

UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT
Filed May 02, 2024, 12:00 a.m. through May 15, 2024, 11:59 p.m.

Number 2024-11
June 01, 2024

Nancy L. Lancaster, Managing Editor

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

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

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

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

Office of Administrative Rules, Salt Lake City 84114

Unless otherwise noted, all information presented in this publication is in the public domain and may be reproduced, reprinted, and redistributed as desired. Materials incorporated by reference retain the copyright asserted by their respective authors. Citation to the source is requested.

Utah state bulletin.

Semimonthly.

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

KFU440.A73S7

348.792'025--DDC

85-643197

TABLE OF CONTENTS

EXECUTIVE DOCUMENTS	1
PROCLAMATION	
2024-08E	1
NOTICES OF PROPOSED RULES.....	2
GOVERNMENT OPERATIONS	
Purchasing and General Services	
R33-1. Utah Procurement Rules, General Procurement	
Provisions	3
R33-9. Cancellations, Rejections, and Debarment.....	7
R33-12. Terms and Conditions, Contracts, Change Orders	
and Costs	10
AGRICULTURE AND FOOD	
Medical Cannabis and Industrial Hemp	
R66-4. Independent Cannabis Testing Laboratory	17
Plant Industry	
R68-30. Independent Cannabis Testing Laboratory	22
COMMERCE	
Artificial Intelligence Policy	
R166-72. Artificial Intelligence Learning Laboratory Program	28
EDUCATION	
Administration	
R277-115. LEA Supervision and Monitoring Requirements of	
Third Party Providers and Contracts.....	31
R277-301. Educator Licensing	34
R277-303. Educator Preparation Programs	41
R277-323. Public Educator Evaluation	45
R277-469. Instructional Materials Commission Operating	
Procedures.....	49
R277-480. Charter School Revolving Account	54
R277-490. Beverley Taylor Sorenson Elementary Arts Learning	
Program (BTSALP).....	58
R277-531. Public Educator Evaluation Requirements (PEER)	62
R277-533. Educator Evaluation Systems	65

R277-602. Carson Smith Scholarships -- Funding and Procedures	69
R277-626. Special Needs Opportunity Scholarship Program	74
R277-733. Adult Education Programs	77
R277-929. State Council on Military Children.....	82
R277-932. Information on Public School Options.....	85
ENVIRONMENTAL QUALITY	
Environmental Response and Remediation	
R311-203. Petroleum Storage Tanks: Technical Standards	87
R311-206. Petroleum Storage Tanks: Certificate of Compliance and Financial Assurance Mechanisms	93
Waste Management and Radiation Control, Radiation	
R313-17. Administrative Procedures	99
R313-24. Uranium Mills and Source Material Mill Tailings Disposal Facility Requirements	102
HEALTH AND HUMAN SERVICES	
Integrated Healthcare	
R414-60-7. Reimbursement	106
Data, Systems and Evaluation, Research and Evaluation, Health Care Statistics	
R428-1. Health Data Plan and Incorporated Documents	108
Data, Systems and Evaluation, Vital Records and Statistics	
R436-13. Disclosure of Records.....	111
NATURAL RESOURCES	
Wildlife Resources	
R657-5. Taking Big Game.....	113
PUBLIC SERVICE COMMISSION	
Administration	
R746-409. Pipeline Safety	117
HIGHER EDUCATION (UTAH BOARD OF)	
Salt Lake Community College	
R784-1. Government Records Access and Management Act Rules.....	123
NOTICES OF CHANGES IN PROPOSED RULES	126
HEALTH AND HUMAN SERVICES	
Population Health, Environmental Health	
R392-304. Artificial Swimming Lagoons	127

NOTICES OF 120-DAY (EMERGENCY) RULES 137

CORRECTIONS

Administration

R251-716. Undercover Roles of Offenders 137

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION 140

AGRICULTURE AND FOOD

Conservation Commission

R64-1. Agricultural Resource Development Loans (ARDL)..... 140

EDUCATION

Administration

R277-115. LEA Supervision and Monitoring Requirements
of Third Party Providers and Contracts..... 141

R277-480. Charter School Revolving Account..... 141

R277-487. Public School Data Confidentiality and Disclosure. 142

HEALTH AND HUMAN SERVICES

Clinical Services, Primary Care and Rural Health

R434-40. Utah Health Care Workforce Financial Assistance Program 143

Data, Systems and Evaluation, Vital Records and Statistics

R436-19. Abortion Reporting 143

NOTICES OF FIVE-YEAR EXPIRATIONS..... 145

GOVERNOR

Economic Opportunity

R357-7. Utah Capital Investment Board 145

NOTICES OF RULE EFFECTIVE DATES 146

EXECUTIVE DOCUMENTS

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

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

PROCLAMATION

WHEREAS, since the close of the 2024 General Session of the 65th Legislature of the state of Utah, certain matters have arisen which require immediate legislative attention; and

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

NOW, THEREFORE, I, Spencer J. Cox, governor of the state of Utah, by virtue of the authority vested in me by the Constitution and Laws of the state of Utah, do by this Proclamation call the Senate only of the 65th Legislature of the state of Utah into the Eighth Extraordinary Session at the Utah State Capitol in Salt Lake City, Utah, on the 15th day of May 2024, at 4:00 p.m., for the following purpose:

For the Senate to consent to appointments made by the Governor to positions within state government of the state of Utah since the close of the 2024 General Session of the Legislature of the state of Utah.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the state of Utah. Done at the Utah State Capitol in Salt Lake City, Utah, this 14th day of May 2024.

(State Seal)

Spencer J. Cox
Governor

ATTEST:

Deidre M. Henderson
Lieutenant Governor

2024-08E

End of the Executive Documents Section

NOTICES OF PROPOSED RULES

A state agency may file a **PROPOSED RULE** when it determines the need for a substantive change to an existing rule. With a **NOTICE OF PROPOSED RULE**, an agency may create a new rule, amend an existing rule, repeal an existing rule, or repeal an existing rule and reenact a new rule. Filings received between May 02, 2024, 12:00 a.m., and May 15, 2024, 11:59 p.m. are included in this, the June 01, 2024, issue of the *Utah State Bulletin*.

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

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

The law requires that an agency accept public comment on **PROPOSED RULES** published in this issue of the *Utah State Bulletin* until at least July 01, 2024. The agency may accept comment beyond this date and will indicate the last day the agency will accept comment in the **RULE ANALYSIS**. The agency may also hold public hearings. Additionally, citizens or organizations may request the agency hold a hearing on a specific **PROPOSED RULE**. Section 63G-3-302 requires that a hearing request be received by the agency proposing the rule "in writing not more than 15 days after the publication date of the proposed rule."

From the end of the public comment period through September 30, 2024, the agency may notify the Office of Administrative Rules that it wants to make the **PROPOSED RULE** effective. The agency sets the effective date. The date may be no fewer than seven calendar days after the close of the public comment period nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file a **CHANGE IN PROPOSED RULE** in response to comments received. If the Office of Administrative Rules does not receive a **NOTICE OF EFFECTIVE DATE** or a **CHANGE IN PROPOSED RULE**, the **PROPOSED RULE** lapses.

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

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

The Proposed Rules Begin on the Following Page

NOTICE OF PROPOSED RULE		
TYPE OF FILING: Amendment		
Rule or Section Number:	R33-1	Filing ID: 56508

Agency Information

1. Department:	Government Operations	
Agency:	Purchasing and General Services	
Room number:	Third Floor	
Building:	Taylorsville State Office Building	
Street address:	4315 S 2700 W	
City, state and zip:	Taylorsville, UT 84129-2128	
Mailing address:	PO Box 141061	
City, state and zip:	Salt Lake City, UT 84114-1061	
Contact persons:		
Name:	Phone:	Email:
Shad Brunson	801-965-4064	sbrunson@utah.gov
Windy Aphayrath	801-957-7138	waphayrath@utah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule or section catchline:
R33-1. Utah Procurement Rules, General Procurement Provisions
3. Purpose of the new rule or reason for the change:
The purposes of the change in Section R33-1-1 are to establish a definition for the word "Award" and to clarify that Section R33-1-4 does not apply to Sections 63G-6a-2503 and 63G-6a-2504.
4. Summary of the new rule or change:
In Section R33-1-1, the definition of "Award" is added, and subsequent definitions are renumbered.
Section R33-1-4 added Subsection R33-1-4(2) to state that the section does not apply to Title 63G, Chapter 6a, Part 25.

Fiscal Information

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

A) State budget:
There are no anticipated costs or savings that are expected to affect the state budget.
The changes to this rule provide clarity in the terms.

B) Local governments:
There are no anticipated costs or savings that are expected to affect the local governments.
The changes to this rule provide clarity in the terms.

C) Small businesses ("small business" means a business employing 1-49 persons):
There are no anticipated costs or savings that are expected to affect small businesses.
The changes to this rule provide clarity in the terms.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons):
There are no anticipated costs or savings that are expected to affect non-small businesses.
The changes to this rule provide clarity in the terms.

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 that are expected to affect any persons.
The changes to this rule provide clarity in the terms.

F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):
There are no anticipated compliance costs for affected persons.
The changes to this rule provide clarity in the terms.

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

Regulatory Impact Table			
Fiscal Cost	FY2024	FY2025	FY2026
State	\$0	\$0	\$0
Government			

NOTICES OF PROPOSED RULES

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

Citation Information

6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:		
Title 63G, Chapter 6a		

Public Notice Information

8. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	07/01/2024
9. This rule change MAY become effective on:	07/08/2024
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.	

Agency Authorization Information

Agency head or designee and title:	Shad Brunson, Procurement Polly Board Chair	Date:	05/10/2024
---	---	--------------	------------

**R33. Government Operations, Purchasing and General Services.
R33-1. Utah Procurement Rules, General Procurement Provisions.**

R33-1-1. Definitions.

(1) Terms used in the procurement rules are defined in Section 63G-6a-103.

(2) In addition:

(a) "Award" means the identification and selection of a vendor who may, upon satisfying the procurement unit's due diligence inquiry, contract with the state or procurement unit as the result of a standard procurement process or an exception allowed under Title 63G, Chapter 6a, Part 8, Exceptions to procurement requirements. Unless otherwise explicitly written in the standard procurement process or exception award documentation, an award or notice of an award does not create or constitute a binding contract until the resulting contract has been fully executed by all parties and approving authorities, or the purchase order documentation has been signed and delivered to the awarded vendor.

([a]b) "Bias" means:

(i) a predisposition or a preconceived opinion that prevents an individual from impartially performing any duty or responsibility in Title 63G, Chapter 6a, Utah Procurement Code, or other applicable law or rule; or

(ii) a prejudice in favor of or against a thing, individual, or group that results in an action or treatment that a reasonable person would consider to be unfair or have the appearance of being unfair.

([b]c) "Bid Bond" is an insurance agreement, accompanied by a monetary commitment, by which a third party accepts liability and guarantees that the bidder will not withdraw the bid. The bidder will furnish bonds in the required amount and if the contract is awarded to the bonded bidder, the bidder will accept the contract as bid, or else the surety will pay a specific amount.

