 63G-2-204~~(2)(d)~~**(3)**; 63A-12-104; **63A-1-105.5**

#### NOTICE OF PROPOSED RULE

**TYPE OF RULE:** Amendment

<b>Utah Admin. Code Ref (R no.):</b>	<b>R68-26</b>	<b>Filing No. 53205</b>
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#### Agency Information

<b>1. Department:</b>	Agriculture and Food	
<b>Agency:</b>	Plant Industry	
<b>Street address:</b>	350 N Redwood Road	
<b>City, state:</b>	Salt Lake City, UT	
<b>Mailing address:</b>	PO Box 146500	
<b>City, state, zip:</b>	Salt Lake City, UT 84114-6500	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
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:

R68-26. Industrial Hemp Product Registration and Labeling

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

The changes are needed to add clarifications for this rule that will improve the process by which the Department of Agriculture and Food (Department) will register industrial hemp products and oversee compliance with rules. The changes will also make this rule clearer for industrial hemp processors.

#### 4. Summary of the new rule or change:

The changes change the way a cannabinoid profile is represented, update labeling requirements, add additional information to the labeling requirements to explain Code of Federal Regulations (CFR) references, change testing requirements so that final products must be tested, removes the requirement for a Food and Drug Administration (FDA) supplement warning for products that contain CBD, and adds violation categories. Changes are also made to make rule text more consistent with the rulewriting manual.

#### Fiscal Information

##### 5. Aggregate anticipated cost or savings to:

###### A) State budget:

There are no anticipated costs or savings to the state budget because these changes just clarify current requirements and make it easier for products to be produced and for the Department to administer the hemp program. There are no changes to fees charged by the Department.

###### B) Local governments:

There are no anticipated costs or savings to local governments because they do not regulate industrial hemp production or produce industrial hemp products.

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

There are no anticipated costs or savings to small businesses because these changes just clarify current requirements and make it easier for products to be produced and for the Department to administer the hemp program. There are no changes to fees charged by the Department.

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

There are no anticipated costs or savings to non-small businesses because these changes just clarify current requirements and make it easier for products to be produced and for the Department to administer the hemp program. There are no changes to fees charged by the Department.

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

There are no anticipated costs or savings to other persons because these changes just clarify current requirements and make it easier for products to be produced and for the Department to administer the hemp program. There are no changes to fees charged by the Department.

<b>F) Compliance costs for affected persons:</b>			
There are no changes to compliance costs because the fees charged by the Department remain the same.			
<b>G) Regulatory Impact Summary Table</b> (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)			
<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2021</b>	<b>FY2022</b>	<b>FY2023</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>H) Department head approval of regulatory impact analysis:</b>			
The Commissioner of the Department of Agriculture and Food, R. Logan Wilde, has reviewed and approves the regulatory impact analysis.			
<b>6. A) Comments by the department head on the fiscal impact this rule may have on businesses:</b>			
These changes will not have any fiscal impact on businesses.			
<b>B) Name and title of department head commenting on the fiscal impacts:</b>			
R. Logan Wilde, Commissioner			

**Citation Information**

<b>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):</b>		
Subsection 4-41-103(4)	Subsection 4-41-403(1)	Subsection 4-41-402(2)
Subsection 4-41-106(1)	Section 4-41-404	

**Public Notice Information**

<b>9. The public may submit written or oral comments to the agency identified in box 1.</b> (The public may also request a hearing by submitting a written request to the agency. 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.)	
<b>A) Comments will be accepted until:</b>	12/31/2020

<b>10. This rule change MAY become effective on:</b>	01/07/2021
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**

<b>Agency head or designee, and title:</b>	R. Logan Wilde, Commissioner	<b>Date:</b>	11/10/2020
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**R68. Agriculture and Food, Plant Industry.**

**R68-26. Industrial Hemp Product Registration and Labeling.**  
**R68-26-1. Authority and Purpose.**

1) Pursuant to Subsections 4-41-103(4) and 4-41-403(1), this rule establishes the requirements for labeling and registration of products made from and containing industrial hemp.

**R68-26-2. Definitions.**

- 1) "CBD" means cannabidiol.
- 2) "Certificate of Analysis" (COA) means a document produced by a testing laboratory listing the quantities of the various analytes for which testing was performed.
- 3) "Department" means the Utah Department of Agriculture and Food.
- 4) "Industrial Hemp" means any part of a cannabis plant, whether growing or not, with a concentration of less than 0.3% tetrahydrocannabinol by weight.

- 5) "Industrial hemp product" means products derived from, or made by processing industrial hemp plants or plant parts.
- 6) "Label" means the display of each written, printed, or graphic matter upon the immediate container or statement accompanying an industrial hemp product.
- 7) "Manufacturer" means a person who makes any industrial hemp products.
- 8) "Person" means an individual, partnership, association, firm, trust, limited liability company, or corporation or any employees of such.
- 9) "THC" means total composite tetrahydrocannabinol, including delta -9- tetrahydrocannabinol and tetrahydrocannabinolic acid.
- 10) "Third- party laboratory" means a laboratory with no direct interest in a grower or processor of industrial hemp or industrial hemp products that is capable of performing mandated testing utilizing validated methods.

**R68-26-3. Product Registration.**

- 1) Each industrial hemp product distributed or available for distribution in Utah shall be officially registered annually with the department.
- 2) Application for registration shall be made to the department on a form provided by the department including the following information:
  - a) the name and address of the applicant and the name and address of the person whose name will appear on the label, if other than the applicants;
  - b) the name of the product;
  - c) the type and use of the product;
  - d) a complete copy of the label as it will appear on the product in a legible format ~~provided in a PDF format~~; and
  - e) if the product has been assigned a National Drug Code in accordance with 21 CFR 207.33, the applicant shall provide the National Drug Code number.
- 3) If the industrial hemp product being registered contains a cannabinoid, the application shall include a certificate of analysis from a third-party laboratory for the product in compliance with Section R68-26-4. The certificate of analysis shall show the cannabinoid profile of the product by percentage of mass.
- 4) A registration fee per product, as set forth in the fee schedule approved by the legislature, shall be paid to the department with the submission of the application.

5) The department may deny registration for an incomplete application[s].

~~6) The department may exempt an industrial hemp product that is determined to be adequately regulated by a federal agency.~~

- ~~7) 6) A new registration is required for any of the following:~~
  - a) any change[s] in the industrial hemp product ingredients;
  - b) any change[s] to the directions for use; and
  - c) any change of name for the product.
- ~~8) 7) Other changes shall not require a new registration but the registrant shall submit copies of [a] each label change[s] to the department as soon as they are effective.~~
- ~~9) 8) The person registering the industrial hemp product is responsible for the accuracy and completeness of information submitted.~~
- ~~10) 9) A registration is renewable for up to a one-year period with an annual renewal fee per product, [which] that shall be paid on or before June 30th of each year.~~

- ~~10) 10) An industrial hemp product that has been discontinued shall continue to be registered in the state until the product is no longer available for distribution.~~
- ~~11) 11) A late fee shall be assessed for a renewal of an industrial hemp product registration submitted after June 30th and shall be paid before the registration renewal is issued.~~
- ~~12) 12) The department shall not register an industrial hemp product containing a cannabinoid if the product:~~
  - ~~a) is in an unapproved medicinal dosage form;~~
  - ~~b) a) uses the cannabinoid as a food additive; or~~
  - ~~e) b) is represented for use as a conventional food.~~

**R68-26-4. Certificate of Analysis.**

- 1) ~~The~~ A certificate of analysis for any industrial hemp product[s] containing a cannabinoid shall be available through a QR code or website listed on the label. ~~tested for.~~
- 2) Testing shall be conducted on the product in its final form for:
  - a) the cannabinoid profile by percentage of ~~mass~~ dry weight;
  - b) solvents;
  - c) pesticides;
  - d) microbials; and
  - e) heavy metals.
- ~~3) 3) The test results required in Subsection R68-26-4(1) shall be reported in accordance with the requirements for a cannabinoid product in [-]Rule R68-29 including the specified units of measure.~~
- ~~4) 4) The certificate of analysis shall include the following information:~~
  - a) the batch identification number;
  - b) the date received;
  - c) the date of completion;
  - d) the method of analysis for each test conducted; and
  - e) ~~a picture of the product in its final form.~~ proof that the certificate of analysis is connected to the product.
- ~~5) 5) Testing shall be conducted on the product in its final form.~~

**R68-26-5. Label Requirements.**

- 1) Industrial hemp products containing a cannabinoid produced for oral human consumption shall be labeled in accordance with:
  - a) 21 CFR 101.1, Principal display panel of package form food;
  - b) 21 CFR 101.2, Information panel of package form food;
  - c) 21 CFR 101.3, Identity labeling of food in packaged form;
  - d) 21 CFR 101.4, Food; designation of ingredients;
  - e) 21 CFR 101.5, Food; name and place of business of manufacturer, packer, or distributor;
  - f) 21 CFR 101.7, Declaration of net quantity of contents;
  - g) 21 CFR 101.9(j)(13) [21 CFR 101.9(j)] and (17), Nutrition labeling of food;
  - h) 21 CFR 101.15, Food; prominence of required statements; and
  - i) 21 CFR 101.36, Nutrition labeling of dietary supplements;
- ~~a) i) a label may contain the term "product facts" in place of "supplement facts" provided the information required in 21 CFR 101.36 is on the label; and~~

~~(b)(ii)~~ the label shall include the following text, prominently displayed: "This product has not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat, cure, or prevent any disease."

2) A cannabinoid product intended to be vaporized for inhalation shall:

a) be labeled in accordance with Subsection R68-26-5(1); or

b) be labeled in accordance with 21 CFR 101.1, 21 CFR 101.2, 21 CFR 101.3, 21 CFR 101.4, 21 CFR 101.5, 21 CFR 101.7, 21 CFR~~[401.5]~~ 101.15, and contain the following text, prominently displayed: "This product has not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat, cure, or prevent any disease."

3) Industrial hemp products containing a cannabinoid produced for absorption by humans shall be labeled~~[:]~~

~~[a)]~~ in accordance with 21 CFR 701, Cosmetic Labeling~~;~~ ~~and~~].

~~(b)(4)~~ Industrial hemp products containing cannabinoids other than CBD shall contain the following text, prominently displayed: "Warning - The safety of this product has not been determined."

~~[4]5)~~ Notwithstanding Subsection R68-26-5(1) or R68-25-5(3), an industrial hemp product containing a cannabinoid produced for human use that has a National Drug Code issued shall be labeled in accordance with 21 CFR 201.66.

~~[5]6)~~ In addition to the requirements of Subsections R68-26-5(1) through R68-26-5(3) an industrial hemp product containing a cannabinoid shall have on the label a scannable barcode, QR code, or web address linked to a document containing the following information:

- ~~[a) the batch identification number;~~
- ~~b) the product name;~~
- ~~c) the batch date;~~
- ~~d) an expiration date;~~
- ~~e) the batch size;~~

~~f)a)~~ the total quantity produced; and ~~[g)b)~~ a downloadable link for a certificate of analysis for the batch identified.

~~[6]7)~~ Industrial hemp products shall not contain medical claims on the label unless the product has been registered with the FDA and is labeled in accordance with Subsection R68-26-5(4).

~~[7]8)~~ Industrial hemp products that do not contain a cannabinoid intended for human consumption shall be labeled in accordance with 21 CFR 101, Food Labeling.

~~[8]9)~~ Industrial hemp products that do not contain a cannabinoid ~~and are~~ intended for human absorption shall be labeled in accordance with 21 CFR 701, Cosmetic Labeling~~[-and 21 CFR 740, Cosmetic Product Warnings Statements].~~

~~[9]10)~~ Industrial hemp products meant for animal consumption shall be labeled and comply with applicable federal laws and regulations and other applicable state laws and regulations.

~~1[0]1)~~ Industrial hemp seed products intended for cultivation shall be labeled in accordance with Title 4, Chapter 16, Utah Seed Act.

~~1[+]2)~~ Each industrial hemp product shall comply with the federal Food Drug and Cosmetic Act, 21 U.S.C. Chapter 9 and other applicable federal laws and regulations and applicable state laws and regulations relating to the labeling of food, cosmetics, and fiber.

**R68-26-6. Inspection and Testing.**

1) The department shall conduct randomized inspection of industrial hemp products distributed or available for distribution in the state for compliance with this rule.

2) The department shall periodically sample, analyze, and test industrial hemp products distributed within the state for compliance with registration and labeling requirements and the certificate of analysis, if applicable.

3) The department may conduct inspection of industrial hemp products distributed or available for distribution for any reason the department deems necessary.

4) The sample taken by the department shall be the official sample.

**R68-26-7. Retailer Responsibilities.**

1) A retailer shall:

a) ensure that any industrial hemp product is labeled correctly; and

b) ensure that ~~[a]H~~each industrial hemp product~~[s]~~ sold ~~[are]~~is properly registered with the department.

2) Retailers shall provide the identity of the manufacturer of industrial hemp products sold upon request of the department.

3) A retailer may register the product in lieu of the manufacturer if the product is not registered.

**R68-26-8. Violation.**

1) Each improperly labeled industrial hemp product shall be a separate violation of this rule.

2) Industrial hemp products not meeting the labeling requirements shall be deemed to be misbranded.

3) Industrial hemp products shall be considered falsely advertised if it does not meet the labeling requirements of this rule.

4) It is a violation to distribute or market an industrial hemp product that is not registered with the department.

~~5) It is a violation to distribute or market industrial hemp flower as a final product.~~

~~[5]6)~~ It is a violation to distribute or market an industrial hemp product that contains greater than 0.3% THC.

~~[6]7)~~ It is a violation to distribute or market an industrial hemp product containing a cannabinoid ~~[that is not in a medical dosage form.]~~that has not been tested as required by Rule R68-29.

~~[7]8)~~ It is a violation to distribute or market an industrial hemp product containing a cannabinoid as a conventional food product.

~~[8]9)~~ It is a violation to distribute or market a product claiming a cannabinoid derived from industrial hemp as a food additive.

~~[-----]9) The Department shall use a penalty matrix to develop appropriate penalties.]~~

**R68-26-9. Violation Categories.**

1) Public Safety Violations: Each person shall be fined \$3,000- \$5,000 per violation. This category is for violations that present a direct threat to public health or safety including:

- a) industrial hemp sold to an unlicensed source;
- b) industrial hemp purchased from an unlicensed source;
- c) refusal to allow inspection;
- d) failure to comply with labeling requirements;
- e) failure to comply with testing requirements;
- f) possessing, manufacturing, or distributing industrial hemp product that a person knows or should know appeals to children; or



g) engaging in or permitting a violation of the Title 4, Chapter 41, Hemp and Cannabinoid Act that amounts to a public safety violation as described in this Subsection.

2) Regulatory Violations: Each person shall be fined \$1,000-\$5,000 per violation. This category is for violations involving this rule and other applicable state rules under Title R68 including:

- a) failure to register an industrial hemp product;
- b) failure to provide a certificate of analysis as required by Section R68-26-4;

- c) failure to keep and maintain records;
- d) engaging in or permitting a violation of Title 4, Chapter 41a, Hemp and Cannabinoid Act or this Rule that amounts to a regulatory violation as described in this subsection.

3) Licensing Violations: Each person shall be fined \$500-\$5,000 per violation. This category is for violations involving licensing requirements including:

- a) engaging in or permitting a violation of this rule, other applicable rules under Title R68, or Title 4, Chapter 41, Hemp and Cannabinoid Act, that amounts to a licensing violation; or
- b) failure to respond to violations.

4) The department shall calculate penalties 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.

5) The department may enhance or reduce the penalty based on the seriousness of the violation.

**KEY: CBD labeling, CBD products, hemp product registration**  
**Date of Enactment or Last Substantive Amendment: ~~August 10, 2020~~ 2021**  
**Authorizing, and Implemented or Interpreted Law: 4-41-403(1); 4-41-402(2); 4-41-103(4)**

NOTICE OF PROPOSED RULE		
TYPE OF RULE: New		
Utah Admin. Code Ref (R no.):	R68-34	Filing No. 53151

**Agency Information**

<b>1. Department:</b>	Agriculture and Food	
<b>Agency:</b>	Plant Industry	
<b>Street address:</b>	350 N Redwood Road	
<b>City, state:</b>	Salt Lake City, UT	
<b>Mailing address:</b>	PO Box 146500	
<b>City, state, zip:</b>	Salt Lake City, UT 84114-6500	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
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:**  
 R68-34. Educational Event and Educational Material Rules

**3. Purpose of the new rule or reason for the change:**  
 This rule is required by Subsections 4-41a-403(5)(a) - (c) that allows cannabis production establishments to create educational materials and hold educational events if they follow rules set by the Department of Agriculture and Food (Department). The requirement was added as part of S.B. 121, passed during the 2020 General Session.

**4. Summary of the new rule or change:**  
 This new rule sets guidelines for educational materials produced by and educational events held by a cannabis production establishment that relate to the use or production of cannabis. This includes specific standards for educational materials to ensure the materials do not include false, misleading, or dangerous information, as well as standards for educational events that include attendee requirements, presenter requirements, and information that can be shared.

**Fiscal Information**

**5. Aggregate anticipated cost or savings to:**

**A) State budget:**  
 There is no anticipated cost or savings to the state budget. There are no fees associated with dissemination of materials or the holding of educational events and the Department is able to enforce the standards within our existing resources.

**B) Local governments:**  
 There are no anticipated costs or savings to local governments associated with this rule. Local governments will not be holding educational events or producing materials subject to this rule.

**C) Small businesses** ("small business" means a business employing 1-49 persons):  
 There are no anticipated costs or savings to small businesses because the Department is not imposing fees related to educational events or materials.

**D) Non-small businesses** ("non-small business" means a business employing 50 or more persons):  
 There are no anticipated costs or savings to non-small businesses because the Department is not imposing fees related to educational events or materials.

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

There are no anticipated costs or savings to other persons businesses because the Department is not imposing fees related to educational events or materials.

**F) Compliance costs for affected persons:**

There are no fees associated with the production of educational materials or events so there should be 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
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**H) Department head approval of regulatory impact analysis:**

The Commissioner of the Department of Agriculture and Food, R. Logan Wilde, has reviewed and approves the regulatory impact analysis.

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

This rule will allow for dissemination of safe and clear information regarding medical cannabis and will not have a fiscal impact on business in Utah.

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

R. Logan Wilde, Commissioner

**Citation Information**

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

Subsection 4-41a-403(5)(a)	Subsection 4-41a-403(5)(c)	Subsection 4-41a-403(5)(b)
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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:** 12/15/2020

**10. This rule change MAY become effective on:** 12/22/2020

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**

<b>Agency head or designee, and title:</b>	R. Logan Wilde, Commissioner	<b>Date:</b>	10/28/2020
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**R68. Agriculture and Food, Plant Industry.****R68-34. Educational Event and Educational Material Rules.****R68-34-1. Authority and Purpose.**

Pursuant to Subsections 4-41a-403(5)(a) through 4-41a-403(5)(c), this rule establishes the elements and restrictions on educational events a cannabis production establishment may hold for the public or medical providers, and provides guidelines for educational material shared at the events.

**R68-34-2. Definitions.**

1) "Educational event" means an event held by a cannabis production establishment or presented by a cannabis production establishment agent for the purpose of providing education about medical cannabis for the benefit of the public or medical providers.

2) "Educational material" means content distributed by a medical cannabis production establishment, cannabis production establishment agent, medical cannabis pharmacy agent, or qualified medical provider, whether in-person or online. Educational material includes:

- a) live or recorded content of an actual educational event;
- b) printed material such as books, pamphlets, flyers, or business cards; and
- c) online content.

**R68-34-3. Educational Material Standards.**

1) A presenter seeking to dispel false or misleading information about medical cannabis may include the false or misleading information in educational material if they also include a true statement regarding lawful cannabis use in Utah that dispels the false or misleading information.

2) Educational material shall include information relating to side effects, consequences, contraindications, and effectiveness of medical cannabis, and ensure that information relating to effectiveness is not presented in greater scope, depth, or detail than information relating to side effects, consequences, and contraindications.

3) Educational material standards assessed by the department include factors such as typography, layout, contrast, headlines, paragraphing, white space, and other techniques used to achieve emphasis.

4) Educational material is false or otherwise misleading if it:

- a) contains a representation that a cannabis strain, brand, or product is more effective, useful in a broader range of conditions or patients, or safer than another drug or treatment, including other cannabis strains or product, unless the claim has been demonstrated by substantial evidence or substantial clinical data;
- b) uses a quote or paraphrases information out of context or without citing conflicting information from the same source to convey a false or misleading idea;
- c) uses a study on individuals without a qualifying medical condition without disclosing that the subjects were not suffering from a qualifying medical condition;
- d) uses data to present a cannabis product favorably that is derived from patients treated with a different product or with dosages different from those legal in Utah;
- e) contains favorable information or conclusions from a study that is inadequate in design, scope, or conduct to furnish significant support for the information or conclusions;
- f) fails to disclose the source of the material with sufficient detail to enable participants to locate the material independently; or

g) fails to disclose that a study has not been subject to the peer review process.

5) Educational material shall not include:

- a) an unsubstantiated health claim or claim that is not supported by substantial evidence or substantial clinical data;
- b) information that encourages the use of cannabis for a condition other than a qualifying medical condition;
- c) unprofessional terms, slang, phrasing, or verbiage associated with the recreational use of cannabis unless those terms are necessary to clarify or provide information valuable to the educational event participants, such as law enforcement officers, in identifying and educating individuals on common terms used by patients and other individuals to refer to cannabis and are presented in that context;
- d) any image bearing resemblance to a cartoon character or fictional character whose target audience is children or minors;
- e) content, symbol, or imagery that the cannabis production establishment knows or should know appeals to children;
- f) imagery featuring a person using the product in any way;
- g) any statement that encourages, promotes, or otherwise creates an impression that use of cannabis is legal or acceptable to use in a manner except as specifically authorized under Title 26, Chapter 61a, Utah Medical Cannabis Act;
- h) any statement that recreational use of cannabis has any potential health or therapeutic benefits, or that recreational use or possession is legal in Utah or under federal law;
- i) any recreationally oriented subject;
- j) any content that might be considered dismissive of medical cannabis as approved to treat a qualifying medical condition;
- k) content that promotes consumption in excess of the recommended dosage;
- l) content targeting out-of-state customers;
- m) any statement that falsely disparages a competitor's product; or
- n) any statement, design, or representation, picture or illustration that is obscene or indecent.

**R68-34-4. Educational Event Standards.**

1) Any attendee at an educational event held by a cannabis production establishment pursuant to Section 4-41a-403 shall be at least 21 years of age.

2) A presenter may address issues or questions posed during an educational event that clarify or provide educational material on the limits of cannabis use under Title 4, Chapter 41a, Cannabis Production Establishments or Title 26, Chapter 61a, Utah Medical Cannabis Act.

**R68-34-5. Department Review.**

1) Any educational event that falls under this rule must be disclosed to the department no less than 10 business days prior to the educational event.

2) A department employee may attend an educational event to verify compliance with state law and this rule.

3) The department may require that a cannabis production establishment provide copies of any educational material scheduled to be distributed at an educational event to:

- a) verify that documents and materials are in compliance with Section 4-41a-403 and do not conflict with Title 26, Chapter 61a, Utah Medical Cannabis Act;
- b) confirm the information presented is correct; and
- c) pursuant to Subsection 4-41a-403(1), confirm that advertising is not included.

NOTICES OF PROPOSED RULES

4) The department may require the cannabis production facility or presenter at an educational event to change the presentation and materials to comply with state laws and this rule.

**KEY: cannabis, educational event**  
**Date of Enactment or Last Substantive Amendment: 2021**  
**Authorizing, and Implemented or Interpreted Law: 4-41a-403(5)(a) through 4-41a-403(5)(c)**

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R151-4	Filing No. 53220

**Agency Information**

<b>1. Department:</b>	Commerce	
<b>Agency:</b>	Administration	
<b>Street address:</b>	160 E 300 S 2nd FL	
<b>City, state, zip:</b>	Salt Lake City, UT 84111	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Jacob Hart	801-530-6636	jfhart@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R151-4. Department of Commerce Administrative Procedures Act Rule
<b>3. Purpose of the new rule or reason for the change:</b>
The purpose of the rule change is to update, streamline, and clarify procedures for administrative actions before the Department of Commerce and its Divisions.
<b>4. Summary of the new rule or change:</b>
1. Updated the definition of "pleading" to make it more consistent with the term as used in the Utah Rules of Civil Procedure, i.e., a document that initiates an action or a document replying to a pleading. The term "pleading" no longer includes "motions". References to "pleading" throughout the rules were updated to also include "motion" where appropriate.
2. The prior rule prohibited discovery in informal adjudicative proceedings in sections applicable only to formal adjudicative proceedings. The prohibition of discovery in informal adjudicative proceedings was moved to Section R151-4-114, the subsection addressing informal adjudicative proceedings. A reference to Subsection 63G-4-203(1)(e) was added noting that

administrative subpoenas issued by agencies are permitted in informal proceedings.

3. Amended Section R151-4-202 to add page limits to motions consistent with those found in the Utah Rules of Civil Procedure.

4. Increased the time allowed to respond to motions in Section R151-4-303 consistent with the Utah Rules of Civil Procedure.

5. Amended Section R151-4-306 to change the process and procedure for motions to disqualify board or commission members. Motions to disqualify are now decided by the presiding officer rather than the board or commission member at issue. This rule update also provides time frames for when a motion to disqualify may be made.

6. Section R151-4-512 was updated to reflect changes to the Utah Rules of Civil Procedure that make certain provisions no longer applicable.

7. Amended Section R151-4-602 to clarify and amend the interview process. This rule change provides for recording interviews and circulating copies of the recordings, amends what is required by a moving party to obtain a deposition, and provides that the parties may stipulate to a deposition.

8. Removes references to "licensed" court reporters to reflect changes to Title 58, Chapter 74.

9. Adds determinations made on an application for a division determination regarding criminal record to the list of orders not subject to agency review.

10. Amends Section R151-4-902 in light of Utah Supreme Court case law, including *State v. Nielsen*, 2014 UT 10, governing the marshalling of evidence. A failure to marshal evidence may result in a persuasive failure but is no longer grounds for dismissal as a procedural matter. Citations to law and the record are still required in arguments on agency review.

11. The amendment makes other stylistic changes consistent with the *Rulewriting Manual for Utah*.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
This rule does not amend fees or any revenue generation for the state and will not affect the state budget.
<b>B) Local government:</b>
Local governments are typically not involved in administrative hearings before the Department of Commerce and are not impacted by this amendment.

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

This rule is procedural in nature and has no discernable impact on the costs required for a small business to appear in a matter before the Department of Commerce.

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

This rule is procedural in nature and has no discernable impact on the costs required for a non-small business to appear in a matter before the Department of Commerce.

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

This rule is procedural in nature and has no discernable impact on the costs required for other persons to appear in a matter before the Department of Commerce.

**F) Compliance costs for affected persons:**

None--This rule only affects those appearing before the Department of Commerce in an administrative proceeding. These rule changes do not impose requirements that would increase 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
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0

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

**H) Department head 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:**

There will be no fiscal impact on businesses.

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

Chris Parker, Executive Director

**Citation Information**

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

Section 13-1-6	Subsection 63G-4-102(6)	
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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:** 12/31/2020

**10. This rule change MAY become effective on:** 01/07/2021

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**

<b>Agency head or designee, and title:</b>	Jacob Hart, Deputy Director	<b>Date:</b>	11/16/2020
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**R151. Commerce, Administration.**

**R151-4. Department of Commerce Administrative Procedures Act Rule.**

**R151-4-101. Title and Organization.**

This rule ~~[(R151-4)]~~ is:

- (1) known as the "Department of Commerce Administrative Procedures Act Rule;" and
- (2) organized into the following Parts:
  - (a) Part 1, General Provisions, including ~~[(Sections R151-4-101 through R151-4-114)];~~
  - (b) Part 2, Pleadings, including ~~[(Sections R151-4-201 through R151-4-205)];~~
  - (c) Part 3, Motions, including ~~[(Sections R151-4-301 through R151-4-305)];~~
  - (d) Part 4, Filing and Service, including ~~[(Sections R151-4-401 through R151-4-402);~~
  - (e) Part 5, Discovery - Formal Proceedings, including ~~[(Sections R151-4-501 through R151-4-516)];~~
  - (f) Part 6, Depositions - Formal Proceedings, including ~~[(Sections R151-4-601 through R151-4-611)];~~
  - (g) Part 7, Hearings, including ~~[(Sections R151-4-701 through R151-4-712)];~~
  - (h) Part 8, Orders, including ~~[(Sections R151-4-801 through R151-4-803)];~~ and
  - (i) Part 9, Agency Review and Judicial Review, including ~~Sections [(R151-4-901 through R151-4-907)];~~

**R151-4-102. Definitions.**

In addition to the definitions in Title 63G, Chapter 4, Administrative Procedures Act, as used in this rule ~~[(R151-4)]~~:

- (1) "Agency head" means the executive director of the department or the director of a division.
- (2) "Applicant" means a person who submits an application.
- (3) "Application" means a request for:
  - (a) licensure;
  - (b) certification;
  - (c) registration;
  - (d) permit; or
  - (e) other right or authority granted by the department.
- (4) "Department" means:
  - (a) the Utah Department of Commerce; or
  - (b) a division of the department.
- (5) "Division" means a division of the department.
- (6) "Electronic" means a:
  - (a) facsimile transmission; or
  - (b) PDF file attached to an email.
- (7) "Intervenor" means a person permitted to intervene in an adjudicative proceeding before the department.
- (8) "Motion" means a request for any action or relief in an adjudicative proceeding.
- (9)(a) "Party in interest[;]" ~~[(a)]~~ means ~~includes~~:
  - (i) a party;
  - (ii) a relative of a party; or
  - (iii) an individual with a financial interest in the outcome of the proceeding; and

(b) does not include:

- (i) a party's counsel; or
  - (ii) an employee of a party's counsel.
- (10) "Petition" means the charging document setting forth:
- (a) statement of jurisdiction;
  - (b) statement of one or more allegations;
  - (c) statement of legal authority; and
  - (d) request for relief.
- (11) "Pleading[s]" ~~include~~ means the following ~~along with any response~~:
- (a) a notice of agency action or request for agency action;
  - ~~[(b) the petition, motions, briefs or other documents filed by the parties to an adjudicative proceeding;]~~
  - ~~[(e)]~~ a request for agency review or agency reconsideration;
  - ~~[(d) motions, briefs or other documents filed by the parties on agency review;]~~ and
  - ~~[(e)]~~ a response or reply submitted to a pleading.

**R151-4-103. Authority.**

This rule ~~[(R151-4)]~~ is adopted in accordance with ~~under~~ Subsection 63G-4-102(6) and Section 13-1-6 to ~~define, clarify, or establish the procedures that~~ govern adjudicative proceedings before the department.

**R151-4-104. Supplementing Provisions.**

Any provision of this rule ~~[(R151-4)]~~ may be supplemented by a division rule unless expressly prohibited by this rule.

**R151-4-105. Purpose and Scope.**

(1) This rule ~~[(R151-4)]~~ is intended to secure the just, speedy, and economical determination of ~~all~~ issues presented in adjudicative proceedings before the department.

(2) In the event of a conflict between this rule and a statute, the statute governs.

**R151-4-106. Utah Rules of Civil Procedure.**

The Utah Rules of Civil Procedure and related case law are persuasive authority in this rule ~~[(R151-4)]~~ but may not, except as otherwise provided by Title 63G, Chapter 4, Administrative Procedures Act or by this rule, be considered controlling authority.

**R151-4-107. Computation of Time.**

- (1) Periods of time in department proceedings shall:
  - (a) exclude the first day of the act, event, or default from which the time begins to run; and
  - (b) include the last day unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday.
- (2) When a period of time is less than seven days, Saturdays, Sundays, and legal holidays are excluded.
- (3)(a)(i) When a period of time runs after the service of a document by mail, three days shall be added to the end of the prescribed period.
  - (ii) Except as provided in Subsection R151-4-107(1)(b), these three days include Saturdays, Sundays, and legal holidays.
  - (b) No additional time is provided if service is accomplished by electronic means.
- (4) Subsection (3) does not apply to a request for agency review filing made pursuant to Subsection R151-4-901(1).

**R151-4-108. Timeliness of Administrative Proceedings.**

In both informal and formal proceedings, the hearing date shall be scheduled to provide for the hearing to be concluded not more than 180 calendar days after the day ~~on which~~:

- (1) the notice of agency action is issued; or
- (2) the initial decision with respect to a request for agency action is issued.

**R151-4-109. Extension of Time and Continuance of Hearing.**

(1) When ruling on a motion or request for extension of time or continuance of a hearing, the presiding officer shall consider:

- (a) whether there is good cause for granting the extension or continuance;
- (b) the number of extensions or continuances the requesting party has already received;
- (c) whether the extension or continuance will work a significant hardship upon the other party;
- (d) whether the extension or continuance will be prejudicial to the health, safety or welfare of the public; and
- (e) whether the other party objects to the extension or continuance.

(2)(a) Except as provided in Subsection R151-4-109(2)(b), an extension of a time period or a continuance of a hearing may not result in the hearing being concluded more than 240 calendar days after the day ~~on which~~:

- (i) the notice of agency action was issued; or
- (ii) the initial decision with respect to a request for agency action was issued.

(b) ~~[Notwithstanding R151-4-109(2)(a), a]~~ An extension of a time period or a continuance may exceed the time restriction in Subsection R151-4-109(2)(a) only if:

(i)(A) a party provides an affidavit or certificate signed by a licensed physician verifying that an illness of the party, the party's counsel, or a necessary witness precludes the presence of the party, the party's counsel, or a necessary witness at the hearing;

(B) counsel for a party withdraws shortly before the final hearing, unless the presiding officer finds the withdrawal was for the purpose of delaying the hearing, in which case the hearing will go forward with or without counsel;

(C) a parallel criminal proceeding or investigation exists based on facts at issue in the administrative proceeding, in which case the continuance must address the expiration of the continuance upon the conclusion of the criminal proceeding; or

(D) the board or commission designated to act as the factfinder at hearing is unavailable to meet on a date that:

- (I) allows the parties a reasonable period of time for discovery, motion practice, or hearing preparation; and
- (II) falls within the 240-day deadline for resolution; and
- (ii) the presiding officer finds that injustice would result from failing to grant the extension or continuance.

(c)(i) If the presiding officer considers that extenuating circumstances not contemplated in Subsection R151-4-109(2)(b) justify a continuance beyond the 240-day deadline, the presiding officer shall file a written request for continuance with the Executive Director.

(ii) A party may not directly petition the Executive Director for a continuance.

(iii) The Executive Director's decision on the presiding officer's request for continuance shall be issued on an interlocutory basis, not subject to a request for reconsideration or judicial review until after a final order on the merits is issued.

(d) The failure to conclude a hearing within the required time period is not a basis for dismissal.

(3) The presiding officer may not grant an extension of time or continuance that is not authorized by statute or rule.

(4) The factors in Subsection (1) do not apply to a request for agency review filing made pursuant to Subsection R151-4-901(1)(a). A request for an extension to file a request for agency review is governed by Subsection R151-4-901(1)(c).

**R151-4-110. Representation of Parties.**

(1) A party may:

- (a) be represented by counsel who is an active member of a state bar if counsel submits a written notice of appearance;
- (b) represent oneself individually; or
- (c) if not an individual, represent itself through an officer or employee.

(2) Counsel licensed by the bar of a state other than Utah shall submit a certificate of good standing from the relevant state bar.

**R151-4-111. Review of Emergency Orders.**

Unless otherwise provided by statute or rule:

(1)(a) A division shall schedule a hearing to determine whether an emergency order should be affirmed, set aside, or modified based on the standards in Section 63G-4-502 if:

(i) the division has previously:

- (A) commenced an emergency adjudicative proceeding in the matter; and

(B) issued an order in accordance with Section 63G-4-502 that results in a continued impairment of the affected party's rights or legal interests; and

(ii) the affected party timely submits a written request for a hearing.

(b) A hearing under this section ~~[rule (R151-4-111)]~~ shall be conducted in conformity with the procedures of Section 63G-4-206.

(2)(a) Upon request for a hearing under this section ~~[rule]~~, the Division shall conduct a hearing as soon as reasonably practical but not later than 20 days from the receipt of a written request unless the Division and the party requesting the hearing agree in writing to conduct the hearing at a later date.

(b) The Division has the burden of proof to establish, by a preponderance of the evidence, that the requirements of Section 63G-4-502 have been met.

(3)(a) Except as otherwise provided by statute, the division director or designee shall select an individual or body of individuals to act as presiding officer at the hearing.

(b) An individual who directly participated in issuing the emergency order may not act as the presiding officer.

(4)(a) Within 15 calendar days after the day ~~on which~~ the hearing to consider the emergency order concludes, the presiding officer shall issue an order in accordance with Section 63G-4-208.

(b) The order of the presiding officer is subject to agency review.

**R151-4-112. Declaratory Orders.**

(1)(a) A petition for the issuance of a declaratory order under Section 63G-4-503 shall be filed with the agency head who has primary jurisdiction to enforce or implement the statute, rule, or order for which a declaratory order is sought.

(b) The petition shall:

- (i) set forth:

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- (A) the question to be answered;
- (B) the facts and circumstances related to the question;
- (C) the statute, rule, or order to be applied to the question;

and

(D) whether oral argument is sought in conjunction with the petition; and

- (ii) comply with Part 2, Pleadings.

(2)(a) If the agency head issues a declaratory order without setting the matter for an adjudicative proceeding, the order shall be based on:

- (i) a review of the petition;
- (ii) oral argument, if any;
- (iii) laws and rules applicable to the petition;
- (iv) applicable records maintained by the department; and
- (v) other relevant information reasonably available to the department.

(b) If the agency head sets the matter for an adjudicative proceeding, the department shall issue a notice of adjudicative proceeding under Subsection 63G-4-201(2)(a).

(3) The department may not issue a declaratory order in any of the following classes of circumstances:

- (a) questions involving circumstances set forth in Subsections 63G-4-503(3)(a)(ii) or (3)(b);
  - (b) questions that are not within the jurisdiction of the department;
  - (c) questions that have been addressed by the department in an order, rule, or policy;
  - (d) questions that can be addressed by informal advice;
  - (e) questions that are addressed by statute;
  - (f) questions that would be more properly addressed by statute or rule;
  - (g) questions that arise out of pending or anticipated litigation in a civil, criminal, or administrative forum; or
  - (h) questions that are irrelevant, insignificant, meaningless, or spurious.
- (4) The recipient of a declaratory order may request agency review.

**R151-4-113. Record of an Adjudicative Proceeding.**

The record of an adjudicative proceeding includes:

- (1) each [the] pleading[s], motion, brief, exhibit, and any other document [exhibits] filed by a [the] party [ies];
- (2) the recording of a hearing;
- (3) a transcript of a hearing; and
- (4) orders or other documents issued:
  - (a) by a presiding officer; or
  - (b) on agency review or reconsideration.

**R151-4-114. Informal Adjudicative Proceedings in General and Prohibition of Discovery.**

(1) Any provision of this rule [R151-4-] that is specific to a formal adjudicative proceeding is not mandatory for an informal adjudicative proceeding.

(2) By rule or order a division may apply a provision applicable to a formal adjudicative proceeding to an informal adjudicative proceeding, except that a provision relating to discovery, including depositions, may not be applied to an informal adjudicative proceeding.

(3) Discovery is prohibited in informal adjudicative proceedings, but the department or a division may issue subpoenas or other orders to compel production of evidence in accordance with Subsection 63G-4-203(1)(e).

**R151-4-201. Docket Number and Title.**

(1) The department shall assign a docket number to each notice of agency action and, where appropriate, to each request for agency action.

(2) At a minimum the docket number shall consist of:

(a) a letter code identifying where the matter originated, as follows:

- (i) CORP-Corporations;
- (ii) CP-Consumer Protection;
- (iii) DOPL-Occupational and Professional Licensing, including additional designations that division may implement for diversion, lien recovery fund, or other programs;
- (iv) NAFA-New Automobile Franchise Act;
- (v) PVFA-Powersport Vehicle Franchise Act;
- (vi) RE-Real Estate;
- (vii) AP-Real Estate Appraisers;
- (viii) MG-Mortgage; and
- (ix) SD-Securities;

(b) a numerical code indicating the calendar year the matter arises; and

(c) another number indicating chronological position among notices of agency action or requests for agency action filed during the year.

(3) The department shall give each adjudicative proceeding a title in substantially the following form:

TABLE [4]1

BEFORE THE (DIVISION)  
OF THE DEPARTMENT OF COMMERCE  
OF THE STATE OF UTAH

In the Matter of  
(the application,  
petition or license  
of John Doe)

(Notice of Agency Action)  
(Request for Agency Action)

No. AA-2000-001

**R151-4-202. Content and Size of Pleadings and Motions and Limitation of Number of Pages.**

~~[Pleadings shall:]~~

(1) A pleading or motion shall be double-spaced, typewritten, [and] presented on standard 8 1/2 x 11 inch white paper, [and]

~~[ (2) ]~~ contain:

(a) a clear and concise statement of the allegations or facts relied upon as the basis for the pleading or motion; and

(b) an appropriate request for relief when relief is sought.

(2) A motion to dismiss or motion for summary judgment may not exceed 25 pages, not counting any attachment, unless a longer motion is permitted by the presiding officer. Other motions may not exceed 15 pages, not counting the attachments, unless a longer motion is permitted by the presiding officer.

(3) If the motion is a motion to dismiss or motion for summary judgment, the memorandum opposing the motion may not exceed 25 pages, not counting the attachments, unless a longer memorandum is permitted by the presiding officer. Other opposing memoranda may not exceed 15 pages, not counting the attachments, unless a longer memorandum is permitted by the presiding officer.

(4) If the motion is a motion to dismiss or motion for summary judgment, the reply memorandum may not exceed 15 pages, not counting the attachments, unless a longer memorandum is permitted by the presiding officer. Other reply memoranda may not exceed 10 pages, not counting the attachments, unless a longer memorandum is permitted by the presiding officer.



(5) A memorandum supporting agency review in accordance with Section R151-4-904 may not exceed 30 pages not counting the attachments, unless a longer memorandum is permitted by the presiding officer assigned to the agency review.

(6) A response to a request for agency review and the memorandum supporting that response may not exceed 30 pages not counting the attachments, unless a longer memorandum is permitted by the presiding officer assigned to the agency review.

(7) A reply memorandum filed in an agency review may not exceed 15 pages not counting the attachments, unless a longer memorandum is permitted by the presiding officer assigned to the agency review.

(8) The presiding officer may permit a party to file an overlength motion or memorandum upon a showing of good cause. An overlength motion or memorandum must include a table of contents and a table of authorities with page references. The presiding officer may rule on a motion for overlength motion or memorandum without waiting for a response. No statement of facts and legal authorities beyond a concise statement of the relief requested is required in a motion for overlength motion or memorandum.

**R151-4-203. Signing of Pleadings and Motions.**

(1) Any p[P]leading[s] or motion shall be signed by the party or the party's representative and shall show the signer's address.

(2) The signature is a certification that:

(a) the signer has read the pleading or motion; and

(b) to the best of the signer's knowledge and belief, there is good ground to support the pleading or motion.

**R151-4-204. Amendments to Pleadings.**

(1)(a) A party may amend a pleading once as a matter of course at any time before a responsive pleading is served.

(b) A party that does not qualify to amend a pleading under (1)(a) may amend a pleading only by leave of the presiding officer or by written consent of the adverse party.

(2) A party shall respond to an amended pleading within the later of:

(a) the time remaining for response to the original pleading; or

(b) ten days after service of the amended pleading.

(3) Defects in a pleading that do not affect substantial rights of a party need not be amended and shall be disregarded.

**R151-4-205. Response to a Notice of Agency Action.**

(1) A respondent in a formal adjudicative proceeding shall file a response to the notice of agency action.

(2)(a) A respondent in an informal adjudicative proceeding may file a response to a notice of agency action.

(b) The presiding officer may, by a written order, require a respondent in an informal adjudicative proceeding to submit a response.

(3) Unless a different date is established by law or rule the following shall be filed within 30 days after the mailing date of the notice:

(a) a response to a notice of agency action; or

(b) a notice of receipt of request for agency action.

**R151-4-301. General Provisions.**

(1) A party may file a motion that is relevant and timely.

(2) Each[All] motion[s] shall be filed in writing unless the necessity for a motion arises at a hearing and could not have been anticipated prior to the hearing.

(3) Subsection 63G-4-102(4)(b) may not be construed to prohibit a presiding officer from granting a timely motion to dismiss for

(a) failure to prosecute;

(b) failure to comply with this rule [~~(R151-4)~~], except where this rule expressly provides that a matter is not a basis for dismissal;

(c) failure to establish a claim upon which relief may be granted; or

(d) other good cause basis.

**R151-4-302. Motion to Dismiss.**

(1) A motion to dismiss on a ground described in Rule 12(b)(1) through (7) of the Utah Rules of Civil Procedure shall be filed prior to filing a responsive pleading.

(2) In a case that is under agency review:

(a) ~~[A]~~a motion to dismiss may be brought for:

(i) failure to comply with a jurisdictional deadline;

(ii) failure to file a hearing transcript; or

(iii) failure to file a required memorandum.

(b) A motion to dismiss may not be brought on an allegation or argument as to:

(i) the sufficiency of a pleading or a memorandum in support thereof;

(ii) the sufficiency of the evidence; or

(iii) any other issue that requires substantive analysis.

**R151-4-303. Memoranda and Affidavits.**

(1) The presiding officer shall permit and may require memoranda and affidavits in support of, or in response to, a motion.

(2) Unless otherwise governed by a scheduling order issued by the presiding officer:

(a) memoranda or affidavits in support of a motion shall be filed concurrently with the motion;

(b) memoranda or affidavits in response to a motion shall be filed no later than ~~14[0]~~ days after service of the motion; and

(c) a final reply shall be filed no later than ~~seven[five]~~ days after service of the response.

**R151-4-304. Oral Argument.**

(1) The presiding officer may permit or require oral argument on a motion.

(2) Oral argument on a motion shall be scheduled to take place no more than 10 days after the last day ~~[on which]~~ the party:

(a) who did not make the motion could have filed a response if that party does not file a response; or

(b) the party who made the motion;

(i) replies to the opposing party's response to the motion;

or  
(ii) could have replied to the opposing party's response to the motion.

**R151-4-305. Ruling on a Motion.**

(1) The presiding officer shall verbally rule on a motion at the conclusion of oral argument whenever possible.

(2) When a presiding officer verbally rules on a motion, the presiding officer shall issue a written ruling within 30 calendar days after the day ~~[on which]~~ the presiding officer makes the verbal ruling.

(3) If the presiding officer does not verbally rule on a motion at the conclusion of oral argument, the presiding officer shall

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issue a written ruling on the motion no more than 30 calendar days after:

- (a) oral argument; or
- (b) if there is no oral argument, the final submission on the motion as outlined in Subsection R151-4-304(2).

(4) The failure of the presiding officer to comply with the requirements of Section R151-4-305:

- (a) is not a basis for dismissal of the matter; and
- (b) may not be considered an automatic denial or grant of the motion.

**R151-4-306. Recusal or Motion to [Recuse or] Disqualify a Board or Commission Member.**

(1) A board or commission member may recuse him or herself at any time from participation in an action before the board or commission, even if a party to the action has not requested the member's recusal or filed a motion to disqualify the member.

(2)(a) A party to an action before a board or commission may file a motion to disqualify a board or commission Member. The motion must be accompanied by a certificate that the motion is filed in good faith and must be supported by an affidavit or unsworn declaration as described in Title 78B, Chapter 18a, Uniform Unsworn Declarations Act stating facts sufficient to show bias, prejudice, or conflict of interest.

(2)(b) The motion must be filed after commencement of the action, but no later than 21 days after the last of the following:

- (i) the date of service of the action or hearing on the Respondent; or
- (ii) the date the moving party knew or should have known of the grounds upon which the motion is based.

If the last event occurs fewer than 21 days before a hearing, the motion must be filed as soon as practicable.

(2)(c) No party may file more than one motion to disqualify in an action, unless the second or substitute motion is based on grounds that the party did not know of and could not have known at the time of the earlier motion.

(2)(d) If timeliness of the motion is determined under Subsection (2)(b)(ii) or (2)(c), the affidavit or declaration supporting the motion must state when and how the party came to know of the reason for disqualification.

(3) Within 7 days of receipt of the motion by the presiding officer, the presiding officer shall provide a copy of the motion to the board or commission member who is the subject of the motion.

~~\_\_\_\_\_ (1)(a) A motion to recuse or disqualify a Board or Commission member must be filed no later than 14 days prior to the scheduled hearing before the Board or Commission and may include affidavits supporting the basis for the motion. Service of such motion to the opposing party shall be by electronic mail, facsimile or overnight mail.~~

~~\_\_\_\_\_ (b) A response to a motion to recuse or disqualify a Board or Commission member is permitted but not mandatory. Any response shall be filed no later than seven days before the scheduled hearing. Service of a response to the opposing party shall be by electronic mail, facsimile or overnight mail.~~

~~\_\_\_\_\_ (c) No reply is permitted.]~~

(4)(2)(a) The decision on a motion to [recuse or] disqualify a Board or Commission member shall be made by the presiding officer [Board or Commission member the motion seeks to recuse or disqualify]. A written decision is not necessary.

~~\_\_\_\_\_ (b) At the beginning of the scheduled hearing, the Board or Commission member shall state on the record his or her decision. The Board or Commission member may choose to notify the~~

~~presiding officer of his or her decision prior to the hearing, and the presiding officer shall then state the decision on the record.~~

~~\_\_\_\_\_ (c) The Board or Commission member may ask the advice of the other members at the beginning of a scheduled hearing, but the Board or Commission member shall not be bound by any such advice.]~~

(b)(4) The Division [presiding officer,] or moving [filing] party may not subject the Board or Commission member to questioning or examination on the motion, but the presiding officer or the board or commission may question the member verbally or in writing prior to issuing a decision on the motion.

(5) A recused or disqualified board or commission member may not participate with fellow board or commission members in the action and is prohibited from voting on the action.

~~\_\_\_\_\_ (e) The Division or presiding officer may not reverse a recusal or disqualification decision made by a Board or Commission member.]~~

~~[(f)6] [Like all interlocutory matters, a] A decision on a motion to [recuse or] disqualify a Board or Commission member is not subject to an interlocutory appeal or agency review.~~

(7)(3) This section [rule] does not apply to any adjudicative proceedings under [the] Title 13, Chapter 14, New Automobile Franchise Act, [Utah Code Ann. Sections 13-14-101 et seq.,] or Title 13, Chapter 35, [the] Powersport Vehicle Franchise Act [Utah Code Ann. Sections 13-35-101 et seq].

~~\_\_\_\_\_ (4) A Board or Commission member may recuse him or herself at any time regardless of whether a party has filed a motion to recuse or disqualify the Board or Commission member.]~~

**R151-4-401. Filing.**

(1)(a) Any [P] pleading[s] or motion shall be filed with the department or division in which the adjudicative proceeding is being conducted, which maintains the official file.

(b) The filing of discovery documents is governed by R151-4-512.

(2)(a) A filing may be accomplished by:

- (i) hand delivery of a paper copy, pursuant to Subsection (2)(b)(i);
- (ii) first class or certified mail, postage pre[-]paid, of a paper copy, pursuant to Subsection (2)(b)(i);
- (iii) fax, pursuant to Subsection (2)(b)(ii); or
- (iv) attachment to electronic mail, pursuant to Subsection (2)(b)(iii).

(b)(i) A filing by hand delivery or first class or certified mail is complete when it is received and date stamped by the department or division, as applicable.

(ii) A filing by fax or electronic mail is complete upon transmission, if:

- (A) compliant with Subsection (1);
- (B) completed and received during the department's operating hours, 8 a.m. to 5 p.m. Mountain Time [Standard or Daylight Savings, as applicable], on days other than Saturdays, Sundays, or state or federal holidays;
- (C) the recipient receives [all pages of] the complete document [transmitted]; and,
- (D) the party filing the document:

- (I) also mails the document to the department or division the same day, as evidenced by a postmark; or
- (II) prior to any applicable filing deadline, is expressly excused by the presiding officer from mailing the document.

(c) The burden is on the party filing the document to ensure that a filing is properly completed.

**R151-4-402. Service.**

(1)(a) ~~[P]~~leading[s] or motions filed by the parties shall be concurrently served on ~~each[+]~~ party[ies] and any administrative law judge who is assigned ~~[+]~~to the case. Documents issued by the presiding officer shall be concurrently served on ~~[all parties]~~each party.

(b) The party who files a pleading or motion is responsible for service of the pleading or motion.

(c) The presiding officer who issues a document is responsible for service of the document.

(2)(a) Service may be made:

(i) on a person upon whom a summons may be served pursuant to the Utah Rules of Civil Procedure; and

(ii) personally or on the agent of the person being served.

(b) If a party is represented by an attorney, service shall be made on the attorney.

(3)(a) Service may be accomplished by hand delivery of a paper copy, by mail of a paper copy to the last known address of the intended recipient, or by attachment to electronic mail.