([d]d) "Bid Rigging" means an agreement among potential competitors to manipulate the competitive bidding process, for example, by agreeing not to bid, to bid a specific price, to rotate bidding, or to give kickbacks.

([e]e) "Bid Security" means the deposit of cash, certified check, cashier's check, bank draft, money order, or bid bond submitted with a bid and serving to guarantee to the owner that the bidder, if awarded the contract, will execute such contract in accordance with the bidding requirements and the contract documents.

([f]f) "Brand Name or Equal Specification" means a specification which uses a brand name specification to describe the standard of quality, performance, and other characteristics being solicited, and which invites the submission of equivalent products.

([g]g) "Brand Name Specification" means a specification identifying one or more products by manufacturer name, product name, unique product identification number, product description, SKU, or catalog number.

([h]h) "Collusion" means when two or more persons act together to achieve a fraudulent or unlawful act. Collusion inhibits free and open competition in violation of law.

([i]i) "Cost Analysis" means the evaluation of cost data to arrive at estimates of costs to be incurred, prices to be paid, costs to be reimbursed, or costs actually incurred.

(~~f~~l) "Cost Data" means factual information concerning the cost of labor, material, overhead, and other cost elements expected to be incurred or that have been actually incurred by the contractor in performing the contract.

(~~f~~k) "Evaluation Criteria" means the objective or subjective criteria that will be used to evaluate a vendor's solicitation response.

(~~f~~l) "Mandatory Requirement" means a condition set out in the specifications or statement of work that must be met without exception.

(~~f~~m) "New Technology" means any invention, discovery, improvement, or innovation, that was not available to the acquiring agency on the effective date of the contract, whether or not patentable, including:

(i) new processes, emerging technology, machines, and improvements to, or new applications of, existing processes, machines, manufactures, and software;

(ii) new computer programs, and improvements to, or new applications of, existing computer programs, whether or not copyrightable; and

(iii) any new process, machine, including software, and improvements to, or new applications of, existing processes, machines, manufactures, and software.

(~~m~~n) "Objective Criteria" means the solicitation criteria that will be evaluated and scored based solely on the measurable and verifiable facts, evidence, and documentation provided in each vendor's solicitation response.

(~~m~~o) "Payment Bond" is a bond that guarantees payment for labor and materials expended on the contract.

(~~e~~p) "Performance Bond" means a promise to pay the obligee or owner a certain amount if the principal or contractor fails to meet some obligation, such as fulfilling the terms of a contract.

(~~p~~q) "Person" means:

(i) an individual;

(ii) an association;

(iii) an institution;

(iv) a corporation;

(v) a company;

(vi) a trust;

(vii) a limited liability company;

(viii) a partnership;

(ix) a political subdivision;

(x) a government office, department, division, bureau, or other body of government; and

(xi) any other organization or entity.

(~~e~~r) "Price Analysis" means the evaluation of price data without analysis of the separate cost components and profit.

(~~f~~s) "Price Data" means factual information concerning prices for procurement items.

(~~s~~t) "Reasonable Person Standard" means an objective test to determine if a reasonably prudent person who exercises an average degree of care, skill, and judgment would be justified in drawing the same conclusions under the same circumstances or having knowledge of the same facts.

(~~t~~u) "Subjective Criteria" means the solicitation criteria that will be evaluated and scored based on the personal judgment, interpretations, and opinions of the evaluators after reviewing and analyzing the information provided in each vendor's solicitation response.

(~~u~~v) "Steering a Contract to a Favored Vendor" is defined as a person involved in any phase of the procurement process who acts with bias or prejudice in violation of the law to favor one vendor

over another vendor in awarding a government contract. Steering a contract to a favored vendor includes:

(i) taking part in collusion or manipulation of the procurement process[~~z~~].

(ii) accepting any form of illegal gratuity, bribe, or kickback from a vendor in exchange for a contract award[~~z~~].

(iii) awarding a contract to a vendor without engaging in a standard procurement process without proper justification[~~z~~].

(iv) involvement in a bid rigging scheme[~~z~~].

(v) writing specifications that are overly restrictive, beyond the reasonable needs of the procurement unit, or that gives an unfair advantage to a particular vendor without proper justification[~~z~~].

(vi) intentionally dividing a purchase to avoid engaging in a standard competitive procurement process as set forth in Subsection 63G-6a-506(8)[~~z~~].

(vii) leaking solicitation or other information to a particular vendor that is prejudicial to other vendors[~~z~~].

(viii) improperly avoiding engaging in a standard procurement process to extend the duration of a vendor's existing contract through means of a contract extension; or

(ix) participating in the procurement process while having a financial conflict of interest as set forth in Section R33-24-105.

(w) "Technology" means any type of technology defined as "Information Technology" in Subsection 63A-16-102(8).

R33-1-2. Applicability of Rules.

(~~+~~) Title R33 shall apply to:

(~~a~~1) a procurement unit for which the Utah State Procurement Policy Board is identified in Section 63G-6a-103 as the applicable rulemaking authority, except to the extent the procurement unit has adopted its own administrative rules as authorized under Subsection 63G-6a-103(77); and

(~~b~~2) a procurement unit with independent procurement authority or a procurement unit for which the Utah State Procurement Policy Board is not identified in Section 63G-6a-103 as the applicable rulemaking authority, and the procurement unit has adopted Title R33 or a portion of Title R33 by rule, ordinance, policy, or other authorized means.

R33-1-2.5. Use of Similar Laws and Rules to Establish Precedent or Extrapolate Legal Intent.

(~~+~~) When making a determination and a specific law or rule pertaining to the issue does not exist, the procurement official may refer to other applicable laws that are similar in nature to the issue to establish a precedent or extrapolation of legal intent to assist in making a determination based on the reasonable person standard in Section R33-1-1.

R33-1-3. Determinations by Procurement Official.

(1) Unless specifically stated otherwise, determinations under Title 63G, Chapter 6a, Utah Procurement Code and Title R33 shall be made by the procurement official.

(2) A determination by the procurement official shall be made:

(a) in accordance with the provisions set forth in Sections 63G-6a-106 and 63G-6a-303 and other rules and laws if applicable; or

(b) by applying the reasonable person standard to determine:

(i) if the actions of a person involved in the procurement process would cause a reasonable person to conclude that the person

has acted in violation of Title 63G, Chapter 6a, Utah Procurement Code, or Title R33;

(ii) if the circumstances surrounding a procurement would cause a reasonable person to conclude that a violation of Title 63G, Chapter 6a, Utah Procurement Code, or Title R33 has occurred; or

(iii) if the evidence presented would cause a reasonable person to conclude that certain facts associated with a procurement are true.

R33-1-4. Competitive Procurement Required for Expenditure of Public Funds or Use of Public Property or Other Public Assets to Acquire a Procurement Item Unless Exception is Authorized.

(1) Unless the procurement official issues a written exception in accordance with Title 63G, Chapter 6a, Utah Procurement Code, and applicable rules documenting why a competitive procurement process is not required and why it is in the best interest of the procurement unit to award a contract without engaging in a standard procurement process, a procurement unit shall conduct a standard procurement process when:

(a) public funds are expended or used to acquire a procurement item; or

(b) a procurement unit's property, name, influence, assets, resources, programs, or other things of value are used as consideration in the formation of a contract for a procurement item.

(2) This rule does not apply to procurements made under Section 63G-6a-2503 or 63G-6a-2504.

R33-1-12. Mandatory Minimum Requirements in a Solicitation.

~~(4)~~ Mandatory minimum requirements may be used in a solicitation to assist the conducting procurement unit in identifying the most qualified vendors responding to a solicitation and to limit the number of vendors eligible to move forward to subsequent stages in the solicitation or evaluation process.

R33-1-13. Pre-Solicitation Conferences and Site Visits.

(1) A pre-solicitation conference and site visit may be held to explain the procurement requirements in accordance with the following:

(a) Persons submitting a solicitation response must attend pre-solicitation conferences and site visits, except as authorized in writing by the procurement official.

(b) Pre-solicitation conferences or site visits may be attended in person or via any of the following electronic means:

(i) teleconference;

(ii) webinar; or

(iii) other electronic media approved by the procurement official.

(c) Pre-solicitation conferences and site visits must be attended by an authorized representative of the vendor submitting a response and as may be further specified in the procurement documents.

(d) If the pre-solicitation conference or site visit is mandatory, the solicitation must state that failure to attend shall result in the disqualification of any vendor that does not have an authorized representative present for the entire duration of the pre-solicitation conference or site visit.

(e) An audio or video recording of a pre-solicitation conference and site visit may be made at the discretion of the procurement unit.

(f) Listening to or viewing an audio or video recording of a mandatory pre-solicitation conference or site visit may not be

substituted for attendance~~[7]~~ unless the procurement official grants an exception to the mandatory requirement in writing.

(2)(a) If a pre-solicitation conference or site visit is held, the procurement unit shall maintain:

(i) an attendance log including the name of each attendee, the entity the attendee is representing, and the attendee's contact information;

(ii) minutes of the pre-solicitation conference or site visit; and

(iii) a copy of any document distributed by the procurement unit to the attendees.

(b) After the pre-solicitation conference or site visit, the procurement unit shall publish an addendum to the solicitation that includes:

(i) the attendance log;

(ii) minutes of the pre-bid conference or site visit;

(iii) a copy of any document distributed to attendees; and

(iv) any verbal modification made to any solicitation document during the pre-solicitation conference or site visit.

R33-1-14. Addenda to Solicitation.

~~(4)~~ Before the deadline for receipt of a solicitation response, a procurement unit may issue addenda modifying any aspect of the solicitation.

~~(a)~~ Addenda shall be distributed within a reasonable time to allow a person to consider the addenda in preparing a response to the solicitation.

~~(b)~~ After the due date and time for submitting a response, at the discretion of the procurement official, addenda to the solicitation may be limited to vendors who submitted a solicitation response, provided the addenda does not make a change to the solicitation that, in the opinion of the procurement official, likely would have impacted the number of persons responding to the solicitation.

R33-1-15. Rejection of a Late Response -- Delivery and Time Requirements.

(1) Except as provided in Subsection (4), a procurement unit may not accept a response after the deadline for receipt of solicitation responses.

(2) When submitting a response electronically, vendors must allow sufficient time to complete the online forms and finish uploading all documents before the closing time posted in the electronic system. Solicitation responses still in the process of being uploaded at the posted closing time will not be accepted.

(3) When submitting a solicitation response by physical delivery, which includes U.S. Mail, courier service, hand-delivery, or other physical means the vendor is solely responsible for meeting the deadline. Any delay caused by a delivery service or other physical means will not be considered an acceptable reason for a response being late.

(4) Responses received by physical delivery will be date and time stamped by the procurement unit.

(5) If an error by the procurement unit or an employee of a procurement unit results in a response not being received by the established due date and time, the response shall be accepted as being on time.

R33-1-16. Voluntary Withdrawal of a Response.

~~(4)~~ A vendor may voluntarily withdraw a response at any time before a contract is awarded with respect to the solicitation for which the response was submitted provided the vendor is not engaged

in any type of bid rigging, collusion, or other anti-competitive practice made unlawful under other applicable law.