(b) Service by hand delivery is complete upon delivery to:

(i) the person who is required to be served;

(ii) any individual who is employed by, and physically present at, the business office of the person who is required to be served; or

(iii) a mailbox or dropbox that is:

(A) assigned to the person who is required to be served;

and

(B) physically located at the person's place of business.

(c) Service by mail is complete upon mailing, as evidenced by a postmark.

(d) Service by attachment to electronic mail is complete on transmission if transmission is completed during normal business hours, 8 a.m. to 5 p.m. on days other than Saturdays, Sundays, and state and federal holidays, at the place receiving the service; otherwise, service is complete on the next business day.

(4) There shall appear on ~~each[+]~~ document[s] required to be served a certificate of service in substantially the following form:

TABLE 2[+]

CERTIFICATE OF SERVICE

I certify that I have this day served the foregoing document on the parties of record in this proceeding set forth below (by delivering a copy thereof in person) (by mailing a copy thereof, properly addressed by first class mail with postage prepaid, to) (by electronic means to):

(Name(s) of parties of record)

(Address(es))

Dated this (day) day of (month), (year).

(Signature)

(Name and Title)

**R151-4-501. Applicability.**

(1) This part, ~~[c]~~Sections R151-4-501 through~~[to]~~ R151-4-516~~[s]~~ applies only to formal adjudicative proceedings.

~~[(2) Discovery is prohibited in informal adjudicative proceedings.]~~

**R151-4-502. Scope of Discovery.**

(1) Parties may obtain discovery regarding a matter that:

(a) is not privileged;

(b) is relevant to the subject matter involved in the proceeding; and

(c) relates to a claim or defense:

(i)(A) of the party seeking discovery; or

(B) of another party;

(ii) that is set forth in a pleading; and

(iii) that is brought pursuant to a statement of fact, information, or belief.

(2)(a) Subject to Subsection R151-4-502(3) and Section R151-4-504, a party may obtain discovery of documents and tangible things otherwise discoverable under Subsection R151-4-502(1) and prepared in anticipation of litigation or for hearing by or for another party or by or for that party's representative, including the party's attorney, consultant, insurer or other agent, only on a showing that the party seeking discovery:

(i) has substantial need of the materials in the preparation of the case; and

(ii) is unable without undue hardship to obtain the substantial equivalent of the materials by other means.

(b) In ordering discovery of materials described in Subsection R151-4-502(2)(a), the presiding officer shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney of a party.

(3) Discovery of facts known and opinions held by experts, otherwise discoverable under Subsection R151-4-502(1) and acquired or developed in anticipation of litigation or for hearing, may be obtained only through the disclosures required by Section R151-4-504.

**R151-4-503. Disclosures Required by Prehearing Order.**

(1) In the prehearing order the presiding officer may require each party to disclose in writing:

(a)(i) the name and, if known, the address and telephone number of each individual likely to have discoverable information supporting the party's claims or defenses; and

(ii) identification of the topic(s) addressed in the information maintained by each individual; and

(b)(i) a copy of ~~each[+]~~ discoverable document[s], data compilation[s], and tangible thing[s] that:

(A) ~~[are]~~is in the party's possession, custody, or control; and

(B) supports the party's claims or defenses; or

(ii)(A) a description, by category and location, of the tangible things identified in Subsection R151-4-503(1)(b)(i); and

(B) reasonable access.

(2)(a) The order may not require disclosure of expert testimony, which is governed by Section R151-4-504.

(b) The order shall not require the disclosure of information regarding persons or things intended to be used solely for impeachment.

(3)(a) Each party shall make the disclosures required by Subsection R151-4-503(1) within 14 days after the prehearing order is issued.

(b) A party joined after the prehearing conference shall make these disclosures within 30 days after being served.

(c) A party shall make initial disclosures based on the information then reasonably available and is not excused from making disclosures because:

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- (i) the party has not fully completed the investigation of the case;
  - (ii) the party challenges the sufficiency of another party's disclosures; or
  - (iii) another party has not made disclosures.
- (4) Disclosures required under Section R151-4-503 shall be made in writing, signed, and served.

**R151-4-504. Disclosures Otherwise Required.**

- (1)(a) A party shall:
- (i) disclose in writing the name, address and telephone number of any person who might be called as an expert witness at the hearing; and
  - (ii) provide a written report signed by the expert that contains a complete statement of ~~each~~ opinion[s] the expert will offer at the hearing and the basis and reasons for them. Such an expert may not testify in a party's case-in-chief concerning any matter not fairly disclosed in the report. The party offering the expert shall pay the costs for the report.
- (b) Unless otherwise stipulated in writing by the parties or ordered in writing by the presiding officer, the disclosures required by Subsection R151-4-504(1) shall be made:
- (i) within 30 days after the deadline for completion of discovery; or
  - (ii) if the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party under Subsection R151-4-504(1)(a), within 60 days after the disclosure made by the other party.
- (c) If either party fails to file its disclosure within the time frames in Subsection R151-4-504(1), the presiding officer:
- (i) shall exclude the expert testimony from the proceeding; and
  - (ii) may not continue the hearing to allow additional time for the disclosures.
- (2)(a) In addition to the disclosures required by Subsection R151-4-504(1), a party shall disclose information regarding evidence the party may present at hearing other than solely for impeachment purposes pursuant to the pretrial disclosures provisions of ~~[Rule 26 of the]~~ Utah Rules of Civil Procedure, Rule 26.
- (b)(i) The disclosures required by Subsection R151-4-504(2) shall be made at least 45 days before the hearing.
- (ii) Within 14 days after service of the disclosures a party may serve and file an objection to the:
- (A) use of a deposition designated by another party; and
  - (B) admissibility of materials identified under Subsection R151-4-504(2)(a).
- (iii) An objection not timely made is waived.

**R151-4-505. Other Discovery Methods.**

- Parties may obtain discovery by one or more of the following methods:
- (1) depositions upon oral examination;
  - (2) production of documents or things;
  - (3) permission to enter upon land or other property for inspection and other purposes; and
  - (4) physical and mental examinations.

**R151-4-506. Limits on Use of Discovery.**

The frequency and extent of discovery shall be limited by the presiding officer regardless of whether either party files a motion to limit discovery if:

- (1) the discovery sought is unreasonably cumulative, duplicative, or is obtainable from some other source that is:
  - (a) more convenient;
  - (b) less burdensome; or
  - (c) less expensive;
- (2) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or
- (3) the discovery is unduly burdensome or expensive, taking into account:
  - (a) the needs of the case;
  - (b) the amount in controversy;
  - (c) limitations on the parties' resources; and
  - (d) the importance of the issues at stake in the litigation.

**R151-4-507. Protective Orders.**

- (1) Upon motion by a party or by the person from whom discovery is sought the presiding officer may make an order that justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:
- (a) that the discovery not be had;
  - (b) that the discovery may be had only on specified terms and conditions, including a designation of the time or place;
  - (c) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;
  - (d) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;
  - (e) that discovery be conducted with no one present except persons designated by the presiding officer;
  - (f) that a deposition after being sealed be opened only by order of the presiding officer;
  - (g) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; or
  - (h) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the presiding officer.
- (2) If the motion for a protective order is denied in whole or in part, the presiding officer may order that a party or person provide or permit discovery.

**R151-4-508. Timing, Completion, and Sequence of Discovery.**

- (1) Parties are encouraged to initiate appropriate discovery procedures in advance of the prehearing conference so that discovery disputes can be addressed at that conference to the extent possible.
- (2)(a) ~~[All]~~ Discovery, except for prehearing disclosures governed by Section R151-4-504, shall be completed within 120 calendar days after the day ~~on which~~:
- (i) the notice of agency action was issued; or
  - (ii) the initial decision with respect to a request for agency action was issued.
- (b) Factors the presiding officer shall consider in determining whether to shorten this time period include:
- (i) whether a party's interests will be prejudiced if the time period is not shortened;
  - (ii) whether the relative simplicity or nonexistence of factual issues justifies a shortening of discovery time; and
  - (iii) whether the health, safety or welfare of the public will be prejudiced if the time period is not shortened.
- (c) Factors the presiding officer shall consider in determining whether a party has demonstrated good cause to extend this time period include, in addition to those set forth in R151-4-109:

(i) whether the complexity of the case warrants additional discovery time; and

(ii) whether that party has made reasonable and prudent use of the discovery time that has already been available to the party since the proceeding commenced.

(d) ~~[Notwithstanding R151-4-508(2)(c),]~~ ~~[t]~~he presiding officer may not extend discovery in a way that prevents the hearing from taking place within the time frames established in Section R151-4-108.

(3)(a) Unless the presiding officer orders otherwise for the convenience of parties and witnesses, and except as otherwise provided by this rule~~[(R151-4)]~~, discovery methods may be used in any sequence.

(b) The fact that a party is conducting discovery shall not operate to delay another party's discovery.

**R151-4-509. Supplemented Disclosures and Amended Responses.**

(1) A party who has made a disclosure or responded to a request for discovery with a response that was complete when made shall supplement the disclosure or amend the response to include subsequent information if:

(a) ordered by the presiding officer; or

(b) a circumstance described in Subsections~~[R151-4-509]~~(2) or (3) exists.

(2)(a) A party shall supplement disclosures if:

(i) the party learns that in some material respect the information disclosed is incomplete or incorrect; and

(ii) the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.

(b) With respect to testimony of an expert from whom a report is required under Section R151-4-504:

(i) the duty extends to information contained in the report; and

(ii) additions or other changes to this information shall be disclosed by the time the party's disclosures under Section R151-4-504 are due.

(3) A party shall amend a prior response to a request for production:

(a) within a reasonable time after the party learns that the response is in some material respect incomplete or incorrect; and

(b) if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.

**R151-4-510. Prehearing Conference - Scheduling the Hearing Date.**

(1) Each notice of agency action or initial decision with respect to a request for agency action:

(a) shall contain the time, date, and location of a prehearing conference, which shall be at least 45 calendar days but not more than 60 calendar days after the date of the notice of agency action or initial decision with respect to a request for agency action;

(b) shall contain a clear notice that failure to respond within 30 calendar days may result in:

(i) cancellation of the prehearing conference; and

(ii) a default order; and

(c) may contain the date, consistent with Section R151-4-108, of the scheduled hearing.

(2)(a) The prehearing conference may be in person or telephonic.

(b) Each Party~~[All parties]~~, or their counsel, shall participate in the conference.

(c) The conference shall include discussion and scheduling of discovery, prehearing motions, and other necessary matters.

(3) During the prehearing conference, the presiding officer shall issue a verbal order, and shall issue a written order to the same effect within 2 business days after the conference is concluded, which shall address each of the following:

(a) if necessary, scheduling an additional prehearing conference;

(b) setting a deadline for the filing of ~~[all]~~prehearing motions and cross-motions, including motions for summary judgment, which deadline shall allow for ~~[all]~~motions to be submitted and ruled on prior to the hearing date;

(c) modifying, if appropriate, a deadline for disclosures;

(d) resolving discovery issues;

(e) establishing a schedule for briefing, discovery needs, expert witness reports, witness and exhibit lists, objections, and other necessary or appropriate prehearing matters;

(f) if not already scheduled, scheduling a hearing date in compliance with Section R151-4-108; and

(g) dealing with other necessary matters.

(4) A party joined after the prehearing conference is bound by the order issued as a result of that conference unless the order is modified in writing pursuant to a stipulation or motion.

(5)(a) ~~[Notwithstanding any other rule, t]~~The presiding officer shall schedule ~~[all]~~prehearing matters consistent with Section R151-4-108.

(b) The presiding officer may:

(i) adjust time frames as necessary to accommodate Section R151-4-108; and

(ii) schedule appropriate prehearing matters to occur concurrently.

**R151-4-511. Signing of Disclosures, Discovery Requests, Responses, and Objections.**

(1)(a) Each~~[Every]~~ disclosure shall:

(i) be signed by:

(A) at least one attorney of record; or

(B) the party if not represented by an attorney; and

(ii) include the mailing address of the signer.

(b) The signature of the attorney or party constitutes a certification that to the best of the signer's knowledge, information, and belief, formed after a reasonable inquiry, the disclosure is complete and correct as of the time it was made.

(2)(a) Each~~[Every]~~ request for discovery or response or objection to discovery shall:

(i) be signed by:

(A) at least one attorney of record; or

(B) the party if not represented by an attorney; and

(ii) include the mailing address of the signer.

(b) The signature of the attorney or party constitutes a certification that the signer has read the request, response, or objection, and that to the best of the signer's knowledge, information, and belief formed after a reasonable inquiry it is:

(i) consistent with this rule ~~[(R151-4)]~~and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law;

(ii) not interposed for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and

(iii) not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, and the importance of the issues at stake in the proceeding.

(3)(a) If a request, response, or objection is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, response or objection.

(b) A party is not obligated to take an action with respect to a request, response, or objection until it is signed.

**R151-4-512. Filing of Discovery Requests or Disclosures.**

(1) Unless otherwise ordered by the presiding officer:

(a) a party may not file a request for or response to discovery, but shall file only the original certificate of service stating that the request or response has been served on the other parties and the date of service;

(b) ~~except as described in Subsection R151-4-512(1)(c), a party may not file any of the disclosures required by the prehearing order~~ ~~or any of the expert witness disclosures required by R151-4-504],~~ but shall file only the original certificate of service stating that the disclosures have been served on the other parties and the date of service;

~~[(c) except as may be required by Rule 30 of the Utah Rules of Civil Procedure, depositions shall not be filed;]~~ and

~~[(d)]~~(c) a party shall file the disclosures required by Section R151-4-504.

(2) A party filing a motion for a protective order or a motion for an order compelling discovery shall attach to the motion a copy of the request or response at issue.

**R151-4-513. Subpoenas.**

(1) Each subpoena:

(a) shall be issued and signed by the presiding officer;

(b) shall state the title of the action;

(c) shall command each person to whom it is directed to attend and give testimony at a hearing or deposition at a time and place specified;

(d) may command the person to whom it is directed to produce designated books, papers, or tangible things, and in the case of a subpoena for a deposition, may permit inspection and copying of the items; and

(e) shall limit its designation of books, papers, or tangible things to matters properly within the scope of discoverable information.

(2) A subpoenaed individual shall receive the fee for attendance and mileage reimbursement required by law.

(3)(a) A subpoena commanding a person to appear at a hearing or a deposition in Utah may be served at any place in Utah.

(b) A person who resides in Utah may be required to appear at a deposition:

(i) in the county where the person resides, is employed, or transacts business in person; or

(ii) at any reasonable location as the presiding officer may order.

(c) A person who does not reside in this state may be required to appear at a deposition:

(i) in the county in Utah where the person is served with a subpoena; or

(ii) at any reasonable location as the presiding officer may order.

(4) A subpoena shall be served in accordance with the requirements of the jurisdiction in which service is made.

(5) Upon a motion made promptly to quash or modify a subpoena, but no later than the time specified in the subpoena for compliance, the presiding officer may:

(a) quash or modify the subpoena, if it is shown to be unreasonable and oppressive; or

(b) conditionally deny the motion with the denial conditioned on the payment of the reasonable cost of producing the requested materials by the person on whose behalf the subpoena is issued.

(6)(a) In the case of a subpoena requiring the production of books, papers, or other tangible things at a deposition, the person to whom the subpoena is directed may, within 10 days after service or on or before the time specified in the subpoena for compliance if the time is less than 10 days after service, serve on the attorney designated in the subpoena a written objection to production, inspection, or copying of any of the designated materials.

(b) If this objection is made, the party serving the subpoena is not entitled to production, inspection, or copying of the materials except pursuant to a further order of the presiding officer who issued the subpoena.

**R151-4-514. Production of Documents and Things and Entry Upon Land for Inspection and Other Purposes.**

(1) Upon approval by the presiding officer, a party may serve on another party a request:

(a) to produce and permit the party making the request to:

(i) inspect and copy a data compilation from which information can be obtained and translated into a reasonably usable form; or

(ii) inspect and copy, test, or sample a document or tangible thing that:

(A) constitutes or contains matters within the scope of Subsection R151-4-502(1); and

(B) are in the possession, custody or control of the party upon whom the request is served; or

(b) to permit, within the scope of Subsection R151-4-502(1), entry on designated land, property, object, or operation in the possession or control of the party upon whom the request is served for the purpose of inspection, measuring, surveying, photographing, testing, or sampling.

(2)(a) Before permitting a party to serve a request for production of documents, the presiding officer must first find that the requesting party has demonstrated the records have not already been provided.

(b) After approval by the presiding officer, the request may be served on a party.

(c) The request shall:

(i) set forth the items to be inspected either by individual item or by category;

(ii) describe each item and category with particularity; and

(iii) specify a reasonable time, place, and manner of making the inspection and performing the related acts.

(d)(i) The party upon whom the request is served shall serve a written response within 20 days after service of the request unless the presiding officer allows a shorter or longer time in a written order.

(ii) The response shall state, with respect to each specific item or category:

(A) that inspection and related activities will be permitted as requested; or

(B) an objection.

- (iii) The party submitting the request may move for an order under Section R151-4-516 with respect to any:
  - (A) objection;
  - (B) failure to respond to any part of the request; or
  - (C) failure to permit inspection as requested.
- (e) A party who produces documents for inspection shall:
  - (i) produce them as they are kept in the usual course of business; or
  - (ii) organize and label them to correspond with the categories in the request.

**R151-4-515. Physical and Mental Examination of Persons.**

(1)(a) When the mental or physical condition, including the blood group, of a party or of a person in the custody or under the legal control of a party is in controversy, the presiding officer may order the party or person to:

- (i) submit to a physical or mental examination by a physician; or
  - (ii) produce for examination the person in the party's custody or legal control.
- (b) The order:
- (i) may be made only on motion for good cause shown and upon notice to the person to be examined and to each[all] party[parties]; and
  - (ii) shall specify:
    - (A) the time, place, manner, conditions, and scope of the examination; and
    - (B) the person or persons by whom it is to be made.

(2)(a)(i) If requested by the party against whom an order is made under this rule or the person examined, the party causing the examination to be made shall deliver to the requester a copy of a detailed written report of the examining physician including findings, diagnoses, conclusions, test results, and reports of any earlier examination of the same condition.

(ii)(A) After delivery, the party causing the examination is entitled, on request, to receive from the party against whom the order is made a like report of an examination, previously or thereafter made, of the same condition unless, in the case of an examination of a person not a party, the party shows that the party is unable to obtain it.

(B) The presiding officer on motion may order a party to deliver a report, and if a physician fails or refuses to make a report, the presiding officer may exclude the physician's testimony at the hearing.

(b) By requesting and obtaining an examination report or by taking the deposition of the examiner, the party examined waives any privilege regarding the testimony of any[every] other person who has examined or may thereafter examine the party for the same mental or physical condition.

(c) Subsection R151-4-515(2):

(i) applies to examination made by agreement of the parties unless the agreement expressly provides otherwise; and

(ii) does not preclude discovery of a report of an examining physician or the taking of a deposition of the physician under any other rule.

**R151-4-516. Motion to Compel Discovery - Sanctions.**

(1)(a) The discovering party may move for an order compelling discovery if:

- (i) a party fails to make disclosures required by a prehearing order;

- (ii) a party fails to make the disclosures required by R151-4-504;

(iii) a deponent fails to answer a question;

(iv) a corporation or other entity named as a deponent fails to designate an individual to testify pursuant to ~~[Rule 30 of the]~~ Utah Rules of Civil Procedure, Rule 30; or

(v) a party, in response to a request for inspection under Section R151-4-514, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested.

(b) When taking a deposition, the proponent of the question may complete or adjourn the examination before applying for an order.

(c) If the presiding officer denies the motion in whole or in part, the presiding officer may make a protective order that otherwise would be authorized by Section R151-4-507.

(d) An evasive or incomplete answer is treated as a failure to answer.

(2)(a) If a party or other person fails to comply with an order compelling discovery:

(i) the department may seek civil enforcement in the district court under Section 63G-4-501; or

(ii) the presiding officer may, for good cause, issue an order:

(A) that the related matters and facts shall be taken to be established;

(B) refusing to allow the disobedient party to support or oppose designated claims or defenses; or

(C) prohibiting the disobedient party from introducing designated matters in evidence;

(D) striking out pleadings or motions, or portions of pleadings or motions;

(E) dismissing the proceeding or a portion of the proceeding; or

(F) rendering a judgment by default against the disobedient party.

**R151-4-601. Applicability - Scope.**

(1)(~~a~~) This part, Section [c]R151-4-601 [to-]through Section R151-4-611, [r] applies only to formal adjudicative proceedings.

~~(b) Discovery is prohibited in informal adjudicative proceedings.~~

(2)(a) Only as provided in this part and with a written order of the presiding officer, a party may take the testimony by deposition upon oral examination of certain persons, including parties, who have knowledge of facts relevant to the claims or defenses of a party in the proceeding.

(b) The attendance of witnesses may be compelled by subpoena.

(c) A party may not depose an expert witness.

**R151-4-602. General Provisions - Persons who may be Deposed.**

(1) Before a party may request leave to take a person's deposition, the party must first make ~~[diligent]~~ efforts to obtain discovery from that person by means of an ~~[informal]~~ interview. For purposes of this section, "interview" means an unsworn, oral examination of a person with knowledge of facts relevant to the claims or defenses of a party in the proceeding, whether in-person or by remote means.

(2) A party may not be granted leave to take a deposition unless the party, upon motion, demonstrates to the satisfaction of the

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presiding officer that the person has knowledge of facts relevant to the claims or defenses of a party in the proceeding and:

(a) has refused a reasonable request by the moving party for an ~~[informal]~~ interview;

~~(b) has failed to attend a scheduled interview;~~  
~~(c) has failed to provide reasonable availability for an interview;~~

~~[(b) after having notice of at least two reasonable requests by that party for an informal interview, has failed to respond to those requests;]~~

~~[(d)]~~ has refused to answer reasonable questions propounded to ~~[him]~~ the person by that party in an ~~[informal]~~ interview; or

~~[(e)]~~ will be unavailable to testify at the hearing.

(3) In deciding whether to grant the motion, the presiding officer shall consider the probative value the testimony is likely to have in the proceeding and the complexity of the proceeding.

~~(4) The moving party has the burden of proof in a motion for leave to take a deposition[demonstrating the need for a deposition].~~

(5) Any participant in an interview conducted in accordance with this section may create an audio recording of the interview as long as the person recording the interview gives verbal notice to the other participants that the interview is being recorded. Any participant that creates an audio recording of the interview shall provide a copy of the recording to each party to the proceeding within 10 days of the interview.

(6) The parties to a proceeding may stipulate to take a deposition rather than conduct an interview, even if the requirements of this section have not been met.

**R151-4-603. Notice of Deposition - Requirements.**

(1)(a) A party permitted to take a deposition shall give notice pursuant to the notice requirements of ~~[Rule 30 of the]~~ Utah Rules of Civil Procedure, Rule 30.

(2)(a) The parties may stipulate in writing or, upon motion, the presiding officer may order in writing that the testimony at a deposition be recorded by means other than stenographic means.

(b) The stipulation or order:

(i) shall designate the person before whom the deposition shall be taken;

(ii) shall designate the manner of recording, preserving and filing the deposition; and

(iii) may include other provisions to assure the recorded testimony will be accurate and trustworthy.

(c) A party may arrange to have a transcript made at the party's own expense.

(d) A deposition recorded by means other than stenographic means shall set forth in writing:

(i) any objections;

(ii) any changes made by the witness;

(iii) the signature of the witness identifying the deposition as the witness's own or the statement of the court reporter required if the witness does not sign; and

(iv) any certification required by ~~[Rule 30 of the]~~ Utah Rules of Civil Procedure, Rule 30.

(3) The notice to a party deponent may be accompanied by a request in compliance with R151-4-514 for the production of documents and tangible things at the deposition.

(4) ~~[Rule 30(b)(6) of the]~~ Utah Rules of Civil Procedure, Rule 30(b)(6), shall apply where a deponent is:

(a) a public or private corporation;

(b) a partnership;

(c) an association; or

(d) a government agency.

(5) The parties may stipulate in writing or, upon motion, the presiding officer may order a deposition be taken by telephone.

**R151-4-604. Examination and Cross-Examination.**

(1) Examination and cross-examination of witnesses may proceed as permitted at a hearing under the Utah Administrative Procedures Act and ~~[pursuant to Rule 30 of the]~~ Utah Rules of Civil Procedure, Rule 30.

**R151-4-605. Motion to Terminate or Limit Examination.**

(1) The presiding officer may order the court reporter conducting the examination to end the deposition or may limit the scope and manner of taking the deposition pursuant to ~~[Rule 30 of the]~~ Utah Rules of Civil Procedure, Rule 30.

**R151-4-606. Submission to Witness - Changes - Signing.**

A deposition shall be submitted to the witness, changed, and signed pursuant to ~~[Rule 30 of the]~~ Utah Rules of Civil Procedure, Rule 30.

**R151-4-607. Certification - Delivery - Exhibits.**

(1) The transcript or recording of a deposition shall be certified and delivered pursuant to ~~[Rule 30 of the]~~ Utah Rules of Civil Procedure, Rule 30.

(2) Exhibits shall be marked for identification, inspected, copied, and delivered pursuant to ~~[Rule 30 of the]~~ Utah Rules of Civil Procedure, Rule 30.

**R151-4-608. Persons Before Whom Depositions May Be Taken.**

Depositions shall be taken before an individual certified court reporter as defined by Title 58, Chapter 74, State Certification of Court Reporters Act ~~[holding a current and active license under Utah Code Title 58, Chapter 74, Certified Court Reporters Licensing Act].~~

**R151-4-609. Use of Depositions.**

(1) Pursuant to the other provisions of Section R151-4-609, a part of a deposition, if admissible under the rules of evidence applied as though the witness were present and testifying, may be used against a party who:

(a) was present or represented at the taking of the deposition; or

(b) had reasonable notice of the deposition.

(2) A party may use a deposition:

(a) to contradict or impeach the testimony of the deponent as a witness; or

(b) for another purpose permitted by the Utah Rules of Evidence.

(3) An adverse party may use a deposition for any purpose.

(4) A party may use the deposition of a witness, whether or not a party, for any purpose if the presiding officer finds that:

(a) the witness is dead;

(b) the witness is more than 100 miles from the hearing, unless it appears the absence of the witness was procured by the party offering the deposition;

(c) the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; or

(d) the party offering the deposition has been unable to procure the attendance of the witness by subpoena.



(5) If part of a deposition is offered in evidence by a party, an adverse party may require introduction of any other part ~~that~~<sup>which</sup> ought, in fairness, to be considered with the part introduced.

(6) A deposition lawfully taken and filed in a court or another agency within Utah may be used as if originally taken in the pending proceeding.

(7) A deposition previously taken may otherwise be used as permitted by the Utah Rules of Evidence.

**R151-4-610. Objections to Admissibility.**

A party may object at a hearing to receiving in evidence any part of a deposition for a reason that would require the exclusion of the evidence if the witness were present and testifying.

**R151-4-611. Effect of Errors and Irregularities in Depositions.**

(1) An error or irregularity in the notice for taking a deposition is waived unless a party promptly serves a written objection on the party giving the notice.

(2) Objection to taking a deposition because of disqualification of the court reporter before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(3) An objection to the competency of a witness or to the competency, relevancy, or materiality of testimony is not waived by failure to make it before or during the taking of the deposition, unless the basis of the objection is one that could have been obviated or removed if presented at that time.

(4) An error or irregularity occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties, and an error that might be obviated, removed, or cured if promptly presented, is waived unless an objection is made at the taking of the deposition.

(5) An error or irregularity in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, endorsed, transmitted, filed, or otherwise dealt with is waived unless a motion to suppress is made with reasonable promptness after the defect is, or with due diligence should have been, discovered.

**R151-4-701. Hearings Required or Permitted.**

A hearing shall be held in an adjudicative proceeding<sup>[s]</sup> in which a hearing is:

- (1) required by statute or rule and not waived by the parties; or
- (2) permitted by statute or rule and timely requested.

**R151-4-702. Time to Request Permissive Hearing.**

A request for a hearing permitted by statute or rule must be received no later than:

- (1) the time period for filing a response to a notice of agency action if a response is required or permitted;
- (2) twenty days following the issuance of a notice of agency action if a response is not required or permitted; or
- (3) the filing of the request for agency action.

**R151-4-703. Hearings Open to Public - Exceptions.**

(1) A hearing in an adjudicative proceeding is open to the public unless closed by:

(a) the presiding officer conducting the hearing, pursuant to Title 63G, Chapter 4, ~~the~~ Administrative Procedures Act; or

(b) a presiding officer who is a public body, pursuant to Title 52, Chapter 4, ~~the~~ Open and Public Meetings Act.

(2)(a) The deliberative process of an adjudicative proceeding is a quasi-judicial function exempt from the Open and Public Meetings Act.

(b) Deliberations are closed to the public.

**R151-4-704. Bifurcation of Hearing.**

The presiding officer may, for good cause, order a hearing bifurcated into a findings phase and a sanctions phase.

**R151-4-705. Order of Presentation in Hearings.**

The order of presentation of evidence in hearings in formal adjudicative proceedings shall be as follows:

- (1) opening statement of the party with the burden of proof;
- (2) opening statement of the opposing party, unless the party reserves the opening statement until the presentation of its case-in-chief;
- (3) case-in-chief of the party with the burden of proof and cross examination of witnesses by opposing party;
- (4) case-in-chief of the opposing party and cross examination of witnesses by the party with the burden of proof;
- (5) if the presiding officer finds it to be necessary, rebuttal evidence by the party ~~that~~<sup>which</sup> has the burden of proof;
- (6) if the presiding officer finds it to be necessary, rebuttal evidence by the opposing party;
- (7) closing argument by the party with the burden of proof;
- (8) closing argument by the opposing party; and
- (9) final argument by the party with the burden of proof.

**R151-4-706. Testimony Under Oath.**

Testimony presented at a hearing shall be given under oath administered by the presiding officer and under penalty of perjury.

**R151-4-707. Electronic Testimony.**

(1) As used in this section, ~~[(R151-4-707),]~~ electronic testimony means testimony by contemporaneous transmission from a different location including by telephone, or by other audio or video conferencing technology.

(2) For good cause and with appropriate safeguards, the presiding officer may permit electronic testimony in hearings in administrative proceedings.

(3) With appropriate safeguards, electronic testimony is permissible in an informal proceeding on the request of a party.

**R151-4-708. Standard of Proof.**

Unless otherwise provided by statute or a rule applicable to a specific proceeding, the standard of proof in a proceeding under this rule~~[(R151-4)]~~, whether initiated by a notice of agency action or request for agency action, is a preponderance of the evidence.

**R151-4-709. Burden of Proof.**

Unless otherwise provided by statute:

- (1) the department has the burden of proof in a proceeding initiated by a notice of agency action; and
- (2) the party who seeks action from the department has the burden of proof in a proceeding initiated by a request for agency action.

**R151-4-710. Default Orders.**

(1) The presiding officer may enter a default order under Section 63G-4-209, with or without a motion from a party.

(2) If a basis exists for a default order, the order may enter without notice to the defaulting party or a hearing.

(3) A default order is not required to be accompanied by a separate order.

**R151-4-711. Record of Hearing.**

(1) The presiding officer shall make a record of [all] prehearing conferences and hearings.

(2)(a) The presiding officer shall make the record of a hearing in a formal proceeding by means of:

(i) a certified court reporter as defined by Title 58, Chapter 74, State Certification of Court Reporters Act [~~licensed under Title 58, Chapter 74, Certified Court Reporters Licensing Act~~]; or

(ii) a digital audio or video recording in a commonly used file format.

(b) The presiding officer shall make record of a hearing in an informal proceeding by:

(i) a method required for a formal proceeding; or

(ii) minutes or an order prepared or adopted by the presiding officer.

(3) A hearing in an adjudicative proceeding shall be recorded at the expense of the department.

(4)(a) If a party is required by Section R151-4-902 to obtain a transcript of a hearing for agency review, the party must ensure that the record is transcribed:

(i) in a formal adjudicative proceeding, by a certified court reporter; or

(ii) in an informal adjudicative proceeding, by:

(A) a certified court reporter; or

(B) a person who is not a party in interest.

(b) Where a transcript is prepared by someone other than a certified court reporter, a party shall file an affidavit of the transcriber stating under penalty of perjury that the transcript is a correct and accurate transcription of the hearing record.

(c) Pages and lines in a transcript shall be numbered for referencing purposes.

(d) The party requesting the transcript shall bear the cost of the transcription.

(5) The original transcript of a record of a hearing shall be filed with the presiding officer.

**R151-4-712. Fees.**

(1)(a) Witnesses appearing on the demand or at the request of a party may receive payment from that party of:

(i) \$18.50 for each day in attendance; and

(ii) if traveling more than 50 miles to attend and return from the hearing, 25 cents per mile for each mile actually and necessarily traveled.

(b) A witness subpoenaed by a party other than the department may:

(i) demand one day's witness fee and mileage in advance; and

(ii) be excused from appearance unless the fee is provided.

(2) Interpreters and translators may receive compensation for their services.

(3) An officer or employee of the United States, the State of Utah, or a county, incorporated city, or town within the State of Utah, may not receive a witness fee unless the officer or employee is required to testify at a time other than during normal working hours.

(4) A witness may not receive fees in more than one adjudicative proceeding on the same day.

**R151-4-801. Requirements and Timeliness.**

(1) For default orders and orders issued subsequent to a default order, the requirements of Subsections 63G-4-203(1)(i)(iii) and (iv) and 63G-4-208(1)(e) through [(f) and] (g) are satisfied if the order includes a notice of the right to seek to set aside the order as provided in Subsection 63G-4-209(3).

(2) Except as provided in Sections 63G-4-502 and R151-4-111, the presiding officer shall issue an order within 45 calendar days after the day [on which] the hearing concludes.

(3) If the presiding officer permits the filing of post-hearing documents, that filing shall be scheduled in a way that allows the presiding officer to issue an order within 45 calendar days after the day [on which] the hearing concludes.

(4) The failure of the presiding officer to comply with the requirements of this section [~~(R151-4-801)~~]:

(a) is not a basis for dismissal of the matter; and

(b) may not be considered an automatic denial or grant of a motion.

**R151-4-802. Effective Date.**

The effective date of an order is 30 calendar days after its issuance unless otherwise provided in the order.

**R151-4-803. Clerical Mistakes.**

(1) The department may correct clerical mistakes in orders or other parts of the record and errors arising from oversight or omission on:

(a) its own initiative; or

(b) the motion of a party.

(2) Mistakes described in this section [~~(R151-4-803)~~] may be corrected:

(a) at any time prior to the docketing of a petition for judicial review; or

(b) as governed by [~~Rule 11(h) of the~~] Utah Rules of Appellate Procedure, Rule 11(h).

**R151-4-901. Availability of Agency Review and Reconsideration.**

(1)(a) Except as otherwise provided in Subsection 63G-4-209(3)(c), an aggrieved party may obtain agency review of a final order by filing a request with the executive director within 30 calendar days after the issuance of the order.

(b) This 30-day deadline is jurisdictional. The three-day mailing rule in Subsection 151-4-107(3) does not apply and does not extend the jurisdictional deadline.

(c) Pursuant to Subsection 63G-4-102(9), the Executive Director may extend the deadline only for good cause shown. For purposes of this section [~~R151-4-901~~], good cause to justify an extension means special circumstances beyond the control of the person requesting agency review that prevents a timely filing of the request.

(2)(a) Agency review is not available for an order or decision entered by:

(i) the Utah Motor Vehicle Franchise Advisory Board;

(ii) the Utah Powersport Vehicle Franchise Advisory Board; or

(iii) the Utah Department of Commerce under Title 13, Chapter 55, Regulatory Sandbox Program.

(b) Agency review is not available for an order or decision entered by the Division of Occupational and Professional Licensing for:

(i) Prelitigation proceedings under Title 78B, Chapter 3, the Utah Health Care Malpractice Act;

(ii) a request for modification of a disciplinary order; ~~or~~

(iii) a request under Subsection 58-1-404(4) for entry into the Diversion Program ~~or~~;

(iv) a determination made on an application for a division determination regarding criminal record in accordance with Section 58-1-310.

(c) Agency review is not available for an order or decision entered by the Division of Corporations and Commercial Code for:

(i) refusal to file a document under the Utah Revised Business Corporations Act pursuant to Section 16-10a-126;

(ii) revocation of a foreign corporation's authority to transact business pursuant to Section 16-10a-1532;

(iii) refusal to file a document under the Utah Revised Limited Liability Company Act pursuant to Section 48-3a-209; or

(iv) denial of reinstatement under the Uniform Limited Cooperative Association Act pursuant to Section 16-16-1213.

(d)(i) A party may request agency reconsideration pursuant to Section 63G-4-302 for an order or decision exempt from agency review under Subsections R151-4-901(2)(a), R151-4-901(2)(b)(ii), and R151-4-901(2)(c).

(ii) Pursuant to Subsections 58-1-404(4)(d) and 78B-3-416(1)(c), agency reconsideration is not available for an order or decision exempt from agency review under Subsections R151-4-901(2)(b)(i) and R151-4-901(2)(b)(iii).

#### **R151-4-902. Request for Agency Review - Transcript of Hearing - Service.**

(1) A request for agency review shall:

(a) comply with Subsection 63G-4-301(1)(b) and this section ~~(R151-4-902)~~; and

(b) include a copy of the order that is the subject of the request.

(2) A party requesting agency review shall set forth any factual or legal basis in support of that request, including adequate supporting arguments and citation to:

(a) appropriate legal authority; and

(b) the relevant portions of the record.

(3)(a) If a party challenges a finding of fact, the party must demonstrate, based on the entire record, that the finding is not supported by substantial evidence.

(b) A party challenging a finding of fact bears the burden to:

~~(i) marshal or gather all the evidence in support of the finding; and~~

~~(ii) show that [despite that evidence,] the finding is not supported by substantial evidence.~~

~~(c) The failure to marshal the evidence permits the executive director to accept a division's findings of fact as conclusive.~~

~~(d)~~(e) A party challenging a legal conclusion must support the argument with citation to:

(i) relevant authority; and

(ii) the portions of the record relevant to the issue.

(4)(a) If the grounds for agency review include a challenge to a determination of fact or conclusion of law as unsupported by or contrary to the evidence, the party seeking agency review shall order and cause a transcript of the record relevant to the finding or conclusion to be prepared.

(b) When a transcript is required, the party seeking review shall:

(i) certify that the transcript has been ordered;

(ii) notify the department when the transcript will be available; and

(iii) file the transcript with the executive director in accordance with the time frame stated in the certification regarding transcript.

(c) The party seeking agency review bears the cost of the transcript.

(5) Grounds for agency review that include any legal argument must be supported by specific citations to the transcript of the proceeding, indicating when the argument was raised and preserved in the proceeding. Examples of legal argument include but are not limited to:

(a) an objection to a ruling of the presiding officer;

(b) an argument regarding one or more procedures attendant to the proceeding; or

(c) an argument as to the legal validity, including the ~~c~~[C]onstitutionality, of a statute or rule.

(6)(a) A party seeking agency review shall, in the manner described in Sections R151-4-401 and R151-4-402, file and serve on ~~the~~[~~all~~] parties copies of correspondence, pleadings, motions, and other submissions.

(b) If an attorney enters an appearance on behalf of a party, service shall be made on the attorney instead of the party.

~~[(7) Failure to comply with this section (R151-4-902) may result in dismissal of the request for agency review.]~~

#### **R151-4-903. Stay Pending Agency Review.**

(1) With a timely filing of a request for agency review of an order, the party seeking review may file a motion for a stay of the order pending the completion of agency review.

(b) If a motion to stay is not timely filed and subsequently granted, the order subject to review shall remain in effect according to its terms.

(2)(a) The division that issued the order subject to review may oppose a motion for a stay in writing within ten days from the date the stay is requested.

(b) Failure to oppose a timely request for a stay shall result in an order granting the stay unless the department determines that a stay would not be in the best interest of the public.

(c) If a division opposes a motion for a stay, the department may permit a final response by the party requesting the stay.

(d) The department may enter an interim order granting a stay pending a decision on the motion for a stay.

(3)(a) In determining whether to grant a request for a stay, the department shall review the division's findings of fact, conclusions of law and order to determine whether granting a stay would, or might reasonably be expected to, pose a significant threat to the public health, safety and welfare.

(b) The department may issue:

(i) an order granting the motion for a stay;

(ii) a conditional stay imposing terms, conditions or restrictions on a party pending agency review;

(iii) a partial stay; or

(iv) an order denying the motion for a stay.

#### **R151-4-904. Agency Review - Memoranda.**

(1)(a) The department may order or permit the parties to file memoranda to assist in conducting agency review.

(b) Memoranda shall comply with:

(i) this rule ~~(R151-4)~~; and

(ii) a scheduling order entered by the department.

NOTICES OF PROPOSED RULES

(2)(a) If a transcript is not necessary to conduct agency review, a memorandum supporting a request for agency review shall be concurrently filed with the request.

(b) If a transcript is necessary to conduct agency review, a supporting memorandum shall be filed no later than 15 days after the filing of the transcript with the department.

(3)(a) A response to a request for agency review and a memorandum supporting that response shall be filed no later than 30 days after the service of the memoranda supporting the request.

(b) A final reply memorandum shall be filed no later than 10 days after the service of a response to the request for agency review.

(4) If agency review involves more than two parties the department shall conduct a telephonic scheduling conference to address briefing deadlines.

**R151-4-905. Agency Review - Standards of Review.**

In both formal and informal adjudicative proceedings, the standards for agency review correspond to the standards for judicial review of formal adjudicative proceedings under Subsection 63G-4-403(4).

**R151-4-906. Agency Review - Type of Relief - Order on Review.**

(1) The type of relief available on agency review shall be the same as the type of relief available on judicial review under Subsection 63G-4-404(1)(b).

(2) The order on review constitutes final agency action for purposes of Subsection 63G-4-401(1).

**R151-4-907. Stay Pending Judicial Review.**

(1) A party seeking judicial review of an order may file with the executive director a motion for a stay of the order pending judicial review. The motion for a stay shall be filed with the executive director on the same date that a timely petition for judicial review is filed with the court.

(2) Unless otherwise provided by statute, a motion for a stay of an order pending judicial review shall include:

- (a) a statement of the reasons for the relief requested;
- (b) a statement of the facts relied upon;
- (c) affidavits or other sworn statements if the facts are subject to dispute;
- (d) relevant portions of the record of the adjudicative proceeding and agency review;
- (e) a memorandum of law identifying the issues to be presented on appeal and supporting the aggrieved party's position that those issues raise a substantial question of law or fact reasonably likely to result in reversal, remand for a new hearing, or relief from the order entered;

(f) clear and convincing evidence that if the requested stay is not granted, the aggrieved party will suffer irreparable injury;

(g) clear and convincing evidence that if the requested stay is granted, it will not substantially harm other parties to the proceeding; and

(h) clear and convincing evidence that if the requested stay is granted, the aggrieved party will not pose a significant danger to public health, safety and welfare.

(3)(a) The division that issued the order subject to review may oppose a motion for a stay in writing within ten days from the date that the motion is filed.

(b) Failure to oppose a timely motion under this [S]section, shall result in an order granting the stay unless the executive director determines that a stay would not be in the public interest.

(c) If a division opposes a motion for a stay, the executive director may permit a final response by the party filing the motion.

(4) The executive director may grant a motion for a stay of an order pending judicial review if [all of]the criteria in Section R151-4-907 are met.

(c) If a division opposes a motion for a stay, the executive director may permit a final response by the party filing the motion.

(4) The executive director may grant a motion for a stay of an order pending judicial review if [all of]the criteria in Section R151-4-907 are met.

**KEY: administrative procedures, adjudicative proceedings, government hearings**

**Date of Enactment or Last Substantive Amendment: [January 8, 2020]2021**

**Notice of Continuation: March 15, 2016**

**Authorizing, and Implemented or Interpreted Law: 13-1-6; 63G-4-102(6)**

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R156-31b	Filing No. 53200

**Agency Information**

<b>1. Department:</b>	Commerce	
<b>Agency:</b>	Occupational and Professional Licensing	
<b>Building:</b>	Heber M. Wells Building	
<b>Street address:</b>	160 E 300 S	
<b>City, state:</b>	Salt Lake City, UT 84111-2316	
<b>Mailing address:</b>	PO Box 146741	
<b>City, state, zip:</b>	Salt Lake City, UT 84114-6741	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Jeff Busjahn	801-530-6789	jbusjahn@utah.gov

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

**General Information**

<b>2. Rule or section catchline:</b>
R156-31b. Nurse Practice Act Rule
<b>3. Purpose of the new rule or reason for the change:</b>
The Division of Occupational and Professional Licensing (Division) in collaboration with the Board of Nursing and the Nursing Advisory Peer Education Committee is filing these proposed amendments to clarify and update the rule and implement certain requirements in accordance with statutory changes made by S.B. 23, S.B. 127, H.B. 274, and H.B. 24 passed in the 2020 General Session.
<b>4. Summary of the new rule or change:</b>
The amendments to Section R156-31b-102 define "clinical practical experiences," add to the definition of "delegator" a responsible caregiver who delegates to an unlicensed

direct care worker per Section 58-31b-308.1, remove unnecessary repetitive language and clarify that the definitions of "supervision" are the same as those globally defined in Section R156-1-102, and define "unlicensed assistive personnel."

The amendments to Subsection R156-31b-301c(2)(a)(i) clarify that 1,000 hours will be credited as a block for an applicant's completion of Advanced Practice Registered Nurses (APRN) clinical experience in an approved education program in psychiatric mental health nursing, regardless of the number of hours completed by the applicant. New Subsection R156-31b-301c(2)(a)(ii)(C)(iii) adds an additional supervisor option of a licensed psychiatrist for the completion of clinical hours. The Board of Nursing and the Nursing Advisory Peer Education Committee recommend these changes to provide needed clarification and additional flexibility for students and educational programs.

The amendments to Section R156-31b-402 organize and update the fine table, and also add fine amounts for violation of new Subsection 58-31b-502(1)(r) as enacted by 2020 H.B. 24.

In accordance with Subsection 58-31b-601(2) as amended by S.B. 127 (2020), the amendments to Section R156-31b-602 update the requirements for limited-time approval of non-accredited nursing education programs by extending the time frame for nursing education programs to achieve full accreditation to June 30, 2022, and updating the disclosure requirements.

In accordance with Section 58-1-307.1 enacted by H.B. 274 (2020), the amendments to Section R156-31b-701 (now renumbered to Section R156-31b-701a) refer to a new list that will be posted on the Division's website that will itemize the nursing tasks that an unlicensed individual may perform without delegation by a health care provider.

In accordance with Section 58-31b-308.1 enacted by H.B. 274 (2020), new Section R156-31b-701c clarifies that a responsible caregiver retains accountability for the appropriate delegation of a task, and prohibits a delegatee from further delegating to another person a delegated task or any part of a delegated task, and from expanding the scope of the delegated task.

Google Meet information for December 7, 2020, electronic rule hearing before the Division:  
 Join with Google Meet: [meet.google.com/wbh-dapw-ata](https://meet.google.com/wbh-dapw-ata)  
 Join by phone: (US) +1 615-486-2288 (PIN: 594866996)

**Fiscal Information**

**5. Aggregate anticipated cost or savings to:**

**A) State budget:**

Most of the proposed amendments are not expected to result in any measurable fiscal impact to the state budget as they merely update and conform this rule to statutory changes and will not impact state practices or procedures over and above the statutory changes. The proposed amendment to Section R156-1-402 establishing a new fine is not expected to affect the state budget over and above the impact already contemplated by H.B. 24 (2020), as the fiscal note anticipated that beginning FY 2021 the Division would receive revenue of approximately \$1,000 per year annually and incur an estimated \$1,300 cost per year for investigation and oversight. The amendments to Section R156-31b-701 (renumbered to Section R156-31b-701a) that implement the requirements of Section 58-1-307.1 may cause the Division to incur an additional cost of \$100 per year ongoing due to the need to maintain the list of nursing tasks on the Division's (DOPL's) website if additions, clarifications, or subtractions occur during the year. This cost is expected to be absorbed within the Division's existing budget.

**B) Local governments:**

The Division estimates that the proposed amendments will have no measurable impact on local governments because none of these amendments are expected to impact existing local government practices or procedures.

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

Most of the proposed amendments are not expected to result in any measurable fiscal impact to small businesses as they merely update and conform this rule to statutory changes and will not impact small businesses' practices or procedures over and above the statutory changes. The proposed amendment to Section R156-31b-402 establishing a new fine may indirectly affect the estimated 740 small businesses in Utah comprising establishments employing nurses, such as private or group practices, hospitals, or medical centers (North American Industry Classification System (NAICS) 621399, 621330). However, the amendment is not expected to result in a measurable fiscal impact for small businesses over and above that provided for in the fiscal note for H.B. 24 (2020) because it only imposes a penalty for noncompliance as contemplated by the bill. Additionally, the practices of most small businesses should already be consistent with the Utah Code requirements enacted by H.B. 24 (2020), and as described below for other persons there will be no fiscal impact on the typical licensee so that most small businesses will never be impacted.

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

Most of the proposed amendments are not expected to result in any measurable fiscal impact to non-small businesses as they merely update and conform this rule to statutory changes and will not impact non-small business practices or procedures over and above the statutory changes. In particular, the proposed amendment to Section R156-31b-602 is expected to impact one non-small business (Utah NAICS 6112, 6113, 6115, 6116 and national NAICS code 611310) that currently has pre-accreditation status with its accrediting body for nursing education (the other Utah educational institutions have already achieved full accreditation status). However, this amendment also merely conforms the rule to the statutory changes made by S.B. 127 (2020) and is therefore not expected to impact this business beyond the statutory changes.

The proposed amendment to Section R156-31b-402 establishes a new fine that may indirectly affect the estimated 51 non-small businesses in Utah comprising establishments employing nurses, such as private or group practices, hospitals, or medical centers (NAICS 621399, 621330). However, the amendment is not expected to result in a measurable fiscal impact for non-small businesses over and above that provided for in the fiscal note for H.B. 24 (2020) because it only imposes a penalty for noncompliance as contemplated by the bill. Additionally, the practices of most non-small businesses should already be consistent with the Utah Code requirements enacted by H.B. 24 (2020), and as described below for other persons there will be no fiscal impact on the typical licensee so that most non-small businesses will never be impacted.

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

There are approximately 4,475 licensed nurses that may be affected by the proposed amendment to Section R156-31b-402 establishing a new fine, but the Division does not anticipate any measurable fiscal impact to these persons over and above the statutory change and the impact already addressed in the fiscal note for H.B. 24 (2020). The practices of most licensees should already be consistent with the Utah Code requirements enacted by H.B. 24 (2020), and the amendment only imposes a penalty for noncompliance as contemplated by H.B. 24 (2020). Further, for the typical licensee the proposed amendment will have no fiscal impact, as the goal of the penalty is to provide a deterrent so that there is a \$0 net impact on all parties involved and minimal occasions to sanction a licensee for noncompliance.

These proposed amendments will be beneficial to clarify delegation of tasks for patients, responsible caregivers and providers.

The proposed amendments to Section R156-31b-301c that provide clarification for the number of hours credited for clinical experiences and an additional choice of supervisor may create a fiscal benefit for future APRN licensees who will specialize as psychiatric nurse practitioners as well as for some of the current 121 licensed APRNs in Utah who maintain a specialty as a psychiatric nurse practitioner and who still need to complete their remaining 3,000 required hours. However, the exact impact cannot be estimated as it will vary widely depending on individual circumstances and licensee choices.

**F) Compliance costs for affected persons:**

As described above for other persons, the Division does not anticipate any compliance costs for any affected persons from these proposed amendments.

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

**Regulatory Impact Table**

<b>Fiscal Cost</b>	<b>FY2021</b>	<b>FY2022</b>	<b>FY2023</b>
State Government	\$100	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$100</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>-\$100</b>	<b>\$0</b>	<b>\$0</b>

**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 proposes amendments to update the Nurse Practice Act Rule after consultation with the Board of Nursing and the Nursing Advisory Peer Education Committee. These proposed amendments encompass the statutory changes in S.B. 23, S.B. 127, H.B. 274 and H.B. 24 made in the 2020 General Session. The changes pertain to the details of license requirements and defining professional conduct. Further, other revisions are made to conform grammar, formatting changes for clarity, deleting unnecessary language, and updating statutory and rule section references.

**Small Businesses:** In Utah there are approximately 740 small business entities employing nurses, in private practices, hospitals, and medical centers (NAICS 621399, 621330) that may face a fiscal impact from the new fine table coming from changes to Section R156-1-402. Accordingly, most small businesses are already compliant with the practices in H.B. 24 (2020). Therefore, no fiscal impact is expected for small business over and above any fiscal impact described in the legislative fiscal note for H.B. 24 (2020) as these costs are either inestimable or there is no fiscal impact.

**Regulatory Impact to Non-Small Businesses:** There is one non-small business in Utah (Utah NAICS 6112, 6113, 6115, 6116 and national NAICS code 611310) that the proposed amendment to Section R156-31b-602 is expected to render a fiscal impact that is currently in pre-accreditation status for nursing education. Also, an indirect fiscal impact is expected to 51 non-small businesses and hospitals employing nursing staff in Utah (NAICS 621399, 621330). However, this amendment is conforming this rule to the statutory changes made by S.B. 1127 and H.B. 24 (2020) and it is not expected to impact these non-small businesses beyond expectations in the legislative fiscal notes. Similar to the above mentioned costs in small business, further 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 58-31b-101	Subsection 58-1-106(1)(a)	Subsection 58-1-202(1)(a)
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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:** 12/31/2020

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

On:	At:	At:
12/07/2020	10:30 am	see Box 4 above for Google Meet information for an electronic rule hearing to be conducted before the Division.