R33-1-17. Errors Discovered After the Award of Contract.

(1) An error discovered after the award of a contract may only be corrected if, after consultation with the procurement official and the applicable legal counsel, it is determined that correction of the error does not violate the requirements of Title 63G, Chapter 6a, Utah Procurement Code, or ~~these~~ Title R33.

(2) Any correction made under this subsection must be supported by a written determination signed by the procurement official.

KEY: government purchasing, Utah procurement rules, general procurement provisions, definitions

Date of Last Change: [~~October 28, 2022~~2024

Notice of Continuation: July 8, 2019

Authorizing, and Implemented or Interpreted Law: 63G-6a

NOTICE OF PROPOSED RULE		
TYPE OF FILING: Amendment		
Rule or Section Number:	R33-9	Filing ID: 56507

Agency Information

1. Department:	Government Operations	
Agency:	Purchasing and General Services	
Room number:	Third Floor	
Building:	Taylorsville State Office Building	
Street address:	4315 S 2700 W	
City, state and zip:	Taylorsville, UT 84129-2128	
Mailing address:	PO Box 141061	
City, state and zip:	Salt Lake City, UT 84114-1061	
Contact persons:		
Name:	Phone:	Email:
Shad Brunson	801-965-4064	sbrunson@utah.gov
Windy Aphayrath	801-957-7138	waphayrath@utah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule or section catchline:
R33-9. Cancellations, Rejections, and Debarment

3. Purpose of the new rule or reason for the change:
The purpose of this filing is to add Section R33-9-106 to make it clear that a procurement unit has the right to cancel after an award has been made.
4. Summary of the new rule or change:
New section R33-9-106 states the procurement official can cancel an award before the contract is issued when it is the best interest of the procurement unit and in the event that information is received that would have prevented award to the vendor if known previous to the award.
By cancelling, the procurement unit to award to the second most qualified vendor using the same solicitation.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
A) State budget:
There are no anticipated cost savings to the state budget.
The new section provides the procurement unit the right to cancel an award when it is in the best interest of the procurement; the cancellation is not required.
B) Local governments:
There are no anticipated costs or savings for local governments.
The new section provides the procurement unit the right to cancel an award when it is in the best interest of the procurement; the cancellation is not required.
C) Small businesses ("small business" means a business employing 1-49 persons):
There are no anticipated costs or savings that are expected to affect the small businesses.
The new section provides the procurement unit the right to cancel an award when it is in the best interest of the procurement; the cancellation is not required.
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):
There are no anticipated costs or savings that are expected to affect the non-small businesses.
The new section provides the procurement unit the right to cancel an award when it is in the best interest of the procurement; the cancellation is not required.

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 that are expected to affect any persons.

The new section provides the procurement unit the right to cancel an award when it is in the best interest of the procurement; the cancellation is not required.

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

There are no anticipated compliance costs for affected persons.

The new section provides the procurement unit the right to cancel an award when it is in the best interest of the procurement; the cancellation is not required.

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

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

Net Benefits	Fiscal \$0	\$0	\$0
--------------	------------	-----	-----

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

The Executive Director of the Department of Government Operations, Marvin Dodge, has reviewed and approved this regulatory impact analysis.

Citation Information

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

Title 63G, Chapter 6a, Part 9		
----------------------------------	--	--

Public Notice Information

8. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:	07/01/2024
--	------------

9. This rule change MAY become effective on:	07/08/2024
---	------------

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

Agency Authorization Information

Agency head or designee and title:	Shad Brunson, Procurement Policy Board Chair	Date:	05/10/2024
---	---	--------------	------------

R33. Government Operations, Purchasing and General Services. R33-9. Cancellations, Rejections, and Debarment. R33-9-101. Cancellation Before Opening.

(1) A solicitation under a standard procurement process may be canceled before the deadline for receipt of a solicitation response when it is in the best interests of the procurement unit as determined by the procurement official. In the event a solicitation is cancelled, the reasons for cancellation shall be made part of the procurement file and shall be available for public inspection and the procurement unit shall:

(a) re-solicit new responses to a solicitation using a standard procurement process using the same or revised specifications; or[;]

(b) withdraw the requisition for the procurement item.

R33-9-102. Re-solicitation.

(1) In the event there is no response to an initial solicitation, the procurement official may:

(a) contact the known supplier community to determine why there were no responses to the solicitation;

(b) research the potential vendor community; and[;]

(c) based upon the information in Subsections (a) and (b) require the procurement unit to modify the solicitation documents.

(2) If the procurement unit has modified the solicitation documents and after the re-issuance of a solicitation, there is still no competition or there is insufficient competition, the procurement official shall:

(a) require the procurement unit to further modify the procurement documents; or

(b) cancel the requisition for the procurement item.

(3) An executive branch procurement unit may not reissue a canceled solicitation unless:

~~(a)~~ [F] the procurement official determines the issues identified in the written justification for canceling the solicitation set forth in Section R33-9-103 have been resolved.

R33-9-103. Cancellation Before Award but After Opening.

(1) A solicitation under a standard procurement process may be cancelled before award but after the opening of solicitation responses when the issuing procurement unit determines in writing that:

(a) the scope of work or other requirements contained in the solicitation documents were not met by any person and all solicitation responses have been determined to be either nonresponsive or not responsible;

(b) an infraction of code, rule, or policy has occurred;

(c) inadequate, erroneous, or ambiguous specifications or requirements were cited in the solicitation;

(d) the specifications in the solicitation have been or must be revised;

(e) the procurement item being solicited are no longer required;

(f) the solicitation did not provide for consideration of all factors of cost to the procurement unit, such as cost of transportation, warranties, service, and maintenance;

(g) solicitation responses received show that the needs of the procurement unit can be satisfied by a less expensive procurement item differing from that in the solicitation;

(h) except as provided in Section 63G-6a-607, all otherwise acceptable solicitation responses received are at unreasonable prices, or only one solicitation response is received, and the procurement official cannot determine the reasonableness of the bid price or cost proposal;

(i) other reasons specified in ~~[63G-6a]~~ Title 63G, Chapter 6a, Utah Procurement Code or ~~[A]~~ administrative ~~[R]~~ rule; or

(j) other circumstances deemed to constitute reasonable cause by the procurement official.

(2) Notwithstanding ~~[7]~~ Subsection R33-9-103(1) ~~[7]~~ a procurement unit may not cancel and reissue a solicitation:

(a) To steer a contract to a favored vendor; or

(b) Except as permitted under the protest and appeal provisions set forth in ~~[63G-6a]~~ Title 63G, Chapter 6a Part ~~[s]~~ 16, Protests and Title 63G, Chapter 6a Part 17, Procurement Appeals Board, to make a vendor who was previously disqualified or rejected in a solicitation for the procurement item eligible for a contract award for the same procurement item.

R33-9-104. Alternative to Cancellation.

~~[(1)]~~ In the event administrative difficulties are encountered before award but after the deadline for receipt of solicitation responses that may delay award beyond the bidders', offerors', or person's acceptance periods, the bidders, offerors, or persons should be requested, before expiration of their solicitation

responses, to extend in writing the acceptance period, with consent of sureties, if any, to avoid the need for cancellation.

R33-9-105. Award of a Contract After Cancellation for Cause or by Mutual Agreement.

(1) If a contract awarded through a standard procurement process is cancelled for cause or by mutual agreement within the first 12 months of the contract term and the procurement item is still needed by the procurement unit, the procurement official shall make a determination as to whether it is in the best interest of the procurement unit to award a contract for the balance of the scope of work, as set forth in the solicitation, to:

(a) the responsible vendor with a responsive solicitation response, meeting all minimum score thresholds set forth in the solicitation:

(i) having the next lowest bid in an invitation for bids procurement process and in accordance with the provisions set forth in 63G-6a, Part 6 Bidding, and Title R33; or

(ii) with the next highest total score or other authorized method to award a contract in accordance with:

(A) the request for proposals procurement process set forth in 63G-6a, Part 7, Requests for Proposals and Title R33;

(B) the approved vendor list procurement process set forth in Section 63G-6a-507 and Title R33; or

(C) the design professional procurement process set forth in 63G-6a, Part 15, Design Professional Services and Title R33; or

(b) issue a new solicitation for the procurement item.

(2) The procurement official shall consider the following when making a determination under Subsection (1):

(a) the fair and equitable treatment of all persons currently involved or that may be involved in the procurement process pertaining to the procurement item;

(b) the length of time that has passed between the initial procurement and cancellation of the awarded contract;

(c) the applicability and competitiveness of prices submitted in response to the initial procurement;

(d) the willingness of the vendor to maintain prices submitted in the vendor's initial response to the solicitation for the full scope of work or, as applicable, remaining proportionate scope of work;

(e) the vendor's availability and ability to perform the work;

(f) the existence of additional or new vendors who may be available and willing to submit responses to a new solicitation for the procurement item;

(g) costs and time delays to the procurement unit associated with conducting a new procurement; and

(h) other applicable issues unique to the solicitation or procurement item.

(3) This rule may not be used:

(a) If a contract is cancelled by a procurement unit for convenience;

(b) To extend the contract beyond the contract period identified in the solicitation; or

(c) If a contract is cancelled after the first 12 months of the contract period.

R33-9-106. Cancellation of Award Before Contract Execution.

(1) After an award is made, but before the execution of a contract or purchase order, the procurement official may cancel an award when it is in the best interest of the procurement unit or other

allowable reasons under Utah Procurement Code in accordance with Sections 63G-6a-102, 63G-6a-902, and 63G-6a-903.

(2) To promote the purposes of the Utah Procurement Code and to ensure fairness and transparency, cancelling an award under this section may occur when new information or changed circumstances become known to the procurement unit that made the award.

R33-9-201. Rejection of a Solicitation Response.

~~(1)~~ An issuing procurement unit may reject any or all solicitation responses, in whole or in part, as may be specified in the solicitation, when it is in the best interest of the procurement unit. In the event of a rejection of any or all bids, offers or other submissions, in whole or in part, the reasons for rejection shall be made part of the procurement file and shall be available for public inspection.

R33-9-202. Conformity to Solicitation Requirements.

(1)(a) Any solicitation response that fails to conform to the essential requirements of the solicitation shall be rejected.

(b) Any solicitation response that does not conform to the applicable specifications shall be rejected unless the solicitation authorized the submission of alternate solicitation responses and the procurement item offered as alternates meet the requirements specified in the solicitation.

(c) Any solicitation response that fails to conform to the delivery schedule or permissible alternates stated in the solicitation shall be rejected.

R33-9-204. Rejection for Nonresponsibility or Nonresponsiveness.

(1) The procurement official:

(a) Shall, subject to Section 63G-6a-903 and, as applicable, Section 63G-6a-604, reject a bid if the bid is determined not responsive or the bid is submitted by a bidder determined to be not responsive;

(b) May reject a solicitation response to any other type of standard procurement process if the solicitation response is determined to be not responsive or the solicitation response is submitted by a person determined to be not responsive; and

(c) Subsections (a) and (b) shall be conducted in accordance with the definitions of Responsible and Responsive set forth in Section 63G-6a-103.

(2) When a bid security is required and a bidder fails to furnish the security in accordance with the requirements of the invitation for bids, the bid shall be rejected.

(3) All written findings with respect to such rejections shall be made part of the procurement file and available for public inspection.

R33-9-301. Rejection for Suspension or Debarment.

~~(1)~~ Solicitation responses received from any person that is suspended, debarred, or otherwise ineligible as of the deadline for receipt of solicitation responses shall be rejected.

KEY: government purchasing, cancellations, rejections, debarment

Date of Last Change: ~~May 23, 2022~~ 2024

Notice of Continuation: July 8, 2019

Authorizing, and Implemented or Interpreted Law: 63G-6a

NOTICE OF PROPOSED RULE		
TYPE OF FILING: Amendment		
Rule or Section Number:	R33-12	Filing ID: 56512

Agency Information

1. Department:	Government Operations	
Agency:	Purchasing and General Services	
Room number:	Third Floor	
Building:	Taylorsville State Office Building	
Street address:	4315 S 2700 W	
City, state and zip:	Taylorsville, UT 84129-2128	
Mailing address:	PO Box 141061	
City, state and zip:	Salt Lake City, UT 84114-1061	
Contact persons:		
Name:	Phone:	Email:
Shad Brunson	801-965-4064	sbrunson@utah.gov
Windy Aphayrath	801-957-7138	waphayrath@utah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule or section catchline:
R33-12. Terms and Conditions, Contracts, Change Orders and Costs
3. Purpose of the new rule or reason for the change:
The purpose of this filing is to add information and clarity to the prepayment process in Section R33-12-402.
4. Summary of the new rule or change:
The amendment replaces the current wording of Section R33-12-402 and provides specific instances in which a prepayment does not require the procurement official's written determination.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
A) State budget:
The amendment is anticipated as a cost savings for the state budget as a determination for specific industry specific prepayments will not have to be written and signed by the procurement official.

The cost savings cannot be determined because the annual frequency of instances is unknown and the savings depend on how many workloads are eliminated from the process.

B) Local governments:

The amendment is anticipated as a cost savings for local governments who adopt this rule as a determination for specific industry specific prepayments will not have to be written and signed by the procurement official.

The cost savings cannot be determined because the annual frequency of instances is unknown and the savings depend on how many workloads are eliminated from the process.

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

There are no anticipated costs or savings that are expected to affect the small businesses.

The change to this rule does not impact small businesses.

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

There are no anticipated costs or savings that are expected to affect non-small businesses.

The changes to this rule do not impact non-small businesses.

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

There are no anticipated costs or savings that are expected to affect any persons.

The changes to this rule only impact a procurement process.

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

There are no anticipated compliance costs for affected persons.

The changes to this rule provide clarity in the terms.

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

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

Citation Information

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

Title 63G, Chapter 6a, Part 12		
--------------------------------------	--	--

Public Notice Information

8. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:	07/01/2024
--	------------

9. This rule change MAY become effective on:	07/08/2024
---	------------

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

Agency Authorization Information

Agency head or designee and title:	Shad Brunson, Procurement Policy Board Chair	Date:	05/10/2024
---	--	--------------	------------

R33. Government Operations, ~~Division of~~ Purchasing and General Services.

R33-12. Terms and Conditions, Contracts, Change Orders and Costs.

R33-12-101. Required Contract Clauses.

~~[(1)]~~ Public entities shall comply with Section 63G-6a-1202 ~~[considering]~~ concerning clauses for contracts. All definitions in the Utah Procurement Code shall apply to this rule unless otherwise specified in this rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

R33-12-201. Establishment of Terms and Conditions.

(1) Executive branch procurement units without independent procurement authority shall be required to use the standard terms and conditions adopted by the division for each particular procurement~~[-]~~ unless exceptions or additions are granted by the procurement official after consultation with the Attorney General's Office. Public entities, other than executive branch procurement units, may enact similar requirements. Terms and conditions may be established for:

- (a) a category of procurement items;
- (b) a specific procurement item;
- (c) general use in procurements;
- (d) the special needs of a procurement unit; or
- (e) the requirements of federal funding.

(2) In addition to the required standard terms and conditions, executive branch procurement units without independent procurement authority may submit their own additional special terms and conditions subject to the following:

- (a) the chief procurement officer may reject terms and conditions submitted by a conducting procurement unit if:
 - (i) the terms and conditions are unduly restrictive;
 - (ii) will unreasonably increase the cost of the procurement item; or
 - (iii) places the state at increased risk.
- (b) the procurement official may require the conducting procurement unit's Assistant Attorney General to approve any additional special terms and conditions.

R33-12-301. Awarding a Multiple Award Contract.

(1) A multiple award contract is a procurement process where two or more bidders or offerors are awarded a contract under a single solicitation. Purchases are made through an order placed

with a vendor on a multiple award contract pursuant to the procedures established in Section R33-12-301b.

(2) As authorized under Section 63G-6a-1204.5, the division or a procurement unit with independent procurement authority may enter into multiple award contracts.

(3) A multiple award contract may be awarded under a single solicitation when two or more bidders or offerors for similar procurement items are needed for:

(a) coverage on a statewide, regional, combined statewide and regional basis, agency specific requirement, or other criteria specified in the solicitation such as:

- (i) delivery;
- (ii) service;
- (iii) product availability; or
- (iv) compatibility with existing equipment or infrastructure.

(4) In addition to the requirements set forth in Sections 63G-6a-603 and 63G-6a-703, when it is anticipated that a procurement will result in multiple contract awards, the solicitation shall include a statement that:

- (a) indicates that contracts may be awarded to more than one bidder or offeror;
- (b) specifies whether contracts will be awarded on a statewide, regional, combined statewide and regional basis, or agency specific requirement; and
- (c) describes specific methodology or a formula that will be used to determine the number of contract awards.

(5) A multiple award contract in an invitation for bids shall be conducted and awarded in accordance with Title 63G, Chapter ~~[-]~~ 6a, Part 6, Other Standard Procurement Processes to the lowest responsive and responsible bidder who meet the objective criteria described in the invitation for bids and may be awarded to provide adequate regional, statewide, or combined regional and statewide coverage, agency specific requirement, or delivery, or product availability using the following methods:

(a) lowest bids for procurement items solicited provided the solicitation indicates that multiple contracts will be awarded to the lowest bidders for procurement items being solicited as determined by the following methods:

- (i) bids within a specified percentage, not to exceed 5%~~[-]~~ of the lowest responsive and responsible bid, unless otherwise approved in writing by the procurement official;
- (ii) responsive and responsible bidders will be awarded a contract, provided the contract specifically directs that orders must be placed first with low bidder unless the lowest bidder cannot provide the needed procurement item, then with the second lowest bidder unless the second lowest bidder cannot provide the needed procurement item, then with the third lowest bidder unless the third lowest bidder cannot provide the needed procurement item, and so on in order from the lowest responsive and responsible bidder to the highest responsive and responsible bidder; or
- (iii) other methodology described in the solicitation to award contracts;

- (b) lowest bid by category provided:
 - (i) the solicitation indicates that a contract will be awarded based on the lowest bid per category; and
 - (ii) only one bidder may be awarded a contract per category;
- (c) lowest bid by line item provided:
 - (i) the solicitation indicates that a contract will be awarded based on the lowest bid per line item, task, or service; and

(ii) only one bidder may be awarded a contract per line item, task, or service; or

(d) other specific objective methodology described in the solicitation, such as Section R33-12-302 for primary and secondary contracts, approved by the procurement official.

(6) Multiple award contracts in a request for proposals shall be conducted and awarded in accordance with Title 63G, Chapter [-]6a, Part 7, Requests for Proposals, and may be awarded on a statewide, regional, combination statewide and regional basis, agency specific requirement, or other criteria set forth in the solicitation and in accordance with point thresholds and other methodology set forth in the request for proposals describing how multiple award contracts will be awarded with enough specificity as to avoid the appearance of any favoritism affecting the decision of whether to award a multiple contract and who should receive a multiple award contract.

R33-12-301a. Multiple Award Contracts for Unidentified Procurement Items.

(1) An unidentified procurement item is defined as a procurement item when the solicitation is issued:

(a) Has not been specifically identified but will be identified in the future, such as an approved vendor list or approved consultant list;

(b) Does not have a clearly defined project or procurement specific scope of work; and

(c) Does not have a clearly defined project or procurement specific budget.

(2) Unidentified procurement items may be procured under the approved vendor list thresholds established by the applicable rule making authority or Section R33-4-102.

(3) An RFP, request for statements of qualifications, or multi-stage solicitation issued for a multiple award contract for unidentified procurement item must specify the methodology that the procurement unit will use to determine which vendor under the multiple award contract will be selected.

(a) The methodology must include a procedure to document that the procurement unit is obtaining best value, including an analysis of cost and other evaluation criteria outlined in the solicitation.

(b) The methodology must also ensure the fair and equitable treatment of each multiple award contract vendor, including using methods to select a vendor such as:

(i) a rotation system, organized alphabetically, numerically, or randomly;

(ii) assigning a potential vendor or contractor to a specified geographical area;

(iii) classifying each potential vendor or contractor based on the potential vendor's or contractor's field or area of expertise; or

(iv) obtaining quotes or bids from two or more vendors or contractors.

R33-12-301b. Ordering From a Multiple Award Contract.

(1)(a) When buying a procurement item from a multiple award contract solicited through an invitation for bids, a procurement unit shall:

(i) obtain a minimum of two quotes for the procurement item if the contract was awarded based on the method described in Subsection R33-12-301(5)(a)(i) and place the order for the procurement item with the vendor or contractor with the lowest quoted price;

(ii) place the order for the procurement item with the lowest bidder on contract unless the lowest bidder cannot provide the needed procurement item, then the order may be placed with the second lowest bidder unless the second lowest bidder cannot provide the needed procurement item and on, in order, from lowest bidder to highest bidder as described in Subsection R33-12-301(5)(a)(ii);

(iii) place the order in accordance with instructions contained in the contract for the procurement item if the contract was awarded based on the method described in Subsection R33-12-301(5)(a)(iii);

(iv) place the order for the procurement item if the contract was awarded based on the method described in Subsection R33-12-301(5)(b); or

(v) place the order for the procurement item if the contract was awarded based on the method described in Subsection R33-12-301(5)(c);

(b) The requirement to obtain two or more quotes in Subsection (1)(a)(i) is waived when there is only one bidder award for the particular procurement item or only one bidder is awarded per geographical area.

(2) When buying a procurement item from a multiple award contract solicited through an RFP, a procurement unit may place orders with any vendor or contractor under contract based on which procurement item best meets the needs of the procurement unit. Contracts awarded through the RFP process are awarded based on best value as determined by cost and non-price criteria specified in the RFP. As a result, all vendors, contractors, and procurement items under contract issued through an RFP have been determined to provide best value to procurement units buying from these contracts.

(3) A procurement unit may not use a multiple award contract to steer purchases to a favored vendor or use any other means or methods that do not result in fair consideration being given to all vendors that have been awarded a contract under a multiple award.