**10. This rule change MAY become effective on:** 01/07/2021

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**

<b>Agency head or designee, and title:</b>	Mark B. Steinagel, Division Director	<b>Date:</b>	11/09/2020
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**R156. Commerce, Occupational and Professional Licensing.**

**R156-31b. Nurse Practice Act Rule.**

**R156-31b-102. Definitions.**

In addition to the definitions in Title 58, Chapter[s] 1, General Rule of the Division of Occupational and Professional Licensing, and Title 58, Chapter 31b, Nurse Practice Act, the following rule definitions supplement the statutory definitions~~as defined or used in this rule~~:

(1) "Accreditation" means formal recognition and approval of a nurse education program by an accrediting body for nursing education that is approved by the United States Department of Education.

(2) "Administering" means the direct application of a prescription drug or device, whether by injection, inhalation, ingestion, or by any other means, to the body of a human patient or research subject by another person.

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- (3) "APRN" means advanced practice registered nurse.
- (4) "APRN-CRNA" means advanced practice registered nurse with registered nurse anesthetist certification.
- (5) "Approved continuing education" means:
  - (a) continuing education that has been approved by a nationally or internationally recognized approver of professional continuing education for health-related industries;
  - (b) nursing education courses offered by an approved education program as defined in Subsection ~~R156-31b-102~~(7);
  - (c) health-related coursework taken from an educational institution accredited by a regional or national institutional accrediting body recognized by the U.S. Department of Education;
  - (d) continuing education approved by any state board of nursing; or
  - (e) training or educational presentations offered by the Division.
- (6) "Approved education program" means any nursing education program that meets the standards established in Sections 58-31b-601 or ~~Section~~ R156-31b-602.
- (7) "Approved re-entry program" means:
  - ~~(a)~~ a program designed to evaluate nursing competencies for nurses ~~;~~ that is:
    - ~~(b)~~(i) approved by a state board of nursing; or
    - ~~(e)~~(ii) offered by an accredited nursing education program; and
  - ~~(d)~~(b) includes a minimum of 150 hours of supervised clinical learning.
- (8) "CGFNS" means the Commission on Graduates of Foreign Nursing Schools.
- (9)(a) "Clinical practice experiences" means, as used in the Commission on Collegiate Nursing Education (CCNE) Standards for Accreditation of Baccalaureate and Graduate Nursing Programs, amended 2018, planned learning activities in nursing practice that allow students to understand, perform, and refine professional competencies at the appropriate program level.
  - (b) "Clinical practice experiences" may be known as clinical learning opportunities, clinical practices, clinical strategies, clinical activities, experiential learning strategies, or practice.
- (~~9~~)~~10~~ "Completed a PN, RN, or APRN pre-licensing program" means graduation from the pre-licensing program, verified by official transcripts showing degree and date of program completion.
- (~~10~~)~~11~~ "Comprehensive nursing assessment" means:
  - (a) conducting extensive initial and ongoing data collection:
    - (i) for individuals, families, groups, or communities; and
    - (ii) addressing anticipated changes in patient conditions as well as emergent changes in patient health status;
  - (b) recognizing alterations to previous patient conditions;
  - (c) synthesizing the biological, psychological, spiritual, and social aspects of the patient's condition;
  - (d) evaluating the impact of nursing care; and
  - (e) using data generated from the assessments conducted pursuant to ~~this~~ Subsections (a) through (d) to:
    - (i) make independent decisions regarding patient health care needs;
    - (ii) plan nursing interventions;
    - (iii) evaluate any possible need for different interventions; and
    - (iv) evaluate any possible need to communicate and consult with other health team members.
- (~~11~~)~~12~~ "Contact hour" in the context of continuing education means 60 minutes, ~~which~~ and may include a ~~10~~ ten-minute break.

- (~~12~~)~~13~~ "Delegate" means:
  - (a) to transfer to another nurse the authority to perform a selected nursing task in a selected situation;
  - (b) in the course of practice of an APRN who specializes in psychiatric mental health nursing, to transfer to any individual licensed as a mental health therapist selected psychiatric APRN supervisory clinical experiences within generally-accepted industry standards; or
  - (c) to transfer to an unlicensed ~~person~~ individual, including unlicensed assistive personnel or a responsible caregiver, the authority to perform a task that, according to generally-accepted industry standards or law, does not require a nursing assessment as defined in ~~Sections R156-31b-102(10) and (16)~~ Subsections (11) and (17).
- (~~13~~)~~14~~ "Delegatee" means one or more persons assigned by a delegator to act on the delegator's behalf.
- (~~14~~)~~15~~ "Delegator" means:
  - (a) a licensed nurse directly responsible for a patient's care, who assigns to another licensed or unlicensed ~~person~~ individual the authority to perform a task on behalf of the delegator in accordance with Subsections 58-31b-102(15)(g), ~~Subsection~~ R156-31b-102(~~13~~), and Sections R156-31b-701a, or R156-31b-701b; or
  - (b) a responsible caregiver who delegates to an unlicensed direct care worker the performance of nursing care for a patient in accordance with Sections 58-31b-308.1 and R156-31b-701c.
- (~~15~~)~~16~~(a) "Disruptive behavior" means conduct, whether verbal or physical, that:
  - (i) is demeaning, outrageous, or malicious;
  - (ii) occurs during the process of delivering patient care; and
  - (iii) places a patient at risk.
- (b) "Disruptive behavior" does not include criticism that is offered in good faith with the aim of improving patient care.
- (~~16~~)~~17~~ "Focused nursing assessment" means an appraisal of a patient's status and situation at hand, including:
  - (a) verification and evaluation of orders; and
  - (b) assessment of:
    - (i) the patient's nursing care needs;
    - (ii) the complexity and frequency of the required nursing care;
    - (iii) the stability of the patient; and
    - (iv) the availability and accessibility of resources, including appropriate equipment, adequate supplies, and other appropriate health care personnel to meet the patient's nursing care needs.
- (~~17~~)~~18~~ "Foreign nurse education program" means any program that originates or occurs outside of the United States.
- (~~18~~)~~19~~ "Individualized healthcare plan" or "IHP" means a written document that outlines the provision of student healthcare services intended to achieve specific student outcomes.
- (~~19~~)~~20~~ "Licensure by equivalency" applies only to ~~the~~ a licensed practical nurse and may be warranted if the person seeking licensure:
  - (a)(i) has, within the two-year period preceding the date of application, successfully completed course work in a registered nurse education program that meets the criteria established in Sections 58-31b-601 and R156-31b-602; and
  - (ii) has been unsuccessful on the NCLEX-RN at least one time; or
  - (b)(i) is currently enrolled in an accredited registered nurse education program; and
  - (ii) has completed course work that is certified by the education program provider as being equivalent to the course work of an ACEN-accredited practical nursing program, as verified by the nursing education program director or administrator.
- (~~20~~)~~21~~ "LPN" means licensed practical nurse.



(~~21~~22) "MAC" means medication aide certified.

(~~22~~23) "Medication" means any prescription or nonprescription drug as defined in Subsections 58-17b-102(24), 58-17b-102(37), or 58-17b-102(61) of the Pharmacy Practice Act.

(~~23~~24) "NCLEX" means the National Council Licensure Examination of the National Council of State Boards of Nursing.

(~~24~~25) "Non-approved education program" means any nurse prelicensing course of study that does not meet the criteria of Section 58-31b-601, including a foreign nurse education program.

(~~25~~26) "Nurse" means:

(a) an individual licensed under Title 58, Chapter 31b, Nurse Practice Act as:

- (i) a licensed practical nurse;
- (ii) a registered nurse;
- (iii) an advanced practice registered nurse; or
- (iv) an advanced practice registered nurse-certified registered nurse anesthetist; or

(b) a certified nurse midwife licensed under Title 58, Chapter 44a, Nurse Midwife Practice Act.

(~~26~~27) "Other specified health care professional[s]," as used in Subsection 58-31b-102(~~15~~16), means an individual[~~;~~] in addition to a registered nurse or a licensed physician[~~;~~] who is permitted to direct the tasks of a licensed practical nurse, and includes:

- (a) an advanced practice registered nurse;
- (b) a certified nurse midwife;
- (c) a chiropractic physician;
- (d) a dentist;
- (e) an osteopathic physician;
- (f) a physician assistant;
- (g) a podiatric physician;
- (h) an optometrist;
- (i) a naturopathic physician; or
- (j) a mental health therapist as defined in Subsection 58-60-

102(5).

(~~27~~28) "Patient" means one or more individuals:

- (a) who receive medical [~~and~~] or nursing care; and
- (b) to whom a licensee owes a duty of care.

(~~28~~29) "Patient surrogate" means an individual who has legal authority to act on behalf of a patient when the patient is unable to act or make decisions unaided, including:

- (a) a parent;
- (b) a foster parent;
- (c) a legal guardian; or
- (d) a person legally designated as the patient's attorney-in-

fact.

(~~29~~30) "PN" means an unlicensed practical nurse.

(~~30~~31) "Psychiatric mental health nursing specialty" means an expertise in psychiatric mental health, whether as a clinical nurse specialist or nurse practitioner licensed as an APRN.

(~~31~~32) "Practica" means working in the nursing field as a student[~~;~~], not exclusive to patient care activities.

(~~32~~33) "Practitioner" means a person authorized by law to prescribe treatment, medication, or medical devices.

(~~33~~34) "RN" means a registered nurse.

(~~34~~35) "School" means any private or public institution of primary or secondary education, including a charter school, pre-school, kindergarten, or special education program.

(~~35~~36) "Supervision" [~~is defined as the following~~] means the global definitions of levels of supervision in Section R156-1-102a, as follows:

(a) "Direct supervision" and "immediate supervision" mean the same as defined in Section R156-1-102a.~~[supervising licensee is~~

~~present and available for face to face communication with the person being supervised when and where occupational or professional services are being provided.]~~

(b) "Indirect supervision" means the same as defined in Section R156-1-102a.~~[supervising licensee:~~

~~(i) has given either written or verbal instructions to the person being supervised;~~

~~(ii) is present within the facility in which the person being supervised is providing services; and~~

~~(iii) is available to provide immediate face to face communication with the person being supervised as necessary.]~~

(c) "General supervision" means the same as defined in Section R156-1-102a.~~[that the supervising licensee:~~

~~(i) has authorized the work to be performed by the person being supervised;~~

~~(ii) is available for consultation with the person being supervised by personal face to face contact, or direct voice contact by telephone, radio or some other means, without regard to whether the supervising licensee is located on the same premises as the person being supervised; and~~

~~(iii) can provide any necessary consultation within a reasonable period of time and personal contact is routine.]~~

(d) "Supervising licensee" means the same as defined in Section R156-1-102a.~~[a licensee who has satisfied any requirements to act as a supervisor and has agreed to provide supervision of an unlicensed individual or a licensee in a classification or licensure status that requires supervision in accordance with the provisions of this chapter.]~~

(37)(a) "Unlicensed assistive personnel," as used in Subsection 58-31b-102(20), is further defined to mean an unlicensed individual who performs health care services in a complementary or assistive role to a nurse in carrying out acts included within the definition of the practice of nursing.

(b) "Unlicensed assistive personnel" includes the following:

(i) a nurse aide, orderly, assistant, attendant, technician, home health aide, medication aide permitted or certified by a state agency, unlicensed direct care worker, or any other individual who provides personal care or assistance regarding health related services; and

(ii) a nursing student not licensed as a nurse, who provides care that is not part of the student's formal educational program, and who must comply with applicable laws and rules regarding the student's performance of care.

(~~36~~38) "Unprofessional conduct," as defined in Title 58, Chapter[s] 1, General Rules of the Division of Occupational and Professional Licensing, and Title 58, [~~and~~] Chapter 31b, Nurse Practice Act, is further defined in Section R156-31b-502.

**R156-31b-103. Authority – Purpose.**

This rule is adopted by the Division under the authority of Subsection 58-1-106(1)(a) to enable the Division to administer Title 58, Chapter 31b, Nurse Practice Act.

**R156-31b-202. Advisory Peer Education Committee Created - Membership - Duties.**

(1) In accordance with Subsection 58-1-203(1)(f), there is created the Advisory Peer Education Committee.

(2) The duties and responsibilities of the Advisory Peer Education Committee are to:

(a) review applications for approval of medication aide training programs;

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(b) monitor a nursing education program that is approved for a limited time under Section R156-31b-602 as it progresses toward accreditation; and

(c) advise the Division as to nursing education issues.

(3) The composition of the Advisory Peer Education Committee shall be:

(a) seven RNs or APRNs actively involved in nursing education, including at least one representative from each of the following:

(i) a public[;] nursing program;

(ii) a private[;] nursing program; and

(iii) a proprietary nursing program[s]; and

(b) any member of the Board who wishes to serve on the committee.

**R156-31b-301a. LPN License -- Education, Examination, and Experience Requirements.**

(1) An applicant who has never obtained a license in any state or country shall:

(a) demonstrate that the applicant:

(i) has successfully completed a PN prelicensing education program that meets the requirements of Section 58-31b-601;

(ii) has successfully completed a PN prelicensing education program that is equivalent to an approved program under Section 58-31b-601;

(iii)(A) has completed an RN prelicensing education program that meets the requirements of Section 58-31b-601; and

(B) has taken, but not passed the NCLEX-RN at least one time; or

(iv)(A) is enrolled in a registered nurse education program that meets the requirements of Section 58-31b-601; and

(B) has completed coursework that is equivalent to the coursework of an accredited practical nurse program;

(b) pass the NCLEX-PN examination pursuant to Section R156-31b-301e; and

(c) submit to a criminal background check pursuant to Subsection 58-31b-302(5) and Section R156-31b-301g.

(2) An applicant who holds a current LPN license issued by another country or state shall:

(a) demonstrate that the license issued by the other jurisdiction is active and in good standing as of the date of application;

(b) demonstrate that the PN prelicensing education completed by the applicant:

(i) is equivalent to PN prelicensing education approved in Utah as of the date of the applicant's graduation; and

(ii) if a foreign education program, meets [all]the requirements outlined in Section R156-31b-301d;

(c) pass the NCLEX-PN examination pursuant to Section R156-31b-301e; and

(d) submit to a criminal background check pursuant to Subsection 58-31b-302(5) and Section R156-31b-301g.

(3) An applicant who holds a current LPN license in an interstate [compact]Party state, as defined in Section 58-31e-102 of the Nurse Licensure Compact, shall apply for a license within 90 days of establishing residency in Utah and complete [all]each of the requirements pursuant to Subsection R156-31b-301a(2).

(4) An applicant who has been licensed previously in Utah, but whose license has expired or lapsed, shall:

(a) if the applicant has not practiced as a nurse for up to five years, document current compliance with the continuing competency requirements as established in Subsection R156-31b-303(3);

(b) if the applicant has not practiced as a nurse for more than five years but less than eight years:

(i) pass the NCLEX-PN examination within 60 days following the date of application; or

(ii) successfully complete an approved re-entry program;

(c) if the applicant has not practiced as a nurse for more than eight years but less than [40]ten years:

(i) successfully complete an approved re-entry program; and

(ii) pass the NCLEX-PN examination within 60 days following the date of application; or

(d) if the applicant has not practiced as a nurse for [40]ten years or more, comply with this Subsection (1).

(5) An applicant who has been licensed in another state or country, but whose license has expired or lapsed, shall:

(a) comply with this Subsection (2)(b);~~and~~

(b) comply with this Subsection (4) as applicable; and

(c) submit to a criminal background check pursuant to Subsection 58-31b-302(5) and Section R156-31b-301g.

**R156-31b-301b. RN License -- Education, Examination, and Experience Requirements.**

(1) An applicant who has never obtained a license in any state or country shall:

(a) demonstrate that the applicant has successfully completed an RN prelicensing education program that:

(i) meets the requirements of Section 58-31b-601; or

(ii) is equivalent to an approved program under Section 58-31b-601;

(b) pass the NCLEX-RN examination pursuant to Section R156-31b-301e; and

(c) submit to a criminal background check pursuant to [Subsection]Sections 58-31b-302[~~(5)~~] and [Section]R156-31b-301g.

(2) An applicant who holds a current RN license issued by another country or state shall:

(a) demonstrate that the license issued by the other jurisdiction is current, active, and in good standing as of the date of application;

(b)(i) demonstrate that the applicant has graduated from an RN prelicensing education program; and

(ii) if a foreign education program, demonstrate that the program meets [all]the requirements outlined in Section R156-31b-301d;

(c) pass the NCLEX-RN examination pursuant to Section R156-31b-301e; and

(d) submit to a criminal background check pursuant to [Subsection]Sections 58-31b-302[~~(5)~~] and [Section]R156-31b-301g.

(3) An applicant who holds a current RN license in an interstate [compact]Party state shall apply for a license within 90 days of establishing residency in Utah and complete [all]requirements pursuant to Section R156-31b-301b[~~(2)~~].

(4) An applicant who has been licensed previously in Utah, but whose license has expired or lapsed, shall:

(a) if the applicant has not practiced as a nurse for up to five years, document current compliance with the continuing competency requirements as established in [Subsection]Section R156-31b-303[~~(3)~~];

(b) if the applicant has not practiced as a nurse for more than five years but less than eight years:

(i) pass the NCLEX-RN examination within 60 days following the date of application; or

(ii) successfully complete an approved re-entry program;

(c) if the applicant has not practiced as a nurse for more than eight years but less than 10 years:

(i) pass the NCLEX-RN examination within 60 days following the date of application; or

(ii) successfully complete an approved re-entry program;

(c) if the applicant has not practiced as a nurse for more than eight years but less than 10 years:

- (i) successfully complete an approved re-entry program; and
- (ii) pass the NCLEX-RN examination within 60 days following the date of application; or
- (d) if the applicant has not practiced as a nurse for 10 years or more, comply with this Subsection (1).
- (5) An applicant who has been licensed in another state or country, but whose license has expired or lapsed, shall:
  - (a) comply with this Subsection (2)(b);
  - (b) comply with this Subsection (4) as applicable; and
  - (c) submit to a criminal background check pursuant to ~~[Subsection]~~ Sections 58-31b-302(~~5~~) and ~~[Section]~~ R156-31b-301g.

**R156-31b-301c. APRN License -- Education, Examination, and Experience Requirements.**

- (1) An applicant for licensure as an APRN shall:
  - (a) demonstrate that the applicant holds a current, active RN license in good standing;
  - (b) demonstrate that the applicant has successfully completed an APRN prelicensing education program that meets the requirements of Subsections 58-31b-601(1) and ~~[Subsection]~~ 58-31b-302(4)(e);
  - (c) pass a national certification examination for nurse practitioner, clinical nurse specialist, certified nurse midwife, or registered nurse anesthetist~~[-]~~ pursuant to Section R156-31b-301e, ~~[and that is]~~ administered by a certification body approved by:
    - (i) the National Commission for Certifying Agencies; or
    - (ii) the Accreditation Board for Specialty Nursing Certification;
  - (d) if the applicant specializes in psychiatric mental health nursing, demonstrate that the requirements outlined in this Subsection (2) are met; and
  - (e) submit to a criminal background check pursuant to Subsection 58-31b-302(5) and Section R156-31b-301g.
- (2) ~~[Requirements for APRN Specializing in Psychiatric Mental Health Nursing: \_\_\_\_\_]~~(a) In accordance with Subsection 58-31b-302(4)(g), the supervised clinical practice requirements in mental health therapy and psychiatric ~~[and]~~ mental health nursing required for an APRN practicing within the psychiatric mental health nursing specialty shall consist of ~~[a minimum of]~~ at least 4,000 hours of psychiatric mental health nursing education and clinical practice, including mental health therapy, as follows~~[-]~~:
  - (i) 1,000 hours shall be credited as a block of time for completion of ~~[clinical experience]~~ Clinical Practice Experience in an approved education program in psychiatric mental health nursing, regardless of the number of hours completed by the applicant; and~~[-]~~
    - (ii) ~~[F]~~the remaining 3,000 hours shall:
      - (A) be completed after passing the applicable national certification examination, and within five years of graduation from an accredited master's or doctoral level educational program;
      - (B) include a minimum of 1,000 hours of mental health therapy practice; and
      - (C) include at least 2,000 clinical practice hours ~~[that are]~~ completed under the supervision of:
        - (I) an APRN specializing in psychiatric mental health nursing;~~[-]~~
        - (II) a licensed mental health therapist as delegated by the supervising APRN~~[-]~~; or
        - (III) a physician holding active board certification with the American Board of Psychiatry and Neurology, or equivalent as determined by the Division.
  - (b) An applicant who obtains all or part of the clinical practice hours outside of Utah may receive credit for that experience by

demonstrating that the training completed is equivalent ~~[in all respects]~~ to the training required under this Subsection (2)(a).

(c)(i) An approved supervisor shall verify the applicant's practice as a licensee engaged in the practice of mental health therapy for ~~[not less than]~~ at least 4,000 hours in a period of ~~[not less than]~~ at least two years.

~~(ii)~~(d) Duties and responsibilities of a supervisor include:

~~(A)~~(i) ~~[being independent from control by]~~ maintaining a relationship with the supervisee ~~[such that in which the supervisor is independent from control by the supervisee, and in which]~~ the ability of the supervisor to supervise and direct the practice of the supervisee is not compromised;

~~(B)~~(ii) supervising not more than three supervisees unless otherwise approved by the Division in collaboration with the Board; and

~~(C)~~(iii) submitting appropriate documentation to the Division ~~[with respect to all]~~ for work completed by the supervisee, including the supervisor's evaluation of the supervisee's competence to practice.

(3) An applicant who holds a current APRN license issued by another state or country shall:

(a) demonstrate that the license issued by the other state or country is current, active, and in good standing as of the date of application;

(b) demonstrate that the APRN prelicensing education completed by the applicant:

(i) if completed on or after January 1, 1987:

(A) is equivalent to APRN prelicensing education approved in Utah as of the date of the applicant's graduation; or

(B) constitutes a bachelor degree in nursing; and

(ii) if a foreign education program, meets ~~[a]~~ the requirements outlined in Section R156-31b-301d;

(c) if the applicant specializes in psychiatric mental health nursing, demonstrate that the applicant has successfully engaged in active practice in psychiatric mental health nursing for ~~[not less than]~~ at least 4,000 hours in the three-year period immediately preceding the date of application; and

(d) submit to a criminal background check pursuant to Subsection 58-31b-302(5) and Section R156-31b-301g.

(4) An applicant who has been licensed previously in Utah, but whose license has expired, lapsed, or been on inactive status, shall:

(a) demonstrate current certification in the individual's specialty area; and

(b) submit to a criminal background check pursuant to Subsection 58-31b-302(5) and Section R156-31b-301g.

(5) An applicant who has been licensed previously in another state or country, but whose license has expired or lapsed, shall:

(a) comply with this Subsection (3)(b);

(b) demonstrate that the applicant is currently certified in the individual's specialty area; and

(c) submit to a criminal background check pursuant to Subsection 58-31b-302(5) and Section R156-31b-301g.

**R156-31b-301d. Foreign Education Programs.**

If an applicant's prelicensing education was completed through a foreign program that does not meet the requirements of Section 58-31b-601, the applicant shall demonstrate:

(1)(a) within the year preceding the date of the application, the applicant successfully completed ~~[a]~~ the three components of the CGFNS Certification Program and the credentials evaluation service professional report; and

(b) within five years preceding the date of the application, the applicant met at least one of the following practice requirements:

(i) completed the nursing education program;

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- (ii) worked as a nurse;
- (iii) completed an approved re-entry program; or
- (iv) obtained ~~[an advanced]~~ [a] baccalaureate, master's or doctorate~~]~~ nursing degree from an accredited nurse education program; or

(2)(a) during the five years preceding the date of the application, the applicant practiced as a licensed nurse for 6,000 hours in another state or territory of the United States; and

(b) prior to the date of the application, the applicant achieved a passing score on an English proficiency test satisfying current CGFNS requirements.

**R156-31b-303. LPN, RN, and APRN License Renewal - Professional Downgrade - Continuing Education.**

(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 31b, Nurse Practice Act, is established by rule in Section R156-1-308a.

(2) Renewal procedures shall be in accordance with Sections R156-1-308~~[e]~~ [b through R156-1-308].

(3) Each applicant for renewal shall comply with the following continuing competency requirements:

(a) An LPN or RN shall complete one of the following during the two-year period immediately preceding the date of application for renewal:

- (i) licensed practice for not less than 400 hours;
- (ii) licensed practice for not less than 200 hours and completion of 15 contact hours of approved continuing education; or
- (iii) completion of 30 contact hours of approved continuing education hours.

(b) An APRN shall comply with the following:

(i)(A) be currently certified or recertified in the licensee's specialty area of practice; or

(B) if licensed prior to July 1, 1992, complete 30 hours of approved continuing education and 400 hours of practice; and

(ii) if authorized to prescribe controlled substances, comply with Section R156-37-402 and Section 58-37-6.5.

(c) A~~[n]~~ [n] MAC shall complete eight contact hours of approved continuing education related to medications or medication administration during the two-year period immediately preceding the application for renewal.

(4) A licensee who wishes to downgrade the license in conjunction with a renewal or reinstatement application shall:

(a) comply with the competency requirements of this Subsection (3)(a);

(b) pay all required fees, including any applicable late fees;

(c) submit a completed renewal or reinstatement form as applicable to the license desired; and

(d) complete and sign a license surrender document as provided by the Division.

(5) A licensee who obtained a license downgrade may apply for license upgrade by:

(i) submitting the appropriate application for licensure complete with all supporting documents as required of an individual making an initial application for license demonstrating the applicant meets ~~[a]~~ [a] the current qualifications for licensure;

(ii) meeting the continuing competency requirements of this Subsection (3); and

(iii) paying the established license fee for a new applicant for licensure.

**R156-31b-309. APRN Intern License.**

(1) An individual who has completed all requirements outlined in Subsection R156-31b-301c(1) except the certification examination requirement may apply for an APRN intern license.

(2) In accordance with Section 58-31b-306, and unless this Subsection (3) or (4) applies, an intern license expires the earlier of:

(a) 180 days from the date of issuance;

(b) 30 days after the Division receives notice pursuant to this Subsection (4) that the applicant has failed the specialty certification examination; or

(c) upon issuance of an APRN license.

(3) The Division in collaboration with the Board may extend the term of any intern license upon a showing of extraordinary circumstances beyond the control of the applicant.

(4) An individual holding an APRN intern license specializing in psychiatric mental health nursing ~~[must]~~ [shall] work under the supervision of an APRN pursuant to R156-31b-301c.

(5) It is the professional responsibility of an APRN intern to:

(a) ~~[to]~~ inform the Division of examination results within ten calendar days of receipt; and

(b) ~~[to]~~ cause the examination agency to send the examination results directly to the Division.

**R156-31b-402. Administrative Penalties.**

In accordance with Sections 58-1-501, 58-31b-501, 58-31b-502, 58-31b-502.5, 58-31b-503, Subsection 58-31b-102(1), and Section R156-31b-502, and unless otherwise ordered by the presiding officer, the following fine schedule shall apply:

TABLE

FINE SCHEDULE

VIOLATION	FIRST OFFENSE	SUBSEQUENT OFFENSE
<del>58-31b-501(1)</del>	<del>\$ 500 - \$ 4,000</del>	<del>\$ 4,000 - \$ 8,000</del>
<del>58-31b-501(2)</del>	<del>\$ 500 - \$ 4,000</del>	<del>\$ 4,000 - \$ 8,000</del>
<del>58-31b-501(3)</del>	<del>\$ 2,000 - \$ 7,500</del>	<del>\$ 7,500 - \$ 9,500</del>
<del>58-31b-601</del>	<del>\$ 2,000 - \$ 7,500</del>	<del>\$ 7,500 - \$ 9,500</del>
<del>R156-31b-602</del>	<del>\$ 2,000 - \$ 7,500</del>	<del>\$ 7,500 - \$ 9,500</del>
58-1-501(1)(a)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
58-1-501(1)(b)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
58-1-501(1)(c)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
58-1-501(1)(d)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
58-1-501(1)(e)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
58-1-501(1)(f)(i)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
<del>58-1-501(1)(g)</del>	<del>\$ 500 - \$ 5,000</del>	<del>\$ 5,000 - \$10,000</del>
58-1-501(2)(a)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
58-1-501(2)(b)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
58-1-501(2)(c)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
58-1-501(2)(d)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
58-1-501(2)(e)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
58-1-501(2)(f)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
58-1-501(2)(g)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
58-1-501(2)(h)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
58-1-501(2)(i)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
58-1-501(2)(j)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
58-1-501(2)(k)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
58-1-501(2)(l)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
58-1-501(2)(m)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
<del>58-1-501(2)(n)</del>	<del>\$ 250 - \$ 4,000</del>	<del>\$ 4,000 - \$ 8,000</del>
58-1-501(2)(o)	\$ 250 - \$ 4,000	\$ 4,000 - \$ 8,000
<del>58-1-501.5</del>	<del>\$ 250 - \$ 4,000</del>	<del>\$ 4,000 - \$ 8,000</del>
<del>58-1-508(2)</del>	<del>\$ 500 per violation</del>	
<del>58-31b-501(1)</del>	<del>\$ 500 - \$ 4,000</del>	<del>\$ 4,000 - \$ 8,000</del>
<del>58-31b-501(2)</del>	<del>\$ 500 - \$ 4,000</del>	<del>\$ 4,000 - \$ 8,000</del>
<del>58-31b-501(3)</del>	<del>\$ 2,000 - \$ 7,500</del>	<del>\$ 7,500 - \$ 9,500</del>
58-31b-502(1)(a)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
58-31b-502(2)(b)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
58-31b-502(3)(c)	\$ 4,000 - \$ 8,000	\$ 8,000 - \$10,000
58-31b-502(4)(d)	\$ 2,000 - \$ 5,000	\$ 5,000 - \$10,000
58-31b-502(5)(e)	\$ 1,000 - \$ 5,000	\$ 5,000 - \$10,000
58-31b-502(6)(f)	\$ 1,000 - \$ 5,000	\$ 5,000 - \$10,000

58-31b-502([7]1)(g)	\$ 1,000 - \$ 5,000	\$ 5,000 - \$10,000
58-31b-502([8]1)(h)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
58-31b-502([9]1)(i)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
58-31b-502([10]1)(j)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
58-31b-502(1[11])(k)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
58-31b-502(1[2])(l)	\$ <del>500</del> 1,000 - \$ 5,000	\$ 5,000 - \$10,000
58-31b-502(1[3])(m)	\$ 1,000 - \$ 5,000	\$ 5,000 - \$10,000
58-31b-502(1[4])(n)	double the original penalty, up to \$20,000	
58-31b-502(1[5])(o)	\$ 1,000 - \$ 5,000	\$ 5,000 - \$10,000
58-31b-502(1)(p)	\$ 1,000 - \$ 5,000	\$ 5,000 - \$10,000
58-31b-502(1)(q)	\$ 1,000 - \$ 5,000	\$ 5,000 - \$10,000
58-31b-502(1)(r)	\$ 1,000 - \$ 5,000	\$ 5,000 - \$10,000
<del>58-31b-801</del>	<del>\$ 1,000 - \$ 5,000</del>	<del>\$ 5,000 - \$10,000</del>
<del>58-1-501(1)</del>	<del>\$ 500 - \$ 5,000</del>	<del>\$ 5,000 - \$10,000</del>
<del>58-1-501(2)</del>	<del>\$ 500 - \$ 5,000</del>	<del>\$ 5,000 - \$10,000</del>
58-31b-502.5(1)	\$ 500 - \$ 5,000	\$ 1,500 - \$10,000
Ongoing: \$2,000 per day but not less than the second offense		
58-31b-502.5(2)	\$ 500 - \$ 5,000	\$ 1,500 - \$10,000
Ongoing: \$2,000 per day but not less than the second offense		
58-31b-502.5(3)	\$ 5,000	\$10,000
Ongoing: \$2,000 per day but not less than the second offense		
58-31b-601	\$ 2,000 - \$ 7,500	\$ 7,500 - \$ 9,500
58-31b-801	\$ 1,000 - \$ 5,000	\$ 5,000 - \$10,000
58-31b-803	\$ 1,000 - \$ 5,000	\$ 5,000 - \$10,000
58-37-19	first offense \$250, second offense \$500	subsequent offenses \$1,000
R156-1-501(6)	\$ 500 - \$ 4,000	\$ 4,000 - \$ 8,000
R156-1-501(7)	\$ 500 - \$ 4,000	\$ 4,000 - \$ 8,000
R156-1-501(8)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
R156-1-501(9)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
R156-1-501.1	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
R156-31b-502(1)(a)	\$ 500 - \$ 4,000	\$ 4,000 - \$ 8,000
R156-31b-502(1)(b)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
R156-31b-502(1)(c)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
R156-31b-502(1)(d)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
R156-31b-502(1)(e)	\$ 1,000 - \$ 5,000	\$ 5,000 - \$10,000
R156-31b-502(1)(f)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
<del>R156-31b-502(1)(e)</del>	<del>\$ 1,000 - \$ 5,000</del>	<del>\$ 5,000 - \$10,000</del>
R156-31b-502(1)(g)	\$ 250 - \$ 1,500	\$ 1,500 - \$10,000
R156-31b-502(1)(h)	\$ 250 - \$ 1,500	\$ 1,500 - \$10,000
<del>58-31b-502.5(1)</del>	<del>\$ 500 - \$ 5,000</del>	<del>\$ 1,500 - \$10,000</del>
Ongoing: \$2,000 per day but not less than the second offense		
58-31b-502.5(2)	\$ 500 - \$ 5,000	\$ 1,500 - \$10,000
Ongoing: \$2,000 per day but not less than the second offense		
58-31b-502.5(3)	\$ 5,000	\$10,000
Ongoing:	\$ 2,000 per day but not less than the second offense]	
R156-31b-502(1)(i)	\$ 250	second offense \$500
	[ <del>third and</del> ]subsequent offenses \$1,000	
R156-31b-502(1)(j)	\$ 250	second offense \$500
	[ <del>third and</del> ]subsequent offenses \$1,000	
R156-31b-501(1)(k)	\$ 1,000 - \$ 5,000	\$ 5,000 - \$10,000
R156-31b-602	\$ 2,000 - \$ 7,500	\$ 7,500 - \$ 9,500
R156-37-502	\$ 1,000	\$ 1,000
	\$ 1,000 for each additional violation	

Subsequent offenses. Unless a specific fine amount is specified elsewhere, a sanction[Sanctions] for an offense subsequent to a second offense[7] shall be the greater of \$10,000 [-]or \$2,000 per day.

**R156-31b-502. Unprofessional Conduct.**

- (1) "Unprofessional conduct" includes:
  - (a) failing to destroy a license that has expired due to the issuance and receipt of an increased scope of practice license;
  - (b) knowingly accepting or retaining a license that has been issued pursuant to a mistake or on the basis of erroneous information;
  - (c) as an RN or LPN, issuing a prescription for a prescription drug to a patient, except in accordance with [the provisions of]Section 58-17b-620 or as [may be]otherwise legally permissible;
  - (d) failing as the nurse accountable for directing nursing practice of an agency to verify any of the following:

- (i) that standards of nursing practice are established and carried out;
- (ii) that safe and effective nursing care is provided to patients;
- (iii) that guidelines exist for the organizational management and management of human resources needed for safe and effective nursing care to be provided to patients; or
- (iv) that the nurses employed by the agency have the knowledge, skills, ability and current competence to carry out the requirements of their jobs;
- (e) engaging in sexual contact with a patient surrogate concurrent with the nurse[7]-patient relationship unless the nurse affirmatively shows by clear and convincing evidence that the contact:
  - (i) did not result in any form of abuse or exploitation of the surrogate or patient; and
  - (ii) did not adversely alter or affect in any way:
    - (A) the nurse's professional judgment in treating the patient;
    - (B) the nature of the nurse's relationship with the surrogate; or
    - (C) the nature of the nurse's relationship with the patient;
  - (f) engaging in disruptive behavior in the practice of nursing;
  - (g) prescribing to oneself any controlled substance drug, in violation of Subsection R156-37-502(1)(a);
  - (h) violating any federal or state law relating to controlled substances, including self-administering any controlled substance [which]that is not lawfully prescribed by another licensed practitioner having authority to prescribe the drug, in violation of Section R156-37-502;
  - (i) as an APRN, failing to discuss the risks of using an opiate with a patient or the patient's guardian before issuing an initial opiate prescription in accordance with Section 58-37-19;
  - (j) as an APRN, violating a provision of Title 26, Chapter 61a, Utah Medical Cannabis Act; and
  - (k) failing to practice within limits of competency, in violation of Section 58-31b-801.
- (2) In accordance with a prescribing practitioner's order and an IHP, a registered nurse who, in reliance on a school's policies or the delegation rule as provided in Sections R156-31b-701 and R156-31b-701a, delegates or trains an unlicensed assistive person to administer medications under Sections 53A-11-601, R156-31b-701 and R156-31b-701a, shall not be considered to have engaged in unprofessional conduct for inappropriate delegation.

**R156-31b-602. Requirements for Limited-time Approval of Non-accredited Nursing Education Programs.**

- (1)[(a)] Pursuant to Subsection 58-31b-601(2), a nursing education program may, prior to obtaining an accreditation described in Subsection 58-31b-601(1), qualify for a limited time as an approved education program if the program was granted limited-time approval on or before May 15, 2016, [~~and had demonstrated to the satisfaction of the Board that the program:~~
  - (i) established a timeline which allows for the initial accreditation visit to occur before the first students graduate;
  - (ii) understands the accreditation standards of its selected accrediting body as demonstrated in a written report which includes plans and processes consistent with the accrediting body for:
    - (A) curricular organization and delivery method;
    - (B) student learning outcomes;

~~(C) student support;~~  
~~(D) program administration and organization;~~  
~~(E) learning environment and facilities;~~  
~~(F) clinical learning and placements; and~~  
~~(G) faculty and nurse administrator qualifications;~~  
~~(iii) clearly informs students and potential students about its accreditation status and the potential implications for future practice; and]~~

(2) The provider of a program with limited-time approval pursuant to ~~this~~ Subsection (1) ~~and (2)~~ shall, pursuant to ~~this~~ Subsection (3);<sup>7</sup>

(a) disclose to each student who enrolls ~~that~~:

(~~a~~)i) ~~that~~ program accreditation is pending;

(~~b~~)ii) ~~that~~ any education completed prior to the accrediting body's final determination will satisfy, at least in part, state requirements for prelicensing education; and

(~~e~~)iii) ~~that~~ if the program fails to achieve accreditation on or before ~~December 31, 2020~~ June 30, 2022, a ~~ny~~ student who has not yet graduated will not be made eligible for the NCLEX by the state ~~of Utah~~; and

(b) attest to each student who enrolls that the program is allowed to enroll new students because it meets the requirements of Subsection 58-31b-601(2)(c).

(3) The disclosure required by this Subsection (2) shall:

(a) be signed by each student who enrolls with the provider; and

(b) at a minimum, state the following: "The nursing program in which you are enrolling has not yet been accredited. The program is being reviewed by the (insert the name of the accrediting body). This program is allowed to enroll new students because it meets the requirements of Utah Code Subsection 58-31b-601(2)(c). Any education you complete ~~prior to December 31, 2020~~ on or before June 30, 2022, or a final determination by the (insert the name of the accrediting body) will satisfy associated state requirements for licensure. If the (insert the name of the accrediting body) ultimately determines that the program does not qualify for accreditation, you will not be made eligible for the NCLEX by the state of Utah."

(4) If an accredited program receives notice or determines that its accreditation status is in jeopardy, the institution offering the program shall:

(a) immediately notify the Board of its accreditation status;

(b) immediately and verifiably notify ~~all~~ each enrolled student[s] in writing of the program's accreditation status, including:

(i) the estimated date ~~on which~~ when the accrediting body will make its final determination as to the program's accreditation; and

(ii) the potential impact of a program's accreditation status on the graduate's ability to secure licensure and employment or transfer academic credits to another institution in the future; and

(c) attempt negotiations with other academic institutions to establish a transfer articulation agreement.

(5) If a program with limited-time approval fails to achieve accreditation ~~by December 31, 2020~~ on or before June 30, 2022, or if a program loses its accreditation, the institution offering the program shall:

(a) submit a written report of official notice of losing accreditation to the Board within ten days of receiving formal notification from the accrediting body;

(b) notify ~~all~~ each matriculated and pre-enrollment nursing student[s] about the program's accreditation status;

(c) inform ~~all~~ each nursing student[s] who will graduate from a non-accredited program that they will not be eligible for initial licensure through ~~Utah~~ the state; and

(d) ~~submit~~ provide the Board with a written plan to close the program and cease operations to the Board within ten days of receiving formal notice of losing accreditation from the program's accrediting body ~~, if necessary~~.

**R156-31b-609. Standards for Out-of-State Programs Providing Clinical Experiences in Utah.**

A nursing education program provider located in another state that desires to place nursing students in Utah agencies or institutions for ~~clinical~~ Clinical Practice Experiences or practica experiences shall, prior to placing a student, demonstrate to the satisfaction of the Division and Board that the program:

(1) is approved by the home state Board of Nursing;

(2) is accredited by an accrediting body for nursing education that is approved by the United States Department of Education;

(3) has faculty who:

(a) are employed by the nursing education program;

(b) meet the requirements to be a faculty member as established by the accrediting body and the home state's Board of Nursing;

(c) are licensed in good standing in Utah or a ~~Compact~~ Party state, as defined in Section 58-31e-102 of the Nurse Licensure Compact, if supervising face-to-face ~~clinical~~ Clinical Practice Experiences or practica experiences; and

(d) are affiliated with an institution of higher education; ~~and]~~

(d) are affiliated with an institution of higher education; ~~and]~~

(4) has a plan for selection and supervision of:

(a) faculty or preceptor; and

(b) the clinical activity, including:

(i) the selection of an appropriate clinical location, and

(ii) ensuring that each preceptor is licensed in good standing in Utah or a ~~Compact~~ Party state, as defined in Section 58-31e-102 of the Nurse Licensure Compacts;

(5) ~~(a)~~ maintains its accreditation with an accrediting body for nursing education that is approved by the United States Department of Education; and

(~~a~~) b reports any changes in its accreditation status to the Utah Board of Nursing in a timely manner;

(6) ~~(a)~~ submits an annual report to the Utah Board of Nursing by August 1 of each year; and

(~~a~~) b includes in the annual report:

(i) an overview of the number of students placed in Utah facilities;

(ii) an attestation that all face-to-face clinical faculty and preceptors used by the program are licensed in good standing in Utah or a ~~Compact~~ Party state, as defined in Section 58-31e-102 of the Nurse Licensure Compact; and

(iii) a verification that it is currently accredited, in good standing, with its accrediting body.

**R156-31b-701a. Delegation of Nursing Tasks in a Non-school Setting.**

In accordance with Subsections 58-31b-102(15)(g) and ~~Subsection~~ R156-31b-102(12), the delegation of nursing tasks in a non-school setting is ~~further defined, clarified, or established~~ as follows:

(1) Pursuant to Section 58-1-307.1, the nursing tasks that an unlicensed individual may perform without delegation by a health care provider are listed on the Division's website at <https://dopl.utah.gov/nurse>.

(2) A delegator retains accountability for the appropriate delegation of tasks and for the nursing care of the patient.

~~(2)3~~ Tasks that are appropriate for delegation with prior assessment are as follows: ~~Appropriate for Delegation—Prior Assessment Required.~~

(a) ~~[A]~~a delegator may not delegate to unlicensed assistive personnel ~~[, including a medical assistant,]~~ any task requiring the specialized knowledge, judgment, or skill of a licensed nurse~~[-]~~;

(b) ~~[A]~~a delegator may not delegate a task that is:

(i) outside the area of the delegator's responsibility;

(ii) outside the delegator's personal knowledge, skills, or ability; or

(iii) beyond the ability or competence of the delegatee to perform:

(A) as personally known by the delegator; and

(B) as evaluated according to generally accepted nursing practice standards of health, safety, and reasonable prudence; ~~and[-]~~

(c) ~~[A]~~a nursing task may be delegated if it meets the following criteria, as applied to each specific patient situation:

(i) it is considered routine care for the specific patient;

(ii) it poses little potential hazard for the patient;

(iii) it is generally expected to produce a predictable outcome for the patient;

(iv) it is administered according to a previously developed plan of care; and

(v) it does not inherently involve nursing judgment that cannot be separated from the procedure; ~~and[-]~~

(d) ~~[B]~~before determining which, if any, nursing tasks may be delegated, the delegator shall make a focused nursing assessment of the circumstances, and evaluate the following factors to determine the degree of supervision required to ensure safe care:

(i) the stability and condition of the patient;

(ii) the training, capability, and willingness of the delegatee to perform the delegated task;

(iii) the nature of the task being delegated, including the complexity, irreversibility, predictability of outcome, and potential for harm inherent in the task;

(iv) the proximity and availability to the delegatee of the delegator or other qualified nurse during the time(s) when the task will be performed; and

(v) any immediate risk to the patient if the task is not carried out; ~~and[-]~~

(e) ~~[F]~~if a delegator, upon review of the criteria established in this Subsection, determines that a proposed delegatee cannot safely provide the requisite care, the delegator shall not delegate the task to the proposed delegatee.

~~(3)4~~ Requirements for instruction and demonstration of competency prior to the delegation of tasks are as follows: ~~Instruction and Demonstration of Competency Prior to Delegation.~~

(a) ~~[F]~~in delegating a nursing task, the delegator shall:

(i) provide instruction and direction necessary to allow the ~~delegatee~~ delegatee to safely perform the specific task;

(ii) explain the delegation to ensure that the delegatee understands which patient is to be treated, and according to what time frame; and

(iii) instruct the delegatee how to intervene in any foreseeable risks that may be associated with the delegated task; ~~and[-]~~

(b)(i) ~~[F]~~if the employing facility or agency requires initial and ongoing demonstration of competency of direct patient care tasks, and makes competency documentation available to the delegator, the delegator may use that competency documentation; ~~[-]~~

(ii) ~~[F]~~if the employing facility or agency does not require demonstration of competency or does not provide competency documentation that is satisfactory to the delegator, or if a task falls outside tasks in which the proposed delegatee has previously been proven competent, the delegator or qualified educator shall:

(A) require the proposed delegatee to provide to the delegator or qualified educator a physical or verbal demonstration of the delegated task; and

(B) document the observed or spoken demonstration; ~~and[-]~~

(iii) ~~[F]~~teaching of a task, demonstration of competency, and documentation may be conducted per individual or in a group training session.

~~(4)5~~ Requirements for a delegator during the supervision and monitoring of a task are as follows: ~~Supervision and Monitoring. During delegation, the delegator shall:~~

(a) provide ongoing appropriate supervision and evaluation of the delegatee;

(b) ensure that the delegator or another qualified nurse is readily available, either in person or by telecommunication, to:

(i) evaluate the patient's health status;

(ii) evaluate the performance of the delegated task;

(iii) determine whether goals are being met; and

(iv) determine the appropriateness of continuing delegation of the task; and

(c) if the delegated task is to be performed more than once, establish a system for ongoing monitoring of the delegatee.

~~(5)6~~ A delegatee is prohibited from the following without express permission from the delegator: ~~Further Delegation Prohibited. A delegatee may not:~~

(a) further delegate to another person ~~[any]a delegated task, or any part of a delegated task~~ ~~[-delegated to the individual by the delegator];~~ or

(b) expand the scope of the delegated task ~~[-without the express permission of the delegator].~~

~~(6)7~~ A medical facility's internal policies or practices required or allowed to be performed by an unlicensed person shall not be deemed to have been delegated by a licensee. ~~Internal Policies or Practices. Tasks that according to the internal policies or practices of a medical facility are required or allowed to be performed by an unlicensed person, shall not be deemed to have been delegated by a licensee.]~~

**R156-31b-701a)b. Delegation of Tasks in a School Setting.**

In addition to ~~[the delegation rule found in]~~Section R156-31b-701a, the delegation of tasks in a school setting is ~~[further defined, clarified, or established]~~as follows:

(1) ~~[B]~~before a registered nurse may delegate a task that is required to be performed within a school setting, the registered nurse shall:

(a) develop an IHP~~[-]~~ in conjunction with the ~~[applicable]~~ student~~[-]~~ and each applicable parent~~{(s)}~~ or parent surrogate~~{(s)}~~, educator~~{(s)}~~, and healthcare provider~~{(s)}~~ ~~an IHP];~~ and

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- (b) ensure that the IHP is available to school personnel.
- (2) ~~Any~~ Each task being delegated by a registered nurse shall be identified within the ~~patient's~~ student's current IHP~~[-]; and~~
- (3)(a) ~~A~~ a registered nurse shall personally train ~~any~~ each unlicensed person who will be delegated the task of administering medications that are routine for the student~~[-]~~
- (b) ~~T~~ the training required under this Subsection (3)(a) shall be performed at least annually~~[-]~~
- (c) ~~A~~ a registered nurse may not delegate to an unlicensed ~~person~~ individual the administration of any medication:
  - (i) ~~with~~ that has known, frequent side effects that can be life threatening;
  - (ii) that requires the student's vital signs or oxygen saturation to be monitored before, during, or after administration~~[-of the drug];~~
  - (iii) that is being administered as a first dose in a school setting:
    - (A) of a new medication; or
    - (B) after a dosage change; or
  - (iv) that requires nursing assessment or judgment prior to or immediately after administration~~[-]; and~~
- (d) ~~H~~ in addition to delegating other tasks pursuant to this rule, a registered nurse may delegate to an unlicensed ~~person~~ individual who has been properly trained, the following tasks regarding a diabetic student's IHP:
  - (i) ~~the~~ administration of a scheduled dose of insulin; and
  - (ii) ~~the~~ administration of glucagon in an emergency situation, as prescribed by the practitioner's order or specified in the IHP.

**R156-31b-701c. Delegation of Nursing Care by a Responsible Caregiver.**

In addition to Section 58-31b-308.1, the delegation of nursing care by a responsible caregiver to an unlicensed direct care work is as follows:

- (1) A responsible caregiver retains accountability for the appropriate delegation of a task and for the nursing care of the patient.
- (2) A delegatee may not:
  - (a) further delegate to another person a delegated task, or any part of a delegated task; or
  - (b) expand the scope of the delegated task.

**R156-31b-703a. Standards of Professional Accountability.**

The following standards apply equally to the LPN, RN, and APRN licenses. In demonstrating professional accountability, a licensee shall:

- (1) practice within the legal boundaries that apply to nursing;
- (2) comply with ~~all~~ applicable statutes and rules;
- (3) demonstrate honesty and integrity in nursing practice;
- (4) base nursing decisions on nursing knowledge and skills, and the needs of patients;
- (5) seek clarification of orders when needed;
- (6) obtain orientation~~[-]~~ and training competency when encountering new equipment and technology or unfamiliar care situations;
- (7) demonstrate attentiveness in delivering nursing care;
- (8) implement patient care, including medication administration, properly and in a timely manner;
- (9) document ~~all~~ any care provided;
- (10) communicate to other health team members relevant and timely patient information, including:

- (a) patient status and progress;
- (b) patient response or lack of response to therapies;
- (c) significant changes in patient condition; and
- (d) patient needs;
- (11) take preventive measures to protect patient, others, and self;
- (12) respect patients' rights, concerns, decisions, and dignity;
- (13) promote a safe patient environment;
- (14) maintain appropriate professional boundaries;
- (15) contribute to the implementation of an integrated health care plan;
- (16) respect patient property and the property of others;
- (17) protect confidential information unless obligated by law to disclose the information;
- (18) accept responsibility for individual nursing actions, competence, decisions, and behavior in the course of nursing practice; and
- (19) maintain continued competence through ongoing learning and application of knowledge in each patient's interest.