R33-12-302. Primary and Secondary Contracts.

(1) Designations of multiple award contracts as primary and secondary may be made provided a statement to that effect is contained in the solicitation documents.

(2) When the procurement official determines that the need for procurement items will exceed the capacity of any single primary contractor, secondary contracts may be awarded to additional contractors.

(3) Purchases under primary and secondary contracts shall be made initially to the primary contractor offering the lowest contract price until the primary contractor's capacity has been reached or the items are not available from the primary contractor, then to secondary contractors in progressive order from lowest price or availability to the next lowest price or availability.

R33-12-303. Intent to Use.

~~[(+)]~~ If a multiple award is anticipated before issuing a solicitation, the method of award shall be stated in the solicitation.

R33-12-401. Contracts and Change Orders -- Contract Types.

~~[(+)]~~ A procurement unit may use contract types to the extent authorized under Section 63G-6a-1205.

R33-12-402. Prepayments.

~~[(+)]~~ Prepayments are subject to the restrictions contained in Section 63G-6a-1208.

(1) The procurement official may determine that it is necessary or beneficial for the procurement unit to pay for the procurement item before the procurement unit receives the procurement item.

(2) In accordance with Subsection 63G-6a-1208(2)(b), a procurement official's written determination is not necessary for the following circumstances:

(a) The procurement item is:
(i) software subscription services;
(ii) online information, media, or database subscription services;

(iii) online Marketplace purchases;
(iv) trade show booth space rentals; or
(v) deposits for venue rental for group gatherings; and
(b) The prepayment is:

(i) below the individual procurement threshold, unless the procurement official determines a lower amount; or
(ii) for a procurement item available through an existing contract entered into in compliance with Title 63G, Chapter 6a, Utah Procurement Code.

R33-12-403. Leases of Personal Property.

(1) Leases of personal property are subject to the following:

(a) Leases shall be conducted in accordance with Division of Finance rules and Section 63G-6a-1209.

(b) A lease may be entered into provided the procurement unit complies with Section 63G-6a-1209 and:

(i) it is in the best interest of the procurement unit;
(ii) all conditions for renewal and costs of termination are set forth in the lease; and

(iii) the lease is not used to avoid a competitive procurement.

(c) Lease contracts shall be conducted with as much competition as practicable.

(d) Executive Branch Procurement Unit Leases with Purchase Option. A purchase option in a lease may be exercised if the lease containing the purchase option was awarded under an authorized procurement process. Before exercising this option, the procurement unit shall:

(i) investigate alternative means of procuring comparable procurement items; and

(ii) compare estimated costs and benefits associated with the alternative means and the exercise of the option, for example, the benefit of buying new state of the art data processing equipment compared to the estimated, initial savings associated with exercise of a purchase option.

R33-12-404. Multi-Year Contracts.

~~(1)~~ Procurement units may issue multi-year contracts for any solicitation process in accordance with Section 63G-6a-1204.

R33-12-405. Installment Payments.

~~(1)~~ Procurement units may make installment payments in accordance with Section 63G-6a-1208.

R33-12-501. Change Orders.

(1) In addition to the requirements in Section 63G-6a-1207, for executive branch procurement units without independent procurement authority, the certifications required under Subsections 63G-6a-1207(1) and 63G-6a-1207(2) must be submitted in writing by the procurement unit to the procurement official before the

commencement of any work to be performed under a contract change order unless:

(a) the procurement unit has authority Subsection 63G-6a-304(1) and Section R33-3-101 to authorize contract change orders up to the amount delegated; or

(b) The change order is:

(i) requisite to avert an emergency; or

(ii) required as an emergency.

(2) For purposes of Subsection (1)(b) "emergency" is described in Subsection R33-8-401(3) and is subject to Section 63G-6a-803.

(3) Any contract change order authorized by a procurement unit under Subsection R33-12-501(1)(c) shall, as soon as practicable, be submitted to the procurement official and included in the division's contract file.

R33-12-502. Contract Modifications for New Technology and Technological Upgrades.

(1) A contract for a procurement item may be modified to include new technology or technological upgrades associated with the procurement item, provided:

(a) The solicitation contains a statement indicating that:

(i) the awarded contract may be modified to incorporate new technology or technological upgrades associated with the procurement item being solicited, including new or upgraded:

(A) systems;

(B) apparatuses;

(C) modules;

(D) components; and

(E) other supplementary items;

(ii) a maintenance or service agreement associated with the procurement item under contract may be modified to include any new technology or technological upgrades; and

(iii) Any contract modification incorporating new technology or technological upgrades is specific to the procurement item being solicited and substantially within the scope of the original procurement or contract.

(2) Any contract modification incorporating new technology or technological upgrades is agreed upon by all parties and is executed using the process set forth in the contract for other contract modifications.

(3) Before executing a contract modification incorporating new technology or technological upgrades, executive branch procurement units shall obtain the approval of the Director of the Division of Technology Services.

(4) A contract modification for new technology or technology upgrades may not extend the term of the contract except as provided in the Utah Procurement Code.

R33-12-601. Requirements for Cost or Pricing Data.

(1) For contracts that expressly allow price adjustments, cost or pricing data shall be required in support of a proposal leading to the adjustment of any contract pricing.

(2) Cost or pricing data exceptions:

(a) need not be submitted when the terms of the contract state established market indices, catalog prices or other benchmarks are used as the basis for contract price adjustments or when prices are set by law or rule;

(b) if a contractor submits a price adjustment higher than established market indices, catalog prices or other benchmarks established in the contract, the procurement official may request additional cost or pricing data; or

(c) the procurement official may waive the requirement for cost or pricing data provided a written determination is made supporting the reasons for the waiver. A copy of the determination shall be kept in the contract file.

R33-12-602. Defective Cost or Pricing Data.

(1) If defective cost or pricing data was used to adjust a contract price, the vendor and the procurement unit may enter into discussions to negotiate a settlement.

(2) If a settlement cannot be negotiated, either party may seek relief through the courts.

R33-12-603. Price Analysis.

(1) Price analysis may be used to determine if a price is reasonable and competitive, such as when:

(a) there are a limited number of vendors, bidders, or offerors;

(b) awarding a sole source or other contract without engaging in a standard procurement process; or

(c) identifying prices that are significantly lower or higher than other vendors, bidders, or offerors.

(2) Price analysis involves a comparison of prices for the same or similar procurement items, including quality, warranties, service agreements, delivery, contractual provisions, terms, and conditions, and so on.

(3) Examples of a price analysis include:

(a) prices submitted by other prospective bidders or offerors;

(b) price quotations;

(c) previous contract prices;

(d) comparisons to the existing contracts of other public entities; and

(e) prices published in catalogs or price lists.

R33-12-604. Cost Analysis.

(1) Cost analysis includes the verification of cost data. Cost analysis may be used to evaluate:

(a) specific elements of costs;

(b) total cost of ownership and life-cycle cost;

(c) supplemental cost schedules;

(d) market basket cost of similar items;

(e) the necessity for certain costs;

(f) the reasonableness of allowances for contingencies;

(g) the basis used for allocation of indirect costs; and

(h) the reasonableness of the total cost or price.

R33-12-605. Right to Audit.

(1) As used in this rule:

(a) "Authorized representative" includes:

(i) a purchasing procurement unit;

(ii) an internal auditor or other employee of the procurement unit;

(iii) an audit firm, consultant, or examiner under contract with the procurement unit;

(iv) the State Auditor;

(v) the Legislative Auditor General; or

(vi) federal auditors.

(b) "Books and records" mean written or electronic information pertaining to the applicable contract between the procurement unit and the contractor including:

(i) accounting information, financial statements, files, invoices, reports, and statements;

(ii) pricing data;

(iii) usage reports;

(iv) transaction histories;

(v) delivery logs;

(vi) contracts, contract amendments, and other legal documents; and

(vii) performance evaluations.

(2) Any contract between a contractor and a procurement unit that involves the expenditure of public funds may include or incorporate by reference a right to audit clause that may contain the following provisions:

(a) a statement indicating that the procurement unit or its authorized representative has the right to audit the books and records of a contractor or any subcontractor under any contract or subcontract to the extent that the books and records relate to the performance of the contract or subcontract;

(b) notification procedures for initiating an audit and reporting audit findings;

(c) dispute resolution procedures, including, to the extent practicable, negotiation, settlement, and final resolution of audit findings;

(d) a statement requiring the contractor and its subcontractors to:

(i) maintain books and records relating to a contract for six years after the day on which the contractor receives the final payment under the contract, or until audits initiated under this section within the six-year period have been completed, whichever is later;

(ii) establish and maintain an accounting and record-keeping system that enables the procurement unit or its authorized representative to readily have access to the contractor's books and records in both written and electronic format;

(iii) upon request, provide to the procurement unit or its authorized representative an electronic copy of the contractor's books and records within 30 days of the request;

(iv) allow the procurement unit or its authorized representative to interview the contractor's employees, agents, subcontractors, partners, resellers, and any other person who might reasonably have information related to the contractor's performance of the contract;

(v) correct errors and repay overcharges to the contracting procurement unit within 30 days of receiving written notice of the errors or overcharges documented in an audit finding;

(A) payments relating to overcharges or other audit findings involving state cooperative contracts shall be repaid to the Utah Division of Purchasing; and

(vi) if contract errors or overcharges are in dispute, correct errors and repay overcharges within 30 days of receipt of a notice of decision issued by the procurement official after a hearing has been conducted to attempt to resolve the dispute, or a court order;

(e) a statement indicating that:

(i) the procurement unit or its authorized representative have the right to audit the contract at any time during or after the term of the contract between the contractor and the procurement unit; including the right to examine, make copies of, or extract data from any record required to be maintained by the contractor; and

(ii) an audit or other request shall:

(A) be limited to records or other information related to or pertaining to the applicable contract;

(B) include access to records necessary to properly account for the contractor's performance under the contract and the payments made by the procurement unit to the contractor; and

(C) be carried out at a reasonable time and place;

NOTICES OF PROPOSED RULES

(f) a notice that if a contractor fails to maintain or provide records in accordance with the contract, the procurement unit may:

- (i) consider the contractor to be in breach of its contract with the procurement unit;
- (ii) enter into negotiations with the contractor to initiate a corrective action plan to bring the contractor into compliance; or
- (iii) cancel the contract;

(g) a notice that the procurement unit may initiate debarment or suspension proceedings against a contractor under Section 63G-6a-904, or pursue other legal action, for any of the following:

- (i) failure to respond to an audit;
- (ii) failure to correct errors or repay overcharges;
- (iii) an illegal act or fraud documented in an audit; or
- (iv) other reasons as determined by the procurement official.

R33-12-607. Applicable Credits.

~~[(4)]~~Applicable credits are receipts or price reductions which offset or reduce expenditures allocable to contracts as direct or indirect costs. Examples include purchase discounts, rebates, allowance, recoveries or indemnification for losses, sale of scrap and surplus equipment and materials, adjustments for overpayments or erroneous charges, and income from employee recreational or incidental services and food sales.