**R156-31b-703b. Scope of Nursing Practice Implementation.**

- (1) LPN. An LPN shall be expected to:
  - (a) conduct a focused nursing assessment;
  - (b) plan for and implement nursing care within limits of competency;
  - (c) conduct patient surveillance and monitoring;
  - (d) assist in identifying patient needs;
  - (e) assist in evaluating nursing care;
  - (f) participate in nursing management by:
    - (i) assigning appropriate nursing activities to other LPNs;
    - (ii) delegating care for stable patients to unlicensed assistive personnel in accordance with these rules and applicable statutes;
    - (iii) observing nursing measures and providing feedback to nursing managers; and
    - (iv) observing and communicating outcomes of delegated and assigned tasks; and
  - (g) serve as faculty in areas~~[-]~~ of competence.
- (2) RN. An RN shall be expected to:
  - (a) interpret patient data, whether obtained through a focused nursing assessment or otherwise, to:
    - (i) complete a comprehensive nursing assessment; and
    - (ii) determine whether, and according to what timeframe, another medical professional, a patient's family member, or any other person should be apprised of a patient's nursing needs;
  - (b) detect faulty or missing patient information;
  - (c) apply nursing knowledge effectively in the synthesis of the biological, psychological, spiritual, and social aspects of the patient's condition;
  - (d) utilize broad and complete analyses to plan strategies of nursing care and nursing interventions that are integrated within each patient's overall health care plan or IHP;
  - (e) demonstrate appropriate decision making, critical thinking, and clinical judgment to make independent nursing decisions and to identify health care needs;
  - (f) correctly identify changes in each patient's health status;
  - (g) comprehend clinical implications of patient signs, symptoms, and changes as part of ongoing or emergent situations;



(h) critically evaluate the impact of nursing care, the patient's response to therapy, and the need for alternative interventions;

(i) intervene on behalf of a patient when problems are identified so as to revise a care plan as needed;

(j) appropriately advocate for patients by:

(i) respecting patients' rights, concerns, decisions, and dignity;

(ii) identifying patient needs;

(iii) attending to patient concerns or requests; and

(iv) promoting a safe and therapeutic environment by:

(A) providing appropriate monitoring and surveillance of the care environment;

(B) identifying unsafe care situations; and

(C) correcting problems or referring problems to appropriate management level when needed;

(k) communicate with other health team members regarding patient choices, concerns, and special needs, including:

(i) patient status and progress;

(ii) patient response or lack of response to therapies; and

(iii) significant changes in patient condition;

(l) demonstrate the ability to responsibly organize, manage, and supervise the practice of nursing by:

(i) delegating tasks in accordance with these rules and applicable statutes; and

(ii) matching patient needs with personnel qualifications, available resources, and appropriate supervision;

(m) teach and counsel patient families regarding an applicable health care regimen, including general information about health and medical conditions, specific procedures, wellness, and prevention;

(n) if acting as a chief administrative nurse:

(i) ensure that organizational policies, procedures, and standards of nursing practice are developed, kept current, and implemented to promote safe and effective nursing care;

(ii)(A) assess the knowledge, skills, and abilities of nursing staff and assistive personnel; and

(B) ensure ~~[all]~~ personnel are assigned to nursing positions appropriate to their determined competence and licensure, certification, or registration [~~licensure/certification/registration~~] level; and

(iii) ensure that thorough and accurate documentation of personnel records, staff development, quality assurance, and other aspects of the nursing organization are maintained;

(o) if employed by a department of health:

(i) implement standing orders and protocols; and

(ii) complete and provide to a patient prescriptions that have been prepared and signed by a physician in accordance with ~~[the provisions of]~~ Section 58-17b-620;

(p) serve as faculty in areas~~(+)~~ of competence; and

(q) perform any task within the scope of practice of an LPN.

(3) APRN.

(a) An APRN who chooses to change or expand from a primary focus of practice shall, at the request of the Division, document competency within that expanded practice based on education, Clinical Practice Experiences~~[experience]~~, and certification. The burden to demonstrate competency rests upon the licensee.

(b) An individual licensed as an APRN may practice within the scope of practice of an RN and an LPN in Utah.

(c) An APRN who wishes to practice as an RN in a ~~[Compact]~~ Party state, as defined in Section 58-31e-102 of the Nurse Licensure Compact, ~~[must]~~ shall reinstate, qualify for, and obtain an RN Compact license in Utah.

### **R156-31b-802. Medication Aide Certified - Approval of Training Programs.**

In accordance with Subsection 58-31b-601(3), the minimum standards for a~~n~~ MAC training program to be approved by the Division in collaboration with the Board, and the process to obtain approval are ~~[established]~~ as follows.

(1) ~~[All]~~ Each MAC training program~~[s]~~ shall be approved by the Division in collaboration with the Board ~~[and shall obtain approval]~~ prior to the program being implemented.

(2) A MAC training~~[Training]~~ program~~[s]~~ may be offered by an educational institution, a health care facility, or a health care association.

(3) The program shall consist of at least:

(a) 60 clock hours of didactic ~~[c]~~ classroom~~[y]~~ training that is consistent with the model curriculum ~~[set forth]~~ in Section R156-31b-803; and

(b) 40 hours of practical training ~~[with]~~ in a long-term care facility.

(4) The classroom instructor shall:

(a)(i) have ~~[a current,]~~ an active~~[y]~~ LPN, RN, or APRN license in good standing or a multistate privilege to practice nursing in Utah; and

(ii) have at least one year of Clinical Practice Experiences~~[clinical experience]~~; or

(b)(i) be an approved certified nurse aide (CNA) instructor who has completed a "Train the Trainer" program recognized by the Utah Nursing Assistant Registry; and

(ii) have at least one year of Clinical Practice Experiences~~[clinical experience]~~.

(5)(a) The on-site practical training experience instructor shall meet the following criteria:

(i)(A) have ~~[a current,]~~ an active~~[y]~~ LPN, RN, or APRN license in good standing or a multistate privilege to practice nursing in Utah; and

(B) have at least one year of Clinical Practice Experiences~~[clinical experience]~~; or

(ii)(A) be an approved certified nurse aide (CNA) instructor who has completed a "Train the Trainer" program recognized by the Utah Nursing Assistant Registry; and

(B) have at least one year of Clinical Practice Experiences~~[clinical experience]~~.

(b) The practical training instructor-to-student ratio shall be no greater than:

(i) 1:2 if the instructor is working with individual students to administer medications; or

(ii) 1:6 if the instructor is supervising students who are working one-on-one with medication nurses to administer medications in clinical facilities.

(c) The on-site practical training experience instructor shall be on site and available at ~~[all]~~ any time~~[s]~~ if the student is not being directly supervised by a licensed nurse during the Clinical Practice Experiences~~[practical training experience]~~.

(6) An entity seeking approval to provide an MAC training program shall:

(a) submit to the Division a complete application form prescribed by the Division;

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(b) provide evidence of adequate and appropriate trainers and resources to provide the training program, including a well-stocked clinical skills lab or the equivalent;

(c) submit to the Division a copy of the proposed training curriculum and an attestation that the proposed curriculum is consistent with the model curriculum referenced in Section R156-31b-803;

(d) document minimal admission requirements, [which]that shall include:

(i) an earned high school diploma, successful passage of the general educational development (GED) test, or equivalent education as approved by the Board;

(ii) current certification as a nursing aide, in good standing, from the Utah Nursing Assistant Registry;

(iii) at least 2,000 hours of experience completed:

(A) as a certified nurse aide working in a long-term care setting; and

(B) within the two-year period preceding the date of application to the training program; and

(iv) current cardiopulmonary resuscitation (CPR) certification.

**R156-31b-803. Medication Aide Certified -- Model Curriculum.**

A school that offers a medication aide certification program shall follow the "Medication Assistant-Certified (MA-C) Model Curriculum" adopted by the National Council of State Boards of Nursing's Delegate Assembly on August 9, 2007, which is hereby adopted and incorporated by reference.

**KEY:** licensing, nurses

**Date of Enactment or Last Substantive Amendment:** ~~December 9, 2019~~ **2021**

**Notice of Continuation:** January 8, 2018

**Authorizing, and Implemented or Interpreted Law:** 58-31b-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.):	R277-100	Filing No. 53206

**Agency Information**

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

**General Information**

<b>2. Rule or section catchline:</b>
R277-100. Definitions for Utah State Board of Education (Board) Rules
<b>3. Purpose of the new rule or reason for the change:</b>
The Utah State Board of Education (Board) Rule R277-100 is being amended to use the exact definitions as Dewey Cornell in the Comprehensive Threat Assessment Guidelines (CSTAG) that was approved by the Board as the evidence-based threat assessment.
<b>4. Summary of the new rule or change:</b>
The rule has been amended to define "Threat" and "Threat Assessment" in Rule R277-100.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
This rule change is not expected to have independent fiscal impact on state government revenues or expenditures. The changes conform definitions with evidence-based threat assessment practices already approved by the Board.
<b>B) Local governments:</b>
This rule change is not expected to have independent fiscal impact on local governments' revenues or expenditures. The changes conform definitions with evidence-based threat assessment practices already approved by the Board.
<b>C) Small businesses</b> ("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 conform definitions with evidence-based threat assessment practices already approved by the Board.
<b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):
There are no non-small businesses in the industry in question, Elementary and Secondary Schools (North American Industry Classification System (NAICS) 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. This proposed rule change is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses and it does not require any expenditures of, or generate revenue for non-small businesses.

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

This rule change is not expected to have independent fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities. The changes conform definitions with evidence-based threat assessment practices already approved by the Board.

**F) Compliance costs for affected persons:**

There are no independent compliance costs for affected persons. The changes conform definitions with evidence-based threat assessment practices already approved by the Board.

**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
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**H) Department head approval of regulatory impact analysis:**

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

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

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

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

Sydnee Dickson, State Superintendent

**Citation Information**

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

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

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

**A) Comments will be accepted until:** 12/31/2020

**10. This rule change MAY become effective on:** 1/07/2021

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**

<b>Agency head or designee, and title:</b>	Angie Stallings, Deputy Superintendent	<b>Date:</b>	11/13/2020
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**R277. Education, Administration.**

**R277-100. Definitions for Utah State Board of Education (Board) Rules.**

**R277-100-1. Authority and Purpose.**

(1) This rule is authorized by:

- (a) Utah Constitution Article X, Section 3, which vests general control and supervision of public education in the Board; and
- (b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

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

**R277-100-2. Definitions.**

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

(2) "Agency" means:

- (a) an entity governed by the Board;
- (b) an LEA; or
- (c) a grant sub-recipient.

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

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

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

- (a) addresses needs of students who are not succeeding in a traditional school environment;
- (b) provides targeted instruction that increases student credit-earning rates toward graduation; and
- (c) partners with community entities to provide a continuum of services with the focus of preparing students for life after high school.

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

- (i) evidence of the student's legal name and date of birth;
- (ii) student demographic data, including race, ethnicity, and gender;
- (iii) name and contact information for the student's parents;
- (iv) a record of the student's courses, teachers, and grades or progress;
- (v) a record of the student's performance on statewide assessments;
- (vi) documentation concerning a student's eligibility for IDEA or 504 services;
- (vii) a record of suspensions and expulsions, in accordance with Subsection 53G-8-208(4)(a);
- (viii) known allergies;
- (ix) a record of vision and health screening results; and
- (x) a record of required student immunizations; and

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

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

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

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

- (a) is enrolled simultaneously in:
  - (i) a private school or home school; and
  - (ii) a public school; and

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

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

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

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

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

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

- (i) agency control systems;
- (ii) compliance;
- (iii) performance; and
- (iv) financial position.

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

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

- (a) attends a home school pursuant to Section 53G-6-204; and
- (b) is not counted by an LEA in membership for purposes of generating state or federal funding.

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

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

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

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

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

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

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

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

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

(i) for a school district, a local school board; and

(ii) for a charter school, a charter school governing board.

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

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

(b) A monitoring or oversight program may include:

(i) review of financial and performance reports required of the subject program;

(ii) follow-up to ensure the subject program takes timely and appropriate actions to correct identified deficiencies;

(iii) supervising remedial action recommended by audit or monitoring findings or required by Board rule; and

(iv) any function performed in an evaluation or review.

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

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

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

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

(i) administrative personnel;

(ii) a local law enforcement officer or school resource officer;

(iii) a mental health professional;

(iv) a general education or special education teacher; and

(v) other community members as determined by the LEA.

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

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

(a) a written plan, updated annually, for a secondary student's (grades 7-12) education and occupational preparation;

(b) all Board, local board and local charter board graduation requirements;

(c) evidence of parent or guardian, student, and school representative involvement annually;

(d) attainment of approved workplace skill competencies, including job placement when appropriate; and

(e) identification of post secondary goals and approved sequence of courses.

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

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

(a) attends a private school; and

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

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

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

(a) attends an LEA governed public school; and

(b) is counted by an LEA in membership for purposes of generating state or federal funding.

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

(a) is governed by an LEA board;

(b) has an assigned administrator;

(c) has enrolled students that generate average daily membership hours during the school year;

(d) has assigned instructional staff;

(e) provides instruction in the Utah core standards;

(f) has one or more grade groups in the range from kindergarten through grade 12; and

(g) is not a program for students enrolled in another public school.

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

(a) understand and manage emotions;

(b) set and achieve positive goals;

(c) feel and show empathy for others;

(d) establish and maintain positive relationships;

(e) make responsible decisions; and

(f) self-advocate.

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

(a) regularly enrolled at two schools within two LEAs at the same time;

(b) eligible for graduation and other services at both schools; and

(c) subject to the split enrollment provisions of R277-419, counted by each LEA in membership for purposes of generating state or federal funding for only those courses or subjects for which each LEA provides instruction.

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

(31) "Student Threat assessment" means a prevention strategy that involves: (a) identifying student threats including to commit a violent act, (b) determining the seriousness of the threat, and (c) developing intervention plans that protect potential victims and address the underlying problem or conflict that stimulated the threatening behavior.

(3[4]2) "Superintendent" means the State Superintendent of Public Instruction or the Superintendent's designee.

(3[2]3) "Suspension" means:

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

(b) an out-of-school suspension that is the removal of a student from school grounds for disciplinary reasons unless the student removed is:

(i) served solely under a Section 504 plan, where an out-of-school suspension is the excluding of the student from school for disciplinary purposes for one day or longer; or

(ii) a student with disabilities under IDEA, where an out-of-school suspension is the temporary removal of the student from the student's regular school for disciplinary reasons to another setting.

(34) "Threat" means an expression of intent to harm someone that is direct, indirect, or implied and may be spoken, written, or expressed in some other way.

(~~33~~35) "USDB" means the Utah Schools for the Deaf and the Blind.

**KEY:** Board of Education, rules, definitions  
**Date of Enactment or Last Substantive Amendment:** [~~November 13, 2020~~2021  
**Authorizing, and Implemented or Interpreted Law:** Art X Sec 3; 53E-3-401(4)

NOTICE OF PROPOSED RULE		
TYPE OF RULE: New		
Utah Admin. Code Ref (R no.):	R277-311	Filing No. 53207

**Agency Information**

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

**General Information**

<b>2. Rule or section catchline:</b>
R277-311. Specialized Endorsements
<b>3. Purpose of the new rule or reason for the change:</b>
This rule has been adopted as part of the on-going changes to the State Board of Education's licensing processes. This new rule is intended to establish specific requirements for the driver's education and physical education endorsements.
<b>4. Summary of the new rule or change:</b>
This new rule outlines requirements for specialized endorsements on educator licenses, specifically establishing requirements to earn endorsements for driver education and physical education. These endorsements will expire along the same cycle as the underlying license if specified requirements are not met.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
This rule change is not expected to have independent fiscal impact on state government revenues or expenditures. It provides additional clarity and direction regarding endorsements for driver and physical education.
<b>B) Local governments:</b>
This rule change is not expected to have independent fiscal impact on local governments' revenues or expenditures. It provides additional clarity and direction regarding endorsements for driver and physical education.
<b>C) Small businesses</b> ("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 additional clarity and direction regarding endorsements for driver and physical education.
<b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):
There are no non-small businesses in the industry in question, Elementary and Secondary Schools (North American Industry Classification System (NAICS) 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. This proposed rule change is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses and it does not require any expenditures of, or generate revenue for non-small businesses.
<b>E) Persons other than small businesses, non-small businesses, state, or local government entities</b> ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <b>agency</b> ):
This 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 provides additional clarity and direction regarding endorsements for driver and physical education.
<b>F) Compliance costs for affected persons:</b>
There are no independent compliance costs for affected persons. It provides additional clarity and direction regarding endorsements for driver and physical education.
<b>G) Regulatory Impact Summary Table</b> (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in

this table. Inestimable impacts will be included in narratives above.)

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

**H) Department head 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-10-507	Subsection 53E-3-501(1)(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:** 12/31/2020

**10. This rule change MAY become effective on:** 1/07/2021

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**

<b>Agency head or designee, and title:</b>	Angie Stallings, Deputy Superintendent	<b>Date:</b>	12/13/2020
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**R277. Education, Administration.**

**R277-311. Specialized Endorsements.**

**R277-311-1. Authority and Purpose.**

- (1) This rule is authorized by:
  - (a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;
  - (b) Section 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law;
  - (c) Section 53E-3-501(1)(a), which directs the Board to make rules regarding the certification of educators; and

NOTICES OF PROPOSED RULES

(d) Section 53G-10-507, which directs the Board to establish procedures and standards to certify teachers of driver education classes as driver license examiners.

(2) The purpose of this rule is establish standards for earning specialized endorsements in:

- (a) driver education; and
- (b) physical education.

**R277-311-2. Definitions.**

(1) "Driver License Division" or "DLD" means the Driver License Division of the Department of Public Safety.

(2) "Endorsement" means a designation on a license area of concentration earned through demonstrating required competencies established by the Superintendent that qualifies the individual to:

- (a) provide instruction in a specific content area; or
- (b) apply a specific set of skills in an education setting.
- (3) "Satisfactory driving record" means that an educator:
  - (a) holds a valid Utah automobile operator's license;
  - (b) has not had an automobile operator's license suspended or revoked during the three years immediately prior to applying for the endorsement;

(c) has not received an automobile operator's license suspension from a court for a non-traffic related issue;

(d) has not been convicted of more than one moving violation under Title 41, Chapter 6a, Traffic Code in any twelve month period over the last 36 months prior to applying for a driver education endorsement;

(e) has not been convicted of any moving violation under Title 41, Chapter 6a, Traffic Code, which resulted in a fatality;

(f) has not been convicted of a violation of Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving during the five years immediately prior to applying for a driver education endorsement;

(g) has not been convicted of two or more violations of Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving; and

(h) has not been convicted of a violation of Section 53-3-227 during the five years immediately prior to applying for a driver education endorsement.

**R277-311-3. Driver Education Endorsement.**

(1) The Superintendent shall issue a driver education endorsement to a licensee that meets the requirements of this Section R277-311-3 and holds a license area of concentration in one or more of the following areas:

- (a) Secondary Education;
- (b) Special Education;
- (c) School Counselor; or
- (d) Career and Technical Education.

(2) A driver education endorsement shall be valid for the same term as the underlying educator license.

(3) The Superintendent shall award a driver education endorsement if an educator:

- (a) has a satisfactory driving record; and
- (b) completes the following professional preparation:
  - (i) a minimum of twelve semester hours of professional learning in the area of driver and safety education, including a practicum covering classroom, on-street, simulator, and driving range instruction;
  - (ii) a minimum of two semester hours of driver education state law and policy through Utah Education Network;

(iii) a minimum of one semester hour of current first aid and CPR training approved by the Superintendent; and

(iv) a minimum of one semester hour of DLD online examiners training.

(4) An educator shall hold a current driver education endorsement to administer written and driving tests for driver education classes under Section 53G-10-507.

(5) An educator shall hold a current driver education endorsement to be certified as a driver license examiner by the DLD.

(6) To renew a driver education endorsement, an educator shall:

- (a) complete:
  - (i) eight hours of professional development training every year; or
  - (ii) 40 hours of professional development training every five years prior to license renewal, which shall include at least one hour of DLD online examiners training; and

(b) provide proof of current first aid and CPR certification from a provider approved by the Superintendent.

(7) An educator may complete professional development under Subsection (6), as follows:

- (a) workshops provided by the DLD; or
- (b) driver education and traffic safety training pre-approved by the Superintendent through:
  - (i) a state agency;
  - (ii) college or university; or
  - (iii) a professional education organization.

(8)(a) The Superintendent shall administratively dissolve a driver education endorsement if an educator fails to maintain a satisfactory driving record.

(b) An administrative dissolution under Subsection (8)(a) shall have no effect on the underlying educator license or license area absent further Board action in accordance with Section 53E-6-604.

(9) An educator whose endorsement was administratively dissolved under Subsection (8)(a), may apply for reinstatement of the endorsement upon re-obtaining a satisfactory driving record and meeting the renewal requirements of Subsection (6).

**R277-311-4. Physical Education Endorsement.**

(1) The Superintendent shall issue a physical education endorsement to a licensee that meets the requirements of this Section R277-311-4 and holds a license area of concentration in one or more of the following areas:

- (a) Elementary Education;
- (b) Secondary Education; or
- (c) Special Education.

(2) A physical education endorsement shall be valid for the same term as the underlying educator license.

(3) The Superintendent shall issue a physical education endorsement if an educator:

- (a)(i) completes university and professional development courses as required by the Superintendent; or
- (ii) demonstrates competency, as required by the Superintendent; and
- (b) provides proof of current first aid and CPR certification from a provider approved by the Superintendent.

(4) To renew a physical education endorsement, an educator must provide proof of current first aid and CPR certification from a provider approved by the Superintendent.

**KEY: endorsement; driver education; physical education**  
**Date of Enactment of Last Substantive Amendment: 2021**



**Authorizing, and Implemented or Interpreted Law: Art X Sec 3: 53E-3-401; 53E-3-501; 53G-10-507**

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R277-445	Filing No. 53208

**Agency Information**

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

**General Information**

<b>2. Rule or section catchline:</b>
R277-445. Classifying Small Schools as Necessarily Existent
<b>3. Purpose of the new rule or reason for the change:</b>
In the 2020 Fifth Special Session under H.B. 5012, the Legislature authorized new funding under the Necessarily Existent Small School (NESS) program. This included new funding for schools with "isolating conditions" as defined by the Utah State Board of Education (Board), and for certain school districts.
<b>4. Summary of the new rule or change:</b>
This rule has been amended to define "isolating conditions" and to implement the new funding provided under Section 53F-2-304.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
This rule change is not expected to have independent fiscal impact on state government revenues or expenditures. S.B. 2 from the 2020 General Session directed the Board to define "isolating conditions" for new funding provided through the NESS program. This rule

change defines "isolating conditions" to identify schools to receive this funding.

**B) Local governments:**

This rule change is not expected to have independent fiscal impact on local governments' revenues or expenditures. S.B. 2 (2020) directed the Board to define "isolating conditions" for new funding provided through the NESS program. This rule change defines "isolating conditions" to identify schools to receive this funding.

**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. S.B. 2 (2020) directed the Board to define "isolating conditions" for new funding provided through the NESS program. This rule change defines "isolating conditions" to identify schools to receive this funding.

**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. S.B. 2 (2020) directed the Board to define "isolating conditions" for new funding provided through the NESS program. This rule change defines "isolating conditions" to identify schools to receive this funding.

**F) Compliance costs for affected persons:**

There are no independent compliance costs for affected persons. S.B. 2 (2020) directed the Board to define "isolating conditions" for new funding provided through the NESS program. This rule change defines "isolating conditions" to identify schools to receive this funding.

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

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

**H) Department head approval of regulatory impact analysis:**

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

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

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

rule change has no fiscal impact on local education agencies and will not have a fiscal impact on small businesses either.

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

Sydnee Dickson, State Superintendent

**Citation Information**

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

Article X, Section 3	Subsection 53F-2-304(3)	Subsection 53F-2-304(7)
Section 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:** 12/31/2020

**10. This rule change MAY become effective on:** 1/07/2021

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**

<b>Agency head or designee, and title:</b>	Angie Stallings, Deputy Superintendent	<b>Date:</b>	12/13/2020
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**R277. Education, Administration.**

**R277-445. Classifying Small Schools as Necessarily Existent.**

**R277-445-1. Authority and Purpose.**

(1) This rule is authorized by:

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

(b) Subsection 53F-2-304(3), which requires the Board to adopt rules that:

(i) govern the approval of necessarily existent small schools consistent with state law; and

(ii) ensure that districts are not building secondary schools in close proximity to one another where economy and efficiency would be better served by one school meeting the needs of secondary students in a designated geographical area; ~~and~~

(c) Subsection 53F-2-304(7), which requires the Board to define isolating conditions, which may qualify a non-NESS school for additional funding; and

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

(2)(a) The purpose of this rule is to specify the standards ~~[by which the Board classifies schools as necessarily existent, which qualifies the schools for additional funding] for schools and districts to received funding under the NESS program.~~

### **R277-445-2. Definitions.**

(1) "ADM" means average daily membership derived from end-of-year data.

(2) "Isolating conditions" means that a school:

(a) is part of a school district that has a student population density of less than one student enrolled per square mile;

(b) is located more than 25 miles by road from a city or town with a population of at least 2,000 people; and

(c) does not qualify for NESS funding due to NESS formula limitations.

([2]3) "NESS" means Necessarily Existent Small School.

(4) "Small district base funding" means the allocation provided to school districts with NESS schools under Subsection 53F-2-304(8).

([3]5) "Weighted Pupil Unit" or "WPU" means the basic unit used to calculate the amount of state funds a school district may receive.

### **R277-445-3. Standards.**

(1) A school may be classified as necessarily existent if the school's ADM does not exceed:

(a) 160 for elementary schools, including kindergarten at a weighting of .55 per average daily membership;

(b) 300 for one or two-year secondary schools;

(c) 450 for three-year secondary schools;

(d) 500 for four-year secondary schools; or

(e) 600 for six-year secondary schools.

(2) In addition to the requirements of Subsection (1), one-way bus travel for any student from the assigned school to the nearest school of the same type within the same district shall require:

(a) students in kindergarten through grade six to travel more than 45 minutes; or

(b) students in grades seven through twelve to travel more than one hour and 15 minutes.

(3) Notwithstanding Subsection (2), the Superintendent may classify a school that meets the criteria of Subsection (1), as necessarily existent if:

(a) the school is in a district which has been consolidated to the maximum extent possible;

(b) there is evidence acceptable to the Superintendent of increased growth in the school sufficient to take it out of the small school classification within a period of three years, provided that:

(i) the Superintendent may only classify the school as necessarily existent until its ADM surpasses the size standard for small schools of the same type;

(ii) the Superintendent shall annually compare the school's ADM to the school's projected ADM to determine increases or decreases in enrollment; and

(iii) if the assessment for the first or second year shows the increase in the school's ADM is less than 80 percent of the projected annual increase, the school shall no longer be classified as necessarily existent;

(c) the Superintendent determines that consolidation may result in undesirable social, cultural, and economic changes in the community, and:

(i) the school has a safe and educationally adequate school facility with a life expectancy of at least ten years, as judged, at least every five years, by the Superintendent after consultation with the district; or

(ii)(A) the district would incur construction costs by combining a school seeking necessarily existent small school status with an existing school and such construction and land costs would exceed the insurance replacement value of the exiting school by 30 percent;

(B) the existing school has a life expectancy of at least ten years; but

(C) In the event that the ADM from the school seeking necessarily existent small school status under Subsection (3)(c)(ii), when combined with the ADM at the existing school exceed criteria in Subsection (1), the Superintendent may not classify the existing school as necessarily existent; or

(d) the school does not qualify under Subsections (3)(a) through (c), and removal of the necessarily existent status would result in capital costs that the school district cannot meet within three years when utilizing all funds available from local, state, or federal sources.

(4) The Superintendent may not recognize a school with less than six grades as a necessarily existent small school if it is feasible in terms of school plant to consolidate the school into a larger school, which, if consolidated, would meet the criteria of Subsections (1) and (2).

(5) If the Superintendent determines that a secondary complex or attendance area meets the criteria of necessarily existent when analyzed on a 7-12 grade basis, the Superintendent shall not invalidate the qualifying status as a result of a reorganization pattern by a district.

(6)(a) In accordance with Subsection 53G-6-305(3)(b)(ii), the Superintendent shall use NESS Program funds to cover out-of-state tuition reimbursements under Rule R277-421.

(b) The Superintendent shall distribute any funding balance in the NESS Program in the current year with:

(i) a minimum of 95% of the distribution based on the number of WPU funds generated for eligible necessarily existent small schools; and

(ii) the remaining funds distributed using a formula that considers the tax effort of a local board of education.

(7)(a) A school district shall utilize additional WPU funds allocated for necessarily existent small schools for programs at the school for which the units were allocated.

(b) Funds allocated under this rule shall supplement and not supplant other funds allocated to schools by the local board of education.

NOTICES OF PROPOSED RULES

(8) The Superintendent shall classify a school after consultation with the district and in accordance with applicable state statutes and Board rules.

(9) The Superintendent shall allocate funds to schools with isolating conditions based on legislative appropriations.

(10) The Superintendent shall distribute small district base funding in accordance with state law.

(11) If a school district receives small district base funding, the funding is not subject to the restrictions of Subsection (7).

**R277-445-4. Application Procedures.**

(1) Beginning in FY2020, a school district shall apply for funding from the NESS program for all eligible schools, including schools with isolating conditions, on a form approved by the Superintendent by April 2.

(2) A school district shall certify that the information in the district's NESS program application remains accurate in each ensuing fiscal year on a form provided by the Superintendent by April 2.

(3) The Superintendent shall review no less than 20% of the certifications submitted under Subsection (2) on a rotating basis annually to ensure compliance with this Rule R277-445.

**KEY:** school enrollment, educational facilities, small schools  
**Date of Enactment or Last Substantive Amendment:** ~~March 12, 2020~~ **2021**  
**Notice of Continuation:** July 19, 2017  
**Authorizing, and Implemented or Interpreted Law:** Art X Sec 3; 53E-3-401(4); 53F-2-304(1)

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Repeal		
Utah Admin. Code Ref (R no.):	R277-507	Filing No. 53209

**Agency Information**

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

**General Information**

<b>2. Rule or section catchline:</b>
R277-507. Driver Education Endorsement

<b>3. Purpose of the new rule or reason for the change:</b>
Utah State Board of Education (Board) Rule R277-311 has been adopted by the Board, which incorporates provisions of Rule R277-507 which means this rule will be obsolete. (EDITOR'S NOTE: The proposed new Rule R277-311 is under Filing No. 53207 in this issue, December 1, 2020, of the Bulletin.)
<b>4. Summary of the new rule or change:</b>
Rule R277-507 is being repealed in its entirety.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
This rule repeal is not expected to have independent fiscal impact on state government revenues or expenditures. Board Rule R277-311, which was adopted by the Board, incorporates the provisions of Rule R277-507. Therefore, Rule R277-507 is unnecessary and is being repealed.
<b>B) Local governments:</b>
This rule repeal is not expected to have independent fiscal impact on local governments' revenues or expenditures. Board Rule R277-311, which was adopted by the Board, incorporates the provisions of Rule R277-507. Therefore, Rule R277-507 is unnecessary and is being repealed.
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):
This rule repeal is not expected to have independent fiscal impact on small businesses' revenues or expenditures. Board Rule R277-311, which was adopted by the Board, incorporates the provisions of Rule R277-507. Therefore, Rule R277-507 is unnecessary and is being repealed.
<b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):
There are no non-small businesses in the industry in question, Elementary and Secondary Schools (North American Industry Classification System (NAICS) 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. This rule repeal is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses and it does not require any expenditures of, or generate revenue for non-small businesses.
<b>E) Persons other than small businesses, non-small businesses, state, or local government entities</b> ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <b>agency</b> ):

This rule repeal is not expected to have independent fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities. Board Rule R277-311, which was adopted by the Board, incorporates the provisions of Rule R277-507. Therefore, Rule R277-507 is unnecessary and is being repealed.

**F) Compliance costs for affected persons:**

There are no independent compliance costs for affected persons. Board Rule R277-311, which was adopted by the Board, incorporates the provisions of Rule R277-507. Therefore, Rule R277-507 is unnecessary and is being repealed.

**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
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**H) Department head 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 repeal is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses, and it does not require any expenditures of, or generate revenue for non-small businesses. This rule repeal has no fiscal impact on local education agencies and will not have a fiscal impact on small businesses either.

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

Sydnee Dickson, State Superintendent

**Citation Information**

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

Article X, Section 3	Section 53G-10-507	Subsection 53E-3-501(1)(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:** 12/31/2020

**10. This rule change MAY become effective on:** 1/07/2021

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**

<b>Agency head or designee, and title:</b>	Angie Stallings, Deputy Superintendent	<b>Date:</b>	12/13/2020
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**R277. Education, Administration.**

~~**[R277-507. Driver Education Endorsement.**~~

~~**R277-507-1. Authority and Purpose.**~~

- ~~\_\_\_\_\_ (1) This rule is authorized by:~~
  - ~~\_\_\_\_\_ (a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;~~
  - ~~\_\_\_\_\_ (b) Subsection 53E-3-501(1)(a), which directs the Board to make rules regarding the certification of educators;~~
  - ~~\_\_\_\_\_ (c) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and~~
  - ~~\_\_\_\_\_ (d) Section 53G-10-507, which directs the Board to establish procedures and standards to certify teachers of driver education classes as driver license examiners.~~
- ~~\_\_\_\_\_ (2) The purpose of this rule is to establish standards and procedures for secondary teachers to qualify for a driver education endorsement.~~

~~**R277-507-2. Definitions.**~~

- ~~\_\_\_\_\_ (1) "Driver License Division" or "DLD" means the Driver License Division of the Department of Public Safety.~~
- ~~\_\_\_\_\_ (2) "Endorsement" means a stipulation appended to a license setting forth the areas of practice to which the license applies.~~
- ~~\_\_\_\_\_ (3) "Level 1 License" means a license issued:~~
  - ~~\_\_\_\_\_ (a) upon completion of an approved educator preparation program;~~
  - ~~\_\_\_\_\_ (b) upon completion of an alternative preparation program;~~
  - ~~\_\_\_\_\_ (c) pursuant to an agreement under the NASDTEC Interstate Contract to candidates who have also met all ancillary requirements established by law or rule; or~~
  - ~~\_\_\_\_\_ (d) in accordance with the requirements of Rule R277-511.~~
- ~~\_\_\_\_\_ (4) "Level 2 License" means a license issued after satisfaction of all requirements for a Level 1 license as well as any additional requirements established by law or rule relating to professional preparation or experience.~~
- ~~\_\_\_\_\_ (5) "Level 3 License" means a license issued to an educator who holds a current Utah Level 2 license and has also received, in the educator's field of practice, National Board certification or a doctorate from an accredited institution.~~
- ~~\_\_\_\_\_ (6) "NASDTEC Interstate Contract" means the contract implementing Title 53E, Chapter 6, Part 10, Compact for Interstate Qualification of Educational Personnel, which is administered through the National Association of State Directors of Teacher Education and Certification, and which provides for reciprocity of educator licenses among states.~~
- ~~\_\_\_\_\_ (7)(a) "Utah Driver Handbook" means a manual, prepared and periodically updated by the DLD, containing the rules which should be followed when operating a motor vehicle in Utah.~~
  - ~~\_\_\_\_\_ (b) The updated Utah Driver Handbook is available at <http://dld.utah.gov/handbooksprintableforms/>.~~

**R277-507-3. Endorsement Requirements.**

- ~~\_\_\_\_\_ (1) A driver education endorsement shall be added to an educator's Level 1, 2, or 3 license if the educator:~~
    - ~~\_\_\_\_\_ (a) has a valid and current Level 1, 2, or 3 license with an area of concentration in one or more of the following:~~
      - ~~\_\_\_\_\_ (i) Secondary Education;~~
      - ~~\_\_\_\_\_ (ii) Special Education;~~
      - ~~\_\_\_\_\_ (iii) School Counselor; or~~
      - ~~\_\_\_\_\_ (iv) Career and Technical Education;~~
    - ~~\_\_\_\_\_ (b) has a valid Utah automobile operator's license;~~
    - ~~\_\_\_\_\_ (c) has not had an automobile operator's license suspended or revoked during the two year period immediately prior to applying for the endorsement; and~~
    - ~~\_\_\_\_\_ (d) has completed the professional preparation requirements set forth in Subsection (2).~~
  - ~~\_\_\_\_\_ (2) A high school driver education teacher shall complete professional preparation which includes sixteen (16) semester hours in the area of driver and safety education, as follows:~~
    - ~~\_\_\_\_\_ (a) a minimum of twelve (12) semester hours shall be in the area of driver and safety education, including a practicum covering classroom, on street, simulator, and driving range instruction;~~
    - ~~\_\_\_\_\_ (b) a minimum of two (2) semester hours of Driver Education State Law and Policy through Utah Education Network;~~
    - ~~\_\_\_\_\_ (c) a minimum of one (1) semester hour of current/valid first aid and CPR training; and~~
    - ~~\_\_\_\_\_ (d) a minimum of one (1) semester hour of DLD online examiners training.~~
  - ~~\_\_\_\_\_ (3) In order for a high school driver education teacher to be certified as a driver license examiner by the DLD, the teacher shall first be licensed and endorsed as provided in this Section R277-507-3 by the Board.~~
  - ~~\_\_\_\_\_ (4) After meeting the criteria of Subsection(1), a high school driver education teacher shall obtain a valid and current certificate from the DLD to administer written and driving tests, in accordance with Section 53G-10-507.~~
- R277-507-4. Driver Education Program Standards.**
- ~~\_\_\_\_\_ A teacher preparation program of an institution may be approved by the Board if it requires demonstrated competency by the teacher in:~~
    - ~~\_\_\_\_\_ (1) structuring, implementing, identifying and developing support materials related to:~~
      - ~~\_\_\_\_\_ (a) regular classroom instruction;~~
      - ~~\_\_\_\_\_ (b) multimedia instruction;~~
      - ~~\_\_\_\_\_ (c) driving simulation;~~
      - ~~\_\_\_\_\_ (d) off street multiple car driving range experiences; and~~
      - ~~\_\_\_\_\_ (e) on street driving experiences;~~
    - ~~\_\_\_\_\_ (2) assisting students in examining and clarifying their attitudes and values about safety;~~
    - ~~\_\_\_\_\_ (3) understanding and explaining the basic principles of motor vehicle systems, dynamics, and maintenance;~~
    - ~~\_\_\_\_\_ (4) understanding and explaining the interaction of all highway transportation system elements;~~
    - ~~\_\_\_\_\_ (5) initiating emergency procedures under varying circumstances;~~
    - ~~\_\_\_\_\_ (6) motor vehicle operation and on street instruction;~~
    - ~~\_\_\_\_\_ (7) understanding and explaining the physiological and psychological influences of alcohol and other drugs especially as they relate to driving;~~
    - ~~\_\_\_\_\_ (8) understanding and explaining seat belt safety;~~

- ~~(9) understanding and explaining the consequences of distracted driving;~~
- ~~(10) understanding and explaining due process in the legal system;~~
- ~~(11) communicating effectively with federal, state, and local agencies concerning safety issues;~~
- ~~(12) understanding and explaining the frequency, severity, nature and prevention of accidents related to driving which occur in various age groups in various life activities; and~~
- ~~(13) understanding and explaining the Utah Driver Handbook.~~

**R277-507-5. Endorsement Suspension.**

- ~~(1) A driver education endorsement shall be immediately suspended and the previously endorsed individual may not be allowed to teach driver education following the suspension or revocation of the individual's automobile operator's license.~~
- ~~(2) Once an individual's endorsement to teach has been suspended, the individual shall maintain a driving record free of convictions for moving violations or chargeable accidents for a period of two years before the endorsement to teach may be reinstated.~~

~~**KEY:** professional education, driver education, educator licensure  
**Date of Enactment or Last Substantive Amendment:** March 14, 2017  
**Notice of Continuation:** November 15, 2016  
**Authorizing, and Implemented or Interpreted Law:** Art X Sec 3; 53E-3-5501(1)(a); 53E-3-401(4); 53G-10-507]~~

NOTICE OF PROPOSED RULE		
TYPE OF RULE: New		
Utah Admin. Code Ref (R no.):	R277-626	Filing No. 53210

**Agency Information**

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

**General Information**

<b>2. Rule or section catchline:</b>
R277-626. Special Needs Opportunity Scholarship Program

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

The Legislature enacted H.B. 4003 in the 2020 Fourth Special Session, which created the Special Needs Scholarship Program. Through this program, the Utah State Board of Education (USBE) is required to contract with a provider to solicit funds and administer a private school scholarship program for eligible special education students. The bill further requires USBE to make rules to implement the program. Rule R277-626 was drafted to comply with H.B. 4003's rulemaking requirements and establish the Special Needs Scholarship Program.

**4. Summary of the new rule or change:**

This proposed rule is to provide guidelines for contracted scholarship granting organizations, and for the Superintendent to implement the Special Needs Opportunity Scholarship Program.

**Fiscal Information**

**5. Aggregate anticipated cost or savings to:**

**A) State budget:**

This proposed rule is not expected to have independent fiscal impact on state government revenues or expenditures. This new rule is to comply with the requirements of H.B. 4003 (4th Spec Sess).

**B) Local governments:**

This proposed rule is not expected to have independent fiscal impact on local governments' revenues or expenditures. This new rule is to comply with the requirements of H.B. 4003 (4th Spec Sess).

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

This proposed rule is not expected to have independent fiscal impact on small businesses' revenues or expenditures. This new rule is to comply with the requirements of H.B. 4003 (4th Spec Sess).

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

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

This proposed rule is not expected to have independent fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities. This new rule is to comply with the requirements of H.B. 4003 (4th Spec Sess).

**F) Compliance costs for affected persons:**

There are no independent compliance costs for affected persons. This new rule is to comply with the requirements of H.B. 4003 (4th Spec Sess).

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

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

**H) Department head approval of regulatory impact analysis:**

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

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

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

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

Sydnee Dickson, State Superintendent

**Citation Information**

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

Article X, Section 3	Section 53E-7-404	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:** 12/31/2020

**10. This rule change MAY become effective on:** 1/07/2021

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

<b>Agency head or designee, and title:</b>	Angie Stallings, Deputy Superintendent	<b>Date:</b>	12/13/2020
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#### R277. Education, Administration.

##### **R277-626. Special Needs Opportunity Scholarship Program.**

##### **R277-626-1. Authority and Purpose.**

(1) This rule is authorized by:

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

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

(c) Section 53E-7-404, which requires the Board to make rules to implement the Special Needs Opportunity Scholarship Program.

(2) The purpose of this rule is to provide guidelines for contracted scholarship granting organizations and the Superintendent to implement the Special Needs Opportunity Scholarship Program.

##### **R277-626-2. Definitions.**

(1) "Eligible student" has the same meaning as defined in Subsection 53E-7-401(1).

(2) "Program donation" means a donation to a scholarship granting organization in accordance with Section 53E-7-405.

(3) "Qualifying school" has the same meaning as defined in Subsection 53E-7-401(7).

(4) "Request for proposals" or "RFP" has the same meaning as defined Subsection 63G-6a-103(70).

(5) "Scholarship expense" has the same meaning as defined in Subsection 53E-7-401(10).

(6)(a) "Scholarship granting organization" or "SGO" has the same meaning as defined in Subsection 53E-7-401(11).

(b) An SGO may not be a qualifying school.

(7) "Scholarship student" has the same meaning as defined in Subsection 53E-7-401(12).

(8) "Special Needs Opportunity Scholarship Program" or "the program" means the scholarship grant program established in Section 53E-7-402.

##### **R277-626-3. Superintendent Responsibilities.**

(1) The Superintendent shall conduct an RFP for an SGO in accordance with Subsection 53E-7-404(3).

(2) The Superintendent shall provide all information required to the Utah State Tax Commission in accordance with Subsection 53E-7-404(4)(c).

(3) The Superintendent shall provide a tax credit certificate form, in accordance with Subsection 53E-7-404(2)(a) for use by an approved SGO.

(4) The Superintendent shall annually recommend to the Board a program donations cap for approval in accordance with Subsection 53E-7-407(4).

(5)(a) The Superintendent shall monitor an SGO chosen under Subsection (1) to ensure compliance with state law, including Title 53E, Chapter 7, Part 4, Special Needs Opportunity Scholarship Program and this Rule R277-626.

(b) The Superintendent may recommend remedial action against an SGO in accordance with Rule R277-114 and Subsection 53E-7-404(5).

(6)(a) The Superintendent shall:

(i) recommend qualifying schools to the Board for approval in accordance with Subsection 53E-7-408(6); and

(ii) require, as a condition for approval, that a qualifying school reimburse scholarship money to an SGO if an eligible student discontinues enrollment early.

(b) The Superintendent shall post a list of approved qualifying schools on the Board website.

(c) The Superintendent may monitor eligible schools for on-going compliance with the requirements of Section 53E-7-408.

(7)(a) The Superintendent shall monitor SGO employees and officers in accordance with Subsection 53E-7-410(2).

(b) The Superintendent shall initiate corrective action against an SGO if an employee or officer of the SGO is facing charges for, or has been convicted or pled guilty or no contest to a violation of the following state laws or laws of another jurisdiction:

(i) any felony; or

(ii) an offense involving fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct.

##### **R277-626-4. SGO Responsibilities.**

(1) An SGO approved in accordance with Subsection R277-626-3(1) shall administer the program in accordance with Section 53E-7-405.

(2)(a) An SGO shall maintain separate accounts for all scholarship donations, including any interest or other income from the scholarship funds.

(b) An SGO may not commingle the scholarship funds with any other funds and may only use funds from the account to cover scholarship expenses.

(3)(a)(i) Prior to an SGO paying expenses for tuition and fees, a parent of an eligible student shall personally approve a funds transfer to the qualifying school.

(ii) A student may not approve a funds transfer under a power of attorney from the student's parent.

(iii) After approval as required under Subsection (3)(a)(i), an SGO shall pay costs for tuition and school fees for an eligible student directly to a qualifying school.

(b) An SGO may disburse reimbursements to an eligible student's parent upon proof of payment of other approved scholarship expenses.

(3) If an eligible student discontinues enrollment in a qualifying school, the SGO shall:

(a) notify the Superintendent; and

(b) obtain reimbursement of scholarship money from the qualifying school.

(4) An SGO shall provide the following information to the Superintendent biannually by January 31 and July 31:

(a) the amount of tuition and fees each qualifying school charges for the 2020-21 through the 2023-24 school years;

(b) financial records of the SGO annually, including administrative costs incurred by the SGO to administer the program;

(c) the number of scholarship students from each school district of residence annually;

(d) the number of first time scholarship students annually;

(e) the amount disbursed for scholarship expenses annually, provided with any detail requested by the Superintendent;

(f) the standards used by the SGO to determine whether a student is an eligible student;

NOTICES OF PROPOSED RULES

- (g) data reflecting savings to the state and LEAs, if any, as a result of scholarship students exiting the public school system;
  - (h) demographic information on scholarship students, including:
    - (i) name
    - (ii) date of birth;
    - (iii) gender;
    - (iv) race; and
    - (v) last public school attended, if applicable;
  - (i) whether the SGO has received complaints of discrimination, and any steps taken by the SGO to remedy the complaints; and
  - (j) any other information requested by the Superintendent to facilitate monitoring of the program and preparation of the annual report required by Section 53E-1-202.1.
- (5) An SGO may not have a personal or professional relationship with a qualifying school or an employee of a qualifying school that would create a conflict of interest, favoritism, or bias in making awards from program donations.
- (6) An SGO is subject to monitoring and corrective action in the same manner as a recipient under Rule R277-114.

**KEY: special needs opportunity scholarship**  
**Date of Enactment or Last Substantive Amendment: 2021**  
**Authorizing, and Implemented, or Interpreted Law: Art X, Sec 3; 53E-3-401(4); Title 53E, Chapter 7, Part 4**

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R277-726	Filing No. 53221

**Agency Information**

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

**General Information**

<b>2. Rule or section catchline:</b>
R277-726. Statewide Online Education Program

<b>3. Purpose of the new rule or reason for the change:</b>
Utah State Board of Education Assessment staff and Statewide Online Education Program (SOEP) program staff have identified issues related to assessments SOEP providers are required to administer and questions related to student access to facility space, and for certain students who qualify for fee waivers, access to technology and WiFi when participating in the program.
<b>4. Summary of the new rule or change:</b>
This rule has been amended to update definitions and update the superintendent, local education agency (LEA), and provider requirements and responsibilities. This rule has also been amended to require LEAs to provide students access to facility space during the regular school day for students to participate in an SOEP course. This rule also clarifies that a student's primary school of enrollment is responsible to ensure students who qualify for fee waivers have the ability to access SOEP courses.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
This rule change is not expected to have independent fiscal impact on state government revenues or expenditures. The SOEP is funded through the Minimum School Program for public school students and a state appropriation for home and private school students. The changes do not affect this state funding for the program.
<b>B) Local governments:</b>
This rule change is not expected to have independent fiscal impact on local governments' revenues or expenditures. This rule change clarifies that for participating students who qualify for a fee waiver, the student's primary LEA or school of enrollment shall provide the student with access to necessary technology during a school period or during the regular school day for the student to participate in an online course or provide the student with technology and WiFi for the student to participate outside of the school building. This clarification could require additional costs and/or resources from LEAs to the degree they are not already providing these resources to students who qualify. The impact of this change varies by LEA and the degree to which the LEA already complies with the changes and the number of participating students in the LEA eligible for a fee waiver.
<b>C) Small businesses</b> ("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 SOEP is funded through the Minimum School Program for public school students and a state appropriation for home and private school students. The changes do not affect this state funding for the program.

The SOEP program providers are either school district or charter LEAs.

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

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

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

This rule change is not expected to have independent fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities. . This rule has been amended to require LEAs to provide students access to facility space during the regular school day for students to participate in an SOEP course. This rule also clarifies that a student's primary school of enrollment is responsible to ensure students who qualify for fee waivers have the ability to access SOEP courses.

**F) Compliance costs for affected persons:**

There are no independent compliance costs for affected persons. This rule has been amended to require LEAs to provide students access to facility space during the regular school day for students to participate in an SOEP course. This rule also clarifies that a student's primary school of enrollment is responsible to ensure students who qualify for fee waivers have the ability to access SOEP courses.

**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
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**H) Department head approval of regulatory impact analysis:**

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

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

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

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

Sydnee Dickson, State Superintendent

**Citation Information**

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

Article X, Section 3	Section 53F-4-514	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.)

<b>A) Comments will be accepted until:</b>	12/31/2020
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<b>10. This rule change MAY become effective on:</b>	1/07/2021
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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**

<b>Agency head or designee, and title:</b>	Angie Stallings, Deputy Superintendent	<b>Date:</b>	11/16/2020
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**R277. Education, Administration.**

**R277-726. Statewide Online Education Program.**

**R277-726-1. 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) Section 53F-4-514, which requires the Board to make rules;
    - (i) providing for the administration of the high school assessment~~[statewide assessments]~~ to students enrolled in online courses; and
    - ~~[(c)]~~ ~~Section 53F-4-508, which requires the Board to make rules.~~ (ii) that establish a course credit acknowledgment form and procedures for completing and submitting the form to the Board; and
    - ~~[(c)]~~ ~~Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.~~
- (2) The purpose of this rule is to:
  - (a) define necessary terms;
  - (b) provide and describe a program registration agreement; and
  - (c) provide other requirements for an LEA, the Superintendent, a parent and a student, and a provider for program implementation and accountability.

**R277-726-2. Definitions.**

- (1) "Actively participates" means the student actively participates as defined by the provider.
- (2) "Course completion" means that a student has completed a course with a passing grade and the provider has transmitted the grade and credit to the primary LEA of enrollment.
- (3)(a) "Course Credit Acknowledgment" or "CCA" means an agreement and registration record using the Statewide Online Education Program application provided by the Superintendent.
- (b) Except as provided in Subsection 53F-4-508(3)(h), the CCA shall be signed by the designee of the primary school of enrollment, and the qualified provider.
- (4)(a) "Eligible student" means a student enrolled in grades 6-12 in a secondary environment in a course that:
  - (i) is offered by a public school; and
  - (ii) provides the student the opportunity to earn high school graduation credit.
- (b) "Eligible student" does not include a student enrolled in an adult education program.
- (5) "Enrollment confirmation" means the student initially registered and actively participated, as defined under Subsection(1).
- (6)(a) "Executed CCA" means a CCA that has been signed by all parties as provided in Subsection 53F-4-508(3)(h) and received by the Superintendent.
- (b) Following enrollment confirmation and participation, Superintendent directs funds to the provider, consistent with Sections 53F-4-505 through 53F-4-507.
- (7)(a) "High school assessment" means the high school assessment described in Section 53E-4-304 and Subsection R277-404-2(6).
- (b) "High school assessment" includes the board-approved alternate assessment for high school.
- ~~[(7)](8) "LEA" includes, for purposes of this rule, the Utah Schools for the Deaf and the Blind.~~
- ~~[(8)](9) "Online course" means a course of instruction offered through the Statewide Online Education Program.~~
- ~~[(9)](10) "Online course payment" means the amount withheld from a student's primary LEA and disbursed or otherwise paid to the designated provider following satisfaction of the requirements of the law, and as directed in Subsection 53F-4-507(2).~~
- ~~[(10)](11) "Online course provider" or "provider" means:~~
  - (a) a school district school;
  - (b) a charter school;
  - (c) an LEA program created for the purpose of serving Utah students in grades 9-12 online; or
  - (d) a program of an institution of higher education described in Subsection 53F-4-504(3).
- ~~[(11)](12) "Primary LEA of enrollment" means the LEA in which an eligible student is enrolled for courses other than online courses offered through the Statewide Online Education Program, and which reports the student to be in regular membership, and special education membership, if applicable.~~
- ~~[(12)](13) "Primary school of enrollment" means:~~
  - (a) a student's school of record within a primary LEA of enrollment; and
  - (b) the school that maintains the student's cumulative file, enrollment information, and transcript for purposes of high school graduation.
- ~~[(13)](14) "Resident school" means the district school within whose attendance boundaries the student's custodial parent or legal guardian resides.~~

~~[(14) "Statewide assessment" means a test or assessment required under Rule R277-404.]~~

(15) "Statewide Online Education Program" or "program" means courses offered to students under Title 53F, Chapter 4, Part 5, Statewide Online Education Program Act.

(16) "Teacher of record" means the teacher who is employed by a provider and to whom students are assigned for purposes of reporting and data submissions to the Superintendent in accordance with Section R277-484-3.