R33-12-608. Use of Federal Cost Principles.

(1) In dealing with contractors operating according to federal cost principles, the procurement official may use the federal cost principles, including the determination of allowable, allocable, and reasonable costs, as guidance in contract negotiations.

(2) In contracts not awarded under a program which is funded by federal assistance funds, the procurement official may explicitly incorporate federal cost principles into a solicitation and thus into any contract awarded pursuant to that solicitation. The procurement official and the contractor by mutual agreement may incorporate federal cost principles into a contract during negotiation or after award.

(3) In contracts awarded under a program which is financed in whole or in part by federal assistance funds, requirements set forth in the assistance document including specified federal cost principles, must be satisfied. To the extent that the cost principles specified in the grant document conflict with the cost principles issued pursuant to Section 63G-6a-1206, the cost principles specified in the grant shall control.

R33-12-609. Authority to Deviate from Cost Principles.

~~[(4)]~~If a procurement unit desires to deviate from the cost principles set forth in this rule, a written determination shall be made by the procurement official specifying the reasons for the deviation and the written determination shall be made part of the contract file.

R33-12-701. Inspections.

(1) Circumstances under which the procurement unit may perform inspections include inspections of the contractor's manufacturing or production facility or place of business, or any location where the work is performed:

(a) whether the definition of "responsible," has been met or is capable of being met; and

(b) if the contract is being performed in accordance with its terms.

R33-12-702. Access to Contractor's Manufacturing or Production Facilities.

(1) The procurement unit may enter a contractor's or subcontractor's manufacturing or production facility or place of business to:

(a) inspect procurement items for acceptance by the procurement unit pursuant to the terms of a contract;

(b) audit cost or pricing data or audit the books and records of any contractor or subcontractor pursuant to Section R33-12-605; and

(c) investigate in connection with an action to debar or suspend a person from consideration for award of contracts.

R33-12-703. Inspection of Supplies and Services.

~~[(4)]~~Contracts may provide that the procurement unit or procurement official may inspect procurement items at the contractor's or subcontractor's facility and perform tests to determine whether the procurement items conform to solicitation and contract requirements.

R33-12-704. Conduct of Inspections.

(1) Inspections or tests shall be performed so as not to unduly delay the work of the contractor or subcontractor. No inspector may change the specifications or the contract without written authorization of the procurement official. The presence or absence of an inspector or an inspection~~[;]~~ ~~[shall]~~ may not relieve the contractor or subcontractor from any requirements of the contract.

(2) When an inspection is made, the contractor or subcontractor shall provide without charge all reasonable facilities and assistance for the safety and convenience of the person performing the inspection or testing.

KEY: terms and conditions, contracts, change orders, costs

Date of Last Change: ~~May 23, 2022~~2024

Notice of Continuation: July 8, 2019

Authorizing, and Implemented or Interpreted Law: 63G-6a

NOTICE OF PROPOSED RULE		
TYPE OF FILING: New		
Rule or Section Number:	R66-4	Filing ID: 56504

Agency Information

1. Department:	Agriculture and Food
Agency:	Medical Cannabis and Industrial Hemp
Building:	TSOB South Bldg, Floor 2
Street address:	4315 S 2700 W
City, state and zip:	Taylorsville, UT 84129
Mailing address:	PO Box 146500
City, state and zip:	Salt Lake City, UT 84114-6500

Contact persons:		
Name:	Phone:	Email:
Amber Brown	385-245-5222	ambermbrown@utah.gov
Brandon Forsyth	801-710-9945	bforsyth@utah.gov
Kelly Pehrson	385-977-2147	kwpehrson@utah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule or section catchline:
R66-4. Independent Cannabis Testing Laboratory
3. Purpose of the new rule or reason for the change:
This rule has been repealed under Rule R68-30 and is being simultaneously reenacted under a new title specific to medical cannabis and industrial hemp, Title R66.
4. Summary of the new rule or change:
This rule has been repealed and is being simultaneously reenacted under Rule R66-4. (EDITOR'S NOTE: The proposed repeal of Rule R68-30 is under ID 56503 in this issue, June 1, 2024, of the Bulletin.)

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
A) State budget:
This change does not have a fiscal impact to the state because this rule is not changing, it is just being repealed to be reenacted under a new title and with a new rule number.
B) Local governments:
Local governments will not be impacted because they do not participate in the medical cannabis program.
C) Small businesses ("small business" means a business employing 1-49 persons):
This change does not have a fiscal impact to small businesses because this rule is not changing, it is just being repealed to be reenacted under a new title and with a new rule number.

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

This change does not have a fiscal impact to non-small businesses because this rule is not changing, it is just being repealed to be reenacted under a new title and with a new rule number.

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 change does not have a fiscal impact to other persons because this rule is not changing, it is just being repealed to be reenacted under a new title and with a new rule number.

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

Compliance costs are not impacted because the substance of this rule is not changing with this filing.

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

Regulatory Impact Table

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

NOTICES OF PROPOSED RULES

Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0
H) Department head comments on fiscal impact and approval of regulatory impact analysis:			
The Commissioner of the Department of Agriculture and Food, Craig W. Buttars, has reviewed and approved this regulatory impact analysis.			

Citation Information

6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:		
Subsection	4-2-103(1)(i)	

Incorporations by Reference Information

7. Incorporations by Reference :	
A) This rule adds, updates, or removes the following title of materials incorporated by references :	
Official Title of Materials Incorporated (from title page)	Cannabis Inflorescence: Standards of Identity, Analysis, and Quality Control
Publisher	American Herbal Pharmacopoeia
Issue Date	2014
Issue or Version	2014 Revisions

B) This rule adds, updates, or removes the following title of materials incorporated by references :	
Official Title of Materials Incorporated (from title page)	OECD Principles of Good Laboratory Practice and Compliance Monitoring
Publisher	Organization for Economic Co-operation and Development
Issue Date	January 1998
Issue or Version	1997

Public Notice Information

8. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	07/01/2024

9. This rule change MAY become effective on:	07/08/2024
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.	

Agency Authorization Information

Agency head or designee and title:	Craig W. Buttars, Commissioner	Date:	05/10/2024
---	--------------------------------	--------------	------------

R66. Agriculture and Food, Medical Cannabis and Industrial Hemp.

R66-4. Independent Cannabis Testing Laboratory.

R66-4-1. Authority and Purpose.

Pursuant to Subsections 4-41a-103(5), 4-41a-302(3)(b)(ii), 4-41a-404(3), 4-41a-405(2)(b)(iv), 4-41a-701(3), 4-41a-801(1), and 4-2-103(1)(i), this rule establishes the application process, qualifications, and requirements to obtain and maintain an independent cannabis testing laboratory license.

R66-4-2. Definitions.

(1) "Applicant" means any person or business entity who applies for a cannabis processing facility license.

(2) "Batch" means a quantity of:

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

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

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

(3) "Cannabis" means any part of a marijuana plant.

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

(a) possesses cannabis;

(b) grows or intends to grow cannabis; and

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

(5) "Cannabis processing facility" means a person that:

(a) acquires or intends to acquire cannabis from a cannabis production establishment or a holder of an industrial hemp processor license under Title 4 Chapter 41, Hemp and Cannabinoid Act;

(b) possesses cannabis with the intent to manufacture a cannabis product;

(c) manufactures or intends to manufacture a cannabis product from unprocessed cannabis or a cannabis extract; and

(d) sells or intends to sell a cannabis product to a medical cannabis pharmacy or the state central fill medical cannabis pharmacy.

(6) "Cannabis production establishment agent registration card" means a registration card that the department issues that:

(a) authorizes an individual to act as a cannabis production establishment agent; and

(b) designates the type of cannabis production establishment for which an individual may act as an agent.

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

(8) "Independent cannabis testing laboratory" means a person who:

(a) conducts a chemical or other analysis of cannabis or a cannabis product; or

(b) acquires, possesses, and transports cannabis or a cannabis product with the intent to conduct a chemical or other analysis of the cannabis or cannabis product.

(9) "Independent cannabis testing laboratory agent" means an individual who:

(a) is an employee of an independent cannabis testing laboratory; and

(b) holds a valid cannabis production establishment agent registration card.

(10) "Lot" means the quantity of:

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

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

(11) "Medical cannabis research licensee" means a person who holds a license to perform academic medical cannabis research pursuant to Section 4-41a-901 and Rule R68-35.

R66-4-3. Independent Testing Laboratory License.

(1) An independent testing laboratory license allows the licensee to receive cannabis from a licensed cannabis cultivation facility to conduct testing as required by Subsection 4-41a-701(2) and Rule R68-29.

(2) An independent testing laboratory license allows the licensee to receive cannabis from a licensed cannabis processing facility to conduct testing as required by Subsection 4-41a-701(2) and Rule R68-29.

(3) An independent testing laboratory license allows the licensee to receive cannabis from a licensed cannabis cultivation facility and a cannabis processing facility to conduct the additional test as requested.

(4) A complete application shall include the required fee, statements, forms, diagrams, operation plans, and other applicable documents required in the application packet to be accepted and processed by the department.

(5) Before approving an application, the department may contact any applicant and request additional supporting documentation or information.

(6) Before issuing a license, the department shall inspect the proposed premises to determine if the applicant complies with state laws and rules.

(7) The department may conduct face-to-face interviews with an applicant if needed to determine the best-qualified applicant for the number of licenses needed.

(8) The license shall expire 12 months from the date on which the license is issued.

(9) An application for renewals shall be submitted to the department no later than 30 days before the license expiration date.

(10) If the renewal application is not submitted 30 days before the expiration date the licensee may not continue to operate.

(11) An independent cannabis testing laboratory license is not transferable or assignable. If the ownership of an independent cannabis testing laboratory changes by 50% or more, the requirements of Subsection 4-41a-201(15) shall be followed.

R66-4-4. Independent Cannabis Testing Laboratory Requirements.

(1) An independent testing laboratory shall employ a scientific director responsible for:

(a) ensuring that the laboratory achievement and maintenance of quality standards of practice; and

(b) supervising laboratory staff.

(2) The scientific director for an independent laboratory shall have:

(a) a doctorate in chemical or biological sciences from an accredited college or university and have at least 2 years of post-degree laboratory experience;

(b) a master's degree in chemical or biological sciences from an accredited college or university and have at least 4 years of post-degree laboratory experience; or

(c) a bachelor's degree in chemical or biological sciences from an accredited college or university and have at least 6 years of post-degree laboratory experience.

(3) An independent cannabis testing laboratory shall follow validated analytical methods, such as those published by the Association of Official Agricultural Chemists (AOAC), American Herbal Pharmacopoeia, EPA, FDA, or other reputable scientific organizations or notify the department of alternative scientifically valid testing methodology the lab is following for each required test.

(4) An independent cannabis testing laboratory may not use an alternative testing method without earlier review from the department.

(5) The department shall review any monograph or analytical method followed by an independent cannabis testing laboratory to ensure the methodology produces scientifically accurate results before the use of alternative testing methods to conduct the required tests.

(6) An independent cannabis testing laboratory shall establish written standard operating procedures for each test being conducted.

(7) An independent cannabis testing laboratory shall maintain an average testing turnaround time below ten business days within any three-month period.

(8) An independent cannabis testing laboratory shall obtain and keep the International Organization for Standardization (ISO) 17025:2017 accreditation.

(9) An independent cannabis testing laboratory may be licensed before ISO 17025:2017 accreditation provided the independent cannabis testing laboratory:

(a) adopt and follow minimum good laboratory practices which satisfy the OECD Principles of Good Laboratory Practice and Compliance Monitoring published by the Organization for Economic Co-operation and Development; and

(b) becomes ISO 17025:2017 accredited within 24 months.

(10) The department incorporates the following materials by reference:

(a) Cannabis Inflorescence: Standards of Identity, Analysis, and Quality Control (2014 Revisions) published by the American Herbal Pharmacopoeia; and

(b) OECD Principles of Good Laboratory Practice and Compliance Monitoring (1997) published by the Organization for Economic Co-operation and Development.

(11) An independent cannabis testing laboratory shall have written emergency procedures to be followed in case of:

(a) fire;

NOTICES OF PROPOSED RULES

- _____ (b) chemical spill; or
- _____ (c) other emergencies at the laboratory.
- _____ (12) An independent cannabis testing laboratory shall compartmentalize each area in the facility based on function and shall limit access to the compartments to the appropriate authorized agents.

R66-4-5. Security Requirements.

- _____ (1) At a minimum, a licensed independent cannabis testing laboratory shall have a security alarm system on each perimeter entry point and perimeter window.
- _____ (2) At a minimum, a licensed independent cannabis testing laboratory shall have complete video surveillance system:
 - _____ (a) with minimum camera resolution of 640 x 470 pixels or pixel equivalent for analog; and
 - _____ (b) that retains footage for at least 45 days.
- _____ (3) Cameras shall:
 - _____ (a) be fixed and placement shall allow for the clear and certain identification of any person and activities in controlled areas; and
 - _____ (b) record continuously.
- _____ (4) Controlled areas included:
 - _____ (a) entrances and exits;
 - _____ (b) any areas where cannabis or cannabis products are stored;
 - _____ (c) any areas where cannabis or cannabis products are being tested; and
 - _____ (d) any areas where cannabis waste is being moved, processed, stored, or destroyed.
- _____ (5) If an independent cannabis testing facility stores footage locally, the surveillance system storage device shall be secured in the facility in a lockbox, cabinet, closet, or secured in another manner to protect from employee tampering or criminal theft.
- _____ (6) If an independent cannabis testing laboratory stores footage on a remote server, access shall be restricted to protect from employee tampering.
- _____ (7) Any entry point shall be lighted in low-light conditions sufficient to record activity occurring.
- _____ (8) Any visitors to an independent cannabis testing laboratory shall be required to have a properly displayed identification badge issued by the facility at all times while on the premises of the facility.
- _____ (9) Any visitors shall be escorted by an independent cannabis facility agent at all times while in the facility.
- _____ (10) An independent cannabis testing laboratory shall keep and maintain a visitor's log showing:
 - _____ (a) the full name of each visitor entering the facility;
 - _____ (b) the badge number issued;
 - _____ (c) the time of arrival;
 - _____ (d) the time of departure; and
 - _____ (e) the purpose of the visit.
- _____ (11) The independent cannabis testing laboratory shall keep the visitors log for a minimum of a year.
- _____ (12) The independent cannabis testing laboratory shall make the visitor log available to the department upon request.

R66-4-6. Inventory Control.

- _____ (1) Each test sample shall have a unique identification number in the inventory control system.
- _____ (2) Each test sample shall be traceable to the lot or batch used as the base material from the cannabis production establishment.
- _____ (3) Unique identification numbers may not be reused.

- _____ (4) Each test sample that has been issued a unique identification number shall have a physical tag placed on it with:
 - _____ (a) the unique identification number;
 - _____ (b) the license number and name of the lab receiving the test sample;
 - _____ (c) the license number and name of the cannabis production establishment name;
 - _____ (d) the date the test sample was collected; and
 - _____ (e) the weight of the sample.
- _____ (5) The tag shall be legible and placed in a position that can be clearly read and shall be kept free from dirt and debris.
- _____ (6) The following shall be reconciled in the inventory control system at the close of business each day:
 - _____ (a) the date and time the test sample was received;
 - _____ (b) each sample used for testing and the test results;
 - _____ (c) the identity of the agent conducting the test;
 - _____ (d) a complete inventory of cannabis test samples;
 - _____ (e) the weight and disposal of cannabis waste materials;
 - _____ (f) the identity of who disposed of the cannabis waste; and
 - _____ (g) the theft or loss or suspected theft or loss of test sample.
- _____ (7) An independent cannabis testing laboratory shall document in the inventory tracking system any test samples received, and any difference between the quantity specified in the transport and quantities received.

R66-4-7. Independent Cannabis Testing Laboratory Agents.

- _____ (1) A prospective independent cannabis testing laboratory agent shall apply to the department for a cannabis testing laboratory agent registration card on a form provided by the department.
- _____ (2) An application is not considered complete until the background check has been completed, the registration fee has been paid, and the prospective agent has submitted the required training certificate.
- _____ (3) The cannabis establishment agent registration card shall contain:
 - _____ (a) the agent's full name;
 - _____ (b) identifying information; and
 - _____ (c) a photograph of the agent.
- _____ (4) An independent cannabis testing laboratory is responsible to ensure that each agent has received any task-specific training as outlined in the operating plan submitted to the department.
- _____ (5) An independent cannabis testing agent shall have a properly displayed identification badge which has been issued by the department while on the facility premises or while engaged in the transportation of cannabis.
- _____ (6) Cannabis testing laboratory agents shall have their state-issued identification card in their possession to certify the information on their badge is correct.
- _____ (7) Each cannabis testing laboratory shall maintain a list of each employee that holds a cannabis testing laboratory agent registration card and provide the list to the department upon request.

R66-4-8. Transportation.

- _____ (1) A printed transport manifest shall accompany every transport of cannabis.
- _____ (2) The manifest shall contain the following information:
 - _____ (a) the cannabis production establishment address and license number of the departure location;
 - _____ (b) physical address and license number of the receiving location;
 - _____ (c) strain name, quantities by weight, and unique identification numbers of each cannabis material to be transported;

- _____ (d) date and time of departure;
- _____ (e) estimated date and time of arrival; and
- _____ (f) name and signature of each agent accompanying the cannabis.
- _____ (3) The transport manifest may not be voided or changed after departing from the original cannabis production establishment.
- _____ (4) A copy of the transport manifest shall be given to the independent laboratory.
- _____ (5) The receiving independent laboratory shall ensure that the cannabis material received is as described in the transport manifest and shall record the amounts received for each strain into the inventory control system.
- _____ (6) The receiving independent laboratory shall document at the time of receipt any differences between the quantity specified in the transport manifest and the quantities received in the inventory control system.
- _____ (7) During transport an independent cannabis testing laboratory agent shall ensure the cannabis is:
 - _____ (a) shielded from the public view;
 - _____ (b) secured; and
 - _____ (c) temperature controlled if perishable.
- _____ (8) An independent cannabis testing laboratory shall contact the department within 24 hours if a vehicle transporting cannabis is involved in an accident that involves product loss.
- _____ (9) Only the registered agents of the independent cannabis testing laboratory may occupy a transporting vehicle.

R66-4-9. Cannabis Waste Disposal.

- _____ (1) Solid and liquid wastes generated during cannabis testing shall be stored, managed, and disposed of in accordance with applicable state law.
- _____ (2) Waste water generated during cannabis testing shall be disposed of in compliance with applicable state law.
- _____ (3) Cannabis waste generated from the cannabis plant, trim, and leaves are not considered hazardous waste unless it has been treated or contaminated with a solvent, or pesticide.
- _____ (4) Cannabis waste shall be made unusable before leaving the independent cannabis testing laboratory, except as provided for in Subsection R68-30-9(10) and Subsection R68-30-9(11).
- _____ (5) Cannabis waste, which is not designated as hazardous, shall be made unusable by grinding and incorporating the cannabis waste with other ground materials so the resulting mixture is at least 50% non-cannabis waste by volume or other methods approved by the department before implementation.
- _____ (6) Materials used to grind and incorporate with cannabis fall into two categories:
 - _____ (a) compostable; or
 - _____ (b) non-compostable.
- _____ (7) Compostable waste is cannabis waste to be disposed of as compost or in another organic waste method mixed with:
 - _____ (a) food waste;
 - _____ (b) yard waste; or
 - _____ (c) vegetable-based grease or oils.
- _____ (8) Non-compostable waste is cannabis waste to be disposed of in a landfill or another disposal method, such as incineration, mixed with:
 - _____ (a) paper waste;
 - _____ (b) cardboard waste;
 - _____ (c) plastic waste; or
 - _____ (d) soil.
- _____ (9) Cannabis waste includes:

- _____ (a) cannabis plant waste including roots, stalks, leaves, and stems;
- _____ (b) excess cannabis or cannabis products from any quality assurance testing;
- _____ (c) cannabis or cannabis products that fail to meet testing requirements; and
- _____ (d) cannabis or cannabis products subject to a recall.
- _____ (10) An independent cannabis testing laboratory may transfer cannabis waste material to a cannabis testing laboratory operated by the department for use by a medical cannabis research licensee if:
 - _____ (a) the laboratory operated by the department agrees to accept the material;
 - _____ (b) the licensee that submitted the material to the laboratory for testing allows the use of their material for medical cannabis research;
 - _____ (c) the material passed all required tests or is clearly labeled "not for human consumption" and is accompanied by a list of known contaminants; and
 - _____ (d) the material has met the sample retention requirements of the laboratory.
- _____ (11) The cannabis testing laboratory operated by the department may transfer any cannabis waste material to a medical cannabis research licensee if:
 - _____ (a) the licensee that submitted the material to the laboratory for testing agrees to the use of their material for medical cannabis research;
 - _____ (b) the material passed all required tests or is clearly labeled "not for human consumption" and is accompanied by a list of known contaminants; and
 - _____ (c) the material has met the sample retention requirements of the laboratory.

R66-4-10. Change in Operation Plans.

- _____ (1) An independent cannabis testing laboratory shall submit a notice, on a form provided by the department, before making any changes to:
 - _____ (a) ownership or financial backing of the facility;
 - _____ (b) the facility's name;
 - _____ (c) a change in location;
 - _____ (d) change in testing methods, equipment, remodeling, expansion, reduction or physical, non-cosmetic alteration of the lab; or
 - _____ (e) change in written operating procedures.
- _____ (2) An independent cannabis testing laboratory may not implement changes to the approved operation plan without department approval.
- _____ (3) The department shall approve of requested changes unless approval would lead to a violation of the applicable laws and rules of the state.
- _____ (4) The department shall specify the reason for the denial of approval for a change to the operation plan.

R66-4-11. Renewals.

- _____ (1) An independent cannabis testing laboratory shall submit a notice of intent to renew and the licensing fee to the department by their license expiration date.
- _____ (2) If the licensing fee and intent to renew are not submitted on or before the expiration date, the licensee may not continue to operate.