(17) "Underenrolled student" means a student with less than a full course load, as defined by the LEA, during the regular school day at the student's primary school of enrollment.

(18) "USB E course code" means a code for a designated subject matter course assigned by the Superintendent.

(19) "Withdrawal from online course" means that a student withdraws or ceases participation in an online course as follows:

(a) within 20 calendar days of the start date of the course, if the student enrolls on or before the start date;

(b) within 20 calendar days of enrolling in a course, if the student enrolls after the start date; or

(c) within 20 calendar days after the start date of the second 0.5 credit of a 1.0 credit course; or

(d) as the result of a student suspension from an online course following adequate documented due process by the provider.

#### **R277-726-3. Course Credit Acknowledgment (CCA) Process.**

(1) A student, a student's parent, a counselor, or a provider may initiate a CCA.

(2)(a) A counselor designated by a student's primary school of enrollment shall review the student's CCA to ensure consistency with:

- (i) graduation requirements;
- (ii) the student's plan for college and career readiness;
- (iii) the student's IEP;
- (iv) the student's Section 504 plan; or
- (v) the student's international baccalaureate program.

(b) The primary school of enrollment shall return the CCA to the Superintendent within 72 business hours.

(3)(a) The primary school of enrollment is not required to meet with the student or parent for approval of a course request.

(b) The Superintendent shall notify a primary school of enrollment of a student's enrollment in the program.

(4) If a student enrolling in the program has an IEP or a Section 504 plan, the primary LEA or school of enrollment shall forward the IEP or description of 504 accommodations to the provider within 72 business hours of receiving notice from the Superintendent that the provider has accepted the enrollment request.

(5) The Superintendent shall develop and administer procedures for facilitation of a CCA that informs all appropriate parties.

#### **R277-726-4. Eligible Student and Parent Rights and Responsibilities.**

(1) An eligible student may register for program credits consistent with Section 53F-4-503.

(2) An eligible student may exceed a full course load during a regular school year if:

(a) the student's plan for college and career readiness indicates that the student intends to complete high school graduation requirements and exit high school before the rest of the student's high school cohort; and

(b) the student's schedule demonstrates progress toward early graduation.

(3) In accordance with Section 53F-4-509(5), if a student enrolled in a program course exceeds a full course load during a regular school year, a primary LEA of enrollment may mark the student as an early graduate and increase membership in accordance with Section R277-419-6 and Rule R277-484 to account for credits in excess of full-time enrollment in a local Student Information System.

(4)(a) An eligible student is expected to complete courses in which the student enrolls in a timely manner consistent with Section 53F-4-505 and requirements for attendance and participation in accordance with Subsection R277-726-7(15).

(b) If a student changes the student's enrollment for any reason, it is the student's or student's parent's responsibility to notify the provider immediately.

(5) A student should enroll in online courses, or declare an intention to enroll, during the school course registration period designated by the primary LEA of enrollment for regular course registration.

(6) A student may alter a course schedule by dropping a traditional course and adding an online course in accordance with the primary school of enrollment's same established deadline for dropping and adding traditional courses.

(7)(a) Notwithstanding Subsection (6), an underenrolled student may enroll in an online course at any time during a calendar year.

(b) If an underenrolled student enrolls in an online course as described in Subsection (7)(a), the primary school of enrollment may immediately claim the student for the adjusted portion of enrollment.

#### **R277-726-5. LEA Requirements and Responsibilities.**

(1) A primary school of enrollment shall facilitate student enrollment with any and all eligible providers selected by an eligible student consistent with course credit limits.

(2) A primary school of enrollment or a provider LEA shall use the CCA application, records, and processes provided by the Superintendent for the program.

(3) A primary school or LEA of enrollment shall provide information about available online courses and programs:

- (a) in registration materials;
- (b) on the LEA's website; and
- (c) on the school's website.

(4) A primary school or LEA of enrollment shall provide the notice required under Subsection (3) concurrent with the high school course registration period designated by the LEA for the upcoming school year to facilitate enrollment as required by Section 53F-4-513.

(5) A primary school of enrollment shall include a student's online courses in the student's enrollment records and, upon course completion, include online course grades and credits on the student's transcripts.

(6) A primary school of enrollment shall recognize credit earned by a participating secondary student through courses completed prior to grade 9 for purposes of high school graduation provided that:

(a) the student has in the student's records documentation of the student's intention to graduate early; and

(b) the student is enrolled at a middle school or junior high school and a high school accredited in accordance with Rule R277-410.

(7) A primary school of enrollment shall determine fee waiver eligibility for participating public school students pursuant to R277-407.

(8)(a) If a participating student qualifies for a fee waiver, the student's primary LEA or school of enrollment shall provide the participating student access to an online course by:

(i) allowing a student access to necessary technology in a computer lab or other space within the school building during a school

period or during the regular school day for the student to participate in an online course; or

(ii) providing a participating student technology and wifi needed for the student to participate outside of the school building.

(b) If a participating student who qualifies for a fee waiver is a home or private school student, the online course provider shall provide the participating home or private school student access to the online course.

~~(8)~~(9) A primary school of enrollment shall provide participating students access to facilities for the student to participate in an online course during the regular school day, sports, extracurricular and co-curricular activities, and graduation services consistent with local policies governing participation irrespective of relative levels of participation in traditional courses versus Statewide Online Education courses.

~~(9)~~(10)(a) If a participating student's primary school of enrollment is a middle school or junior high as defined in Rule R277-700, course completions will be recorded in a student's record of credit and course completion for grade 9 to allow recognition toward grades 9-12, high school graduation requirements, and post-secondary requirements.

(b) A primary LEA of enrollment accepting credit toward high school requirements is not required to independently verify:

- (i) early graduation status; or
- (ii) the non-supplanting nature of SOEP courses.

~~(10)~~(11) When a student satisfactorily completes an online semester or quarter course, in accordance with the LEA's procedures, a designated counselor or registrar at the primary school of enrollment shall forward records of grades and credit for students participating prior to grade 9 to the student's grade 9 primary school of enrollment for recording grades and credit per Subsection ~~[R277-726-5(8)]~~(10) once a student completes grade 8.

**R277-726-6. Superintendent Requirements and Responsibilities.**

(1) The Superintendent shall provide a website for the program, including information required under Section 53F-4-512 and other information as determined by the Board.

(2) The Superintendent shall direct a provider to administer ~~[statewide assessments consistent with Rule R277-404 and Section 53F-4-514 for identified courses using LEA adopted and state approved assessments]~~the high school assessment consistent with Section 53F-4-514 and Rule R277-404.

(3)(a) The Board may determine space availability standards and appropriate course load standards for online courses consistent with Subsection 53F-4-512(3)(d).

(b) Course load standards may differ based on subject matter.

(4) The Board shall withhold funds from a primary LEA of enrollment and make payments to a provider consistent with Sections 53F-4-505 through 53F-4-507.

(5) The Board may refuse to provide funds under a CCA if the Board finds that information has been submitted fraudulently or in violation of the law or Board rule by any of the parties to a CCA.

(6) The Superintendent shall receive and investigate complaints, and impose sanctions, if appropriate, regarding course integrity, financial mismanagement, enrollment fraud or inaccuracy, or violations of the law or this rule specific to the requirements and provisions of the program.

(7) If a Board investigation finds that a provider has violated the IDEA or Section 504 provisions for a student taking online courses, the provider shall compensate the student's primary LEA of enrollment for all costs related to compliance.

(8)(a) The Superintendent may audit, at the Board's sole discretion, an LEA's or program participant's compliance with any requirement of state or federal law or Board rule under the program.

(b) All participants shall provide timely access to all records, student information, financial data or other information requested by the Board, the Board's auditors, or the Superintendent upon request.

(9) The Board may withhold funds from a program participant for the participant's failure to comply with a reasonable request for records or information.

(10) Program records are available to the public subject to Title 63G, Chapter 2, Government Records Access and Management Act.

(11) The Superintendent shall withhold online course payment from a primary LEA of enrollment and payments to an eligible provider at the nearest monthly transfer of funds, subject to verification of information, in an amount consistent with, and at the time a provider qualifies to receive payment, under Subsection 53F-4-505(4).

(12) The Superintendent shall pay a provider consistent with Minimum School Program funding transfer schedules.

(13)(a) The Superintendent may make decisions on questions or issues unresolved by Title 53F, Chapter 4, Part 5, Statewide Online Program Act or this rule on a case-by-case basis.

(b) The Superintendent shall report decisions described in Subsection (13)(a) to the Board consistent with the purposes of the law and this rule.

**R277-726-7. Provider Requirements and Responsibilities.**

(1)(a) A provider shall administer the high school assessment to a participating private or home school student as directed by the Superintendent, including proctoring the high school assessment, consistent with Section 53F-4-510 and Rule R277-404~~[statewide assessments as directed by the Superintendent, including proctoring statewide assessments, consistent with Section 53F-4-415 and Rule R277-404].~~

(b) A provider shall pay administrative and proctoring costs for the high school assessment described in Subsection (1)(a)~~[all statewide assessments].~~

(2) A provider shall provide a parent or a student with email and telephone contacts for the provider during regular business hours to facilitate parent contact.

(3) A provider and any third party working with a provider shall, for all eligible students, satisfy all Board requirements for:

- (a) consistency with course standards;
- (b) criminal background checks for provider employees;
- (c) documentation of student enrollment and participation;

and

- (d) compliance with:
  - (i) the IDEA;
  - (ii) Section 504; and
  - (iii) requirements for ELL students.

(4) A provider shall receive payments for a student properly enrolled in the program from the Superintendent consistent with:

- (a) Board procedures;
- (b) Board timelines; and
- (c) Sections 53F-4-505 through 53F-4-508.

(5)(a) A provider may charge a fee consistent with other secondary schools.

(b) If a provider intends to charge a fee of any kind, the provider:

- (i) shall notify the primary school of enrollment with whom the provider has the CCA of the purpose for fees and amounts of fees;

(ii) shall provide timely notice to a parent of required fees and fee waiver opportunities;

(iii) shall post fees on the provider website;

(iv) shall be responsible for fee waivers for an eligible student, including all materials for a student designated fee waiver eligible by a student's primary school of enrollment;

(v) shall satisfy all requirements of Rule R277-407, as applicable; and

(vi) shall provide fee waivers to home school or private school students who meet fee waiver eligibility at the provider's expense.

(6) A provider shall maintain a student's records and comply with the federal Family Educational Rights and Privacy Act, Title 53E, Chapter 9, Part 3, Utah Family Educational Rights and Privacy Act, and Rule R277-487, including:

(a) protecting the confidentiality of a student's records and providing a parent and an eligible student access to records; and

(b) providing a parent or student documentation of educational performance, including:

(i) test scores;

(ii) grades;

(iii) progress and performance measures; and

(iv) completion of credit.

(7) Except as otherwise provided in this Rule R277-726, a provider shall submit a student's credit and grade to the Superintendent, using processes and applications provided by the Superintendent for this purpose, to a designated counselor or registrar at the primary school of enrollment, and the student's parent no later than:

(a) 30 days after a student satisfactorily completes an online semester or quarter course; or

(b) June 30 of the school year.

(8) A provider may not withhold a student's credits, grades, or transcripts from the student, parent, or the student's school of enrollment for any reason.

(9)(a) If a provider suspends or expels a student from an online course for disciplinary reasons, the provider shall notify the student's primary LEA of enrollment by placing the student on disciplinary withdrawal.

(b) A provider is responsible for all due process procedures for student disciplinary actions in the provider's online program.

(c)(i) A provider shall notify the Superintendent of a student's administrative withdrawal, if the student is inactive in a course for more than ten days, using forms and processes developed by the Superintendent for this purpose.

(ii) If a student, parent, or counselor fails to request reinstatement following notification under Subsection (c)(i), the provider shall formally withdraw the student within 72 hours and notify the student, parent, and primary LEA of the action.

(10) If a student entitled to services under the IDEA is removed from an online program, the primary LEA shall work with the student and the student's parents to identify alternatives to provide a free and appropriate public education.

(11)(a) A provider shall provide to the Superintendent a list of course options using USBE-provided course codes.

(b) All program courses shall be coded as semester or quarter courses.

(c) A provider shall update the provider's course offerings annually.

(12) A provider shall serve a student on a first-come-first-served basis who desires to take courses and who is designated eligible by a primary school of enrollment if desired courses have space available.

(13) A provider shall provide all records maintained as part of a public online school or program, including:

(a) financial and enrollment records; and

(b) information for accountability and audit purposes upon request by the Superintendent and the provider's external auditors.

(14) A provider shall maintain the following for at least five calendar years after the student exits the provider's or third party's program:

(a) test scores;

(b) student grades;

(c) completion of credit; and

(d) other progress and performance measures

(15)(a) A provider is responsible for complete and timely submissions of record changes to executed CCAs and submission of other reports and records as required by the Superintendent.

(b) A provider shall update CCAs to the nearest credit value earned by June 30 annually.

(c) A provider may only maintain an CCA open after June 30 if a student remains actively engaged in coursework, meeting the provider's standard of active participation.

(16) A provider shall inform a student and the student's parent of expectations for active participation prior to the inception of course work, including informing the student and the student's parent of travel expectations to fulfill course requirements.

(17)(a) An LEA may participate in the program as a provider by offering a school or program consistent with the provisions of Rule R277-115 to a Utah secondary student in grades 6-12 who is not a resident student of the LEA and a regularly-enrolled student of the LEA consistent with Sections 53F-4-501 and 53F-4-503.

(b) An LEA program created in accordance with Subsection (17)(a) for serving students in grades 9-12 online must partner with an accredited school and shall:

(i) report grades and credit earned by a student to the Superintendent; and

(ii) record educator assignments consistent with Rule R277-484.

(18) A program school or program shall:

(a) be accredited by the accrediting entity adopted by the Board consistent with Rule R277-410;

(b) have a designated administrator who meets the requirements of Rule R277-520;

(c) ensure that a student who qualifies for a fee waiver shall receive all services offered by and through the public schools consistent with Section 53G-7-504 and Rule R277-407;

(d) maintain student records consistent with:

(i) the federal Family Educational Rights and Privacy Act, 20 U.S.C. Sec 1232g and 34 CFR Part 99;

(ii) Rule R277-487; and

(iii) this Rule R277-726; and

(e) shall offer course work:

(i) aligned with Utah Core standards;

(ii) in accordance with program requirements; and

(iii) in accordance with the provisions of Rules R277-700 and R277-404;

(f) shall not issue transcripts under the name of a third-party provider; and

(g) shall record teaching assignments by November 15 annually consistent with Rule R277-484 and Section R277-512-7, either directly or through a partner school in accordance with Subsection (17)(b).

(19) An LEA that offers an online program or school as a provider under the program:

## NOTICES OF PROPOSED RULES

(a) shall employ only educators licensed in Utah as teachers;  
(b) may not employ an individual whose educator license has been suspended or revoked;

(c) shall require all employees to meet requirements of Title 53G, Chapter 11, Part 4, Background Checks, prior to the provider offering services to a student;

(d) may only employ teachers who meet the requirements of Rule R277-~~549~~(301), Educator Licensing - Highly Qualified Assignment;

(e) for a provider that provides an online course to a private or home school student, shall agree to administer and have the capacity to proctor and carry out the high school assessment,~~[statewide assessments, including proctoring statewide assessments,]~~ consistent with Sections 53E-4-302, 53F-2-103, and Rule R277-404;

(f) in accordance with Section R277-726-8, shall provide services to a student consistent with requirements of the IDEA, Section 504, and Title VI of the Civil Rights Act of 1964 for English Language Learners (ELL);

(g) shall maintain copies of all CCAs for audit purposes; and

(h) shall agree that funds shall be withheld by the Superintendent consistent with Sections 53F-4-505, 53F-4-506, and 53F-4-508.

(20) A provider shall cooperate with the Superintendent in providing timely documentation of student participation, enrollment, educator credentials, and other additional data consistent with Board directives and procedures and as requested.

(21) A provider shall post required information online on the provider's individual website including required assessment and accountability information.

(22)(a) A provider contracting with a third-party to provide educational services to students participating with the provider through the Statewide Online Education Program shall:

(b) develop a written monitoring plan to supervise the activities and services provided by the third-party provider to ensure:

(i) a third-party provider is complying with:

- (A) federal law;
- (B) state law; and
- (C) Board rules;

(ii) curriculum provided by a third-party provider is aligned with the Board's core standards and rules;

(iii) a third-party provider has access to curriculum for alignment and adjustment to ensure the curriculum is consistent with the Utah core standards in Rule R277-700 and a Board approved core code;

(iv) supervision of third-party facilitation and instruction by an educator licensed in Utah:

(A) employed by the provider, and

(B) reported as teacher of record per Section R277-484-3 and Subsection R277-726-2(3); and

(iv) consistent with the LEA's administrative records retention schedule, maintenance of documentation of the LEA's supervisory activities.

(23) A provider shall offer courses consistent with standards outlined in an applicable Statewide Services Agreement, which may be updated or amended to reflect changes in law, rule or recommended practice.

(24) A provider utilizing a third party shall establish contractual and procedural safeguards:

(a) retaining legal and procedural authority to open coursework to a participating student only upon issuance of a Notice of Enrollment regarding a particular course and credit;

(b) signifying the provider's authority to interact instructionally with a student not regularly enrolled in the LEA but

participating in SOEP courses with approval of the student's primary LEA of enrollment; and

(c) including acceptance of financial responsibility by a primary LEA of enrollment.

(25) A provider is not required to independently verify:

- (a) early graduation status; or
- (b) the non-supplanting nature of SOEP courses.

### **R277-726-8. Services to Students with Disabilities Participating in the Program.**

(1)(a) If a student wishes to receive services under Section 504 of the Rehabilitation Act of 1973, the student shall make a request with the student's primary school of enrollment.

(b) The primary school of enrollment shall evaluate a student's request under Subsection (1)(a) and determine if a student is eligible for Section 504 accommodations.

(c) If the primary school of enrollment determines the student is eligible, the school shall prepare a Section 504 plan and implement the plan in accordance with Subsection (2)(b).

(2)(a) If a student requests services related to an existing Section 504 accommodation, a provider shall:

(i) except as provided in Subsection (2)(b), review and implement the plan for the student; and

(ii) provide the services or accommodations to the student in accordance with the student's Section 504 plan.

(b) An LEA of enrollment shall provide a Section 504 plan of a student to a provider within 72 business hours if:

- (i) the student is enrolled in a primary LEA of enrollment; and
- (ii) the primary LEA of enrollment has a current Section 504 plan for the student.

(2) For a student enrolled in a primary LEA of enrollment, if a student participating in the program qualifies to receive services under the IDEA:

(a) the student's primary LEA of enrollment shall:

(i) working with a provider LEA representative, review or develop an IEP for the student within ten days of enrollment;

(ii) working with a provider LEA representative, update an existing IEP with necessary accommodations and services, considering the courses selected by the student;

(iii) provide the IEP described in Subsection (2)(a)(i) to the provider within 72 business hours of completion of the student's IEP; and

(iv) continue to claim the student in the primary LEA of enrollment's membership; and

(b) the provider shall provide special education services and accommodations to the student in accordance with the student's IEP described in Subsection (2)(a)(i).

(3) If a home or private school student requests an evaluation for eligibility to receive special education services:

(a) the home or private school student's resident school shall:

(i) evaluate the student's eligibility for services under the IDEA;

(ii) if eligible, prepare an IEP for the student, with input from the provider LEA, in accordance with the timelines required by the IDEA;

(iii) provide the IEP described in Subsection (4)(a)(ii) to the provider within 72 business hours of completion of the student's IEP; and

(iv) claim the student in the resident school's membership; and



(b) the provider shall provide special education services and accommodations to the student in accordance with the student's IEP described in Subsection (4)(a)(i) including in cases where the provider utilizes a third party provider for delivery of educational or other services.

**R277-726-9. Home and Private School Appropriation.**

(1) The Superintendent shall allocate the annual appropriation for home and private school tuition, along with any carryover or unobligated funds, as follows:

(a) Prior to December 1 annually, the Superintendent shall accommodate home school students with at least 50% of the total appropriation for home and private school students, unless the home school demand is less.

(b) After December 1 annually, until available funds are obligated, the Superintendent shall:

(i) receive and accept enrollment requests on a first come, first served basis; and

(ii) offer preference to home school students in the event demand exceeds available funding.

(3) If home school or private school student funds remain by December 1, the Superintendent may release the funds for any pending enrollment requests.

**R277-726-10. Other Information.**

(1) A primary school of enrollment shall set reasonable timelines and standards.

(2) A provider shall adhere to timelines and standards described in Subsection (1) for student grades and enrollment in online courses for purposes of:

(a) school awards and honors;

(b) Utah High School Activities Association participation; and

(c) high school graduation.

**KEY: statewide online education program**

**Date of Enactment or Last Substantive Amendment:** ~~March 12, 2020~~ **2021**

**Notice of Continuation:** December 15, 2015

**Authorizing, and Implemented or Interpreted Law:** Art X Sec 3; 53F-4-510; 53F-4-514; 53E-3-401

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R277-920	Filing No. 53222

**Agency Information**

<b>1. Department:</b>	Education
<b>Agency:</b>	Administration
<b>Building:</b>	Board of Education
<b>Street address:</b>	250 E 500 S
<b>City, state:</b>	Salt Lake City, UT 84111
<b>Mailing address:</b>	PO Box 144200
<b>City, state, zip:</b>	Salt Lake City, UT 84114-4200
<b>Contact person(s):</b>	

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:**

R277-920. School Improvement - Implementation of the School Turnaround and Leadership Development Act

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

Rule R277-920 is being amended due to the passage of H.B. 420 in the 2020 General Session, which allows the Utah State Board of Education (Board) more flexibility to establish criteria for schools to exit turnaround.

**4. Summary of the new rule or change:**

This rule is being amended to address exit criteria for turnaround schools impacted by the Spring 2020 waiver in Section 53E-4-205.1 from the requirement to administer statewide assessments, as well as to amend exit criteria for schools in future years. This rule was reorganized structurally, which include an extensive amount of nonsubstantive changes. This amended rule also includes clarification on how qualifying school leaders will be compensated for an incentive to participate in a school leadership program and maintain employment in low performing schools.

**Fiscal Information**

**5. Aggregate anticipated cost or savings to:**

**A) State budget:**

This rule change is not expected to have a material fiscal impact on state government revenues or expenditures. This rule alters exit criteria for turnaround schools, and addresses identification criteria for schools in a year with statewide assessment system irregularities and an exit criteria process for schools in a year with statewide assessment system irregularities. This program is funded through a state appropriation and none of these changes affect that appropriation.

**B) Local governments:**

This rule change is not expected to have a material fiscal impact on local governments' revenues or expenditures. This rule alters exit criteria for turnaround schools, and addresses identification criteria for schools in a year with statewide assessment system irregularities and an exit criteria process for schools in a year with statewide assessment system irregularities. This program is funded through a state appropriation and none of these changes affect that appropriation. The program funding available for schools also remains unchanged.

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

This rule change is not expected to have a material fiscal impact on small businesses' revenues or expenditures. This rule alters exit criteria for turnaround schools, and addresses identification criteria for schools in a year with statewide assessment system irregularities and an exit criteria process for schools in a year with statewide assessment system irregularities. This program is funded through a state appropriation and none of these changes affect that appropriation. The program funding available for schools also remains unchanged. Local education boards will continue to use the funding to contract with an independent school turnaround expert as detailed in 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 a material fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities. This rule alters exit criteria for turnaround schools, and addresses identification criteria for schools in a year with statewide assessment system irregularities and an exit criteria process for schools in a year with statewide assessment system irregularities.

**F) Compliance costs for affected persons:**

There are no independent compliance costs for affected persons. This rule alters exit criteria for turnaround schools, and addresses identification criteria for schools in a year with statewide assessment system irregularities and an exit criteria process for schools in a year with statewide assessment system irregularities.

**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
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**H) Department head 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>B) Name and title of department head commenting on the fiscal impacts:</b>
Sydnee Dickson, State Superintendent

**Citation Information**

<b>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):</b>		
Article X, Section 3	Title 53E, Chapter 5, Part 3	Subsection 53E-3-401(4)

**Public Notice Information**

<b>9. The public may submit written or oral comments to the agency identified in box 1.</b> (The public may also request a hearing by submitting a written request to the agency. 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.)	
<b>A) Comments will be accepted until:</b>	12/31/2020

<b>10. This rule change MAY become effective on:</b>	1/07/2021
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**

<b>Agency head or designee, and title:</b>	Angie Stallings, Deputy Superintendent	<b>Date:</b>	11/16/2020
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**R277. Education, Administration.**

**R277-920. School Improvement - Implementation of the School Turnaround and Leadership Development Act.**

**R277-920-1. 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) Title 53E, Chapter 5, Part 3, School Turnaround and Leadership Development Act, which requires the Board to make rules to establish:
    - (i) an appeal process for the denial of a school turnaround plan;

- (ii) provisions regarding funding distributed to a low performing school;
  - (iii) criteria for granting an extension to a low performing school;
  - (iv) criteria for exiting a school that has demonstrated sufficient improvement;
  - (v) criteria for approving a teacher recruitment and retention plan;
  - (vi) implications for a low performing school; and
  - (vii) eligibility criteria, application procedures, selection criteria, and procedures for awarding incentive pay for the School Leadership Development Program.
- (2) The purpose of this rule is to:
- (a) enact provisions governing school improvement efforts; and
  - (b) implement and administer the School Turnaround and Leadership Development Act.

**R277-920-2. Definitions.**

- (1) "Appeal committee" means the committee established by Section R277-920-5.
- (2) "Baseline performance" means the percentage of possible points earned by a school through the school accountability system in the year the school was identified as a low performing school.
- ~~(2)~~(3) "Committee" means a school turnaround committee established in accordance with Subsections 53E-5-303(1) or 53E-5-304(4).
- ~~(3)~~(4) "Eligible school" means ~~[the same as that term is defined in Section 53E-5-307.]~~ a low performing school that:
  - (a) was designated as a low performing school based on 2014-2015 school year performance; and
  - (b)(i) improves the school's grade by at least one letter grade, as determined by comparing the school's letter grade for the school year prior to the initial remedial year to the school's letter grade for the final remedial year; or
  - (ii)(A) has been granted an extension under Subsection 53E-5-306(3) and this Rule R277-920; and
  - (B) improves the school's grade by at least one letter grade, as determined by comparing the school's letter grade for the school year prior to the initial remedial year to the school's letter grade for the last school year of the extension period.
- ~~(4)~~(5) "Low performing school" means a school that:
  - (a) is for two consecutive school years in the lowest performing:
    - ~~(a)~~(i) 3% of the high schools statewide according to the percentage of possible points earned under the school accountability system; or
    - ~~(b)~~(ii) 3% of the elementary, middle, and junior high schools statewide according to the percentage of possible points earned under the school accountability system; and
  - (b) participates in the school turnaround and leadership development program described in Title 53E, Chapter 5, Part 3.
- ~~(5)~~(6) "High performing charter school" means the same as that term is defined in Section 53E-5-306.
- ~~(6)~~ "Local education board" means a local school board or charter school governing board.
- (7) "School improvement grant" means a Title I grant under the Elementary and Secondary Education Act, 20 U.S.C. Sec. 6303(g).
- (8) "Schools in critical needs status" means a school that has been identified under Subsection R277-920-3(1).
- (9) "School leader" means the same as that term is defined in Section 53E-5-309.

(10) "School turnaround program" or "school turnaround" means the school turnaround and leadership development program described in Title 53G, Chapter 5, Part 3.

(11) "State review panel" means a state review panel appointed by the Superintendent that includes at least three members who each have demonstrated expertise in two or more of the following fields:

- (a) leadership at the school district or school level;
- (b) standards-based elementary or secondary curriculum instruction and assessment;
- (c) instructional data management and analysis;
- (d) educational program evaluation;
- (e) educational program management;
- (f) teacher leadership;
- (g) change management;
- (h) organizational management; or
- (i) school budgeting and finance.

(12) "Title I school" means a school that receives funds under the Elementary and Secondary Education Act of 1965, Title I, 20 U.S.C. Sec. 6301 et seq.

**R277-920-3. Superintendent's Identification of Schools for Critical Needs Status – Readiness Review.**

(1) Subject to Subsection (2), on or before September 30, the Superintendent shall identify schools for critical needs status if the school is a:

- (a) low performing school;
- (b) high school with a four-year adjusted cohort graduation rate of less than or equal to 67% for ~~two consecutive~~ three school years on average;
- (c) Title I school with chronically underperforming student groups as described in Section R277-920-11; or
- (d) Title I school that:
- (i) has not been identified under Subsection (1)(a), (b), or (c);

and

(ii) performed in the lowest 5% of Title I schools over the past three years on average according to the percentage of points earned under the school accountability system.

(2) The Superintendent shall make the identification under:

- (a) Subsection (1)(b) beginning with the 2018-2019 school accountability results and every two years thereafter;
- (b) Subsection (1)(c) beginning with the 2022-2023 school accountability results and every three years thereafter; and
- (c) Subsection (1)(d) beginning with the 2021-2022 school accountability results and every three years thereafter.

(3)(a) Except as provided in Subsection (3)(b), schools in critical needs status are required to comply with the provisions of Title 53E, Chapter 5, Part 3, School Turnaround and Leadership Development Act.

(b) Schools that are identified under Subsections (1)(b), (1)(c), and (1)(d) are exempt from the requirement to contract with an independent school turnaround expert described in Section 53E-5-305.

**R277-920-4. Superintendent's Identification of Schools for Targeted Needs Status.**

(1) As used in this section, "student groups" means a group of 10 or more students:

- (a) who are economically disadvantaged;
- (b) with disabilities;
- (c) who are English learners;
- (d) who are African American;
- (e) who are American Indian;

- (f) who are Asian;
- (g) who are Hispanic;
- (h) who are Multiple races;
- (i) who are Pacific Islander; or
- (j) who are White.

(2)(a) Subject to Subsection (2)(b), the Superintendent shall identify for targeted needs status any school with one or more student groups who:

(i) for two consecutive years, is assigned a percentage of possible points in the state's accountability system that is equal to or below the percentage of possible points associated with the lowest rating in the state's accountability system; and

(ii) is not currently identified for critical needs status under Section R277-920-3.

(b) The Superintendent shall make the identification under Subsection (2)(a) beginning with the 2018-2019 school accountability results and every year thereafter.

(3) A school identified under Subsection (2) shall develop and implement a plan to improve performance of the student group that was the subject of the identification under Subsection (2), in accordance with the Elementary and Secondary Education Act of 1965, 20 U.S.C. Sec. 6301 et seq.

(4) To exit targeted needs status, a school shall demonstrate that the school no longer meets the criteria for which the school was identified for two consecutive years within four school years after the month in which the school was identified.

(5) The Superintendent shall identify a school that does not meet the exit criteria described in Subsection (4) as a school with chronically underperforming student groups as described in Section R277-920-3.

**R277-920-5. Identification of New Schools due to Statewide Assessment System Irregularities During the 2020 COVID-19 Pandemic.**

The Superintendent may not identify a new school for critical needs status based on school accountability results from the 2019-20 school year due to the waiver to administer assessments described in Section 53E-4-315.

**R277-920-[4]6. School Turnaround Plan Submission and Approval Process.**

(1) In addition to the requirements described in Subsection 53E-5-303(5), a plan shall include at least the following:

(a) if the school in critical needs status is a district school, a request to the local school board and district superintendent for:

- (i) additional resources;
- (ii) personnel; or
- (iii) exemptions from district policy that may be contributing to the low performance of the district school; and

(b) a plan for management of school personnel, including:

- (i) recruitment of an educator or school leader; and
- (ii) professional development for an educator or school leader.

(2) A local education board shall include in the plan a strategy for sustaining school improvement efforts after a school exits critical needs status.

(3)(a) A local education board may approve or deny a plan in whole or in part, if the part of the plan the board denies is severable from the part of the plan the board approves.

(b) A local education board shall give a reason for a denial of each part of a plan.

(4) On or before January 15, a local education board of a low performing school shall submit a proposal described in Subsection 53E-5-303(1) or Subsection 53E-5-304(4) to the Superintendent for approval.

(5) A local education board shall submit a plan in accordance with Subsection 53E-5-303(7) or Subsection 53E-5-304(9) to the Board.

(6) In accordance with Subsection 53E-5-305(3), the Board may review and approve or deny a plan in whole or in part, if the part of the plan the Board denies is severable from the part of the plan the Board approves.

**R277-920-5. Funding.**

~~(1) The Superintendent shall annually designate an amount of funds available for distribution under this section, taking into consideration:~~

- ~~(a) variability in the number of schools that are identified on an annual basis;~~
- ~~(b) encumbered funds; and~~
- ~~(c) other program obligations.~~

~~(2) Subject to availability of funds, on or before January 30 of the school year in which a low performing school is identified, the Superintendent shall distribute at least \$240,000 per low performing school to each local education board of a low performing school.~~

~~(3) Subject to availability of funds, in addition to the amount distributed under Subsection (2), the Superintendent shall distribute an amount equal to \$30,000 for each of the following criteria that a school meets:~~

- ~~(a) the school is located in a county with a county seat that is over 100 miles away from Salt Lake City;~~
- ~~(b) the school is located within San Juan County; or~~
- ~~(c) the school:~~
  - ~~(i)(A) has over 75 full time equivalent educators; and~~
  - ~~(B) includes grade 12; or~~
  - ~~(ii)(A) has over 37 full time equivalent educators; and~~
  - ~~(B) does not include grade 12.~~

~~(4) The Superintendent shall distribute any funds available for distribution under Subsection (1) after the allocation of funds described in Subsections (2) and (3) to local education boards of low performing schools on a prioritized basis taking need for the funds, as demonstrated by the needs assessment conducted in accordance with Section 53E-5-302, into account.~~

~~(5)(a) The local education board shall use the funding distributed under this section to contract with an independent school turnaround expert, including travel costs, in accordance with Sections 53E-5-303 and 53E-5-304.~~

~~(b) A local education board shall use funding available after the allocation of funds under Subsection (5)(a) only for interventions identified in a school turnaround plan.~~

~~(6) The Superintendent may review uses of funds and contracts with independent school turnaround experts.~~

**R277-920-6. Teacher Recruitment and Retention.**

~~(1) As used in this section, "matching funds" means funds that are not allocated to a school under Section R277-920-5.~~

~~(2) In accordance with Section 53E-5-308, a local education board of a low performing school may seek and receive matching funds from the state to implement strategies for teacher recruitment and retention identified in a plan described in Subsection (3).~~

~~(3) To qualify for matching funds under this section, on or before January 15, a local education board of a low performing school shall submit a plan to the Superintendent that:~~

~~(a) includes a strategy for teacher recruitment and retention for the school in critical needs status;~~

~~(b)(i) except as provided in Subsection (3)(b)(ii), is responsive to the needs assessment conducted in accordance with Section 53E-5-302; or~~

~~(ii) if the school was identified as a low performing school based on 2014-2015 school accountability results, includes a root cause analysis of the school's teacher recruitment and retention challenges, including:~~

- ~~(A) a clear definition of the problem to be solved;~~
- ~~(B) hypotheses for the causes of the problem;~~
- ~~(C) strategies to address the root causes of the problem;~~
- ~~(D) current data on teacher retention rates; and~~
- ~~(E) current recruitment and retention strategies;~~

~~(c) includes the amount of matching funds the local education board is requesting from the state;~~

~~(d) includes assurances that the local education board will allocate matching funds; and~~

~~(e) may include a stipend for educators who work non-contract hours to develop or implement strategies identified in a school improvement plan.~~

~~(4) The Superintendent shall:~~

~~(a) approve a plan that meets the criteria described in Subsection (3); and~~

~~(b) on or before March 1, distribute matching funds to a local education agency that has submitted an approved plan in an amount not to exceed:~~

- ~~(i) \$1000 per teacher for schools identified based on 2014-2015 school accountability results; or~~
- ~~(ii) \$1500 per teacher for schools identified based on 2016-17 school accountability results and each year thereafter.]~~

**R277-920-7. Appeal Process for Denial of a School Turnaround Plan.**

(1) As used in this section "plan" means a school turnaround plan described in Subsection 53E-5-303(5).

(2) A committee or local education board may appeal the denial of a plan, in whole or in part, by following the procedures and requirements of this section.

(3) An appeal authorized by this rule:

- (a) is an informal adjudicative proceeding under Section 63G-4-203; and
- (b) shall be resolved by the date specified in Subsection 53E-5-305(6)(b).

(4)(a) A principal, on behalf of a committee, may request that the local education board reconsider the denial of a plan:

- (i) by electronically filing the request:
  - (A) with the chair of the local education board; and
  - (B) on a form provided on the Board website; and
- (ii) within 5 calendar days of the denial.

(b) The reconsideration request may include a modification to the plan if the committee approves the modification.

(c) The local education board shall respond to the request within 10 calendar days by:

- (i) refusing to reconsider its action;
- (ii) approving a plan, in whole or in part; or
- (iii) denying a plan modification.

(d) The principal may appeal the denial of a plan under this Subsection (3):

- (i) by electronically filing an appeal with the Superintendent on a form provided on the Board website; and

(ii) within 5 calendar days of the denial.

(e) An appeal filed under this subsection shall be resolved in accordance with Subsections (5) and (6).

(5) A district superintendent, on behalf of a local school board, or a charter school governing board chair, on behalf of a charter school governing board, may appeal the Board's denial of a plan:

(a) by electronically filing an appeal with the Superintendent on a form provided on the Board website; and

(b) within 5 calendar days of the denial.

(6)(a) At least three members of a Board committee, appointed by the Board as the appeal committee, shall review the written appeal.

(b) The appeal committee may ask the principal, district superintendent, local school board chair, or charter school governing board chair to:

(i) provide additional written information; or

(ii) appear personally and provide information.

(c) The appeal committee shall make a written recommendation within 5 business days of receipt of the appeal request to the Board to accept, modify, or reject the plan and give a reason for the recommendation.

(7) The Board may accept or reject the appeal committee's recommendation and the Board's decision is the final administrative action.

**R277-920-8. School Turnaround Program Funding.**

(1) The Superintendent shall annually designate an amount of funds available for distribution to low performing schools under this section, taking into consideration:

(a) variability in the number of schools that are identified on an annual basis;

(b) encumbered funds; and

(c) other program obligations.

(2) The Superintendent shall distribute any funds available for distribution under Subsection (1) after the allocation of funds described in Subsections (3) and (4) to local education boards of low performing schools on a prioritized basis taking need for the funds, as demonstrated by the needs assessment conducted in accordance with Section 53E-5-302, into account.

(3) Subject to availability of funds, on or before January 30 of the school year in which a low performing school is identified, the Superintendent shall distribute at least \$240,000 per low performing school to each local education board of a low performing school.

(4) Subject to availability of funds, in addition to the amount distributed under Subsection (3), the Superintendent shall distribute an amount equal to \$30,000 for each of the following criteria that a school meets:

(a) the school is located in a county with a county seat that is over 100 miles away from Salt Lake City;

(b) the school is located within San Juan County; or

(c) the school:

(i)(A) has over 75 full time equivalent educators; and

(B) includes grade 12; or

(ii)(A) has over 37 full time equivalent educators; and

(B) does not include grade 12.

(5)(a) The local education board shall use the funding distributed under Subsections (3) and (4) to contract with an independent school turnaround expert, including travel costs, in accordance with Sections 53E-5-303 and 53E-5-304.

(b) A local education board shall use funding available after the allocation of funds under Subsection (5)(a) only for interventions identified in a school turnaround plan.

(6) The Superintendent may review uses of funds and contracts with independent school turnaround experts.

**R277-920-9. Teacher Recruitment and Retention.**

(1) As used in this section, "matching funds" means funds that are not allocated to a school under Section R277-920-8.

(2) In accordance with Section 53E-5-308, a local education board of a low performing school may seek and receive matching funds from the state to implement strategies for teacher recruitment and retention identified in a plan described in Subsection (3).

(3) To qualify for matching funds under this section, on or before January 15, a local education board of a low performing school shall submit a plan to the Superintendent that:

(a) includes a strategy for teacher recruitment and retention for the school in critical needs status;

(b)(i) except as provided in Subsection (3)(b)(ii), is responsive to the needs assessment conducted in accordance with Section 53E-5-302; or

(ii) if the school was identified as a low performing school based on 2014-2015 school accountability results, includes a root cause analysis of the school's teacher recruitment and retention challenges, including:

(A) a clear definition of the problem to be solved;

(B) hypotheses for the causes of the problem;

(C) strategies to address the root causes of the problem;

(D) current data on teacher retention rates; and

(E) current recruitment and retention strategies;

(c) includes the amount of matching funds the local education board is requesting from the state;

(d) includes assurances that the local education board will allocate matching funds; and

(e) may include a stipend for educators who work non-contract hours to develop or implement strategies identified in a school improvement plan.

(4) The Superintendent shall:

(a) approve a plan that meets the criteria described in Subsection (3); and

(b) on or before March 1, distribute matching funds to a local education agency that has submitted an approved plan in an amount not to exceed:

(i) \$1000 per teacher for schools identified based on 2014-2015 school accountability results; or

(ii) \$1500 per teacher for schools identified based on 2016-17 school accountability results and each year thereafter.

**R277-920-10. School Leadership Development Program.**

(1) A school leader may apply to participate in the School Leadership Development Program if the school leader:

(a) is assigned to a school in critical needs status; or

(b) is nominated by the school leader's district superintendent or charter school governing board to participate.

(2) A school leader who meets the requirements of Subsection (1) may apply to participate in the School Leadership Development Program by electronically submitting an application to the Superintendent on a form provided on the Board website by the date specified on the Board website.

(3)(a) The Superintendent shall select a school leader to participate in the School Leadership Development Program based on the following selection criteria:

(i) First priority shall be given to a school leader who is assigned to a low performing school;

(ii) second priority is given to a school leader who is assigned to a school in critical needs status that is not a low performing school; and

(iii) third priority is given to a school leader who is nominated by the school leader's district superintendent or charter school governing board.

(b) Notwithstanding Subsection (3)(a), the Superintendent may give priority to a school leader who has not received prior leadership training before selecting a school leader who has received prior leadership training.

(4)(a) In accordance with Subsection 53E-5-309(4), the Superintendent shall award incentive pay to a school leader within 30 days after:

(i) the school leader completes the School Leadership Development Program; and

(ii) the school leader's LEA verifies that the school leader entered into a written agreement as described in Subsection 53E-5-309(4).

(b) The Superintendent shall distribute \$400 per session to a school leader who completes at least 75% of the School Leadership Development Program sessions.

(5) The Superintendent may award incentive pay to a school leader described in Subsection (5) for up to five years.

**R277-920-[8]11. Exit Criteria for a Low Performing School [~~in Critical Needs Status~~] -- Extensions -- More Rigorous Interventions.**

(1)(a) Except as provided in Subsection (1)(b), to exit [~~critical needs status, a~~] the school turnaround program, a low performing school shall demonstrate [~~that the school no longer meets the criteria for which the school was identified;~~

[~~— (i) for, in the [~~second and~~] third or fourth year[s], consecutively,~~] after which the school was identified as a low performing school [~~for critical needs status; or~~], that the school:

(i) meets individualized exit criteria that is calculated by reducing the gap in performance between the school's baseline performance and the threshold score for a 'B' letter grade, as described in R277-497-2, by one-third; and

(ii) exceeds the lowest 5% of all schools in the ranking of schools from the year the school was identified [~~for two consecutive years by the end of the extension period described in Subsection (3)].~~

(b) A low performing school that was identified based on 2014-15 school accountability results is required to improve performance by at least one letter grade, as determined by comparing the school's letter grade for the 2014-15 school year to the school's letter grade for the 2017-18 school year.

(2) In determining whether a school has met the criteria described in Subsection (1), the Superintendent shall apply the indicators, weightings, and threshold scores described in the version of Title 53E, Chapter 5, Part 2, School Accountability System that was in place at the time the school was identified.

(3) If a school does not meet the exit criteria described in Subsection (1)(a) in the fourth year after which the school was identified as a low performing school, the school may qualify for an extension to continue current school improvement efforts for up to two years if the school:

(a)(i)(A) reduced the gap in performance between the school's baseline performance and the threshold for a 'B' letter grade, as described in R277-497-2, by at least one-fourth; and

(B) exceeds at least the lowest 3% of all schools in the ranking of schools from the year the school was scheduled to exit; or [~~has cut the difference by 50% between:~~

(A) the percentage of points earned in the school year in which the school was identified; and

(B) the percentage of points necessary to meet the exit criteria described in Subsection (1)(a); or]

[(ii)](ii) has met only one of the exit criteria described in Subsection (1)(a) [~~for only one year~~]; and

(b) electronically files an extension request with the Superintendent within 15 days of the release of school accountability results, that provides rationale justifying an extension.

(4)(a) The Superintendent shall conduct an in-depth analysis of the alignment of the school's curriculum to the Utah core standards:

(i) in each school that qualifies for an extension under Subsection (3); and

(ii) that is individualized to each teacher.

(b) The Superintendent may require a local education board or school to:

(i) take actions to remedy issues identified in the analysis described in Subsection (4)(a); or

(ii) revise the school turnaround plan.

(5) If a school identified as a low performing school [~~for critical needs status~~] does not meet the exit criteria described in Subsection (1) or qualify for an extension as described in Subsection (3) the following groups shall make a recommendation to the Board on what action the Board should take:

(a) a state review panel, described in Subsection (7);

(b) if the school is a district school, the local school board, with input from the community as described in Subsection (8); and

(c) if the school is a charter school, the charter school authorizer with input from the community as described in Subsection (8).

(6) The groups described in Subsection (5) shall make a recommendation within 90 days of the release of school accountability results on whether the Board should:

(a) require personnel changes, including replacement of school leaders or teachers;

(b) if the school is a district school:

(i) require involuntary transfers of school leaders or teachers;

(ii) require the local school board to change school boundaries;

(iii) temporarily appoint a public or non-profit entity other than the local school board to manage and operate the school; or

(iv) permanently transfer control of a school to a public or non-profit entity other than the local education board;

(c) if the school is a charter school:

(i) require that the charter school governing board be replaced; or

(ii) require that the charter school authorizer close the school;

or

(c) if the school is a charter school, require that the charter school authorizer:

(i) replace some or all members of the charter school governing board;

(ii) transfer operation and control of the charter school to:

(A) a high performing charter school; or

(B) the school district in which the charter school is located;

or

(iii) close the school; or

(d) take other action.

(7)(a) The Superintendent shall appoint members of [~~the~~] a state review panel [~~subject to Subsection (7)(b)].~~

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~~\_\_\_\_\_ (b) The state review panel shall include at least three members who each have demonstrated expertise in two or more of the following fields:~~

- ~~\_\_\_\_\_ (i) leadership at the school district or school level;~~
- ~~\_\_\_\_\_ (ii) standards-based elementary or secondary curriculum instruction and assessment;~~
- ~~\_\_\_\_\_ (iii) instructional data management and analysis;~~
- ~~\_\_\_\_\_ (iv) educational program evaluation;~~
- ~~\_\_\_\_\_ (v) educational program management;~~
- ~~\_\_\_\_\_ (vi) teacher leadership;~~
- ~~\_\_\_\_\_ (vii) change management;~~
- ~~\_\_\_\_\_ (viii) organizational management; or~~
- ~~\_\_\_\_\_ (ix) school budgeting and finance.]~~

~~(e)~~(b) The state review panel shall critically evaluate at least:

- (i) whether the local education agency has the capacity to implement the changes necessary to improve school performance;
  - (ii) whether the school leadership is adequate to implement change to improve school performance;
  - (iii) whether the school has sufficient authority to implement change;
  - (iv) whether the plan is being implemented with fidelity;
  - (v) whether the state and local education board provided sufficient resources to the school to support school improvement efforts, including whether the local school board prioritized school district funding and resources to the school in accordance with Section 53E-5-303;
  - (vi) the likelihood that performance can be improved within the current management structure and staffing; and
  - (vii) the necessity that the school remain in operation to serve students.
- (8) A local school board and charter school authorizer shall develop recommendations under this section in collaboration with:
- (a) parents of students currently attending the school;
  - (b) teachers, principals, and other school leaders at the school;
  - (c) stakeholders representing the interests of students with disabilities, English learners, and other vulnerable student populations; and
  - (d) other community members and community partners.

**R277-920-12. Exit Criteria for Schools in a year with Statewide Assessment System Irregularities.**

(1) For a school year where there are statewide assessment system irregularities or a suspension of the administration of statewide assessments:

- (a) the Superintendent shall appoint a state review panel; and
- (b) the state review panel shall review the data of a school eligible to be considered for exit at the conclusion of the applicable year and make a recommendation to the Board on whether the school demonstrated adequate progress to exit the turnaround program.

(2) A state review panel described in Subsection (1) shall review the following questions to inform the state review panel's recommendation:

- (a)(i) for a school identified based on school accountability results from the 2014-15 or 2015-16 school year, whether the school achieved above the lowest 3% threshold based on the school accountability data and measures from the 2018-19 school year; or
- (ii) for a school identified based on school accountability results from the 2017-18 school year or later, whether the school achieved above the lowest 3% threshold based on the school

accountability data and measures from a combination of two consecutive years;

(b) whether the school provides evidence of substantial progress and growth in addition to the data described in Subsection (2)(a); and

(c) whether the school has qualitative or quantitative data from the implementation of the school's turnaround plan that also demonstrate substantial improvement.

(3) For a school whose data are impacted by statewide assessment system irregularities or a suspension of the administration of statewide assessments during one or more of the school's designated years in the turnaround program:

(a) the Superintendent shall appoint a state review panel;

(b) the state review panel shall review the data of the school whose data are impacted by the statewide assessment system irregularities or suspension of statewide assessment; and

(c) the state review panel shall make a recommendation to the Board whether the school demonstrated substantial improvement.

(4) A state review panel described in Subsection (3) shall review qualitative and quantitative data from the Implementation of the school's turnaround plan.

(5) The qualitative and quantitative data described in Subsection (4) may include:

- (a) local student performance data;
- (b) for a school that is a high school:
  - (i) credit earned;
  - (ii) graduation rate; and
  - (iii) other types of successful completion, such as earning a GED;
- (c) increased attendance;
- (d) student engagement or school climate;
- (e) parent engagement;
- (f) criteria presented by the school being reviewed;
- (g) whether the charter school is meeting all minimum standards described in Section

53G-5-303 in the school's charter agreement with the authorizer, including:

- (i) minimum financial standards for operating the charter school;
- (ii) minimum standards for student achievement;
- (iii) the mission statement and purpose of the charter school;
- (iv) the grade levels served;
- (v) the maximum number of students; and
- (vi) the charter school governing board and structure; and
- (h) additional criteria established by the Superintendent.

**[R277-920-9. School Leadership Development Program.**

(1) A school leader may apply to participate in the School Leadership Development Program if the school leader:

- (a) is assigned to a school in critical needs status; or
- (b) is nominated by the school leader's district superintendent or charter school governing board to participate.

(2) A school leader who meets the requirements of Subsection (1) may apply to participate in the School Leadership Development Program by electronically submitting an application to the Superintendent on a form provided on the Board website by the date specified on the Board website.

(3)(a) The Superintendent shall select a school leader to participate in the School Leadership Development Program based on the following selection criteria:

- (i) First priority shall be given to a school leader who is assigned to a low performing school;



~~(ii) second priority is given to a school leader who is assigned to a school in critical needs status that is not a low performing school; and~~  
~~(iii) third priority is given to a school leader who is nominated by the school leader's district superintendent or charter school governing board.~~  
~~(b) Notwithstanding Subsection (3)(a), the Superintendent may give priority to a school leader who has not received prior leadership training before selecting a school leader who has received prior leadership training.~~  
~~(4)(a) In accordance with Subsection 53E-5-309(4), the Superintendent shall award incentive pay to a school leader within 30 days after the school leader:~~  
~~(i) completes the School Leadership Development Program; and~~  
~~(ii) submits a written agreement to the Superintendent to work as described in Subsection 53E-5-309(4).~~  
~~(b) The Superintendent shall evenly divide the appropriation among the school leaders who meet the requirements of this Subsection (4).~~  
~~(5) The Superintendent may award incentive pay to a school leader described in Subsection (5) for up to five years.]~~

**R277-920-1[0]3. School Recognition and Reward Program.**

(1) The Superintendent shall distribute school recognition and reward program money to an LEA with~~[the principal of]~~ an eligible school]:  
~~(a) in accordance with Section 53E-5-307; and~~  
~~(b)] within 30 days of the Board's official release of school grades for the year the eligible school is eligible for an award of money.~~  
 (2) The Superintendent shall notify the LEA and principal of an eligible school within 15 days of the Board's official release of school grades:  
 (a) that the eligible school is eligible for an award of money[ pursuant to Section 53E-5-307]; and  
 (b) of the amount of the award that the eligible school will receive.  
 (3) [In accordance with Section 53E-5-307, the ]The LEA, in consultation with the principal of the eligible school shall distribute the money received under Subsection (1):  
 (a) to each educator assigned to the school for all of the years the school was identified as a low performing school; and  
 (b) in a pro-rated manner to each educator assigned to the school for less time than the school was identified as a low performing school.

**~~[R277-920-11. Superintendent's Identification of Schools for Targeted Needs Status.~~**

~~(1) As used in this section, "student groups" means a group of 10 or more students:~~  
~~(a) who are economically disadvantaged;~~  
~~(b) with disabilities;~~  
~~(c) who are English learners;~~  
~~(d) who are African American;~~  
~~(e) who are American Indian;~~  
~~(f) who are Asian;~~  
~~(g) who are Hispanic;~~  
~~(h) who are Multiple races;~~  
~~(i) who are Pacific Islander; or~~  
~~(j) who are White.~~

~~(2)(a) Subject to Subsection (2)(b), the Superintendent shall identify for targeted needs status any school with one or more student groups who:~~  
~~(i) for two consecutive years, is assigned a percentage of points in the state's accountability system that is equal to or below the percentage of points associated with the lowest rating in the state's accountability system; and~~  
~~(ii) is not currently identified for critical needs status under Section R277-920-3.~~  
~~(b) The Superintendent shall make the identification under Subsection (2)(a) beginning with the 2018-2019 school accountability results and every year thereafter.~~  
~~(3) A school identified under Subsection (2) shall develop and implement a plan to improve performance of the student group that was the subject of the identification under Subsection (2), in accordance with the Elementary and Secondary Education Act of 1965, 20 U.S.C. Sec. 6301 et seq.~~  
~~(4) To exit targeted needs status, a school shall demonstrate that the school no longer meets the criteria for which the school was identified for two consecutive years within four school years after the month in which the school was identified.~~  
~~(5) The Superintendent shall identify a school that does not meet the exit criteria described in Subsection (4) as a school with chronically underperforming student groups as described in Section R277-920-3.]~~

**KEY:** principals, school improvements, school leaders  
**Date of Enactment or Last Substantive Amendment:** ~~[January 9, 2018]~~**2021**  
**Authorizing, and Implemented or Interpreted Law:** Art X, Sec 3; 53E-3-401(4); Title 53E, Chapter 5, Part 3

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R313-36	Filing No. 53211

**Agency Information**

<b>1. Department:</b>	Environmental Quality	
<b>Agency:</b>	Waste Management and Radiation Control, Radiation	
<b>Room no.:</b>	Second Floor	
<b>Building:</b>	Multi-Agency State Office Building (MASOB)	
<b>Street address:</b>	195 N 1950 W	
<b>City, state:</b>	Salt Lake City, UT	
<b>Mailing address:</b>	PO Box 144880	
<b>City, state, zip:</b>	Salt Lake City, UT 84114-4880	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Rusty Lundberg	801-536-4257	rlundberg@utah.gov

Tom Ball	801-536-0251	tball@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R313-36. Special Requirements for Industrial Radiographic Operations
<b>3. Purpose of the new rule or reason for the change:</b>
Rule R313-36 incorporates selected sections of 10 CFR Part 34, Licenses for Industrial Radiography and Radiation Safety Requirements for Industrial Radiographic Operations. The proposed changes add the additional statutory reference to Subsection 19-3-103.1(1)(a) due to changes made to Radiation Control Act by S.B. 88 passed in the 2020 General Session. These proposed changes also correct references to the appropriate Nuclear Regulatory Commission (NRC) office and federal regulation references.
<b>4. Summary of the new rule or change:</b>
In Section R313-36-1, the reference to Subsection 19-3-103.1(1)(a) in the Radiation Control Act is added to the list to be consistent with changes made to this act by S.B. 88 (2020). Subsection 19-3-103.1(1)(a) states that "the Board may make rules ... that are necessary to implement this part [the Radiation Control Act]." Consequently, it is appropriate to include that reference with the other statutory references in Section R313-36-1 for added clarity and consistency. In Section R313-36-3, the proposed changes correct the referenced NRC office to the current office, "Office of Nuclear Material Safety and Safeguards", correct the reference from "30.6(a)(2)" to "30.6(b)(2)", and delete the phrase "such as Section 21.21" to be accurate with corresponding text in the appropriate places in 10 CFR Part 34 of the federal regulations. Corresponding references in Part 34 do not include the phrase "such as Section 21.21".

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
These proposed changes are minor and do not affect the intent, scope, meaning, or application of the requirements for industrial radiographic operations of 10 CFR Part 34 and that are incorporated by reference in Rule R313-36. Consequently, there are no cost or savings impacts to the state budget nor are there any state agencies that are subject to the requirements of Rule R313-36.
<b>B) Local governments:</b>
These proposed changes are minor and do not affect the intent, scope, meaning, or application of the requirements

for industrial radiographic operations of 10 CFR Part 34 and that are incorporated by reference in Rule R313-36. Consequently, there are no cost or savings impacts to local governments nor are there any local governments that are subject to the requirements of Rule R313-36.

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

These proposed changes are minor and do not affect the intent, scope, meaning, or application of the requirements for industrial radiographic operations of 10 CFR Part 34 and that are incorporated by reference in Rule R313-36. Consequently, there are no cost or savings impacts to any small businesses that are licensed to possess and use industrial radiographic equipment within Utah and therefore, are subject to the requirements of Rule R313-36.

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

These proposed changes are minor and do not affect the intent, scope, meaning, or application of the requirements for industrial radiographic operations of 10 CFR Part 34 and that are incorporated by reference in Rule R313-36. Consequently, there are no cost or savings impacts to non-small businesses that are licensed to possess and use industrial radiographic equipment within Utah and therefore, are subject to the requirements of Rule R313-36.

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

These proposed changes are minor and do not affect the intent, scope, meaning, or application of the requirements for industrial radiographic operations of 10 CFR Part 34 and that are incorporated by reference in Rule R313-36. Consequently, there are no cost or savings impacts to persons other than small businesses, non-small businesses, state, or local government entities that may be licensed to possess and use industrial radiographic equipment within Utah and therefore, are subject to the requirements of Rule R313-36.

**F) Compliance costs for affected persons:**

These proposed changes are minor and do not affect the intent, scope, meaning, or application of the requirements for industrial radiographic operations of 10 CFR Part 34 and that are incorporated by reference in Rule R313-36. Consequently, there are no compliance costs to any of the currently licensed industrial radiographers in Utah.

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

this table. Inestimable impacts will be included in narratives above.)

<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2021</b>	<b>FY2022</b>	<b>FY2023</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>H) Department head approval of regulatory impact analysis:</b>			
The Executive Director of the Department of Environmental Quality, Scott Baird, has reviewed and approved this fiscal analysis.			
<b>6. A) Comments by the department head on the fiscal impact this rule may have on businesses:</b>			
While the proposed changes are necessary to maintain regulatory compatibility, they do not affect the intent, scope, meaning, or application of the requirements for industrial radiographic operations of 10 CFR Part 34 and that are incorporated by reference in Rule R313-36. Consequently, there is no fiscal impact associated with the proposed changes to Rule R313-36.			
<b>B) Name and title of department head commenting on the fiscal impacts:</b>			
Scott Baird, Executive Director			

**Citation Information**

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

Subsection 19-3-103.1(1)(a)	Subsection 19-3-104(4)	Subsection 19-3-104(7)
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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.)

<b>A) Comments will be accepted until:</b>	01/04/2021
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<b>10. This rule change MAY become effective on:</b>	01/11/2021
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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**

<b>Agency head or designee, and title:</b>	Ty Howard, Division Director	<b>Date:</b>	11/02/2020
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**R313. Environmental Quality, Radiation Control.**

**R313-36. Special Requirements for Industrial Radiographic Operations.**

**R313-36-1. Purpose and Authority.**

(1) The rules in Rule R313-36 prescribe requirements for the issuance of licenses and establish radiation safety requirements for persons utilizing sources of radiation for industrial radiography.

(2) The rules set forth herein are adopted pursuant to the provisions of Subsections 19-3-103.1(1)(a), 19-3-104(4) and 19-3-104(7).

(3) The requirements of Rule R313-36 are in addition to, and not in substitution for, the other requirements of these rules.

**R313-36-2. Scope.**

(1) The requirements of Rule R313-36 shall apply to licensees using radioactive materials to perform industrial radiography.

(2) The requirements of Rule R313-36 shall not apply to persons using electronic sources of radiation to conduct industrial radiography.

NOTICES OF PROPOSED RULES

**R313-36-3. Clarifications or Exceptions.**

For purposes of Rule R313-36, 10 CFR 34.3; 34.13; 34.20(a)(1); 34.20(b) through 34.41(b); 34.42(a) through 34.42(c); 34.43(a)(1); 34.43(b) through 34.45(a)(8); 34.45(a)(10) through 34.101 (2019), are incorporated by reference with the following clarifications or exceptions:

- (1) The exclusion of the following:
  - (a) [H]in 10 CFR 34.3, exclude definitions for "Lay-barge radiography," "Offshore platform radiography," and "Underwater radiography";
  - (b) [H]in 10 CFR 34.27(d), exclude "A copy of the report must be sent to the Administrator of the appropriate Nuclear Regulatory Commission's Regional Office listed in appendix D of 10 CFR part 20 of this chapter "Standards for Protection Against Radiation."["]; and
  - (c) [H]in 10 CFR 34.27(e), exclude "Licensees will have until June 27, 1998, to comply with the DU leak-testing requirements of this paragraph."
- (2) The substitution of the following wording:
  - (a) "radioactive materials" for references to "byproduct materials";
  - (b) "Utah Radiation Control Rules" for references to:
    - (i) "Commission's regulations";
    - (ii) "Federal regulations";
    - (iii) "NRC regulations"; and
    - (iv) "Commission regulations.";
  - (c) "Director" for references to:
    - (i) "Commission";
    - (ii) "appropriate NRC regional office listed in Section ~~30.6(a)(2)~~30.6(b)(2)";
    - (iii) "Director, Office of ~~Federal and State Materials and Environmental Management Programs~~Nuclear Material Safety and Safeguards" except as used in 10 CFR 34.43(a)(1); and
    - (iv) "NRC's Office of ~~Federal and State Materials and Environmental Management Programs~~Nuclear Material Safety and Safeguards";
  - (d) "Director, the U.S. Nuclear Regulatory Commission, or an Agreement State" for references to:
    - (i) "NRC or an Agreement State"; and
    - (ii) "Commission or an Agreement State";
  - (e) "Director, the U.S. Nuclear Regulatory Commission, or by an Agreement State" for references to "Commission or by an Agreement State";
  - (f) "License(s)" for references to "NRC license(s)";
  - (g) "NRC or Agreement State License" for references to "Agreement State license"; and
  - (h) "the Utah Radiation Control Rules" for references to "this chapter~~, such as Section 21.21~~."
- (3) The substitution of the following rule references:
  - (a) In 10 CFR 34.51, "R313-12" for references to "10 CFR part 20 of this chapter";
  - (b) "Rule R313-15" for references to "10 CFR part 20" and "10 CFR part 20 of this chapter" except as found in 10 CFR 34.51;
  - (c) "Subsection R313-15-601(1)(a)" for references to "Subsection 20.1601(a)(1) of this chapter";
  - (d) "Subsections R313-15-902(1) and R313-15-902(2)" for references to "10 CFR 20.1902(a) and (b) of this chapter";
  - (e) "Section R313-15-903" for references to "Section 20.1903 of this chapter";
  - (f) "Section R313-15-1203" for references to "10 CFR 20.2203" and "Section 20.2203 of this chapter";
  - (g) "Section R313-12-110" for references to "Section 30.6(a) of this chapter" except as used in 10 CFR 34.43(a)(1);

- (h) "Section R313-19-30" for references to "Section 150.20 of this chapter";
- (i) "Section R313-19-50" for references to "Section 30.50";
- (j) "Section R313-19-100" for references to "10 CFR part 71", and "49 CFR parts 171 - 173";
- (k) "Section R313-22-33" for references to "Section 30.33 of this chapter";
- (l) "Rule R313-36" for references to "NRC regulations contained in this part";
- (m) "Subsection R313-19-100(5)" for references to "Section 71.5 of this chapter"; and
- (n) "Section R313-19-5" for references to "Sections 30.7, 30.9, and 30.10 of this chapter."

**KEY: industry, radioactive material, licensing, surveys**  
**Date of Enactment or Last Substantive Amendment:** ~~February 14, 2020~~**2021**  
**Notice of Continuation:** July 1, 2016  
**Authorizing, and Implemented or Interpreted Law:** 19-3-103.1(1)(a); 19-3-104~~19-6-104~~

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R313-37	Filing No. 53212

**Agency Information**

<b>1. Department:</b>	Environmental Quality	
<b>Agency:</b>	Waste Management and Radiation Control, Radiation	
<b>Room no.:</b>	Second Floor	
<b>Building:</b>	Multi-Agency State Office Building (MASOB)	
<b>Street address:</b>	195 N 1950 W	
<b>City, state:</b>	Salt Lake City, UT	
<b>Mailing address:</b>	PO Box 144880	
<b>City, state, zip:</b>	Salt Lake City, UT 84114-4880	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Rusty Lundberg	801-536-4257	rlundberg@utah.gov
Tom Ball	801-536-0251	tball@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R313-37. Physical Protection of Category 1 or Category 2 Quantities of Radioactive Material

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

Rule R313-37 incorporates selected sections of 10 CFR Part 37, Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material. The proposed changes update the date of the incorporation by reference from 2017 to 2020 to incorporate minor corrections made by the Nuclear Regulatory Commission (NRC) and published in the June 28, 2018 (83 FR 30285), November 21, 2018 (83 FR 58721), and November 18, 2019 (84 FR 63565), issues of the *Federal Register*. By updating this date, the minor corrections made by the NRC in the referenced *Federal Registers* are incorporated into the state radiation control rules. As an Agreement State with the NRC for the radioactive materials program, Utah is required to maintain regulatory compatibility with the corresponding NRC radioactive materials regulations. While the proposed changes are minor in nature, the NRC designated the changes as necessary for an Agreement State to adopt in order to maintain regulatory compatibility with the NRC. Also, the other proposed changes add the additional statutory reference to Subsection 19-3-103.1(1)(a) due to changes made to Radiation Control Act by S.B. 88 passed in the 2020 General Session, and correct references to the appropriate NRC office and federal regulation references.

**4. Summary of the new rule or change:**

In Section R313-37-1, the reference to Subsection 19-3-103.1(1)(a) in the Radiation Control Act is added to the list to be consistent with changes made to this act by S.B. 88 (2020). Subsection 19-3-103.1(1)(a) states that "the Board may make rules ... that are necessary to implement this part [the Radiation Control Act]." Consequently, it is appropriate to include that reference with the other statutory references in Section R313-37-1 for added clarity and consistency. In Section R313-37-3, the date of the incorporation by reference to selected sections of 10 CFR Part 37 is updated from 2017 to 2020. This results in incorporating the minor changes made by the NRC in the above referenced *Federal Registers* to: update references to the appropriate NRC office and related websites; add the phrase "list of individuals that have been approved for unescorted access" to designated paragraphs in Section R313-37.43; and correct the reference of "30.6(a)(2)" to "30.6(b)(2)" in Subsection R313-37.45(b). Also in Section R313-37-3, the other proposed changes: delete references to designated offices in the NRC so that applicable radioactive material licensees in Utah are to also submit the information already required to be submitted to the director of the Division of Waste Management and Radiation Control (DWMRC); correct referenced text from 10 CFR Part 37; and delete "second instance" since there is only one instance in the referenced subsection (10 CFR 37.77(c)(1)).

**Fiscal Information****5. Aggregate anticipated cost or savings to:****A) State budget:**

These proposed changes are minor and do not affect the intent, scope, meaning, or application of the requirements for the physical protection of category 1 and category 2 quantities of radioactive material of 10 CFR Part 37 and that are incorporated by reference in Rule R313-37. Consequently, there are no cost or savings impacts to the state budget.

**B) Local governments:**

These proposed changes are minor and do not affect the intent, scope, meaning, or application of the requirements for the physical protection of category 1 and category 2 quantities of radioactive material of 10 CFR Part 37 and that are incorporated by reference in Rule R313-37. Consequently, there are no cost or savings impacts to local governments nor are there any local governments that are subject to the requirements of Rule R313-37.

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

These proposed changes are minor and do not affect the intent, scope, meaning, or application of the requirements for the physical protection of category 1 and category 2 quantities of radioactive material of 10 CFR Part 37 and that are incorporated by reference in Rule R313-37. Consequently, there are no cost or savings impacts to any small businesses within Utah that have a radioactive materials license and are subject to the requirements of Rule R313-37.

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

These proposed changes are minor and do not affect the intent, scope, meaning, or application of the requirements for the physical protection of category 1 and category 2 quantities of radioactive material of 10 CFR Part 37 and that are incorporated by reference in Rule R313-37. Consequently, there are no cost or savings impacts to any non-small businesses within Utah that have a radioactive materials license and are subject to the requirements of Rule R313-37.

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

These proposed changes are minor and do not affect the intent, scope, meaning, or application of the requirements for the physical protection of category 1 and category 2 quantities of radioactive material of 10 CFR Part 37 and that are incorporated by reference in Rule R313-37. Consequently, there are no cost or savings impacts to any persons other than small businesses, non-small businesses, state, or local government entities within Utah that have a radioactive materials license and are subject to the requirements of Rule R313-37.

**F) Compliance costs for affected persons:**

These proposed changes are minor and do not affect the intent, scope, meaning, or application of the requirements for the physical protection of category 1 and category 2 quantities of radioactive material of 10 CFR Part 37 and that are incorporated by reference in Rule R313-37. Consequently, there are no compliance costs to any of the current radioactive materials licensees that are subject to Rule R313-37.

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

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

**H) Department head approval of regulatory impact analysis:**

The Executive Director of the Department of Environmental Quality, Scott Baird, has reviewed and approved this fiscal analysis.

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

While the proposed changes are necessary to maintain regulatory compatibility, they do not affect the intent, scope, meaning, or application of the requirements the physical protection of category 1 and category 2 quantities of radioactive material of 10 CFR Part 37 and that are incorporated by reference in Rule R313-37. Consequently, there is no fiscal impact associated with the proposed changes to Rule R313-37.

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

Scott Baird, Executive Director

**Citation Information**

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

Subsection 19-3-103.1(1)(a)	Subsection 19-3-104(4)	Subsection 19-3-104(7)
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**Incorporations by Reference Information**

**8. A) This rule adds, updates, or removes the following title of materials incorporated by references:**

	<b>First Incorporation</b>
<b>Official Title of Materials Incorporated (from title page)</b>	10 CFR Part 37
<b>Publisher</b>	U.S. Government Printing Office
<b>Date Issued</b>	January 1, 2020
<b>Issue, or version</b>	January 1, 2020

**Public Notice Information**

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

<b>A) Comments will be accepted until:</b>	01/04/2021
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<b>10. This rule change MAY become effective on:</b>	01/11/2021
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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

<b>Agency head or designee, and title:</b>	Ty Howard, Director	<b>Date:</b>	11/02/2020
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### R313. Environmental Quality, Waste Management and Radiation Control, Radiation.

#### R313-37. Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material.

##### R313-37-1. Purpose and Authority.

(1) The rules in Rule R313-37 prescribe requirements for the physical protection program for a licensee that possesses an aggregated category 1 or category 2 quantity of radioactive material.

(2) The rules set forth herein are adopted pursuant to the provisions of Subsections 19-3-103.1(1)(a), 19-3-104(4) and 19-3-104(7).

(3) The requirements of Rule R313-37 are in addition to, and not in substitution for, the other requirements of these rules.

##### R313-37-2. Scope.

These requirements provide reasonable assurance of the security of category 1 and category 2 quantities of radioactive material by protecting these materials from theft or diversion. Specific requirements for access to material, and use, transfer, and transportation of material are included.

##### R313-37-3. Clarifications or Exceptions.

For purposes of Rule R313-37, 10 CFR 37.5, 37.11(c), 37.21 through 37.43(d)(8), 37.45 through 37.103, and Appendix A to 10 CFR 37 [~~(2017)~~](2020), are incorporated by reference with the following clarifications or exceptions:

(1) The exclusion of the following:

(a) In 10 CFR 37.5, exclude definitions for "Act", "Agreement State", "Becquerel", "Byproduct Material", "Commission", "Curie", "Government Agency", "License", "License issuing authority", "Lost or missing licensed material", "Person", "State", and "United States" [;].

~~(b) In 10 CFR 37.77(a)(1), exclude the wording "Notifications to the NRC must be to the NRC's Director, Division of Security Policy, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. The notification to the NRC may be made by email to RAMQC-SHIPMENTS@nrc.gov or by fax to 301-816-5151."; and~~

~~(c) In 10 CFR 37.81(g), exclude the wording "In addition, the licensee shall provide one copy of the written report addressed to the Director, Division of Security Policy, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.";~~

(2) The substitution of the following wording:

(a) "Utah Radiation Control Rule" for references to:

(i) "Commission regulation" in 10 CFR 37.101; and

(ii) "regulation" in 10 CFR 37.103;

(b) "Utah Radiation Control Rules" for reference to:

(i) "regulations and laws" in 10 CFR 37.31(d);

(ii) "Commission requirements" in 10 CFR 37.43(a)(3) and

37.43(c)(1)(ii); and

(iii) "regulations in this part" in 10 CFR 37.103;

(c) "Director" for references to:

(i) "appropriate NRC regional office listed in Section ~~30.6(a)(2)~~30.6(b)(2) of this Chapter" in 10 CFR 37.45(b);

(ii) "Commission" in 10 CFR 37.103;

(iii) "NRC" in 10 CFR 37.31(d), 37.43(c)(3)(iii), 37.57(a) (second instance of NRC) and (c), 37.77, and 37.77(a)(1) (first instance) and (3), and 37.81(g);

(iv) "NRC's Director, Division of Security Policy, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 29555-0001" in 10 CFR 37.77(c)(2) and 37.77(d);

(v) "NRC's Director of Nuclear Security, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 29555-0001" in 10 CFR 37.77(c)(1) [~~second instance~~];

(vi) "NRC's Operations Center" in 10 CFR 37.81(a) and (b);

(vii) "NRC's Operations Center (301-816-5100)" in 10 CFR 37.57(a) and (b) and 37.81(a) through (f);

(viii) "NRC regional office [~~listed~~]specified in section 30.6[~~(a)(2)~~] of this chapter" in 10 CFR 37.41.(a)(3); and

~~(ix) "NRC regional office specified in section 30.6 of this chapter" in 10 CFR 37.41(a)(3);]~~

(ix) "Director, Office of Nuclear Material Safety and Safeguards in 10 CFR 37.23(b)(2)".

(d) "Director, the U.S. Nuclear Regulatory Commission, or an Agreement State" for references to "Commission or an Agreement State" in 10 CFR 37.71 and 37.71(a) and (b);

(e) "U.S. Nuclear Regulatory Commission's Security Orders or the legally binding requirement issued by Agreement States" for references to "Security Orders" in 10 CFR 37.21(a)(3), 37.25(b)(2), and 37.41(a)(3);

(f) "mail, hand delivery, or electronic submission" for references to "an appropriate method listed in section 37.7" in 10 CFR 37.57(c) and 37.81(g); and

(g) "shall, by mail, hand delivery, or electronic submission," for reference to "shall use an appropriate method listed in section 37.7 to" in 10 CFR 37.27(c).

(3) The substitution of the following rule references:

(a) "R313-19-41(4)" for reference to "section 30.41(d) of this chapter." In 10 CFR 37.71;

(b) "R313-19-100 (incorporating 10 CFR 71.97 by reference)" for reference to "section 71.97 of this chapter" in 10 CFR 37.73(b);

(c) "R313-19-100 (incorporating 10 CFR 71.97(b) by reference)" for reference to "section 71.97(b) of this chapter" in 10 CFR 37.73(b); and

(d) "10 CFR 73" for references to "part 73 of this chapter" in 10 CFR 37.21(c)(4), 37.25(b)(2), and 37.27(a)(4).

**KEY: radioactive materials, security, fingerprinting, transportation**

**Date of Enactment or Last Substantive Amendment: ~~July 13, 2018~~2021**

**Notice of Continuation: January 17, 2017**

**Authorizing, and Implemented or Interpreted Law: 19-3-103; 19-3-104;~~19-6-104~~**

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R414-60	Filing No. 53214

**Agency Information**

<b>1. Department:</b>	Health	
<b>Agency:</b>	Health Care Financing, Coverage and Reimbursement Policy	
<b>Building:</b>	Cannon Health Building	
<b>Street address:</b>	288 N 1460 W	
<b>Mailing address:</b>	PO Box 143102	
<b>City, state, zip:</b>	Salt Lake City, UT 84114-3102	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Craig Devashrayee	801-538-6641	cdevashrayee@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R414-60. Medicaid Policy for Pharmacy Program
<b>3. Purpose of the new rule or reason for the change:</b>
The purpose of this change is to update and clarify provisions in this rule to be consistent with current Medicaid policy.
<b>4. Summary of the new rule or change:</b>
This amendment includes new definitions and clarifies eligibility, program coverage, copayment policy, patient counseling, drug compounds, and clarifies provisions for provider-administered drugs, long-acting injectable drugs, and drugs for the treatment of opioid use disorders.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
There is no impact to the state budget as this amendment simply updates and clarifies current policy for the Pharmacy Program.
<b>B) Local governments:</b>
There is no impact on local governments because they neither fund nor provide services under the Pharmacy Program.
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):

There is no impact on small businesses as this amendment simply updates and clarifies current policy for the Pharmacy Program.

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

There is no impact on non-small businesses as this amendment simply updates and clarifies current policy for the Pharmacy Program.

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

There is no impact on Medicaid providers and Medicaid members as this amendment simply updates and clarifies current policy for the Pharmacy Program.

**F) Compliance costs for affected persons:**

There are no compliance costs to a single Medicaid provider or Medicaid member as this amendment simply updates and clarifies current policy for the Pharmacy Program.

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

**Regulatory Impact Table**

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



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

**H) Department head approval of regulatory impact analysis:**

The Interim Executive Director of the Department of Health, Richard G. 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:**

Businesses will see neither revenue nor cost as this amendment simply updates current Medicaid policy.

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

Richard G. 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):**

Section 26-1-5	Section 26-18-3
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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.)

<b>A) Comments will be accepted until:</b>	12/31/2020
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<b>10. This rule change MAY become effective on:</b>	01/07/2021
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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**

<b>Agency head or designee, and title:</b>	Richard G. Saunders, Interim Executive Director	<b>Date:</b>	11/14/2020
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**R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**

**R414-60. Medicaid Policy for Pharmacy Program.**

**R414-60-2. Definitions.**

(1) "Covered outpatient drug" means a drug that meets ~~the following criteria:~~ the Centers for Medicare and Medicaid Services (CMS) covered outpatient drug definition as outlined in 42 CFR 447.502. The following provisions also apply:

- (a) requires a prescription for dispensing;
- (b) has a national drug code number;
- (c) is eligible for federal medical assistance percentages funds;
- (d) has been approved by the Food and Drug Administration; and
- (e) is listed in the nationally recognized drug pricing index under contract with the Department.

(2) "Full-benefit dual eligible beneficiary" means an individual who has Medicare and Medicaid benefits.

(3) "Rural pharmacy" means a pharmacy located in the state of Utah ~~[which is outside of]~~ and is not located in Weber County, Davis County, Utah County, ~~[and]~~ or Salt Lake County.

(4) "Urban pharmacy" means a pharmacy located in Weber County, Davis County, Utah County, Salt Lake County, or in another state.

(5) "Usual and customary charge" means the lowest amount a pharmacy charges the general public for a covered outpatient drug, which reflects advertised savings, discounts, special promotions, or any other program available to the general public.

(6) "Wholesale acquisition cost" means the list price paid by the wholesaler, distributor, and other direct accounts for drugs purchased from the wholesaler's supply.

(7) "Medically accepted indication" in accordance with 42 U.S.C. 1396r-8 (k)(6), is any use approved by the Food and Drug Administration (FDA) and Cosmetic Act, or a use supported on one of the following compendia:

- (a) American Hospital Formulary Service Drug Information;
- (b) United State Pharmacopeia-Drug Information; or
- (c) the DRUGDEX Information System.

**R414-60-3. ~~Client~~Member Eligibility Requirements.**

(1) Medicaid covers prescription drugs for individuals who are categorically and medically needy under the Medicaid program.

(2) Outpatient drugs included in the Medicare Prescription Drug Benefit-Part D for full-benefit dual eligible beneficiaries will not be covered under Medicaid in accordance with Subsection 1935(a) of the Social Security Act. Certain limited drugs provided in accordance with Subsection 1927(d)(2) of the Social Security Act to ~~[all]~~ Medicaid ~~recipients~~ members, but not included in the Medicare Prescription Drug Benefit-Part D, are payable by Medicaid.

(3) Outpatient drugs included in contracts with the Accountable Care Organization (ACO) must be obtained through the ACO for ~~[clients]~~ members enrolled in an ACO.

(4) Classes of medications and individual drugs carved out from the ACO must be obtained through the Fee for Service (FFS) benefit.

**R414-60-4. Program Coverage.**

(1) Covered outpatient drugs eligible for Federal Medical Assistance Percentages funds are included in the pharmacy benefit; however, covered outpatient drugs may be subject to limitations and restrictions.

(2) In accordance with Subsection 58-17b-606(4), when a multi-source A-rated legend drug is available in the generic form, Medicaid will only reimburse for the generic form of the drug unless:

(a) reimbursing for the non-generic brand-name legend drug will result in a financial benefit to the state;~~or~~

(b) the treating physician demonstrates a medical necessity for dispensing the non-generic, brand-name legend drug~~[-]; or~~

(c) the generic form of the drug is unavailable in the marketplace as defined in the Utah Medicaid Pharmacy Services Provider Manual.

(3) 42 U.S.C 1396b(i)(23) requires Medicaid [P]prescriptions [that are]not executed electronically [must]to be written on tamper-resistant prescription forms as follows:

(a) tamper-resistant prescription forms must include each of the following:

(i) one or more industry-recognized features designed to prevent unauthorized copying of a completed or blank prescription form;

(ii) one or more industry-recognized features designed to prevent the erasure or modification of information written on the prescription by the prescriber; and

(iii) one or more industry-recognized features designed to prevent the use of counterfeit prescription forms.

(b) Documentation by the pharmacy of verbal confirmation of a prescription not written on a tamper resistant prescription form by the prescriber or the prescriber's agent satisfies the tamper-resistant requirement. Documentation of the verbal confirmation must include the date, time, and name of the individual who verified the validity of the prescription.

(c) A pharmacy must maintain documentation that a Medicaid member or authorized representative has received a prescription for a covered outpatient drug. The documentation must clearly identify the covered outpatient drug and the date it was received.

(i) The Division of Medicaid and Health Financing (DMHF) shall waive the proof of delivery requirement for Non-Controlled Schedule 2 (Non-CII) prescriptions.

(ii) In accordance with Subsection R414-60-4(3)(~~e~~)g, the proof of delivery requirement remains for Controlled Schedule 2 (CII) medications that includes a signature or other documentation. The pharmacy shall document member receipt as stated in Subsection R414-60-4(3)(~~e~~)g.

(d) Claims for covered outpatient drugs not dispensed to a Medicaid ~~client~~member or the ~~client's~~member's authorized representative within 14 days must be reversed and any payment from Medicaid must be returned.

**R414-60-6. Copayment Policy.**

(1) Medicaid ~~clients~~members are to pay any applicable copayment amount that complies with the requirements of 42 CFR 447.56, the Utah Medicaid State Plan, and Rule R414-1.

(2) A Medicaid provider may not refuse services to a Medicaid member based on a member's inability to pay a cost-sharing amount in accordance with 42 CFR 447.52.

**R414-60-8. Mandatory Patient Counseling.**

(1) Medicaid ~~clients~~members, or their representatives, must receive counseling that fulfills the requirements of 42 U.S.C. 1396r-8 each time a covered outpatient medication is dispensed.

(2) ~~Section R156-17b-610 does not require [€]counseling [is not required]if a Medicaid [client]member[-] or their representative[-] refuses the offer [to]of counseling.~~

(a) Only a pharmacist, pharmacy intern, or designated medical practitioner may provide oral counseling to a member or member's representative and answer questions concerning prescription drugs.

(3) The offer ~~[to]~~of counseling must be documented and producible upon request.

(4) Written information on a prescription order delivered to a member shall be in the form of patient information leaflets.

**R414-60-11. Compounds.**

(1) ~~[Compounded non-sterile prescriptions are a covered benefit if at least one ingredient is a covered outpatient drug that would otherwise qualify for coverage.]A compounded drug consists of two or more ingredients. Medicaid may only reimburse pharmacies for the ingredient that meets the definition of a covered outpatient drug, except for those listed as non-covered drugs in Section R414-60-5.~~

(2) Compounded non-sterile prescriptions must be prepared by personnel and in settings as defined in the United States Pharmacopeia and National Formulary Chapter <795>.

~~[(2)3] Compounded sterile prescriptions [are a covered benefit if at least one ingredient is a covered outpatient drug that would otherwise qualify for coverage, and is]must be prepared by [a pharmacy]personnel and in settings that [has]have certified [to Utah Medicaid that it]they adhere[s] to the United States Pharmacopeia/National Formulary chapter <797> standard, and test[s] the final product for sterility, potency, and purity.~~

(4) Medicaid does not cover bulk powders for compounded prescriptions.

**R414-60-12. Provider-Administered Long-Acting Injectable Antipsychotic Drugs and Drugs for the Treatment of Opioid Use Disorders.**

~~[A pharmacy may bill Medicaid for any covered, provider-administered drug not directly dispensed to a patient for a long acting injectable antipsychotic drug or for the treatment of an opioid use disorder. The pharmacy may only release the drug to the administering provider or the provider's staff for treatment.]~~

(1) A provider-administered drug is an outpatient drug, other than a vaccine, that is administered by a health care provider in a physician's office or other outpatient clinical setting.

(2) Medicaid may only reimburse for a provider-administered drug if the drug qualifies as a covered outpatient drug in accordance with 42 U.S.C 1396r-8.

(3) Selected provider-administered or provider-observed drugs must be dispensed directly to the provider or provider's staff. These include the following:

(a) long-acting injectable antipsychotics; and

(b) long-acting injectable drugs for the treatment of opioid use disorders.

**KEY: Medicaid**

**Date of Enactment or Last Substantive Amendment: ~~June 19, 2020~~2021**

Notice of Continuation: April 28, 2017  
 Authorizing, and Implemented or Interpreted Law: 26-18-3; 26-1-5

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R510-200-25	Filing No. 53152

**Agency Information**

<b>1. Department:</b>	Human Services	
<b>Agency:</b>	Aging and Adult Services	
<b>Building:</b>	MASOB	
<b>Street address:</b>	195 N 1950 W	
<b>City, state:</b>	Salt Lake City, UT 84116	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Daniel Musto	801-538-3924	dmusto@utah.gov
Jonah Shaw	801-538-4219	jshaw@utah.gov
Nels Holmgren	801-538-3921	nholmgren@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R510-200-25. Liability
<b>3. Purpose of the new rule or reason for the change:</b>
The purpose of this amendment is to establish a liability section within this rule.
<b>4. Summary of the new rule or change:</b>
A liability section applicable to the long term care ombudsman has been added to this rule.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
The language updates, throughout this filing, do not impact the cost of current services and the financial impact on the Long-Term Care Ombudsman Program, its clients, or other agencies.

<b>B) Local governments:</b>			
The language updates, throughout this filing, do not fiscally impact costs at the local government level. This amendment is clarifying in nature.			
<b>C) Small businesses ("small business" means a business employing 1-49 persons):</b>			
The language updates, throughout this filing, do not fiscally impact small businesses. This amendment is clarifying in nature.			
<b>D) Non-small businesses ("non-small business" means a business employing 50 or more persons):</b>			
The language updates, throughout this filing, do not fiscally impact non-small businesses. This amendment is clarifying in nature.			
<b>E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <i>agency</i>):</b>			
The language updates, throughout this filing, do not fiscally impact persons other than small businesses, non-small businesses, state, or local government entities. This amendment is clarifying in nature.			
<b>F) Compliance costs for affected persons:</b>			
There are no anticipated compliance costs associated with the language changes throughout this amendment.			
<b>G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)</b>			
<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2021</b>	<b>FY2022</b>	<b>FY2023</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			

NOTICES OF PROPOSED RULES

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

**H) Department head approval of regulatory impact analysis:**

The Executive Director of the Department of Human Services, Ann Williamson, has reviewed and approved this fiscal analysis.

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

The Department does not anticipate any fiscal impacts on businesses as a result of language changes throughout this rule.

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

Ann Williamson, Executive Director

**Citation Information**

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

Section 62A-3-201

**Public Notice Information**

**9. The public may submit written or oral comments to the agency identified in box 1.** (The public may also request a hearing by submitting a written request to the agency. 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:** 12/31/2020

<b>10. This rule change MAY become effective on:</b>	01/07/2021
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**

<b>Agency head or designee, and title:</b>	Mark Brasher, Deputy Director	<b>Date:</b>	10/28/2020
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**R510. Human Services, Aging and Adult Services.**

**R510-200. Long-Term Care Ombudsman Program Policy.**

**R510-200-25. Liability.**

(1) The LTCO shall not incur any civil or criminal liability for performing his or her official duties in good faith.

(2) "Official duties" are the duties of an LTCO set forth in applicable federal and state law and the policies and procedures set forth throughout this rule. This includes, making a statement or communication relevant to receiving a complaint or conducting an investigation.

(3) Evidence of performing duties in "good faith" includes:  
(a) making every reasonable effort to follow procedures set forth in applicable laws, policies and procedures;

(b) seeking, and making reasonable efforts to follow direction from the Office of the SLTCO; and

(c) seeking, and making reasonable efforts to follow, direction from the relevant LTCO Supervisor.

(4) LTCO actions that are not part of LTCO official duties, include:

(a) transporting a client;

(b) acting as a guardian or payee;

(c) signing consent forms for survey;

(d) medication;

(e) restraints;

(f) signing medical directives;

(g) receiving a client power of attorney; and

(h) similar actions are outside the scope of the LTCO responsibilities.

(5) The Division of Aging and Adult Services does not provide liability insurance or indemnification for the AAA or provider agencies. The AAA and provider agencies are expected to retain their own liability policies.

**KEY: elderly, ombudsman, LTCO**

**Date of Enactment or Last Substantive Amendment:** ~~May 30, 2018~~2021

**Notice of Continuation:** June 30, 2017

**Authorizing, and Implemented or Interpreted Law:** 62A-3-201 to 208; 62A-3-104

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R590-85	Filing No. 53217

**Agency Information**

<b>1. Department:</b>	Insurance	
<b>Agency:</b>	Administration	
<b>Room no.:</b>	3110	
<b>Building:</b>	State Office Building	
<b>Street address:</b>	450 N State St	
<b>City, state:</b>	Salt Lake City, UT 84114	
<b>Mailing address:</b>	PO Box 146901	
<b>City, state, zip:</b>	Salt Lake City, UT 84114-6901	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Steve Gooch	801-538-3803	sgooch@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R590-85. Individual Accident and Health Insurance and Individual and Group Medicare Supplement Rates
<b>3. Purpose of the new rule or reason for the change:</b>
This rule is being amended to implement Section 31A-22-602 by establishing minimum loss ratios and set procedures for the filing of accident and health insurance and Medicare supplement premium rates.
<b>4. Summary of the new rule or change:</b>
The title of the rule is changed to reflect that it applies to all accident and health insurance and Medicare supplement rates. It clarifies that this rule does not apply to policies subject to Title 31A, Chapters 30 and 45 that comply with Rules R590-167, R590-277, and limited long-term care policies subject to Rule R590-285. The change to Subsection R590-85-5(1) sets the medical expense coverage minimum loss ratio for a non-renewable form at 65% and a short-term limited duration health insurance form at 75%. The enforcement date is removed because the rule is already in effect.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
There is no anticipated cost or savings to the state budget. The Insurance Department's insurance analysts will assume these standards into their daily reviews.

<b>B) Local governments:</b>
There is no anticipated cost or savings to local governments. This rule sets the minimum loss ratio for insurers that want to offer a short-term limited duration health insurance.

<b>C) Small businesses ("small business" means a business employing 1-49 persons):</b>
There is no anticipated cost or savings to small businesses. This rule sets the minimum loss ratio for insurers that want to offer a short-term limited duration health insurance.

<b>D) Non-small businesses ("non-small business" means a business employing 50 or more persons):</b>
There is no anticipated cost or savings to non-small businesses. If an insurer elects to offer short-term limited duration health insurance, it will need to comply with the minimum loss ratio as stated in this rule. However, this does not constitute money the insurer would pay to the state or another entity; rather, it is money that is set aside by the insurer to ensure it has sufficient funds to cover losses.

<b>E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency):</b>
There is no anticipated cost or savings to any other persons. This rule sets the minimum loss ratio for insurers that want to offer short-term limited duration health insurance.

<b>F) Compliance costs for affected persons:</b>
There are no compliance costs for any affected persons. If an insurer elects to offer short-term limited duration health insurance, it will need to comply with the minimum loss ratio as stated in this rule. However, this does not constitute money the insurer would pay to the state or another entity; rather, it is money that is set aside by the insurer to ensure it has sufficient funds to cover losses.

**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

NOTICES OF PROPOSED RULES

Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>H) Department head approval of regulatory impact analysis:</b>			
The Interim Commissioner of the Insurance Department, Tanji J. Northrup, has reviewed and approved this fiscal analysis.			
<b>6. A) Comments by the department head on the fiscal impact this rule may have on businesses:</b>			
The above analysis represents the Insurance Department's best estimate of the fiscal impact that this rule may have on businesses.			
<b>B) Name and title of department head commenting on the fiscal impacts:</b>			
Tanji J. Northrup, Interim Insurance Commissioner			

**Citation Information**

<b>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):</b>		
Section 31A-2-201	Section 31A-22-605	Section 31A-22-620

**Public Notice Information**

<b>9. The public may submit written or oral comments to the agency identified in box 1.</b> (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it
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receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)
<b>A) Comments will be accepted until:</b> 12/31/2020

<b>10. This rule change MAY become effective on:</b> 01/07/2021
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**

<b>Agency head or designee, and title:</b> Steve Gooch, Public Information Officer 1	<b>Date:</b> 11/16/2020
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**R590. Insurance, Administration.**

**R590-85. ~~Individual~~ Accident and Health Insurance and ~~Individual and Group~~ Medicare Supplement Rates.**

**R590-85-1. Purpose and Authority.**

(1) The purpose of this rule is to implement Subsections ~~31A-22-602(2)~~, 31A-22-605(4)(e), and 31A-22-620(3)(e) by establishing minimum loss ratios and implementing procedures for the filing of ~~[all individual]~~ accident and health insurance and ~~[all]~~ Medicare supplement premium rates, including the initial filing of rates, and any subsequent rate changes.

(2) This rule is promulgated pursuant to the authority vested in the commissioner by Subsections 31A-2-201(3)(a), ~~[and]~~ 31A-2-201.1(2), 31A-22-605(4)(e), and 31A-22-620(3)(e).

**R590-85-2. Applicability and Scope.**

(1) This rule shall apply to:  
 (a) ~~[all]~~ an individual accident and health insurance ~~[policies]~~ policy except as excluded under Subsection ~~R590-85-2(2)~~; and  
 (b) ~~[certificates issued under group]~~ a Medicare supplement ~~[policies]~~ policy.

(2) This rule does not apply to:  
 (a) ~~[policies]~~ a policy subject to Title 31A, Chapters 30 and 45 that ~~[comply]~~ complies with Rules R590-167 and R590-277; ~~[and]~~  
 (b) a long-term care ~~[policies]~~ policy subject to Rule R590-148; ~~and~~  
 (c) a limited long-term care policy subject to Rule R590-285 ~~[22]~~.

(3) The requirements contained in this rule shall be in addition to any other applicable rules previously adopted.

**R590-85-3. Definitions.**

(1) "Average ~~[A]~~ annual ~~[P]~~ premium ~~[P]~~ per ~~[P]~~ policy" means the average computed by the insurer based on an anticipated distribution of business by all applicable criteria having a price difference, such as age, sex, amount, dependent status, rider frequency, etc., except

assuming an annual mode for all policies, for example, the fractional premium loading may not affect the average annual premium or anticipated loss ratio calculation.

(2) "Conditionally [R]renewable" (CR) means renewal can be declined by class, geographic area or for stated reasons other than deterioration of health.

(3) "Guaranteed [R]renewable" (GR) means renewal cannot be declined by the insurance company for any reason, but the insurance company can revise rates on a class basis.

(4) "Non-[C]cancelable" (NC) means renewal cannot be declined nor can the rates be revised by the insurance company.

(5) "Non-renewable" (NR) means renewal is not an option.

(6) "Optionally [R]renewable" (OR) means renewal is at the option of the insurance company.

(7) "Qualified actuary" means a member in good standing of the American Academy of Actuaries.

#### **R590-85-4. General Requirements.**

(1) When Rate Filing is Required.

(a) Every filing for a policy, certificate, or endorsement affecting benefits shall be accompanied by a rate filing that complies with this rule.

(b) A rate filing is not required for an endorsement that has no rating effect.

(c) Any subsequent addition to or change in rates applicable to the policy, certificate, or endorsement shall also be filed prior to use.

(2) General Contents of All Rate Filings. Each rate submission shall include:

(a) rate sheets for current and proposed rates, if applicable, that are clearly identified;

(b) actuarial memorandum describing the basis on which rates were determined, which includes:

(i) description of the policy, benefits, renewability, general marketing methods, and issue age limits;

(ii) description of how rates were determined, including a general description and source of each assumption used;

(iii) estimated average annual premium per policy for Utah;

(iv) anticipated loss ratio of the present value of the expected benefits to the present value of the expected premiums over the entire period for which rates are computed to provide coverage. Interest shall be used in the calculation;

(v) minimum anticipated loss ratio presumed reasonable in Subsection R590-85-5(1); and

(vi) signed certification by a qualified actuary which states that to the best of the actuary's knowledge and judgment the rate filing is in compliance with the applicable laws and rules of ~~the state of~~ Utah and the benefits are reasonable in relation to the premiums charged; and

(c) a statement that the rates have been filed with and approved by the home state. If approval is not required by the home state, then alternative information which includes a list of the states to which the rates were submitted, the date submitted, and any responses, must be included.

(3) Previously Filed Form. Filing a rate change for a previously filed rate shall include the following:

(a) a statement of the scope and reason for the change;

(b) a description of how revised rates were determined, including the general description and source of each assumption used;

(c) an estimated average annual premium per policy in Utah, before and after the proposed rate increase;

(d) a comparison of Utah and average nationwide premiums, for representative rating cells based on the Utah distribution of business;

(e) a comparison of revised premiums with current scale;

(f) a statement as to whether the filing applies to new business, in-force business, or both, and the reasons;

(g) a detailed history of national experience, which includes the data in Subsection R590-85-4(4) ~~[-]~~ that shows on a yearly and durational basis:

(i) premiums received;

(ii) earned premiums;

(iii) benefits paid;

(iv) incurred benefits;

(v) increase in active life reserves;

(vi) increase in claim reserves;

(vii) incurred loss ratio;

(viii) cumulative loss ratio; and

(ix) any other available data the insurer may wish to provide;

(h) detailed history of Utah experience, which includes the data in Subsection R590-85-4(4) ~~[-]~~ that shows on a yearly basis:

(i) earned premiums;

(ii) incurred benefits;

(iii) incurred loss ratio; and

(iv) cumulative loss ratio;

(i) anticipated nationwide future loss ratio, which includes:

(i) projected premiums;

(ii) projected claims; ~~and~~

(iii) projected loss ratio; and

(iv) assumptions and calculations. Interest shall be used in the calculation;

(j) anticipated Utah future loss ratio, which includes:

(i) projected premiums;

(ii) projected claims; ~~and~~

(iii) projected loss ratio; and

(iv) description of assumptions and calculations. Interest shall be used in the calculation;

(k) cumulative past and projected future loss ratio and description of the calculation;

(l) the number of policyholders ~~residing~~ in ~~the state of~~ Utah; and

(m) the date and magnitude of all previous rate changes for Utah and nationwide.

(4) Experience Records

(a) An insurer shall maintain records of premiums collected, earned premiums, benefits paid, incurred benefits and reserves for each calendar year, for each policy form, and applicable endorsements. The records shall be maintained as required for the Accident and Health Policy Experience Exhibit.

(i) Separate data may be maintained for each endorsement to the extent appropriate.

(ii) Experience under policies that provide substantially similar coverage may be combined. The data shall be for all years of issue combined, for each calendar year of experience since the year the form was first issued.

(b) A rate revision must provide the information required in Subsection R590-85-4(4)(a) ~~[-]~~ on both a national and state basis.

(5) Evaluating Experience Data. In determining the credibility and appropriateness of experience data, due consideration must be given to all relevant factors, such as:

(a) statistical credibility of premiums and benefits, for example low exposure or low loss frequency;

(b) experience and projected trends relative to the kind of coverage, for example: ~~[-]~~ persistency, inflation in medical expenses, or economic cycles affecting disability income experience;

(c) concentration of experience at early policy durations where select morbidity and preliminary term reserves are applicable and

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where loss ratios are expected to be substantially lower than at later policy durations; and

(d) the mix of business by risk classification.

(6) Implementation of a filed rate increase must be initiated within 12 months from the filed date. A company forfeits the right to implement an increase if ~~they~~ it fails to initiate implementation within 12 months of the filed date.

(7) A filing may be rejected or prohibited if the company fails to submit all required information.

**R590-85-5. Reasonableness of Benefits in Relation to Premium.**

(1) With respect to a new form under which the average annual premium per policy is expected to be at least \$200, the anticipated loss ratio shall be at least as great as shown ~~below~~ in this subsection:

(a) Medical Expense Coverage. Except as provided in Subsections R590-85-5(1)(d) and R590-85-5(1)(e), [F]the minimum loss ratio for:

- (i) a non-renewable form is 65%;
- (ii) an optionally renewable form is 60%;
- (iii) a conditionally renewable form is 55%;
- (~~ii~~iv) a guaranteed renewable form is 55%; and
- (~~i~~v) a non-cancelable form is 50%.

(b) Income Replacement. The minimum loss ratio for:

- (i) a non-renewable form is 65%;
- (ii) an optionally renewable form is 60%;
- (iii) a conditionally renewable form is 55%;
- (~~ii~~iv) a guaranteed renewable form is 50%; and
- (~~i~~v) a non-cancelable form is 45%.

(c) For a policy form, including endorsements, under which the expected average annual premium per policy is:

- (i) \$100 or more but less than \$200, subtract five percentage points; or
- (ii) less than \$100 subtract 10 percentage points.

(d) For a Medicare supplement policy~~ies~~, benefits shall be deemed reasonable in relation to premiums provided the anticipated loss ratio meets the requirements of ~~Rule~~Section R590-146-14.

(e) The minimum loss ratio for a short-term limited duration health insurance form is 75%

(2) Rate Changes. With respect to the filing of a rate change for a previously filed form, the standards of this subsection shall be met.

(a) ~~Both~~Subsections R590-85-5(2)(a)(i) and R590-85-5(2)(a)(ii) ~~as follows~~ shall be at least as great as the standards in Subsection R590-85-5(1) and shall include interest in the calculation of benefits, premiums, and present values:

- (i) the anticipated loss ratio over the entire period for which the changed rates are computed to provide coverage; and
- (ii) the ratio of Subsections R590-85-5(2)(a)(ii)(A) and R590-85-5(2)(a)(ii)(B); where

(A) is the sum of the accumulated benefits, from the original effective date of the form to the effective date of the change, and the present value of future benefits; and

(B) is the sum of the accumulated premiums from the original effective date of the form to the effective date of the change and the present value of future premiums, the present values to be taken over the entire period for which the changed rates are computed to provide coverage, and the accumulated benefits and premiums to include an explicit estimate of the actual benefits and premiums from the last date an accounting was made to the effective date of the change.

(b) If an insurer wishes to charge a premium for policies issued on or after the effective date of the change, which is different from the premium charged for the policies issued prior to the change date,

then with respect to policies issued prior to the effective date of the change, the requirements of Subsection R590-85-5(2)(a) must be satisfied, and with respect to policies issued on and after the effective date of the change, the standards are the same as in Subsection R590-85-5(1), except that the average annual premium shall be determined based on an actual rather than an anticipated distribution of business.

(c) ~~Companies~~A company must review ~~their~~its experience periodically and file rate changes, as appropriate, in a timely manner to avoid the necessity of later filing of exceptionally large rate increases. A rate filing requesting an increase may be prohibited if a company has failed to file rate changes in a timely manner.

**R590-85-6. Enforcement Date.**

~~The commissioner will begin enforcing the revised provision of this rule 45 days from the rule's effective date.~~

**R590-85-7. Separability/Severability.**

If any provision of this rule, Rule R590-85, or its application to any person or situation is held invalid, such invalidity does not affect any other provision or application of this rule which can be given effect without the invalid provision or application. The remainder of this rule shall be given effect without the invalid provision or application. [If any provision of this rule or the application of it to any person is for any reason held to be invalid, the remainder of the rule and the application of any provision to other persons or circumstances may not be affected.]

**KEY:** insurance law

**Date of Enactment or Last Substantive Amendment:** ~~January 31, 2006~~2021

**Notice of Continuation:** April 4, 2017

**Authorizing, and Implemented or Interpreted Law:** 31A-2-201; 31A-22-605; 31A-22-620

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R590-244	Filing No. 53218

**Agency Information**

<b>1. Department:</b>	Insurance	
<b>Agency:</b>	Administration	
<b>Room no.:</b>	3110	
<b>Building:</b>	State Office Building	
<b>Street address:</b>	450 N State St	
<b>City, state:</b>	Salt Lake City, UT 84114	
<b>Mailing address:</b>	PO Box 146901	
<b>City, state, zip:</b>	Salt Lake City, UT 84114-6901	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Steve Gooch	801-538-3803	sgooch@utah.gov

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



**General Information**

<b>2. Rule or section catchline:</b>
R590-244. Individual and Agency Licensing Requirements
<b>3. Purpose of the new rule or reason for the change:</b>
The rule is being amended to eliminate a requirement that has been removed from statute, add a requirement that insurers and agencies report terminations to the Insurance Department (Department), and allow nonresident licensees to report information changes online.
<b>4. Summary of the new rule or change:</b>
The change to Section R590-244-8 eliminates a requirement to obtain a navigator license that is no longer required by Utah statute.
The changes to Section R590-244-11 require an insurance company to provide particular information to the Department when the company reports that it has terminated its relationship with an agency based on a violation the Insurance Code. The Department will be better equipped to investigate the violation if that information is provided when the notice of termination is given.
The changes to Section R590-244-12 require an insurance agency to provide particular information to the Department when the agency reports that it has terminated its relationship with an agent based on a violation the Insurance Code. The Department will be better equipped to investigate the violation if that information is provided when the notice of termination is given.
The changes to Section R590-244-13 are needed to address the fact that the Department's vendors, SIRCON and NIPR, now accept online reports of changes to a Department licensee's information from one nonresident state to another.
The changes also remove the enforcement date, update the severability language, and make a number of clerical fixes.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
There is no anticipated cost or savings to the state budget. The information that insurers and agencies report to the Department will be reviewed by Department employees during the course of their normal duties.

<b>B) Local governments:</b>
There is no anticipated cost or savings to local governments. The changes apply to insurers and insurance agencies, and do not affect local governments.
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):
There is no anticipated cost or savings to small businesses. Insurance agencies already collect the information they are being required to provide, and so should not incur extra costs to report such information. The other changes do not require any action.
<b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):
There is no anticipated cost or savings to non-small businesses. Insurers already collect the information they are being required to provide, and so should not incur extra costs to report such information. The other changes do not require any action.
<b>E) Persons other than small businesses, non-small businesses, state, or local government entities</b> ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <b>agency</b> ):
There is no anticipated cost or savings for any other persons. The changes apply to insurers and insurance agencies, and do not affect other entities.
<b>F) Compliance costs for affected persons:</b>
There are no compliance costs for any affected persons. Insurers and agencies already collect the information they are being required to provide, and so should not incur extra costs to report such information. The other changes do not require any action.
<b>G) Regulatory Impact Summary Table</b> (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2021</b>	<b>FY2022</b>	<b>FY2023</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0

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Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>H) Department head approval of regulatory impact analysis:</b>			
The Interim Commissioner of the Insurance Department, Tanji J. Northrup, has reviewed and approved this fiscal analysis.			
<b>6. A) Comments by the department head on the fiscal impact this rule may have on businesses:</b>			
The above analysis represents the Insurance Department's best estimate of the fiscal impact that this rule may have on businesses.			
<b>B) Name and title of department head commenting on the fiscal impacts:</b>			
Tanji J. Northrup, Interim Insurance Commissioner			

**Citation Information**

<b>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):</b>		
Section 31A-2-201	Subsection 31A-23a-102(10)	Section 31A-23a-104
Section 31A-23a-108	Section 31A-23a-110	Section 31A-23a-111
Section 31A-23a-115	Section 31A-23a-302	Section 31A-23b-102
Subsection 31A-23b-102(7)	Section 31A-23b-203	Section 31A-23b-205
Section 31A-23b-207	Section 31A-23b-208	Section 31A-23b-209
Section 31A-23b-401	Section 31A-25-201	Section 31A-25-208

Section 31A-26-202	Section 31A-26-207	Section 31A-26-210
Section 31A-26-213	Section 31A-35-104	Section 31A-35-301
Section 31A-35-401	Section 31A-35-406	

**Public Notice Information**

<b>9. The public may submit written or oral comments to the agency identified in box 1.</b> (The public may also request a hearing by submitting a written request to the agency. 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.)	
<b>A) Comments will be accepted until:</b>	12/31/2020

<b>10. This rule change MAY become effective on:</b>	01/07/2021
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**

<b>Agency head or designee, and title:</b>	Steve Gooch, Public Information Officer 1	<b>Date:</b>	11/16/2020
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**R590. Insurance, Administration.**

**R590-244. Individual and Agency Licensing Requirements.**

**R590-244-1. Authority.**

This rule is promulgated pursuant to:

(1) Subsection 31A-2-201(3) that authorizes the commissioner to adopt rules to implement the provisions of ~~the Utah~~ Title 31A, Insurance Code;

(2) Subsections 31A-23a-104(2), 31A-23a-110(1), 31A-25-201(1), 31A-26-202(1), 31A-23b-203(2), 31A-23b-208(1), 31A-35-104, 31A-35-301(1) and 31A-35-401(2) that authorize the commissioner to prescribe the forms and manner in which an initial or renewal individual or agency license application under Title 31A, Chapters 23a, 23b, 25, 26, and 35 is to be made to the commissioner;

(3) Subsections 31A-23a-111(10), 31A-23b-401(9), 31A-25-208(9), 31A-26-213(10), and 31A-35-406(1) that authorize the commissioner to adopt a rule prescribing license renewal and reinstatement requirements for individual and agency licensees under Title 31A, Chapters 23a, 23b, 25, 26, and 35;

(4) Subsections 31A-23a-108(1), 31A-23b-205(2), ~~and~~ 31A-23b-205(3), ~~and~~ 31A-26-207(1), and 31A-26-207(5), that authorize the commissioner to adopt a rule prescribing how examination

and training requirements may administered to licensees under Title 31A, Chapters 23a, 23b, and 26;

(5) Subsections 31A-23a-115(1) and 31A-23a-115(2) that authorize the commissioner to adopt a rule prescribing reporting and notification requirements to be utilized by an insurer for the initial appointment or the termination of appointment of a person authorized to act on behalf of the insurer under Title 31A, Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and Reinsurance Intermediaries;

(6) Subsection 31A-23a-203.5(3) that authorizes the commissioner to adopt a rule prescribing the terms and conditions of any required legal liability insurance coverage to be maintained by or on behalf of a licensed resident individual producer;

(7) Subsection 31A-23b-207(1) that authorizes the commissioner to adopt a rule prescribing the amount of any surety bond required to be maintained by a licensed navigator to cover the legal liability of a navigator as the result of an erroneous act or failure to act in the navigator's capacity as a navigator;

(8) Subsections 31A-23a-302(2), ~~[and] 31A-23a-302(3), 31A-23b-209(3), [and] 31A-23b-209(4), [and] 31A-26-210(2), and 31A-26-210(3)~~ that authorize the commissioner to adopt a rule prescribing reporting and notification requirements to be utilized by an agency for the initial designation or the termination of designation of a person authorized to act on behalf of the agency under Title 31A, Chapters 23a, 23b, and 26; and

(9) Subsections 31A-23a-102(10) and 31A-23b-102(7) that authorize the commissioner to adopt a rule to define the word "resident".

#### **R590-244-2. Purpose and Scope.**

(1) The purpose of this rule is to provide standards for:

(a) an individual or agency licensee for:

(i) obtaining, renewing, or reinstating a license;

(ii) maintaining any legal liability coverage or surety bond requirements; and

(iii) making other miscellaneous license amendments;

(b) an insurer for the initial appointment or the termination of an appointment of an individual or agency licensee; and

(c) an agency for the initial designation or the termination of a designation of an individual licensee to the agency's license.

(2) Scope.

(a) This rule applies to ~~[all] each~~ individual[s] and agency[ies] licensed under Title 31A, Chapters 23a, 23b, 25, 26, and 35.

(b) This rule applies to ~~[all] any~~ admitted insurer[s] doing business in Utah.

#### **R590-244-3. Definitions.**

For the purpose of this rule the commissioner adopts the definitions as set forth in ~~[Subs]~~ Sections 31A-1-301, 31A-23a-102, 31A-23b-102, 31A-26-102, and 31A-35-102 and the following:

(1) "Active license" means a license under which a licensee has been granted authority by the commissioner to engage in some activity that is part of or related to the insurance business.

(2) "Inactive license" means a formerly active license where a licensee is no longer authorized by the commissioner to engage in some activity that is part of or related to the insurance business.

(3) "Lapse" means the inactivation of an active license by expiration of the period for which the license was issued or by operation of law.

(4) "License application" means information submitted by a license applicant to provide information about the license applicant that is used by the commissioner to evaluate the applicant's qualifications and decide whether to:

(a) issue or decline to issue a license;

(b) add or decline to add an additional line of authority to an active license;

(c) renew or decline to renew an active license; or

(d) reinstate or decline to reinstate an inactive license.

(5) "Line of authority" means a line of insurance of a particular subject matter area within a license type for which the commissioner may grant authority to do business.

(6) "License type" means a category of license identifying a specific functional area of insurance activity for which the commissioner may grant authority to do business.

(7) "NIPR" means an electronic application software provided by the National Insurance Producer Registry (NIPR).

(8) "Reinstate" means the activation of an inactive license within 365 days of the inactivation date.

(9) "Renewal" means the continuation of an active license from one two-year licensing period to another, except that the licensing period for a bail bond agency is one year.

(10) "Resident," for the purpose of a resident insurance license in this state, means a person who claims this state as the person's home state in which the person maintains the principal:

(a) place of residence; or

(b) place of business, and

(c) is licensed to do insurance business.

(11) "SIRCON" means an electronic application software provided by Sircon Corporation or its acquiring parent company, Vertafore, Inc.

(12) "Termination for cause" means:

(a) an insurer or an agency has ended its relationship with a licensee or has cancelled the licensee's authority to act on behalf of the insurer or agency for one of the reasons identified in Subsection 31A-23a-111(5); or

(b) a licensee has been found to have engaged in any of the activities identified in Subsections 31A-23a-111(5), 31A-23b-401(4), or 31A-26-213(5), by a court, government body, or self-regulatory organization authorized by law.

#### **R590-244-4. Requirement to Electronically Submit License Applications, Appointments, Designations, and License Amendments.**

(1) Except as otherwise provided in this rule the following shall be submitted electronically to the department using SIRCON or NIPR:

(a) ~~[all] each~~ individual and agency license application[s] under ~~[e]~~ Title 31A, Chapters 23a, 23b, 25, 26, and 35 as prescribed in Sections R590-244-7, R590-244-9, and R590-244-10 for:

(i) a new license;

(ii) an additional license type or line of authority;

(iii) a license renewal; or

(iv) a license reinstatement;

(b) ~~[all] any~~ appointment[s], termination of appointment[s], designation[s], and termination[s] of designation[s] as prescribed in Sections R590-244-11 and R590-244-12;

(c) all miscellaneous license amendments pertaining to individual and agency licenses under Title 31A, Chapters 23a, 23b, 25, 26 and 35 as prescribed in Section R590-244-13;

(d) all documents related to reporting to the commissioner of criminal prosecution or administrative action taken against a licensee as required under Title 31A, Chapters 23a, 23b, 25, 26 and 35; and

(e) any additional documentation required in connection with an application, except as shown in (iv) below, including ~~[but not limited to]:~~

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(i) written explanation and documentation for positive responses to background questions on a license application;

(ii) evidence of meeting specific experience, bonding, or other requirements for certain license types or lines of authority; or

(iii) evidence of meeting continuing education requirements for a renewal or reinstatement application when there is a question regarding the number of course hours completed.

(iv) If an electronic attachment function for attaching a document required in connection with an application is not available in the attachment utility from SIRCON or NIPR, the document shall be submitted electronically via a facsimile or as a PDF attachment to an email, until such time that an electronic attachment function for submitting the document in connection with the application becomes available from SIRCON or NIPR.

(2) Attestation. Submission of an electronic application or other form under this [R]rule constitutes the applicant's or submitter's attestation under penalties of perjury that the information contained in the application or form is true and correct.

(3) Any submission subject to this rule that does not comply with this rule, including an application that remains incomplete for a period of 30 days following the initial submission, may be rejected as incomplete and returned to the submitter without being processed, with any paid fees forfeited to the State.

**R590-244-5. Requirement of an Active License to Sell, Solicit, or Negotiate Insurance.**

(1) A person must have the following to sell, solicit, or negotiate insurance:

(a) an active license matching the type and line of insurance being sold, solicited, or negotiated; and

(b) if the person is an agency, an appointment from an insurer; or

(c) if the person is an individual:  
(i) an appointment from an insurer or a designation from an agency; and

(ii) if the individual is a resident producer, legal liability errors and omissions insurance coverage in an amount not less than \$250,000 per claim and \$500,000 annual aggregate limit, as applicable in accordance with Section 31A-23a-203.5.

(2) A licensee whose license is inactivated for any reason shall not sell, solicit, or negotiate insurance from the date the active license is inactivated until the date the inactive license is reactivated.

**R590-244-6. Requirement of an Active License to Act as a Navigator.**

(1) A person must have the following to act as a navigator:

(a)(i) an active navigator license issued under Chapter 31A-23b, Navigator License Act, or

(ii) an active producer license issued under Chapter 31A-23a, Insurance Marketing - Licensing Producers, Consultants, and Reinsurance Intermediaries, with an accident and health line of authority; and

(b)(i) a surety bond in an amount not less than \$50,000 to cover the legal liability of the navigator as the result of an erroneous act or failure to act in the navigator's capacity as a navigator, as applicable in accordance with Section 31A-23b-207; or

(ii) legal liability errors and omissions insurance coverage in an amount not less than \$250,000 per claim and \$500,000 annual aggregate limit, as applicable in accordance with Section 31A-23b-207.

(2) A professional liability coverage plan is considered to be a form of errors and omissions insurance coverage.

(3) A navigator whose license is inactivated for any reason shall not act as a navigator from the date the active license is inactivated until the date the inactive license is reactivated.

(4) A navigator license includes the following lines of authority:

- (a) navigator; and
- (b) certified application counselor.

**R590-244-7. New License Application.**

(1) A resident or non-resident license application for a new license, or for addition of an additional license type or line of authority, shall be submitted using either SIRCON or NIPR, except as stated in Subsections R590-244-7(2) and R590-244-7(3)~~[-below]~~.

(2) An application for a navigator license shall be submitted using SIRCON, except as stated in Subsection R590-244-7(3)~~[-below]~~.

(3) A non-resident license application for a license type or line of authority not offered in the person's home state shall be submitted to the commissioner via facsimile or as a PDF attachment to an email using a form available through the Department's website, until such time that an electronic application becomes available from SIRCON or NIPR.

**R590-244-8. Examination and Training.**

(1) Examination and training requirements may be administered by:

- (a) the commissioner;
- (b) a testing vendor approved and contracted by the commissioner; or
- (c) navigator related examination and training administered through the United States Department of Health and Human Services.

(2) To act as a navigator in Utah, a person must successfully complete~~[-~~

~~[-(a)-]~~ the federal navigator training and certification program requirements as established by federal regulation under PPACA and administered through the United States Department of Health and Human Services, including any applicable training, examination, certification or recertification requirements under that program~~[-and~~

~~[-(b)- the state defined contribution arrangements and small employer health insurance exchange training required under Section 31A-23b-205].~~

~~[(e)]~~3) A person who has successfully completed ~~[both-]~~the federal ~~[and state-]~~navigator training and certification identified in Subsection R590-244-8(2)~~[(a) and (b) above]~~ is considered to have successfully completed the required Utah training and examination requirements for a navigator license in accordance with Section 31A-23b-205.

~~[(3)]~~4) An applicant for the crop insurance license class who has satisfactorily completed a national crop adjuster program is exempt from an examination requirement under Section 31A-26-207.

**R590-244-9. Renewal and Non-renewal of an Active License.**

(1) An active license shall be renewed on or before the license expiration date by submitting a resident or non-resident license renewal application online via SIRCON or NIPR.

(2) A new individual license shall expire on the last day of the licensee's birth month following the two-year anniversary of the license issue date, unless renewed, except as shown in Subsection R590-244-9(4)~~[-below]~~.

(3) A renewed individual license shall expire on the last day of the licensee's birth month every two years, unless renewed, except as shown in Subsection R590-244-9(4)~~[-below]~~.

(4) An individual navigator license shall expire annually on the last day of the month from the most recent license issue or renewal date, unless renewed.

(5) An agency license shall expire on the last day of the month every two years from the most recent license issue or renewal date, unless renewed, except as shown in Subsection R590-244-9(6)~~[below]~~.

(6) A bail bond agency license shall expire annually on August 14~~[th]~~, unless renewed.

(7) Renewal Notice.

(a) Prior to the license expiration date, the commissioner may, as a courtesy, send a renewal notice to the licensee's business email address as shown on the records of the ~~[D]~~department.

(b) A renewal notice sent by the commissioner to the business email address, as shown on the records of the department, shall be considered received by the licensee.

(c) A licensee who fails to properly submit to, and maintain with, the commissioner a valid business email address may be subject to administrative penalties.

(8) A license shall non-renew effective the license expiration date if it is not renewed on or before the expiration date, and:

(a) the non-renewed license shall be inactivated;

(b) all agency designations and insurer appointments shall be terminated; and

(c) a lapse license notice will be sent to the affected licensee.

(9) An active licensee who fails to renew a license shall not engage in the business of insurance during the period of time from the expiration date of the license until the date the inactive license is reinstated or a new license is issued.

#### **R590-244-10. Reinstatement of Inactive License.**

(1) An inactive license that has been inactive for a period of one year or less following the license expiration date can be reinstated as stated in Subsections R590-244-10(3) through R590-244-10(7)~~[below]~~.

(2) An inactive license that has not been reinstated within one year following its expiration date shall not be reinstated and the inactive licensee shall apply as a new license applicant.

(3) A reinstatement applicant shall:

(a) comply with all requirements for renewal of a license, including any applicable continuing education or examination requirements if the reinstatement applicant is an individual; and

(b) pay a reinstatement fee as shown in Rule R590-102.

(4) A resident or non-resident license application for reinstatement of an inactive license shall be submitted using either SIRCON or NIPR, except as stated in Subsection R590-244-10(5)~~[below]~~.

(5) The following license applications for reinstatement of an inactive license must be submitted to the department via facsimile or as a PDF attachment to an email using a form available through the department's website, until such time that an electronic application becomes available from SIRCON or NIPR:

(a) a non-resident reinstatement application for a person whose license has been inactivated for failure to maintain an active license in the person's home state;

(b) a resident or non-resident reinstatement application for a person whose license has been voluntarily surrendered; and

(c) a resident or non-resident reinstatement application for a person whose license has been inactivated due to an incomplete renewal application, except as stated in Subsection R590-244-10(5)(c)(i)~~[below]~~.

(i) If a resident license has been inactivated due to a renewal application that was incomplete solely for failure to meet the continuing

education requirements, a resident reinstatement application must be submitted to the department:

(A) during the first 30 days after a license expiration date as a facsimile or as a PDF attachment to an email using a form available through the department's website; or

(B) 31 days to one year after a license expiration date through SIRCON or NIPR.

(7) A license that has been voluntarily surrendered:

(a) may be reinstated:

(i) during the license period in which the license was surrendered; and

(ii) no later than one year from the date the license was surrendered; and

(b) must comply with the reinstatement requirements stated in Subsection R590-244-10(3)~~[above]~~, except that no continuing education requirement will apply for an individual license applicant because the reinstatement is within the current license period.

(8) A reinstated license shall expire on the same date it would have expired had the license not become inactive.

(9) A person with a reinstated license must complete any required insurer contracts and appointments or agency designations before the reinstated licensee can resume doing business.

#### **R590-244-11. Appointment[s] and Termination of Appointment[s] by an Insurer[s].**

(1) ~~[Initial]~~Appointment[s].

(a) An insurer shall ~~[electronically]~~appoint an individual or agency licensee with whom the insurer has a producer contract.

(b) An appointment~~[s are]~~ is continuous until terminated by the insurer or canceled by the department.

(c) ~~[It is not necessary for a]~~An insurer is not required to appoint an individual who is ~~[listed as a designee on]~~designated by an appointed agency~~'s license]~~.

(d) To appoint~~[a person]~~, an insurer shall:

(i) ~~[identify]~~state the date on which the appointment is ~~[to be]~~ effective; and

(ii) submit the ~~[electronic]~~appointment to the commissioner using SIRCON or NIPR no later than 15 days~~[from]~~ after:

(A) the date on which the producer contract is executed; or

(B) the date on which the insurer receives~~[receipt of]~~ the first insurance application from the licensee~~[using SIRCON or NIPR]~~.

(2) ~~[Termination of]~~Terminating an Appointment.

(a) An insurer shall ~~[electronically]~~terminate ~~[the]~~an appointment ~~[of any]~~when a previously appointed individual or agency is no longer authorized to conduct business ~~[on behalf of]~~for the insurer in ~~[this state]~~Utah.

(b) To terminate an ~~[person's]~~appointment, an insurer shall:

(i) ~~[identify]~~state the date on which the termination ~~[of appointment]~~ is ~~[to be]~~ effective; and

(ii) submit the termination ~~[of appointment]~~ to the ~~[department]~~ commissioner using SIRCON or NIPR no later than 30 days after the ~~[identified]~~ effective date of termination~~[using SIRCON or NIPR]~~.

(c) Within 15 days after submitting a termination~~[of appointment to the department]~~, an insurer shall notify ~~[an individual or agency]~~ the licensee of the ~~[terminated appointment]~~ termination and ~~[of]~~ the reason for ~~[termination]~~ it by mail or email at the licensee's last known address or email address.

(3) Reporting Termination for Cause.

(a) ~~[In addition to electronically terminating the individual or agency licensee's appointment, a]~~An insurer that terminates an appointment for cause shall report to the commissioner the cause of

~~termination if required by Subsection 31A-23a-115(3)(a)[individual or agency licensee for cause must send the following information to the department via facsimile or as a PDF attachment to an email:~~

~~(i) the insurer must state that the termination was for cause; and~~

~~(ii) provide the specific circumstances causing the termination for cause].~~

~~(b) The report with attachments shall be submitted to [licensing.uid@utah.gov](mailto:licensing.uid@utah.gov) within 15 days after submitting the notice of termination required by Subsection R590-244-11(2)(c).~~

~~(c) The report shall:~~

~~(i) quote the specific reason or reasons from Subsection 31A-23a-111(5)(b);~~

~~(ii) state the specific facts and reasoning on which the decision to terminate was based;~~

~~(iii) list and include any document, photograph, video and audio recording, and other materials that support the facts and reasoning on which the insurer relied in deciding to terminate;~~

~~(iv) include a copy of every known written finding or conclusion by a court, government body, agency, or self-regulatory organization that supports the reason or reasons for termination; and~~

~~(v) include a copy of the notice required by Subsection R590-244-11(2)(c)[If a licensee is terminated for cause, the insurer shall provide a copy of the information that was sent to the department to the licensee at the licensee's last known address or email address].~~

~~(d) A report of a termination for cause is not required to include information that is unknown to an insurer.~~

**R590-244-12. Designation[s] and Termination of Designation[s] by an Agency[ies].**

(1) Designation[s].

(a) An agency shall ~~[electronically]~~ designate a licensed individual to the agency license to do business on behalf of the agency in ~~[this state]~~ Utah.

(b) ~~[Designations are]~~ A designation is continuous until terminated by the agency or canceled by the department.

(c) To designate ~~[an individual on its license]~~, an agency shall:

(i) ~~[identify]~~ state the date on which the designation is ~~[to be]~~ effective; and

(ii) submit the designation to the commissioner using SIRCON or NIPR no later than 15 days after the ~~[identified]~~ designation effective date ~~[of designation using SIRCON or NIPR]~~.

(2) ~~[Termination of designations]~~ Terminating a Designation.

(a) An agency shall ~~[electronically]~~ terminate ~~[the]~~ a designation ~~[of any]~~ when a previously designated individual is no longer authorized to conduct business ~~[on behalf of]~~ for the agency in ~~[this state]~~ Utah.

(b) To terminate a ~~[n individual's]~~ designation, an agency shall:

(i) ~~[identify]~~ state the date on which the termination ~~[of designation]~~ is ~~[to be]~~ effective; and

(ii) submit the termination ~~[of designation]~~ to the ~~[department]~~ commissioner using SIRCON or NIPR no later than 30 days after the ~~[identified]~~ termination effective date ~~[of termination using SIRCON or NIPR]~~.

(c) Within 15 days after submitting a termination ~~[of designation to the department]~~, an agency shall notify ~~[an individual]~~ the licensee of the ~~[terminated designation]~~ termination and ~~[of]~~ the reason for ~~[termination]~~ it by mail or email at the licensee's last known address or email address.

(3) Reporting Termination for Cause.

(a) ~~[In addition to electronically terminating the individual licensee's designation, a]~~ An agency that terminates a designation for cause shall report to the commissioner the cause of termination if required by Subsection 31A-23a-302(4) ~~[an individual licensee for cause must send the following information to the department via facsimile or as a PDF attachment to an email:~~

~~(i) the agency must state that the termination was for cause; and~~

~~(ii) provide the specific circumstances causing the termination for cause].~~

~~(b) The report with attachments shall be submitted to [licensing.uid@utah.gov](mailto:licensing.uid@utah.gov) within 15 days after submitting the notice of termination required by Subsection R590-244-12(2)(c).~~

~~(c) The report shall:~~

~~(i) quote the specific reason or reasons from Subsection 31A-23a-111(5)(b);~~

~~(ii) state the specific facts and reasoning on which the decision to terminate was based;~~

~~(iii) list and include any document, photograph, video and audio recording, and any other materials that support the facts and reasoning on which the agency relied in deciding to terminate;~~

~~(iv) include a copy of every known written finding or conclusion by a court, government body, agency, or self-regulatory organization that supports the reason or reasons for termination; and~~

~~(v) include a copy of the notice required by Subsection R590-244-12(2)(c)[If a licensee is terminated for cause, the agency shall provide a copy of the information that was sent to the department to the licensee at the licensee's last known address or email address].~~

~~(d) A report of a termination for cause is not required to include information that is unknown to an agency.~~

**R590-244-13. Miscellaneous License Amendments and Changes to an Agency's Employer Identification Number (EIN).**

(1) ~~[All m]~~ Miscellaneous license amendments shall be submitted electronically.

(2) The following ~~[five]~~ six miscellaneous license amendments shall be submitted via SIRCON or NIPR:

(a) a change of residence, business, or mailing address within the same state;

(b) a change of residence, business, or mailing address from one nonresident state to another nonresident state;

~~(c) a change of email address;~~

~~(e)d) a change of telephone number;~~

~~(f)e) a change of an individual licensee's name; or~~

~~(e)f) a change of the licensed individual designated as the person responsible for the regulatory compliance of the agency.~~

(3) The following ~~[five]~~ four miscellaneous license amendments shall be submitted electronically via facsimile or as a PDF attachment to an email, except that ~~[a]~~ the license amendment identified in Subsection R590-244-13(3)(d) ~~[, (e) and (f)]~~ shall be submitted via SIRCON or NIPR once the amendment becomes available electronically from SIRCON or NIPR:

(a) a voluntary surrender of a license or line or authority;

(b) a clearance letter request;

(c) a change of an agency name; or

~~(d) a change of [residence, business, or mailing address from one state to another state; or~~

~~(e) a change of position or title of] an owner, partner, officer, or director of an agency.~~

(4) A miscellaneous license amendment submitted in accordance with this section shall contain:

- (a) the name and title of the individual submitting the amendment;
  - (b) the relationship to the licensee of the individual submitting the amendment; and
  - (c) the following attestation made by the individual submitting the amendment: "I hereby attest that ~~all of~~ the information submitted is true and correct, and that I am the individual licensee for whom the requested change is being submitted, or an authorized responsible representative of the individual or agency licensee for whom the requested change is being submitted."
- (5) A change of Employer Identification Number (EIN):
- (a) cannot be processed as a miscellaneous license amendment; and
  - (b) the entity must apply as a new license applicant.

**R590-244-14. Penalties.**

A person found to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

**R590-244-15. ~~Enforcement Date.~~**

~~The commissioner will begin enforcing the revised provisions of this rule on the effective date of the rule.~~

**R590-244-16. ~~Severability.~~**

~~If any provision of this rule, Rule R590-244, or its application to any person or situation is held invalid, such invalidity does not affect any other provision or application of this rule which can be given effect without the invalid provision or application. The remainder of this rule shall be given effect without the invalid provision or application. If any provision of this rule or its application to any person or situation is held to be invalid, that invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.~~

**KEY: insurance licensing requirements**

**Date of Enactment or Last Substantive Amendment:** ~~[November 21, 2017]~~**2021**

**Notice of Continuation:** June 10, 2019

**Authorizing, and Implemented or Interpreted Law:** 31A-2-201; 31A-23a-102(10); 31A-23a-104; 31A-23a-108; 31A-23a-110; 31A-23a-111; 31A-23a-115; 31A-23a-302; 31A-23b-102; 31A-23b-102(7); 31A-23b-203; 31A-23b-205; 31A-23b-207; 31A-23b-208; 31A-23b-209; 31A-23b-401; 31A-25-201; 31A-25-208; 31A-26-202; 31A-26-207; 31A-26-210; 31A-26-213; 31A-35-104; 31A-35-301; 31A-35-401; 31A-35-406

NOTICE OF PROPOSED RULE		
TYPE OF RULE: New		
Utah Admin. Code Ref (R no.):	R590-286	Filing No. 53219

**Agency Information**

<b>1. Department:</b>	Insurance
<b>Agency:</b>	Administration
<b>Room no.:</b>	3110
<b>Building:</b>	State Office Building
<b>Street address:</b>	450 N State St

<b>City, state:</b>	Salt Lake City, UT 84114	
<b>Mailing address:</b>	PO Box 146901	
<b>City, state, zip:</b>	Salt Lake City, UT 84114-6901	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Steve Gooch	801-538-3803	sgooch@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R590-286. Minimum Standards for Short-Term Limited Duration Health Insurance
<b>3. Purpose of the new rule or reason for the change:</b>
The purpose of this rule is to provide reasonable standardization and simplification of terms and coverages for a short-term limited duration health insurance policy.
<b>4. Summary of the new rule or change:</b>
The rule provides reasonable standardization and simplification of terms and coverages to facilitate public understanding and comparison; eliminate provisions that may be misleading or confusing in connection either with the purchase of such coverage or with the settlement of a claim; comply with certain minimum requirements; set requirements on insurance producers that offer short-term limited duration health insurance policies; and provide for full disclosure and notice.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
There is no anticipated cost or savings to the state budget. The Insurance Department's (Department) insurance analysts will assume these standards into their daily reviews.
<b>B) Local governments:</b>
There is no anticipated cost or savings to local governments. The rule sets standards for those insurers that want to offer a short-term limited duration health insurance policy. Local governments have the option to purchase this new type of product but are not mandated to purchase it.
<b>C) Small businesses ("small business" means a business employing 1-49 persons):</b>
There is no anticipated cost or savings to small businesses. The rule sets standards for those insurers that want to offer a short-term limited duration health

insurance policy. Small businesses have the option to purchase this new type of product but are not mandated to purchase it.

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

If an insurer elects to offer a short-term limited duration health insurance policy, there will be associated business costs to initiate this type of product. The Department does not have information to quantify those implementation and ongoing costs because the Department cannot know each insurer's business costs.

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

There is no anticipated cost or savings to any other persons. This rule sets standards for those insurers that want to offer a short-term limited duration health insurance policy. An entity may incur costs if they elect to purchase this optional coverage.

**F) Compliance costs for affected persons:**

A short-term limited duration health insurance policy is an optional product that is being made available to insurers to offer to individuals and businesses. If an insurer elects to offer a short-term limited duration health insurance policy, there will be associated business costs to initiate this type of product. The Department does not have information to quantify those implementation and ongoing costs because the Department cannot know each insurer's business costs.

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

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

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

**H) Department head approval of regulatory impact analysis:**

The Interim Commissioner of the Insurance Department, Tanji J. Northrup, 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 above analysis represents the Insurance Department's best estimate of the fiscal impact that this rule may have on businesses.

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

Tanji J. Northrup, Interim Insurance 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 31A-2-201(3)(a)	Section 31A-2-202	Subsection 31A-22-605(4)
Subsection 31A-22-605(6)	Subsection 31A-22-605.1(1)	Section 31A-45-103

**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.)



<b>A) Comments will be accepted until:</b>	12/31/2020
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<b>10. This rule change MAY become effective on:</b>	01/07/2021
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**

<b>Agency head or designee, and title:</b>	Steve Gooch, Public Information Officer 1	<b>Date:</b>	11/16/2020
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**R590-286 Insurance, Administration.****R590-286. Minimum Standards for Short-Term Limited Duration Health Insurance.****R590-286-1. Authority.**

This rule is promulgated by the commissioner pursuant to Sections 31A-2-202 and 31A-45-103, and Subsections 31A-2-201(3)(a), 31A-22-605(4), 31A-22-605(6), and 31A-22-605.1(1).

**R590-286-2. Purpose and Scope.**

(1) The purpose of this rule is to provide reasonable standardization and simplification of terms and coverages of a short-term limited duration health insurance policy or certificate to:

- (a) facilitate public understanding and comparison;
- (b) eliminate provisions that may be misleading or confusing in connection either with the purchase of such coverage or with the settlement of a claim;
- (c) comply with certain minimum requirements;
- (d) set forth requirements on insurance producers that offer short-term limited duration health insurance policies; and
- (e) provide for full disclosure and notice to consumers.

(2)(a) Except as provided in Subsections R590-286-2(2)(b) and R590-286-2(3), this rule applies to a short-term limited duration health insurance policy or certificate.

(b) This rule shall not apply to:

- (i) Medicare supplement policies subject to Section 31A-22-620;
- (ii) long-term care insurance policies subject to Title 31A, Chapter 22, Part 14 and Rule R590-148;
- (iii) limited long-term care insurance policies subject to Title 31A, Chapter 22, Part 20 and Rule R590-285; or
- (iv) TRICARE formerly known as the Civilian Health and Medical Program of the Uniformed Services, CHAMPUS, supplement insurance policies.

(3) A short-term limited duration health insurance policy or certificate may not be offered:

- (a) to an employer group as directed by:
  - (i) Part A of Title XXVII of the Public Health Services Act;
  - (ii) Part 7 of ERISA; or
  - (iii) Chapter 100 of the Internal Revenue Code; and
- (b) as a blanket insurance policy.

**R590-286-3. Definitions.**

(1) The definitions in Sections 31A-1-301 and 31A-22-625, and Rules R590-126, R590-192, and R590-203, shall apply for the purpose of this rule.

**R590-286-4. Prohibited Policy Provisions.**

(1) Preexisting conditions.

(a) A preexisting condition shall not be defined more restrictively than a condition for which medical advice or treatment was recommended by a physician or received from a physician within 12 months prior to the first issuance of the policy or certificate of the insured person.

(b) A short-term limited duration health insurance policy for the entire term of the contract, including any renewals or re-issuance, may not exclude coverage for a loss due to a preexisting condition for a period greater than 12 months following the first issuance of the policy or certificate.

(2) Limitations or exclusions. Unless otherwise required by law, a short-term limited duration health insurance policy or certificate may not limit or exclude coverage or benefits by type of illness, accident, treatment, or medical condition, except as follows:

- (a) abortion;
- (b) acupuncture and acupressure services;
- (c) administrative charges for completing insurance forms, duplication services, interest, finance charges, or other administrative charges, unless otherwise required by law;
- (d) administrative exams and services;
- (e) applied behavioral analysis therapy;
- (f) aviation;
- (g) axillary hyperhidrosis;
- (h) benefits provided under:
  - (i) Medicare or other governmental program, except Medicaid;
  - (ii) state or federal worker's compensation; or
  - (iii) employer's liability or occupational disease law;
- (i) charges for appointments scheduled and not kept;
- (j) chiropractic care;
- (k) complementary and alternative medicine;
- (l) corrective lenses, and examination for the prescription or fitting thereof, but policies may not exclude required lens implants following cataract surgery or for keratoconus;
- (m) cosmetic surgery; reversal, revision, repair, complications, or treatment related to a non-covered cosmetic surgery, except that this exclusion does not apply to reconstructive surgery when the service is incidental to or follows surgery resulting from trauma, infection or other diseases of the involved part; or reconstructive surgery because of congenital disease or anomaly of a covered dependent child that has resulted in a functional defect;
- (n) custodial care;
- (o) dental care or treatment;
- (p) dietary products, except as required by Rule R590-194;
- (q) educational and nutritional training, except as required by Rule R590-200;
- (r) experimental or investigational services;
- (s) expenses before coverage begins or after coverage ends;
- (t) felony, riot, or insurrection, when it has been determined the covered person was a voluntary participant;
- (u) fitness training, exercise equipment, or membership fees to a spa or health club;
- (v) foot care in connection with corns, calluses, flat feet, fallen arches, weak feet, chronic foot strain or symptomatic complaints

of the feet, including orthotics. The exclusion of routine foot care does not apply to cutting or removal of corns, calluses, or nails when provided to a person who has a systemic disease, such as diabetes with peripheral neuropathy or circulatory insufficiency, of such severity that unskilled performance of the procedure would be hazardous;

(w) gastric or intestinal bypass services including lap banding, gastric stapling, and other similar procedures to facilitate weight loss, the reversal, or revision of such procedures; or services required for the treatment of complications from such procedures;

(x) gender reassignment, except as required by Section 1557 of the PPACA;

(y) gene therapy;

(z) genetic testing;

(aa) hearing aids, and examination or the prescription or fitting thereof;

(bb)(i) except as proved in Subsection R590-286-4(2)(cc), a loss directly related to the insured's voluntary participation in an activity where the insured:

(A) is found guilty of an illegal activity in a criminal proceeding; or

(B) is found liable for the activity in a civil proceeding;

(ii) a guilty finding includes a plea of guilty, a no contest plea, and a plea in abeyance;

(cc)(i) a loss directly related to the insured or dependent violating:

(A) Section 41-6a-502; or

(B) a law that prohibits operating a motor vehicle, in a state other than Utah, while exceeding the legal limit of concentration of alcohol, drugs, or a combination of both in the blood;

(ii) violations of Subsection R590-286-4(2)(cc)(i) shall be established:

(A) in a criminal proceeding in which the insured or dependent is found guilty, enters a no contest plea, or a plea in abeyance, or enters into a diversion agreement; or

(B) a request for an independent review where the findings support a decision to deny coverage based on the exclusions of Subsection R590-286-4(2)(cc)(i);

(iii) for purposes of Subsection R590-286-4(2)(cc):

(A) an independent review means a process that:

(I) is conducted by an independent entity designated by the insurer;

(II) renders an independent and impartial decision on a decision to deny coverage based on the exclusion in Subsection R590-286-4(2)(cc)(i); and

(III) is paid for by the insurer; and

(B) the independent review entity may not have a material professional, familial, or financial conflict of interest with:

(I) the insurer;

(II) an officer, director, or management employee of the insurer;

(III) the enrollee;

(IV) the enrollee's health care provider;

(V) the health care provider's medical group or independent practice association; or

(VI) a health care facility where services were provided;

(iv) this exclusion does not apply to an insured or dependent who is under 18 years of age;

(dd) infertility services;

(ee) mental health and substance use disorder services;

(ff) injury as a result of a motor vehicle, to the extent the covered person is required by law to have no-fault coverage, limited to

the minimum coverage required by law, whether or not such coverage is in effect;

(gg) nuclear release;

(hh) preexisting conditions or diseases;

(i) to the extent allowed under Subsections 31A-22-605.1(5) and R590-286-4(1); and

(ii) except for coverage of congenital anomalies as required by Subsection 31A-22-610(2)(b);

(ii) refractive eye surgery;

(jj) rehabilitation or habilitative therapy services, such as physical, speech, and occupational, except as required to correct an impairment caused by a covered accident or illness;

(kk) respite care;

(ll) rest cures;

(mm) service in the armed forces or units auxiliary to it;

(nn) services that are not medically necessary;

(oo) services performed by the covered person's parent, spouse, sibling, or child, including a step or in-law relationship;

(pp) services for which no charge is normally made in the absence of insurance;

(qq) sexual dysfunction procedures, equipment, and drugs;

(rr) shipping and handling;

(ss) telephone or electronic consultations, except as required under Section 31A-22-649.5;

(tt) territorial limitations outside the United States;

(uu) terrorism, including acts of terrorism;

(vv) transplants;

(ww) transportation, except medically necessary ambulance services;

(xx) war or act of war, whether declared or undeclared; or

(yy) others that in the opinion of the commissioner are not inequitable, misleading, deceptive, obscure, unjust, unfair, or unfairly discriminatory to the to the policyholder, beneficiary, or covered person under the policy.

**R590-286-5. Required Provisions and General Requirements.**

(1) Policy expiration.

(a) A policy and certificate shall include:

(i) an expiration provision that specifies the conditions for renewal or extension; and

(ii) the total number of months for the full term of contract, pursuant to Subsection R590-286-5(1)(c).

(b) The provision shall be appropriately captioned and appear on the first page of the policy and certificate.

(c) Considering any renewal or extension, a short-term limited duration health insurance policy or certificate is limited to 36 months.

(2) Rights of spouse. The following provisions apply to policies that provide coverage to a spouse of the insured:

(a) A policy or certificate may not provide for termination of coverage of the spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than for nonpayment of premium.

(b) A policy or certificate shall provide that in the event of the insured's death the spouse of the insured shall become the insured.

(3) Applications.

(a) Questions used to elicit health condition information may not be vague and must reference a reasonable time frame in relation to the health condition.

(b) A completed application shall be made part of the policy. A copy of the completed application shall be provided to the applicant prior to or upon delivery of the policy.

(c) Each application shall contain a prominent statement by type, stamp or other appropriate means in either contrasting color or boldface type at least equal to the size type used for the headings or captions of sections of the application and in close conjunction with the applicant's signature block on the application as follows, "Short-Term Limited Duration Health Insurance provides limited benefits. The (policy)(certificate), either by itself or bundled with other limited benefit products, is not meant to replace comprehensive health care insurance. It does not include benefits required by the PPACA. Review your (policy)(certificate) carefully."

(d) A statement regarding any preexisting waiting period as required by Subsection 31A-22-605.1(5)(b).

(e) An application form shall include a question designed to elicit information as to whether the insurance to be issued is intended to replace any other accident and health insurance presently in force. A supplementary application or other form to be signed by the applicant containing the question may be used.

(4) Endorsement acceptance.

(a) Except for an endorsement by which the insurer effectuates a request made in writing by the policyholder, an endorsement added to a policy after date of issue that reduces or eliminates benefits or coverage in the policy shall require signed acceptance by the policyholder.

(b) After the date of policy issue, an endorsement that increases benefits or coverage with a concurrent increase in premium during the policy term, must be agreed to in writing signed by the policyholder, except if the increased benefits or coverage is required by law.

(5) Additional premium. Where a separate additional premium is charged for benefits provided in connection with an endorsement, the premium charge shall be set forth in the policy and certificate.

(6) Benefit payment standard. A policy that provides for the payment of benefits based on standards described as usual and customary, reasonable and customary, or words of similar import, shall include a definition of the terms and an explanation of the terms in its accompanying outline of coverage or certificate.

(7) Preexisting conditions. If a policy or certificate contains any limitations with respect to preexisting conditions, the limitations shall appear as a separate paragraph of the policy and certificate and be labeled as "Preexisting Condition Limitation."

(a) The limitation shall include a description of the existence and terms of any preexisting condition exclusion under the policy, including the maximum preexisting exclusion period; and

(b) state that the exclusion period ends no later than 12 months after the first issuance of the policy or certificate.

(8) Notice to Buyer.

Any short-term limited duration health insurance policy or certificate shall display prominently on the first page of the policy or certificate, in either contrasting color or in boldface type at least equal to the size type used for headings or captions of section in the policy or certificate, the following:

"Notice to Buyer: This coverage is not required to comply with certain federal market requirements for comprehensive health insurance, principally those contained in the Affordable Care Act. Be sure to read your (policy)(certificate) carefully to make sure you are aware of any exclusions or limitations regarding coverage of preexisting conditions or health benefits, such as hospitalization, emergency services, maternity care, preventive care, prescription drugs, and mental health and substance use disorder services. Your (policy)(certificate) might also have lifetime and/or annual dollar limits on health benefits. If this coverage expires or you lose eligibility for this coverage, you

might have to wait until an open enrollment period to get other health insurance coverage."

(9) Termination of the policy shall be without prejudice to a continuous loss or deterioration of health that commenced while the policy or certificate was in force, limited to the duration of the benefit period or payment of the maximum benefits.

#### **R590-286-6. Minimum Policy Standards.**

(1) The duration of a short-term limited duration health insurance policy shall specify that the contract is less than 12 months after the first issuance of the policy or certificate.

(a) The maximum duration, considering any extensions, has an expiration date which is not more than 36 months after the first issuance of the policy or certificate.

(b) Subject to Subsection R590-286-6(1)(a), a short-term limited duration health insurance policy cannot be renewed.

(2) Short-term limited duration health insurance provides medical coverage that includes, at a minimum, the following benefits:

(a) hospital, surgical, and medical expense coverage, to an aggregate maximum of not less than

(i) \$1,000,000; and

(ii) copayment or coinsurance not to exceed 50% of covered charges;

(b) hospital services, including:

(i) inpatient services; and

(ii) other miscellaneous services associated with admission to a hospital for diagnosis and treatment of a covered condition, including medically necessary services delivered in a hospital setting, including:

(A) professional services;

(B) anesthesia;

(C) facility fees;

(D) supplies;

(E) imaging;

(F) laboratory;

(G) pharmacy services and prescription drugs;

(H) treatments;

(I) therapy; and

(J) other services delivered on an inpatient basis;

(c) outpatient services, including medically necessary services ordered by the insured's attending health care practitioner and rendered on an ambulatory basis for diagnosis and treatment of a covered condition, including:

(i) office and clinic visits;

(ii) diagnostic imaging;

(iii) laboratory services;

(iv) radiation therapy;

(v) physical therapy;

(vi) speech therapy;

(vii) occupational therapy; and

(viii) hemodialysis;

(d) surgical services for diagnosis and treatment of a covered condition must include:

(i) inpatient and outpatient surgical services at a hospital, ambulatory surgical facility, surgical suite, or provider's office; and

(ii) medically necessary services delivered in a hospital, ambulatory surgical facility, surgical suite, or provider's office related to provision of a surgical service, including:

(A) professional services;

(B) anesthesiology;

(C) facility fees;

(D) supplies;

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- (E) laboratory; and
- (F) pharmacy services and prescription drugs related to, or required as a result of, the surgical procedure; and
- (e) medical services for diagnosis and treatment of a covered condition including:
  - (i) office visits;
  - (ii) benefits for inborn metabolic errors as required by Section 31A-22-623 and Rule R590-194;
  - (iii) benefits for diabetes as required by Section 31A-22-626 and Rule R590-220; and
  - (iv) telehealth services and telemedicine services as required by Section 31A-22-649.5.

**R590-286-7. Outline of Coverage and Disclosure Requirements.**

- (1) An insurer shall deliver to an applicant the Short-Term Limited Duration Health Insurance Disclosure at application. Signatures on the disclosure shall be obtained prior to issuing the policy.
- (2)(a) Outline of Coverage. The items included in the outline of coverage must appear in the sequence prescribed:

TABLE

(INSERT COMPANY NAME)

SHORT-TERM LIMITED DURATION HEALTH INSURANCE COVERAGE

THIS (POLICY)(CERTIFICATE) PROVIDES LIMITED BENEFITS.

BENEFITS ARE SUPPLEMENTAL AND ARE NOT INTENDED TO COVER ALL MEDICAL EXPENSES

OUTLINE OF COVERAGE

Read Your (Policy)(Certificate) Carefully - This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR (POLICY)(CERTIFICATE) CAREFULLY!

Short-term limited duration health insurance coverage is designed to provide, to persons insured, limited or supplemental coverage.

A brief specific description of the benefits, including dollar amounts.

A description of any provisions that exclude, eliminate, restrict, reduce, limit, delay, or in any other manner operate to qualify payment of the benefits.

A description of provisions respecting renewability or continuation of coverage, including age restrictions or any reservations of right to change premiums.

- (b) an insurer shall deliver an outline of coverage to an applicant prior to or upon the sale of a short-term limited duration health insurance policy as required by this rule; and
- (c) a policy delivered to persons eligible for Medicare by reason of age shall contain the following language, which shall be printed on or attached to the first page of the outline of coverage:  
"THIS IS NOT A MEDICARE SUPPLEMENT POLICY. If you are eligible for Medicare, review the Guide to Health Insurance for People With Medicare available from the company."
- (3) Every application for short-term limited duration health insurance shall contain a statement by the applicant attesting and acknowledging the following:
  - (a) coverage does not meet minimum essential coverage;

- (b) benefits do not comply with the Patient Protection and Affordable Care Act;
- (c) exclusions or limitations, including preexisting exclusions or limitations, may apply;
- (d) lifetime dollar limits may apply on health benefits; and
- (e) annual dollar limits may apply on health benefits.
- (4) An insurer shall, upon specific request from the commissioner, file for use a copy of any short-term limited duration health insurance advertisement intended for use in this state whether through written, radio, electronic, or television medium.

**R590-286-8. Minimum Loss Ratios and Rating.**

The provisions of Rule R590-85 apply to a short-term limited duration health insurance policy.

**R590-286-9. Effective Date.**

The commissioner will begin enforcing the provisions of this rule for new policies issued on or after the effective date.

**R590-286-10. Penalties.**

A person found to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

**R590-286-11. Severability.**

If any provision of this rule, R590-286, or its application to any person or situation is held invalid, such invalidity does not affect any other provision or application of this rule which can be given effect without the invalid provision or application. The remainder of this rule shall be given effect without the invalid provision or application.

**KEY: insurance, health, short-term limited duration Date of Enactment or Last Substantive Amendment: 2021 Authorizing, and Implemented or Interpreted Law: 31A-2-201(3)(a); 31A-2-202; 31A-22-605(4); 31A-22-605(6); 31A-22-605.1(1); 31A-45-103**

<b>NOTICE OF PROPOSED RULE</b>		
<b>TYPE OF RULE:</b> New		
<b>Utah Admin. Code Ref (R no.):</b>	<b>R765-571a</b>	<b>Filing No. 53165</b>

**Agency Information**

<b>1. Department:</b>	Regents (Board of)	
<b>Agency:</b>	Administration	
<b>Building:</b>	Board of Regents Building, The Gateway	
<b>Street address:</b>	60 S 400 W	
<b>City, state:</b>	Salt Lake City, UT 84101	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Kevin V. Olsen	801-556-3461	kvolsen@agutah.gov
Geoffrey T. Landward	801-321-7136	glandward@ushe.edu

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

**General Information**

**2. Rule or section catchline:**

R765-571a. Procurement

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

The purpose of this rule is to make procurement policies and procedures for institutions of higher education as authorized by the Utah Procurement Code.

**4. Summary of the new rule or change:**

This rule governs the management and control of procurements and procurement procedures conducted by the institutions in the state system of higher education.

**Fiscal Information**

**5. Aggregate anticipated cost or savings to:**

**A) State budget:**

Enactment of this rule likely will not materially impact state revenue because it is a reenactment of the Utah Board of Higher Education's purchasing rule which expired.

**B) Local governments:**

Enactment of this rule likely will not result in direct, measurable costs for local governments because it is a reenactment of the Utah Board of Higher Education's purchasing rule which expired.

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

Enactment of this rule likely will not result in direct expenditures from tax or fee changes for small businesses because it is a reenactment of the Utah Board of Higher Education's purchasing rule which expired.

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

Enactment of this rule likely will not result in direct expenditures from tax or fee changes for non-small businesses because it is a reenactment of the Utah Board of Higher Education's purchasing rule which expired.

**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*):**

Enactment of this rule likely will not change the regulatory burden for persons other than small businesses, non-small businesses, state, or local government entities because it is a reenactment of the Utah Board of Higher Education's purchasing rule which expired.

**F) Compliance costs for affected persons:**

There are no increased compliance costs for affected persons because the rule is a reenactment of the Utah Board of Higher Education's purchasing rule which expired.

**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
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**H) Department head approval of regulatory impact analysis:**

The Commissioner of Higher Education, David R. Woolstenhulme, has reviewed and approved this fiscal analysis.

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

This rule affects the transferability of credits earned by qualifying students to institutions of higher education and has no fiscal impact on businesses.

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

David R. Woolstenhulme, Commissioner of Higher Education

**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 63G-6a-103(77)	Sections 63G-6a-101 through 63G-6a-2407	Subsection 63G-6a-107.7(1) (a)
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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.)

<b>A) Comments will be accepted until:</b>	12/31/2020
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**10. This rule change MAY become effective on:** 01/07/2021

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**

<b>Agency head or designee, and title:</b>	Kevin V. Olsen, Designee and Assistant Attorney General	<b>Date:</b>	11/02/2020
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**R765. Regents (Board of), Administration.**

**R765-571a. Procurement.**

**R765-571a-1. Purpose.**

As required by Title 63G, Chapter 6a, Utah Procurement Code, this rule governs the management and control of procurements and procurement procedures conducted by the institutions in the state system of higher education.

**R765-571a-2. Authority.**

This rule is authorized by Subsections 63G-6a-103(77)(f) and 63G-6a-107.7(1)(a).

**R765-571a-3. Definitions.**

3.1. The terms used in this policy shall be defined as they are in Sections 63G-6a-103 and 63G-6a-104.

3.2. In addition, the following definition shall apply:

3.2.1. "Institution" means an institution of higher education listed in Section 53B-1-102.

**R765-571a-4. Delegation of Authority.**

As established in Subsection 63G-6a-103(77)(f), the Utah Board of Higher Education is the body designated with rulemaking authority over procurements for institutions in the state system of higher education. The Board does not formally adopt any part of Title R33. However, each institution may adopt, in whole or in part, any rule listed in Title R33. Such adoption must be in writing. In the event of any conflict, inconsistency, or discrepancy between this rule and Title R33, this rule will govern. The Board delegates to each institution the authority to adopt and administer procurement policies and processes that conform with Title 63G, Chapter 6a, Utah Procurement Code and this rule. Each president, or designee, is given authority over procurements at their respective institution.

**R765-571a-5. Guiding Principles.**

Each institution is charged to provide efficient and timely procurement services that maximizes the institution's resources and promotes its instruction, research, extension, and professional service programs. Each institution shall establish policies that require the institution to strive to obtain the maximum value for each dollar expended, utilizing open competition and impartial evaluation of alternate products. Those policies shall also foster fair, ethical, and legal trade practices, which develop a strong vendor community and promote public trust in the institution and the system of higher education.

**R765-571a-6. Small Purchases.**

Each institution shall establish policies, and processes governing small purchases.

6.1. Each institution shall establish the maximum expenditure that may qualify as a small purchase.

6.2. Each institution may establish expenditure thresholds and procurement requirements related to those thresholds in relation to small purchases, including:

6.2.1. Purchasing Cards or P-Card: Purchasing card programs establish a more efficient method of paying for low-dollar transactions. Institutions shall establish procedures that govern card issuance, card-holder training, and auditing of purchasing card transactions.

6.2.2. Requests for Quotation or RFQ: Institutions shall seek competition whenever practicable. RFQs involve soliciting quotes from two or more known vendors. Each institution should establish procedures regarding the acceptance of phone, fax, and email quotes.

6.2.3. Small-dollar Purchase Orders.

6.2.4. Reimbursements.

6.2.5. Petty Cash.

**R765-571a-7. Solicitations.**

When procuring items over an established threshold for small purchases outlined in Section R765-571a-6.1, each institution shall use a standard procurement process or an exception to the standard procurement process described in Section R765-571a-8 and comply with Title 63G, Chapter 6a, Utah Procurement Code and this

rule. Each institution shall establish policies, and processes governing solicitations, including:

7.1. Invitation for Bid or IFB: The Invitation for Bids is used to initiate a competitive sealed bid procurement.

7.1.1. An IFB shall comply with the requirements of Subsection 63G-6a-603(2).

7.1.2. IFBs must be publicly advertised as outlined in Title 63G, Chapter 6a, Utah Procurement Code.

7.1.3. Bids shall be submitted using a sealed bid process.

7.1.4. Bids shall be opened in accordance with Section 63G-6a-604.

7.1.5. Institutions shall evaluate bids based on the requirements set forth in the IFB, including objective evaluation criteria. Criteria not included in the IFB may not be used to evaluate bids.

7.1.6. Contracts shall be awarded with reasonable promptness by notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the IFB.

7.1.7. Unless otherwise established by policy, institutions shall resolve tie bids by having the president or designee toss a coin in the presence of a minimum of two witnesses with the firm first in alphabetical order being heads.

7.1.8. Institutions may handle bids as otherwise permitted by Title 63G, Chapter 6a, Utah Procurement Code, including, but not limited to, rejecting bids, cancelling the IFB, and using a reverse auction process.

7.2. Request for Proposal or RFP: An RFP process may be used instead of the IFB process if the procurement officer determines, in writing, that the RFP process will provide the best value to the institution.

7.2.1. An RFP shall comply with Section 63G-6a-703.

7.2.2. RFPs must be publicly advertised as outlined in Title 63G, Chapter 6a, Utah Procurement Code.

7.2.3. Proposals shall be processed as outlined in Title 63G, Chapter 6a, Procurement Code.

7.2.4. The institution shall establish an evaluation committee of at least three individuals.

7.2.5. The evaluation committee will rate proposals based on the criteria outlined in the RFP. Criteria not included in the RFP may not be used to evaluate proposals.

7.2.6. The RFP process may be conducted in multiple steps, including presentations/discussions and requests for best and final proposals.

7.2.7. Each institution shall establish policies and processes governing best and final offers in accordance with Title 63G, Chapter 6a, Utah Procurement Code and this rule.

7.2.8. Institutions shall complete a justification statement as required by Title 63G, Chapter 6a, Utah Procurement Code.

7.3. Request for Information or RFI: The purpose of an RFI is to obtain information, comments, or suggestions from potential bidders or offerors before issuing an IFB or RFP. An RFI is not a procurement process and may not be used to:

7.3.1. solicit cost, pricing, or rate information;

7.3.2. negotiate fees;

7.3.3. make a purchase; or

7.3.4. enter into a contract.

7.4. Request for Statement of Qualifications or RFSQ: An institution may use a RFSQ process to prequalify potential bidders or offerors to provide any type of procurement item and limit participation in an IFB or RFP to the prequalified potential bidders or offerors. An institution may also use a RFSQ process to create an

approved vendor list. A RFSQ process is a supplemental procurement process described in Section 63G-6a-410.

7.4.1. A RFSQ in multiple-stage procurement process shall comply with Subsection 63G-6a-410(4).

7.4.2. A RFSQ in an approved vendor list process shall comply with Subsection 63G-6a-410(5).

7.5. Approved Vendor List Procurement Process: Each institution may establish policies and processes governing approved vendor lists and award contracts using methods that comply with Title 63G, Chapter 6a, Utah Procurement Code and this rule.

7.5.1. Award: Institutions choosing to use a vendor list may award a contract to a vendor on an approved vendor list at an established price based on a price list, rate schedule, or pricing catalog in accordance with Section 63G-6a-113.

7.5.2. Selection of Vendors: Institutions choosing to use a vendor list shall select vendors based on a rotation system, the assignment of vendors to a specified geographic area, classifying vendors by particular expertise, qualifications or field, or some other method in accordance with a written, public, and fair process.

7.5.3. Removal of Vendors from the Approved Vendor List: Institutions choosing to use an approved vendor list shall include a statement indicating that vendors whose performance does not meet the minimum performance rating threshold may be disqualified and removed from the approved vendor list.

#### **R765-571a-8. Exceptions to Procurement Requirements.**

Each institution shall establish policies, rules, and processes governing exceptions to procurement requirements that comply with Title 63G, Chapter 6a, Utah Procurement Code and this rule. Institutions may award a contract for a procurement item without using a standard procurement process under the following circumstances and in compliance with Section 63G-6a-802:

8.1. Sole Source Procurement - A standard procurement process is not required where there is only one source for a procurement item. The institution's president or designee shall determine in writing whether a procurement shall be made as a sole source. Notice of a sole source procurement must be published in accordance with Subsection 63G-6a-802(3) if the cost of the procurement item exceeds the amount established by Title 63G, Chapter 6a, Utah Procurement Code except where excluded under Section R765-571a-8.6.

8.2. Transitional Cost - A standard procurement process is not required where transitional costs are a significant consideration in selecting a procurement item and the results of a cost benefit analysis demonstrate that transitional costs are unreasonable or cost-prohibitive and that the awarding of a contract without engaging in a standard procurement process is in the best interest of the institution. Notice of a procurement based on transitional cost must be published in accordance with Subsection 63G-6a-802(3) if the cost of the procurement item exceeds the amount established by Title 63G, Chapter 6a, Utah Procurement Code except where excluded under Section R765-571a-8.6.

8.3. Circumstances in which the Standard Procurement Process is Impractical and Not in Institution's Best Interests: Institutions may establish policies and procedures that designate circumstances under which the standard procurement process is impractical and not in the best interest of the institution. Although the president or designee may add additional criteria, the following are procurements that are deemed to make the awarding of a contract through a standard procurement process impractical or contrary to the institution's best interests:

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- 8.3.1. public utility services;
- 8.3.2. a procurement item where the most important consideration in obtaining the item is the compatibility of equipment, technology, software, accessories, replacement parts, or service;
- 8.3.3. unique research materials;
- 8.3.4. instructional materials or other needed items for curriculum purposes based on pedagogical need and academic freedom of instructors;
- 8.3.5. membership fees, conference registrations, seminars, subscriptions to intellectual content;
- 8.3.6. conference venues and associated meals and entertainment at said venues;
- 8.3.7. used equipment when determined to be more practical or advantageous to the institution;
- 8.3.8. placement advertising in magazines, journals, newspapers, radio, television, online, buses, billboards.;
- 8.3.9. library journals, periodicals, and rare books;
- 8.3.10. athletic game guarantees;
- 8.3.11. guest lecturers, performers, entertainers, convocations;
- 8.3.12. broadcasting rights, television programming, and associated fees;
- 8.3.13. original works of art;
- 8.3.14. study abroad travel expenses;
- 8.3.15. travel, including commercial airfare and hotels;
- 8.3.16. sub-recipients of sponsored projects contributing to the scope of work for the project;
- 8.3.17. supplies or services required by the National Collegiate Athletic Association or the institution's athletic conference;
- 8.3.18. institutional sponsorship of third parties;
- 8.3.19. a procurement item from a specific supplier, service provider, or contractor that is a condition of a grant that will fund the cost of the supply, service, or construction item;
- 8.3.20. publications of an article, manuscript, research paper in a professional journal, periodical, or other source;
- 8.3.21. original equipment manufacturer parts, supplies, maintenance, and service when determined to be in the best interest of the institution; and
- 8.3.22. a procurement item from a specific supplier, service provider, or contractor that is a condition of a donation or sponsorship that will fund the cost of the supply, service, or construction item. Neither state funds nor institutional funds may be added to the donation or sponsorship in order to make an award under the provisions of this section;
- 8.4. Trial Use - The institution may award a contract for a procurement item without competition if the requirements of Section 63G-6a-802.3 are met and the president or designee determine in writing that the procurement item is needed for trial use or testing to determine whether the procurement item will benefit the institution.
- 8.5. Emergency Procurement - Emergency procurement is appropriate when an emergency condition exists that limits the capability of the institution to obtain competition. An emergency condition is a situation described in Subsection 63G-6a-803(1). These procurements shall be made with as much competition as reasonably practical while:
  - 8.5.1. avoiding a lapse in a critical government service;
  - 8.5.2. avoiding harm, or a risk of harm, to the public health, safety, welfare, or property; or
  - 8.5.3. protecting the legal interests of the institution.

8.6. Publication of Notice Not Required. Publication of notice under Subsection 63G-6a-802(3) is not required when the award is made under the circumstances described in Section R765-571a-8.

**R765-571a-9. Protests.**

Aggrieved bidders, offerors, or potential bidders or offerors, may protest the solicitation's specifications or award decision in accordance with Title 63G, Chapter 6a, Utah Procurement Code. The aggrieved party may appeal a protest decision in accordance with Title 63G, Chapter 6a, Utah Procurement Code. Each institution shall establish policies and processes governing protests related to procurement in accordance with Title 63G, Chapter 6a, Utah Procurement Code.

**R765-571a-10. Ethics.**

The institution's employees shall discharge their duties impartially so as to assure fair competitive access to procurements. Employees' conduct should foster public confidence in the integrity of the system of higher education.

**R765-571a-11. Multi-Year Contracts.**

Multi-year contracts, including renewals, may exceed five years if the president or designee determines in writing that:

- 11.1. a longer period is necessary in order to obtain the item;
- 11.2. a longer period is customary for industry standards; or
- 11.3. a longer period is in the best interest of the Institution. The written determination must be included in the procurement file.

**KEY: procurement, purchasing**

**Date of Enactment or Last Substantive Amendment: 2021**

**Authorizing, and Implemented or Interpreted Law: 63G-6a-103(77); 63G-6a-107.7(1)(a); 63G-6a-101 through 63G-6a-2407**

<b>NOTICE OF PROPOSED RULE</b>		
<b>TYPE OF RULE:</b> Amendment		
<b>Utah Admin. Code Ref (R no.):</b>	<b>R930-5-8</b>	<b>Filing No. 53184</b>

**Agency Information**

<b>1. Department:</b>	Transportation	
<b>Agency:</b>	Preconstruction	
<b>Room no.:</b>	Administrative Suite, First Floor	
<b>Building:</b>	Calvin Rampton	
<b>Street address:</b>	4501 S 2700 W	
<b>City, state:</b>	Taylorsville, UT	
<b>Mailing address:</b>	PO Box 148455	
<b>City, state, zip:</b>	Salt Lake City, UT 84114-8455	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Linda Hull	801-965-4253	lhull@utah.gov



James Palmer	801-965-4197	jimpalmer@agutah.gov
Lori Edwards	801-965-4048	ledwards@agutah.gov

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

**General Information**

<b>2. Rule or section catchline:</b>
R930-5-8. Maintenance
<b>3. Purpose of the new rule or reason for the change:</b>
The Department of Transportation (Department) proposes this change to Section R930-5-8 to clarify the Department's intent when it originally promulgated this rule.  The Department filed proposed changes to this rule as Filing No. 53084 on September 23, 2020. The Office of Administrative Rules published the proposed changes in the October 15, 2020, Utah State Bulletin (2020-20). The Department subsequently received informal comments on the analysis that made the Department realize parts of the analysis may be confusing, misleading, or inaccurate. The Department is filing this amendment with a rewritten analysis that removes confusing, misleading, or inaccurate statements, and will let Filing No. 53084 lapse.
<b>4. Summary of the new rule or change:</b>
The Department proposes changing Subsection R930-5-8(1) to clarify the Railroads' and Highway Authorities' allocated responsibility for performing and paying the costs of maintenance described in Subsection R930-5-8(1) and the exception to the allocation, which is a prior signed written agreement that changes the responsibilities.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
This proposed rule change will not lead to additional costs or savings to the state's budget because it only clarifies regulations the state is already responsible for enforcing.
<b>B) Local governments:</b>
This proposed rule change will not lead to additional costs to local governments. However, the proposed change may save local governments from incurring new costs to maintain railroad crossings that affect local governments' highways.
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):

This proposed rule change will not lead to additional costs or savings to small businesses because it only applies to railroad companies. The proposed rule change will not lead to new expenses to railroads that are small businesses. Historically, railroad companies have paid the costs to maintain their crossings that affect highway authorities.

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

This proposed rule change will not lead to additional costs or savings to non-small businesses because it only applies to railroad companies. The proposed rule change will not lead to new costs to large business railroads. Historically, railroad companies have paid the costs to maintain their crossings that affect highway authorities.

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

This proposed rule change will not lead to additional costs or savings to persons other than small businesses, non-small businesses, state, or local government entities because it only applies to railroads and government entities.

**F) Compliance costs for affected persons:**

This proposed rule change will not lead to compliance costs for persons affected by this proposed rule change that they do not already experience. This proposed change only clarifies existing requirements.

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

**Regulatory Impact Table**

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

NOTICES OF PROPOSED RULES

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

**H) Department head approval of regulatory impact analysis:**

Carlos M. Braceras, PE, Executive Director of the Department of Transportation, approves this regulatory impact analysis.

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

This proposed rule change will not have a fiscal impact on businesses, generally.

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

Carlos M. Braceras, PE, 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 41-6a-1205	Section 54-4-14	Section 54-4-15
Section 72-1-201		

**Public Notice Information**

**9. The public may submit written or oral comments to the agency identified in box 1.** (The public may also request a hearing by submitting a written request to the agency. 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:** 12/31/2020

**10. This rule change MAY become effective on:** 01/07/2021

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**

<b>Agency head or designee, and title:</b>	Carlos M. Braceras, PE, Executive Director	<b>Date:</b>	11/05/2020
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**R930. Transportation, Preconstruction.**

**R930-5. Establishment and Regulation of At-Grade Railroad Crossings.**

**R930-5-8. Maintenance.**

(1) Responsibility for maintenance is as described in this section unless a separate prior signed written agreement applies. Responsibility means the obligation to perform and pay for the maintenance.

(a) The Railroad is responsible for the maintenance of all Railroad Passive Warning Devices and Active Warning Devices within the Railroad right-of-way.

(b) If the Railroad has a property interest in the right-of-way, the Railroad is responsible for the maintenance of Crossing material within the Railroad right-of-way and two feet beyond each outside rail for Crossings without concrete crossing panels or edge of concrete crossing panel.

(c) On a temporary Highway Detour Crossing, the Railroad shall be responsible for the maintenance of pavement, Active Warning Devices, and Passive Warning Devices within the Railroad right-of-way at expense of the Highway Authority.

(d) When the Railroad alters the railway due to track and ballast maintenance, the Railroad shall coordinate their work with the Highway Authority so the pavement approaches can be adjusted to provide a smooth and level Crossing surface.

(e) When the Highway Authority changes the Highway profile, through construction or maintenance activities, the Highway Authority shall coordinate their work with the Railroad so the tracks can be adjusted to provide as smooth and level a Crossing surface as possible.

(f) Where a Highway structure overpasses a Railroad, the Highway Authority is responsible for the maintenance of the entire structure and its approaches.

(g) Where a Highway underpasses a Railroad and the Railroad owns the right-of-way in fee title, the Highway Authority is responsible for the maintenance of the Highway and the entire structure below and including the deck plate, girders, handrail, and parapets. The Railroad is responsible for the maintenance of the ballast, ties, rails and any portion of the supporting structure above the top of the ballast deck plate between parapets.

(i) If the Highway Authority owns the right-of-way in fee title, the Railroad is responsible for the maintenance of the entire structure unless a separate prior signed written agreement applies.

(ii) Cost of repairing damages to a Highway or a Highway structure, occasioned by collision, equipment failure, or derailment of the Railroad's equipment shall be borne by the Railroad.

(h) Responsibility for maintenance of private industrial trackage not owned by a Railroad that crosses a Highway shall be as follows:

(i) When a facility, plant, or property owner receives goods and services from a Railroad over private industrial trackage that crosses a Highway, maintenance of the Crossing shall be the responsibility of the industry owning the trackage, or as agreed to by the parties.

(ii) When the Crossing becomes a safety hazard to vehicles and is not maintained, the [D]department [and] or the Railroad shipping the goods and services shall notify the industry owning the trackage in writing to maintain or replace the Crossing material.

(iii) If the industry owning the trackage does not maintain or replace the Crossing material by a specified date, the [D]department shall order the Railroad to cease and desist operations across the Crossing.

(iv) If the industry owning the trackage does not respond to the order to maintain or replace the Crossing material the [D]department shall arrange to have the Crossing material replaced and bill the industry owning the trackage for the expenses to repair the trackage.

**KEY: railroad, crossing, transportation, safety**  
**Date of Enactment or Last Substantive Amendment:** [~~April 21, 2011~~]**2021**  
**Notice of Continuation:** November 2, 2016  
**Authorizing, and Implemented or Interpreted Law:** 41-6a-1205; 54-4-14; 54-4-15; 72-1-201

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R978-1-14	Filing No. 53203

**Agency Information**

<b>1. Department:</b>	Veterans and Military Affairs	
<b>Agency:</b>	Administration	
<b>Room no.:</b>	Suite 105	
<b>Building:</b>	550	
<b>Street address:</b>	550 Foothill Drive	
<b>City, state:</b>	Salt Lake City, UT 84113	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Gary Harter	801-440-6946	gharter@utah.gov
Jennica Gruver		jennicagruver@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R978-1-14. Grant Program

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

The proposed section describes purpose of grant, eligibility requirements, selection provisions, review committee, and funding.

**4. Summary of the new rule or change:**

The Department of Veterans and Military Affairs (Department) is authorized to provide funds through a grant to certain eligible organizations engaged in providing services to veterans across a variety of functions depending on the availability of funds each year.

**Fiscal Information**

**5. Aggregate anticipated cost or savings to:**

**A) State budget:**

Funds for this program will be determined annually based on any remaining Department funds.

**B) Local governments:**

This rule amendment has no impact on local governments. Funds for the program would be determined each year based on remaining Department funds.

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

Small businesses would not be impacted fiscally by this rule amendment. Funds would be determined on an annual basis depending on remaining Department funds.

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

No fiscal impact to non-small businesses as result of this rule amendment. Funds would be determined on an annual basis depending on remaining department funds.

**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 parties or persons will be fiscally impacted by this rule amendment. Funds would be determined on an annual basis depending on remaining Department funds.

**F) Compliance costs for affected persons:**

No compliance costs associated with this rule amendment.

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

<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2021</b>	<b>FY2022</b>	<b>FY2023</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>H) Department head approval of regulatory impact analysis:</b>			
Gary Harter, Executive Director for the Utah Department of Veterans and Military Affairs, has reviewed and approved this fiscal analysis.			
<b>6. A) Comments by the department head on the fiscal impact this rule may have on businesses:</b>			
This rule amendment would not have any fiscal impact on businesses. Funds for this program will be determined annually based on any remaining Department funds.			
<b>B) Name and title of department head commenting on the fiscal impacts:</b>			
Gary Harter, 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		
71-8-2(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.)

<b>A) Comments will be accepted until:</b>	12/31/2020
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<b>10. This rule change MAY become effective on:</b>	01/07/2021
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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**

<b>Agency head or designee, and title:</b>	Gary R. Harter, Executive Director	<b>Date:</b>	11/04/2020
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**R978. Veterans' and Military Affairs, Administration.**

**R978-1. Rule Governing Veterans' Affairs.**

**R978-1-14. Grant Program.**

(1) The department shall administer a grants program for veterans organizations as directed in Subsection 71-8-2(4) and consistent with the availability of funds as determined by the executive director in consultation with the Governor's Office of Management and Budget.

(2) Grants may be solicited by the department at any time following the determination that funds are available.

(3) Grants are limited to a one year period of performance.

(4) Grants may be awarded for one or more of the following purposes such as supporting veteran and military outreach, employment, education, mental wellness, healthcare, homelessness prevention, recognition events and other areas as determined by the department and consistent with the department mission.

(5) The department may award a grant to:

(a) an institution of higher education listed in Section 53B-1-102;

(b) a nonprofit organization involved in veterans or military-related activities; or

(c) a political subdivision of the state.

(6) Grant submissions will include name of submitting organization, verification of organization eligibility to receive grant as outlined in Subsection R978-1-14(5), purpose of the proposal, amount of requested funds, targeted veterans or military population,

intended outcomes, time period for accomplishment of effort, matching funds to be applied to the effort, metrics and measurements, any partners and other elements that the department may request.

(7) Grants will be reviewed by a four member committee comprised of two members from the department, designated by the executive director, and two members from the Veterans Advisory Council, designated by the council chair.

(a) The committee will make recommendations to the executive director for final approval.

(b) Committee members may participate in required meetings either in person or by electronic means to include telephone, internet or mobile device.

(c) Grants will be evaluated on a best value determination.

(8) Grants will be limited to not exceed ten thousand dollars from department funds for any one submission and the limit could be set lower depending on available funds.

(a) Submitting organizations are required to designate matching funds for the grant at a ratio to be determined by the department.

(b) At the completion of the performance period the department may request any remaining funds be returned to the department.

(9) Recipients of grants are required to submit quarterly reports to the department detailing performance of the effort, veterans serviced, metrics and measurements, funds expended and future efforts.

(10) An applicant that receives a grant under this part shall return the grant proceeds or a portion of the grant proceeds to the office if the applicant:

(i) fails to perform in accordance with the contract or other binding agreement; or

(ii) fails to maintain a qualifying status as described in Subsection 978-1-14(5)

**KEY: veterans' and military affairs; veterans grants**

**Date of Enactment or Last Substantive Amendment: ~~May 9, 2017~~ 2021**

**Notice of Continuation: March 1, 2017**

**Authorizing, and Implemented or Interpreted Law: 71-8-2(4)**

**End of the Notices of Proposed Rules Section**



## NOTICES OF 120-DAY (EMERGENCY) RULES

An agency may file a **120-DAY (EMERGENCY) RULE** when it finds that regular rulemaking procedures would:

- (a) cause an imminent peril to the public health, safety, or welfare;
- (b) cause an imminent budget reduction because of budget restraints or federal requirements; or
- (c) place the agency in violation of federal or state law (Subsection 63G-3-304(1)).

As with a **PROPOSED RULE**, a **120-DAY RULE** is preceded by a **RULE ANALYSIS**. This analysis provides summary information about the **120-DAY RULE** including the name of a contact person, justification for filing a **120-DAY RULE**, anticipated cost impact of the rule, and legal cross-references.

Following the **RULE ANALYSIS**, the text of the **120-DAY RULE** is printed. New text is underlined (example) and text to be deleted is struck out with brackets surrounding the deleted text (~~example~~). An emergency rule that is new is entirely underlined. Likewise, an emergency rule that repeals an existing rule shows the text completely struck out. A row of dots in the text (. . . . .) indicates that unaffected text was removed to conserve space.

A **120-DAY RULE** is effective when filed with the Office of Administrative Rules, or on a later date designated by the agency. A **120-DAY RULE** is effective for 120 days or until it is superseded by a permanent rule. Because of its temporary nature, a **120-DAY RULE** is not codified as part of the *Utah Administrative Code*.

The law does not require a public comment period for **120-DAY RULES**. However, when an agency files a **120-DAY RULE**, it may file a **PROPOSED RULE** at the same time, to make the requirements permanent.

Emergency or **120-DAY RULES** are governed by Section 63G-3-304, and Section R15-4-8.

NOTICE OF EMERGENCY (120-DAY) RULE		
Utah Admin. Code Ref (R no.):	R614-1-5	Filing No. 53189

### Agency Information

<b>1. Department:</b>	Labor Commission	
<b>Agency:</b>	Occupational Safety and Health	
<b>Room no.:</b>	3rd Floor	
<b>Building:</b>	Heber Wells Building	
<b>Street address:</b>	160 E 300 S	
<b>City, state, zip:</b>	Salt Lake City, UT 84111	
<b>Mailing address:</b>	PO Box 146650	
<b>City, state, zip:</b>	Salt Lake City, UT 84114-6650	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Cameron Ruppe	801-530-6898	cruppe@utah.gov
Chris Hill	801-530-6800	chill@utah.gov
Please address questions regarding information on this notice to the agency.		

### General Information

<b>2. Rule or section catchline:</b>
R614-1-5. Adoption and Extension of Established Federal Safety Standards and General Safety Orders
<b>3. Effective Date:</b>
11/09/2020
<b>4. Purpose of the new rule or reason for the change:</b>
The purpose of this change is to protect employees by preventing the spread of COVID-19 in their workplaces by using face masks.
<b>5. Summary of the new rule or change:</b>
Face masks have been recommended and at times ordered by Governor Herbert in the workplace, and the recommended use of face masks has been identified by the Centers for Disease Control (CDC) and the Utah Department of Health (UDOH) to be an effective method of preventing the spread of COVID-19. This rule would enable enforcement of the recommendations and orders given previously to wear face masks in the workplace.
<b>6. Regular rulemaking would:</b>
<input checked="" type="checkbox"/> cause an imminent peril to the public health, safety, or welfare;

cause an imminent budget reduction because of budget restraints or federal requirements; or
place the agency in violation of federal or state law.
<b>Specific reason and justification:</b>
COVID-19 continues to spread at a rapid pace across the United States, and Utah specifically has seen an enormous uptick in the number of cases occurring over a seven-day average. The reason for this rule is to enable enforcement of one of the most effective ways to prevent the further spread of COVID-19 both in the workplace and to the general public.

**Fiscal Information**

<b>7. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
No anticipated cost or savings to the state budget. The has worked with many organizations to provide free masks for every person in Utah. Those who have desired to do so have been able to purchase or acquire masks at no charge through other organizations. There will be no enforcement costs to the state budget as inspections of businesses are already part of what the Utah Occupational Safety and Health Division does.
<b>B) Local governments:</b>
No anticipated cost or savings to local governments. The has worked with many organizations to provide free masks for every person in Utah. Those who have desired to do so have been able to purchase or acquire masks at no charge through other organizations.
<b>C) Small businesses ("small business" means a business employing 1-49 persons):</b>
No anticipated cost or savings to small businesses. The has worked with many organizations to provide free masks for every person in Utah. Those who have desired to do so have been able to purchase or acquire masks at no charge through other organizations.
<b>D) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <i>agency</i>):</b>
No anticipated cost or savings to persons other than small businesses, non-small businesses, state, or local government entities. The has worked with many organizations to provide free masks for every person in Utah. Those who have desired to do so have been able to purchase or acquire masks at no charge through other organizations.

<b>8. Compliance costs for affected persons:</b>
No anticipated compliance cost for affected persons. The has worked with many organizations to provide free masks for every person in Utah. Those who have desired to do so have been able to purchase or acquire masks at no charge through other organizations.
<b>9. A) Comments by the department head on the fiscal impact this rule may have on businesses:</b>
If individuals have not taken advantage of the masks available free of charge from the "Mask for Every Utahn" campaign or from other organizations, there may be a cost associated with ensuring that all employees have a mask for use while in the workplace. Masks are largely available for purchase at minimal cost in many retailers across the .
<b>B) Name and title of department head commenting on the fiscal impacts:</b>
Jaceson R. Maughan, Commissioner

**Citation Information**

<b>10. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):</b>
Section 34A-6-104

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Jaceson R. Maughan, Commissioner	<b>Date:</b>	11/06/2020
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**R614. Labor Commission, Occupational Safety and Health.**

**R614-1. General Provisions.**

**R614-1-5. Adoption and Extension of Established Federal Safety Standards and State of Utah General Safety Orders.**

**A. Scope and Purpose.**

1. The provisions of this rule adopt and extend the applicability of established Federal Safety Standards and UAC R614 with respect to every employer, employee and employment in the state of Utah, covered by the Utah OSH Act.

2. All standards and rules, including emergency and/or temporary, promulgated under the Williams-Steiger Occupational Safety and Health Act of 1970 (84 Stat. 1590 et seq., 29 U.S.C. 651 et seq.) shall be accepted as part of the standards, rules and regulations under the Utah OSH Act, unless specifically revoked or deleted.

**B. Reporting Requirements.**

1. Each employer shall within 8 hours of occurrence, notify UOSH of any work-related fatalities, of any disabling, serious, or significant injury and of any occupational disease incident. Call (801) 530-6901.

2. Tools, equipment, materials or other evidence that might pertain to the cause of such accident shall not be removed or destroyed until so authorized by UOSH or one of its CSHOs.



3. Each employer shall investigate or cause to be investigated all work-related injuries and occupational diseases and any sudden or unusual occurrence or change of conditions that pose an unsafe or unhealthful exposure to employees.

C. Employer and Employee Responsibility.

1. It shall be the duty and responsibility of any employee upon entering his or her place of employment, to examine carefully such working place and ascertain if the place is safe, if the tools and equipment can be used with safety, and if the work can be performed safely. After such examination, it shall be the duty of the employee to make the place, tools, or equipment safe. If this cannot be done, then it becomes his or her duty to immediately report the unsafe place, tools, equipment, or conditions to the foreman or supervisor.

2. Employees must comply with all safety rules of their employer and with all the rules and regulations promulgated by UOSH which are applicable to their type of employment.

3. Management shall inspect or designate a competent person or persons to inspect frequently for unsafe conditions and practices, defective equipment and materials, and where such conditions are found, it shall take appropriate action to correct such conditions immediately.

4. Management shall warn all employees of any dangerous condition and permit no one to work in an unsafe place, except for the purpose of making it safe.

5. Each employer shall instruct its employees in a language and vocabulary that the employees can understand. Employees shall only be assigned to duties or locations where they have the necessary skills and comprehension to work in a safe manner.

D. General Safety Requirements.

1. No person shall remove, displace, bypass, destroy, or carry away any safety devices or safeguards provided for use in any place of employment, or interfere in any way with the use thereof by other persons, or interfere in any method or process adopted for the protection of employees.

2. Where there is a risk of injury from hair entanglement in moving parts of machinery, employees shall confine their hair to eliminate the hazard.

3. Loose gloves, sleeves, tails, ties, lapels, cuffs, or similar garments which can become entangled in moving machinery shall not be worn where an entanglement hazard exists. Clothing saturated or impregnated with flammable liquids, corrosive substances, irritant, oxidizing agents or other toxic materials shall be removed and shall not be worn until properly cleaned.

4. Wrist watches, rings, or other jewelry shall not be worn on the job where they constitute a safety hazard.

5. Emergency Posting Required.

A list of telephone numbers or addresses as may be applicable shall be posted in a conspicuous place so the necessary help can be obtained in case of emergency. This list shall include:

- a. Responsible supervision (superintendent or equivalent)
- b. Doctor
- c. Hospital
- d. Ambulance
- e. Fire Department
- f. Sheriff or Police
6. Lockout and Tagout.

a. UOSH has incorporated, by reference, 29 CFR 1910.147, The Control of Hazardous Energy (Lockout/Tagout). See UAC R614-1-4.1.

b. The employee performing servicing or maintenance on machines or equipment required to be locked out under 29 CFR 1910.147 shall have exclusive control of the lockout device until the job

is completed or such employee is relieved from the job, such as by shift change or other assignment.

7. Safety latch-type hooks shall be used wherever possible.

8. Grizzlies Over Chutes, Bins and Tank Openings.

a. Employees shall be provided with and use approved type safety harnesses and shall be tied off securely so as to be suspended above the level of the product before entering any bin, chute or storage place containing material that might cave or run. Cleaning and barring down in such places shall be started from the top using only bars blunt on one end or having a ring type or D handhold.

b. Employees shall not work on top of material stored or piled above chutes, drawholes or conveyor systems while material is being withdrawn unless protected.

c. Chutes, bins, drawholes and similar openings shall be equipped with grizzlies or other safety devices that will prevent employees from falling into the openings.

d. Bars for grizzly grids shall be so fitted that they will not loosen and slip out of place, and the operator shall not remove a bar temporarily to let large rocks through rather than to break them.

E. Process Safety Management.

All requirements of the process safety management (PSM) standard 29 CFR 1910.119 are hereby extended to include blister agents sulfur mustard (H, HD, HT), nitrogen mustard (HN-1, HN-2, HN-3), Lewisite (L) and halogenated oximes (CX) and the nerve agents tabun (GA), sarin (GB), soman (GD) and VX.

F. Novel Coronavirus Disease 2019 (COVID-19).

Novel Coronavirus Disease 2019 (COVID-19) has been characterized by the World Health Organization as a worldwide pandemic caused by Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2), a virus that spreads easily from person to person and can cause serious illness or death. COVID-19 has and continues to spread and cause serious illness and death to Utah residents, threatening public health and wellness throughout the state. On November 9, 2020, the Utah Department of Health declared a state public health emergency due to the spread of COVID-19 in Utah State Public Health Order 2020-22. At the direction of Governor Gary Herbert:

1. Hereafter, every employee shall be required to wear a face mask while that employee is at work, subject to the exceptions below.

a. "Face mask" means a mask that completely covers the nose and mouth, is made of synthetic or natural fabrics, and fits snugly against the nose and sides of the face and under the chin. "Face mask" does not include a mask with an exhalation valve, vent, or other hole or opening, or a mask that is crocheted or made of lace, mesh, or similar open weblike construction or material.

b. Notwithstanding any other provision of these rules, an employee who is otherwise required by this rule to wear a face mask may remove the face mask in the following situations:

i. while actively eating or drinking;

ii. while as the sole occupant of a room, cubicle, or similar enclosure, so long as a physical distance of at least six feet from another individual can be maintained;

iii. when communicating with an individual who is deaf or hard of hearing and communication cannot be achieved through other means and the speaker wears a face shield or uses alternative protection such as a plexiglass barrier;

iv. while obtaining or providing a service that requires the temporary removal of the face mask, such as dental services or speech therapy services;

v. while swimming or on duty as a lifeguard;

NOTICES OF 120-DAY (EMERGENCY) RULES

vi. while giving a religious, political, media, educational, artistic, cultural, musical, or theatrical presentation or performance for an audience;

vii. when engaging in work where wearing a face mask would create a risk to the individual, as determined by government safety guidelines;

viii. when necessary to confirm the individual's identity, including when entering a bank, credit union, or other financial institution; and

ix. when federal or state law or regulations prohibit wearing a face mask.

c. The following employees are exempt from the face mask requirements above:

i. an individual who is unconscious, incapacitated, or otherwise unable to remove the face mask without assistance; and

ii. an individual with a medical condition, mental health condition, or intellectual or developmental disability, that prevents the individual from wearing a face mask.

2. Nothing in this rule supersedes or negates the requirements for wearing a respirator or respiratory protections as set forth elsewhere in these rules.

**KEY: safety**

**Date of Enactment or Last Substantive Amendment: November 9, 2020**

**Notice of Continuation: October 19, 2017**

**Authorizing, and Implemented or Interpreted Law: 34A-6**

**End of the Notices of 120-Day (Emergency) Rules Section**

# FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the agency is required to review the rule. This review is intended to help the agency determine, and to notify the public, that the administrative rule in force is still authorized by statute and necessary. Upon reviewing a rule, an agency may: repeal the rule by filing a **PROPOSED RULE**; continue the rule as it is by filing a **FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (REVIEW)**; or amend the rule by filing a **PROPOSED RULE** and by filing a **REVIEW**. By filing a **REVIEW**, the agency indicates that the rule is still necessary.

A **REVIEW** is not followed by the rule text. The rule text that is being continued may be found in the online edition of the *Utah Administrative Code* available at <https://rules.utah.gov/>. The rule text may also be inspected at the agency or the Office of Administrative Rules. **REVIEWS** are effective upon filing.

**REVIEWS** are governed by Section 63G-3-305.

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R156-9	Filing No. 50258

### Agency Information

<b>1. Department:</b>	Commerce	
<b>Agency:</b>	Occupational and Professional Licensing	
<b>Building:</b>	Heber M. Wells Building	
<b>Street address:</b>	160 E 300 S	
<b>City, state, zip:</b>	Salt Lake City, UT 84111-2316	
<b>Mailing address:</b>	PO Box 146741	
<b>City, state, zip:</b>	Salt Lake City, UT 84114-6741	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Robyn Barkdull	801-530-6727	rbarkdull@utah.gov
Please address questions regarding information on this notice to the agency.		

### General Information

<b>2. Rule catchline:</b>
R156-9. Funeral Service Licensing Act Rule
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
Title 58, Chapter 9, provides for the licensure and regulation of funeral service director, funeral service intern, funeral service establishment, and preneed funeral arrangement sales agent. Subsection 58-1-106(1)(a) provides that the Division of Occupational and

Professional Licensing (Division) may adopt and enforce rules to administer Title 58. Subsection 58-1-202(1)(a) provides that the Board of Funeral Service's duties, functions, and responsibilities includes recommending to the director appropriate rules. This rule was enacted to clarify the provisions of Title 58, Chapter 9, with respect to funeral service director, funeral service intern, funeral service establishment, and preneed funeral arrangement sales agent.

### 4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

Since this rule was last reviewed in April 2016, this rule has been amended two times, once in September 2019 and once in September 2018. The Division has received no written comments with respect to this rule since April 2016.

### 5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule should be continued as it provides a mechanism to inform potential licensees of the requirements for licensure as allowed under statutory authority provided in Title 58, Chapter 9. This rule should also be continued as it provides information to ensure applicants for licensure are adequately trained and meet minimum licensure requirements, and provides licensees with information concerning unprofessional conduct, definitions, and ethical standards relating to the profession.

### Agency Authorization Information

<b>Agency head or designee, and title:</b>	Mark B. Steinagel, Director	<b>Date:</b>	11/05/2020
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R277-726	Filing No. 50534

**Agency Information**

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

**General Information**

<b>2. Rule catchline:</b>
R277-726. Statewide Online Education Program
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
This rule is authorized by Utah Constitution, Article X, Section 3, which vests general control and supervision of public education in the Board; Section 53F-4-514 requires the Board to make rules providing for the administration of statewide assessments to students enrolled in online courses; Section 53F-4-508 requires the Board to make rules that establish a course credit acknowledgment form and procedures for completing and submitting the form to the Board; and Subsection 53E-3-401(4) allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.
<b>4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:</b>
There were no written comments received.
<b>5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:</b>
The purpose of this rule is to define necessary terms; provide and describe a program registration agreement; and provide other requirements for an LEA, the Superintendent, a parent and a student, and a provider for program implementation and accountability. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Angie Stallings, Deputy Superintendent	<b>Date:</b>	11/09/2020
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R277-920	Filing No. 50552

**Agency Information**

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

**General Information**

<b>2. Rule catchline:</b>
R277-920. School Improvement - Implementation of the School Turnaround and Leadership Development Act
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
This rule is authorized by Utah Constitution, Article X, Section 3, which vests general control and supervision over public education in the Board; Subsection 53E-3-401(4) allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and Title 53E, Chapter 5, Part 3, School Turnaround and Leadership Development Act requires the Board to make rules to establish: an appeal process for the denial of a school turnaround plan; provisions regarding funding distributed to a low performing school; criteria for granting an extension to a low performing school; criteria for exiting a school that has demonstrated sufficient improvement; criteria for approving a teacher recruitment and retention plan; implications for a low performing school; and eligibility criteria, application procedures, selection criteria, and procedures for awarding incentive pay for the School Leadership Development Program.

**4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:**

There 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:**

The purpose of this rule is to enact provisions governing school improvement efforts; and implement and administer the School Turnaround and Leadership Development Act. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Angie Stallings, Deputy Superintendent	<b>Date:</b>	11/09/2020
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Utah Admin. Code Ref (R no.):</b>	<b>R436-18</b>	<b>Filing No. 51112</b>
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**Agency Information**

<b>1. Department:</b>	Health	
<b>Agency:</b>	Center for Health Data, Vital Records and Statistics	
<b>Building:</b>	Cannon Health Building	
<b>Street address:</b>	288 N 1460 W	
<b>City, state, zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 141012	
<b>City, state, zip:</b>	Salt Lake City, UT 84114-1012	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Linda S. Winger	801-538-6262	lindaw@utah.gov

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

**General Information**

<b>2. Rule catchline:</b>
R436-18. Adoption Program Procedures, Form Content, and Donations

**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 Title 26, Chapter 2, which establishes a statewide vital records system for the

registration, collection, preservation, amendment, and certification of vital records and other similar documents required by this chapter and activities related to them, including the tabulation, analysis, and publication of vital statistics.

**4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:**

The Office of Vital Records and Statistics (Office) has not received any written comments since the last five-year review of this rule from interested persons supporting or opposing this rule. Only general inquires have been made and responded to by the Office.

**5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:**

This rule is still required by Subsection 26-2-22(6). Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Joseph Miner, MD, Deputy Director	<b>Date:</b>	11/09/2020
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Utah Admin. Code Ref (R no.):</b>	<b>R657-39</b>	<b>Filing No. 51753</b>
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**Agency Information**

<b>1. Department:</b>	Natural Resources	
<b>Agency:</b>	Wildlife Resources	
<b>Room no.:</b>	Suite 2110	
<b>Building:</b>	Department of Natural Resources	
<b>Street address:</b>	1594 W North Temple	
<b>City, state, zip:</b>	Salt Lake City, UT 84116-3154	
<b>Mailing address:</b>	PO Box 146301	
<b>City, state, zip:</b>	Salt Lake City, UT 84114-6301	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Staci Coons	801-450-3093	stacicoons@utah.gov

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

**General Information**

<b>2. Rule catchline:</b>
R657-39. Wildlife Board and Regional Advisory Councils

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

**3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:**

Under Subsection 23-14-2.6(7) and Sections 23-14-2, 23-14-3, and 23-14-19, the Wildlife Board is authorized and required to regulate and prescribe the means by which wildlife may be taken.

**4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:**

No written comments supporting or opposing Rule R657-39 were received since December 2015, when this rule was last reviewed.

**5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:**

Rule R657-39 provides the procedures and practices for the operation of the Wildlife Board and regional advisory councils. The provisions adopted in this rule are effective in providing the standards and requirements for operating Wildlife Board and regional advisory councils. Continuation of this rule is necessary for continued success of this program.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Mike Fowlks, Director	<b>Date:</b>	11/10/2020
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Utah Admin. Code Ref (R no.):</b>	<b>R657-40</b>	<b>Filing No. 51754</b>
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**Agency Information**

<b>1. Department:</b>	Natural Resources
<b>Agency:</b>	Wildlife Resources
<b>Room no.:</b>	Suite 2110
<b>Building:</b>	Department of Natural Resources
<b>Street address:</b>	1594 W North Temple
<b>City, state, zip:</b>	Salt Lake City, UT 84116-3154
<b>Mailing address:</b>	PO Box 146301

<b>City, state, zip:</b>	Salt Lake City, UT 84114-6301
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**Contact person(s):**

<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Staci Coons	801-450-3093	stacicoons@utah.gov

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

**General Information**

**2. Rule catchline:**

R657-40. Wildlife Rehabilitation

**3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:**

Under Sections 23-13-4, 23-14-18, and 23-20-3, the Wildlife Board is authorized and required to provide rules to regulate and prescribe the means by which protected wildlife may be held in captivity for rehabilitation purposes.

**4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:**

The Division of Wildlife Resources and the Wildlife Board have not received any written comments, either in support or opposition to Rule R657-40.

**5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:**

Rule R657-40 provides the procedures, standards, and requirements for possessing protected wildlife in captivity for rehabilitation purposes by trained and educated individuals as a public service for the benefit of Utah's wildlife resources. The provisions adopted in this rule are effective in providing the standards and requirements for providing this service. Continuation of this rule is necessary for continued success of this program.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Mike Fowlks, Director	<b>Date:</b>	11/10/2020
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**End of the Five-Year Notices of Review and Statements of Continuation Section**

## NOTICES OF RULE EFFECTIVE DATES

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State law provides for agencies to make their administrative rules effective and enforceable after publication in the *Utah State Bulletin*. In the case of **PROPOSED RULES** or **CHANGES IN PROPOSED RULES** with a designated comment period, the law permits an agency to make a rule effective no fewer than seven calendar days after the close of the public comment period, nor more than 120 days after the publication date. In the case of **CHANGES IN PROPOSED RULES** with no designated comment period, the law permits an agency to make a rule effective on any date including or after the thirtieth day after the rule's publication date, but not more than 120 days after the publication date. If an agency fails to file a **NOTICE OF EFFECTIVE DATE** within 120 days from the publication of a **PROPOSED RULE** or a related **CHANGE IN PROPOSED RULE** the rule lapses.

Agencies have notified the Office of Administrative Rules that the rules listed below have been made effective.

**NOTICES OF EFFECTIVE DATE** are governed by Subsection 63G-3-301(12), Section 63G-3-303, and Sections R15-4-5a and R15-4-5b.

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### Administrative Services

#### Finance

No. 53094 (Amendment) R25-22: Financial Institution Validation for Access to Medical Inventory Control System  
Published: 10/15/2020  
Effective: 11/23/2020

### Agriculture and Food

#### Plant Industry

No. 53057 (Amendment) R68-3: Utah Fertilizer Act Governing Fertilizers and Soil Amendments  
Published: 10/01/2020  
Effective: 11/16/2020

### Commerce

#### Occupational and Professional Licensing

No. 53070 (Amendment) R156-17b: Pharmacy Practice Act Rule  
Published: 10/01/2020  
Effective: 11/10/2020

No. 53064 (Amendment) R156-60: Mental Health Professional Practice Act Rule  
Published: 10/01/2020  
Effective: 11/10/2020

No. 53065 (Amendment) R156-60a: Social Worker Licensing Act Rule  
Published: 10/01/2020  
Effective: 11/10/2020

No. 53071 (Amendment) R156-60b: Marriage and Family Therapist Licensing Act Rule  
Published: 10/01/2020  
Effective: 11/10/2020

No. 53066 (Amendment) R156-60c: Clinical Mental Health Counselor Licensing Act Rule

Published: 10/01/2020  
Effective: 11/10/2020

No. 53067 (Amendment) R156-60d: Substance Use Disorder Counselor Act Rule

Published: 10/01/2020  
Effective: 11/10/2020

### Education

#### Administration

No. 53025 (Amendment) R277-100: Definitions for Utah State Board of Education (Board) Rules.

Published: 09/01/2020  
Effective: 11/13/2020

No. 53080 (Amendment) R277-113: LEA Fiscal and Auditing Policies.

Published: 10/01/2020  
Effective: 11/10/2020

No. 53082 (Amendment) R277-302: Educator Licensing Renewal

Published: 10/01/2020  
Effective: 11/10/2020

No. 53026 (New Rule) R277-319: Special Educator Stipends

Published: 09/01/2020  
Effective: 11/09/2020

No. 53075 (New Rule) R277-403: School Safety Pilot Program

Published: 10/01/2020  
Effective: 11/10/2020

NOTICES OF RULE EFFECTIVE DATES

No. 53024 (Amendment) R277-406: Early Learning Program and Benchmark Assessments  
Published: 09/01/2020  
Effective: 11/09/2020

No. 53076 (Amendment) R277-407: School Fees  
Published: 10/01/2020  
Effective: 11/10/2020

No. 53027 (Amendment) R277-492: Utah Science Technology and Research Initiative (USTAR) Centers Program  
Published: 09/01/2020  
Effective: 11/09/2020

No. 53028 (Repeal) R277-525: Special Educator Stipends  
Published: 09/01/2020  
Effective: 11/09/2020

No. 53077 (Repeal) R277-528: Use of Public Education Job Enhancement Program (PEJEP) Funds  
Published: 10/01/2020  
Effective: 11/10/2020

No. 53078 (New Rule) R277-721: PRIME Pilot Program  
Published: 10/01/2020  
Effective: 11/10/2020

No. 53029 (Amendment) R277-750: Education Programs for Students with Disabilities  
Published: 09/01/2020  
Effective: 11/06/2020

No. 53079 (Amendment) R277-921: Strengthening College and Career Readiness Program  
Published: 10/01/2020  
Effective: 11/10/2020

No. 53030 (Amendment) R277-925: Effective Teachers in High Poverty Schools Incentive Program  
Published: 09/01/2020  
Effective: 11/09/2020

Environmental Quality Administration

No. 53072 (Amendment) R305-7: Filing and Service of Notices, Orders, Motions, and Other Papers  
Published: 10/01/2020  
Effective: 11/12/2020

Air Quality

No. 53004 (New Rule) R307-240: Prescribed Burning  
Published: 09/01/2020  
Effective: 11/05/2020

Water Quality

No. 53042 (Amendment) R317-1: TMDLs  
Published: 09/15/2020  
Effective: 10/30/2020

Health

Disease Control and Prevention, Health Promotion  
No. 53049 (Amendment) R384-324: Tobacco Retailer Permit Process  
Published: 10/01/2020  
Effective: 11/10/2020

Health Care Financing, Coverage and Reimbursement Policy  
No. 53053 (Amendment) R414-60: Medicaid Policy for Pharmacy Program  
Published: 10/01/2020  
Effective: 11/19/2020

No. 53090 (Amendment) R414-60: Program Coverage  
Published: 10/15/2020  
Effective: 11/23/2020

No. 53073 (Amendment) R414-307: Eligibility for Home and Community-Based Services Waivers  
Published: 10/01/2020  
Effective: 11/10/2020

No. 53083 (Amendment) R414-307: Eligibility for Home and Community-Based Services Waivers  
Published: 10/15/2020  
Effective: 11/24/2020

No. 53086 (Amendment) R414-512: Use of Extrapolation Limited  
Published: 10/15/2020  
Effective: 11/23/2020

Human Services

Services for People with Disabilities  
No. 53069 (Repeal and Reenact) R539-1: Eligibility  
Published: 10/01/2020  
Effective: 11/09/2020

No. 53010 (Amendment) R539-5: Self-Administered Services  
Published: 10/15/2020  
Effective: 11/23/2020

Insurance

Administration  
No. 53097 (Amendment) R590-258: Email Address Requirement  
Published: 10/15/2020  
Effective: 11/23/2020

Natural Resources

Oil, Gas and Mining; Non-Coal  
No. 53045 (Amendment) R647-1: Definitions  
Published: 09/15/2020  
Effective: 10/29/2020

No. 53046 (Amendment) R647-3: Mine Enlargement  
Published: 09/15/2020  
Effective: 10/29/2020



No. 53047 (Amendment) R647-4: Revisions  
Published: 09/15/2020  
Effective: 10/29/2020

Wildlife Resources  
No. 53058 (Amendment) R657-10: Taking Cougar  
Published: 10/01/2020  
Effective: 11/09/2020

Public Service Commission  
Administration  
No. 53096 (Amendment) R746-8: Calculation and  
Application of UUSF Surcharge  
Published: 10/15/2020  
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Technology Services  
Administration  
No. 52827 (Amendment) R895-5: Definitions  
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Transportation

Motor Carrier  
No. 53050 (Amendment) R909-1: Safety Regulations for  
Motor Carriers  
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No. 53051 (Amendment) R909-2: Utah Size and Weight  
Rule  
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No. 53052 (Amendment) R909-19: Safety Regulations for  
Tow Truck Operations - Tow Truck Requirements for  
Equipment, Operation, and Certification  
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**End of the Notices of Rule Effective Dates Section**