NOTICES OF PROPOSED RULES

(3) The department shall renew a license unless renewal would lead to a violation of the applicable laws and rules of the state.

R66-4-12. Proficiency Testing.

(1) The department shall establish a proficiency testing program for independent cannabis testing laboratories.

(2) Each independent cannabis testing laboratory shall participate in the designated proficiency testing program with satisfactory performance as determined by the Department.

R66-4-13. Violation Categories.

(1) Public Safety Violations: \$3,000- \$5,000 per violation. This category is for violations which present a direct threat to public health or safety including:

- (a) cannabis sold to an unlicensed source;
- (b) cannabis purchased from an unlicensed source;
- (c) refusal to allow inspection;
- (d) refusal to participate in proficiency testing;
- (e) failure to comply with testing requirements;
- (f) failure to report testing results;
- (g) unauthorized personnel on the premises;
- (h) permitting criminal conduct on the premises;
- (i) engaging in or permitting a violation of the Title 4, Chapter 41a, Cannabis Production Establishments, that amounts to a public safety violation as described in this subsection.

(2) Regulatory Violations: \$1,000-\$5,000 per violation. This category is for violations involving this rule and other applicable state rules including:

- (a) failure to maintain alarm and security systems;
- (b) failure to keep and maintain records for at least two years;
- (c) failure to maintain traceability;
- (d) failure to follow transportation requirements;
- (e) failure to follow the waste and disposal requirements;

or

(f) engaging in or permitting a violation of Title 4, Chapter 41a, Cannabis Production Establishments or this rule that amounts to a regulatory violation as described in this subsection.

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

- (a) an unauthorized change to the operating plan;
- (b) failure to notify the department of changes to the operating plan;
- (c) failure to notify the department of changes to financial or voting interests of greater than 2%;
- (d) failure to follow the operating plan as approved by the department;
- (e) engaging in or permitting a violation of this rule or Title 4, Chapter 41, Cannabis Production Establishments, that amounts to a licensing violation as described in this subsection; or
- (f) 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.

(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.

KEY: cannabis laboratory, cannabis testing

Date of Last Change: 2024

Authorizing, and Implemented or Interpreted Law: 4-41a-701(3); 4-41a-404(3); 4-41a-405(2)(b)(iv); 4-41a-103(5)

NOTICE OF PROPOSED RULE		
TYPE OF FILING: Repeal		
Rule or Section Number:	R68-30	Filing ID: 56503

Agency Information

1. Department:	Agriculture and Food	
Agency:	Plant Industry	
Building:	TSOB South Bldg, Floor 2	
Street address:	4315 S 2700 W	
City, state and zip:	Taylorsville, UT 84129	
Mailing address:	PO Box 146500	
City, state and zip:	Salt Lake City, UT 84114-6500	
Contact persons:		
Name:	Phone:	Email:
Amber Brown	385-245-5222	ambermbrown@utah.gov
Brandon Forsyth	801-710-9945	bforsyth@utah.gov
Kelly Pehrson	385-977-2147	kwpehrson@utah.gov

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

General Information

2. Rule or section catchline:
R68-30. Independent Cannabis Testing Laboratory
3. Purpose of the new rule or reason for the change:
This rule is being repealed so it can be simultaneously reenacted under a new title specific to medical cannabis and industrial hemp, Title R66.
4. Summary of the new rule or change:
This rule is repealed in its entirety so it can be reenacted under a new title specific to medical cannabis and industrial hemp. The substantive content will remain the same under new Rule R66-4.
(EDITOR'S NOTE: The proposed new Rule R66-4 is under ID 56504 in this issue, June 1, 2024, of the Bulletin.)

Fiscal Information

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

A) State budget:			
This change does not have a fiscal impact to the state because this rule is not changing, it is just being repealed to be reenacted under a new title and with a new rule number.			
B) Local governments:			
Local governments will not be impacted because they do not participate in the medical cannabis program.			
C) Small businesses ("small business" means a business employing 1-49 persons):			
This change does not have a fiscal impact to small businesses because this rule is not changing, it is just being repealed to be reenacted under a new title and with a new rule number.			
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):			
This change does not have a fiscal impact to non-small businesses because this rule is not changing, it is just being repealed to be reenacted under a new title and with a new rule number.			
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 change does not have a fiscal impact to other persons because this rule is not changing, it is just being repealed to be reenacted under a new title and with a new rule number.			
F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):			
Compliance costs are not impacted because the substance of this rule is not changing with this filing.			
G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)			
Regulatory Impact Table			
Fiscal Cost	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0

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

Citation Information

6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:		
Subsection		
4-2-103(1)(i)		

Public Notice Information

8. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	07/01/2024

9. This rule change MAY become effective on:	07/08/2024
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.	

Agency Authorization Information

Agency head or designee and title:	Craig W. Buttars, Commissioner	Date:	05/10/2024
---	--------------------------------	--------------	------------

R68. Agriculture and Food, Plant Industry.

~~R68-30. Independent Cannabis Testing Laboratory.~~

~~R68-30-1. Authority and Purpose.~~

~~Pursuant to Subsections 4-41a-103(5), 4-41a-302(3)(b)(ii), 4-41a-404(3), 4-41a-405(2)(b)(iv), 4-41a-701(3), 4-41a-801(1), and 4-2-103(1)(i), this rule establishes the application process, qualifications, and requirements to obtain and maintain an independent cannabis testing laboratory license.~~

~~R68-30-2. Definitions.~~

~~(1) "Applicant" means any person or business entity who applies for a cannabis processing facility license.~~

~~(2) "Batch" means a quantity of:~~

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

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

~~(c) cannabis flower packaged on a particular date and time, following clean up until the next clean up during which lots of cannabis are being used.~~

~~(3) "Cannabis" means any part of a marijuana plant.~~

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

~~(a) possesses cannabis;~~

~~(b) grows or intends to grow cannabis; and~~

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

~~(5) "Cannabis processing facility" means a person that:~~

~~(a) acquires or intends to acquire cannabis from a cannabis production establishment or a holder of an industrial hemp processor license under Title 4 Chapter 41, Hemp and Cannabinoid Act;~~

~~(b) possesses cannabis with the intent to manufacture a cannabis product;~~

~~(c) manufactures or intends to manufacture a cannabis product from unprocessed cannabis or a cannabis extract; and~~

~~(d) sells or intends to sell a cannabis product to a medical cannabis pharmacy or the state central fill medical cannabis pharmacy.~~

~~(6) "Cannabis production establishment agent registration card" means a registration card that the department issues that:~~

~~(a) authorizes an individual to act as a cannabis production establishment agent; and~~

~~(b) designates the type of cannabis production establishment for which an individual may act as an agent.~~

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

~~(8) "Independent cannabis testing laboratory" means a person who:~~

~~(a) conducts a chemical or other analysis of cannabis or a cannabis product; or~~

~~(b) acquires, possesses, and transports cannabis or a cannabis product with the intent to conduct a chemical or other analysis of the cannabis or cannabis product.~~

~~(9) "Independent cannabis testing laboratory agent" means an individual who:~~

~~(a) is an employee of an independent cannabis testing laboratory; and~~

~~(b) holds a valid cannabis production establishment agent registration card.~~

~~(10) "Lot" means the quantity of:~~

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

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

~~(11) "Medical cannabis research licensee" means a person who holds a license to perform academic medical cannabis research pursuant to Section 4-41a-901 and Rule R68-35.~~

~~R68-30-3. Independent Testing Laboratory License.~~

~~(1) An independent testing laboratory license allows the licensee to receive cannabis from a licensed cannabis cultivation facility to conduct testing as required by Subsection 4-41a-701(2) and Rule R68-29.~~

~~(2) An independent testing laboratory license allows the licensee to receive cannabis from a licensed cannabis processing facility to conduct testing as required by Subsection 4-41a-701(2) and Rule R68-29.~~

~~(3) An independent testing laboratory license allows the licensee to receive cannabis from a licensed cannabis cultivation facility and a cannabis processing facility to conduct the additional test as requested.~~

~~(4) A complete application shall include the required fee, statements, forms, diagrams, operation plans, and other applicable documents required in the application packet to be accepted and processed by the department.~~

~~(5) Before approving an application, the department may contact any applicant and request additional supporting documentation or information.~~

~~(6) Before issuing a license, the department shall inspect the proposed premises to determine if the applicant complies with state laws and rules.~~

~~(7) The department may conduct face-to-face interviews with an applicant if needed to determine the best qualified applicant for the number of licenses needed.~~

~~(8) The license shall expire 12 months from the date on which the license is issued.~~

~~(9) An application for renewals shall be submitted to the department no later than 30 days before the license expiration date.~~

~~(10) If the renewal application is not submitted 30 days before the expiration date the licensee may not continue to operate.~~

~~(11) An independent cannabis testing laboratory license is not transferable or assignable. If the ownership of an independent cannabis testing laboratory changes by 50% or more, the requirements of Subsection 4-41a-201(15) shall be followed.~~

~~R68-30-4. Independent Cannabis Testing Laboratory Requirements.~~

~~(1) An independent testing laboratory shall employ a scientific director responsible for:~~

~~(a) ensuring that the laboratory achievement and maintenance of quality standards of practice; and~~

~~(b) supervising laboratory staff.~~

~~(2) The scientific director for an independent laboratory shall have:~~

~~(a) a doctorate in chemical or biological sciences from an accredited college or university and have at least 2 years of post-degree laboratory experience;~~

~~(b) a master's degree in chemical or biological sciences from an accredited college or university and have at least 4 years of post-degree laboratory experience; or~~

~~_____ (c) a bachelor's degree in chemical or biological sciences from an accredited college or university and have at least 6 years of post-degree laboratory experience.~~

~~_____ (3) An independent cannabis testing laboratory shall follow validated analytical methods, such as those published by the Association of Official Agricultural Chemists (AOAC), American Herbal Pharmacopoeia, EPA, FDA, or other reputable scientific organizations or notify the department of alternative scientifically valid testing methodology the lab is following for each required test.~~

~~_____ (4) An independent cannabis testing laboratory may not use an alternative testing method without earlier review from the department.~~

~~_____ (5) The department shall review any monograph or analytical method followed by an independent cannabis testing laboratory to ensure the methodology produces scientifically accurate results before the use of alternative testing methods to conduct the required tests.~~

~~_____ (6) An independent cannabis testing laboratory shall establish written standard operating procedures for each test being conducted.~~

~~_____ (7) An independent cannabis testing laboratory shall maintain an average testing turnaround time below ten business days within any three month period.~~

~~_____ (8) An independent cannabis testing laboratory shall obtain and keep the International Organization for Standardization (ISO) 17025:2017 accreditation.~~

~~_____ (9) An independent cannabis testing laboratory may be licensed before ISO 17025:2017 accreditation provided the independent cannabis testing laboratory:~~

~~_____ (a) adopt and follow minimum good laboratory practices which satisfy the OECD Principles of Good Laboratory Practice and Compliance Monitoring published by the Organization for Economic Co-operation and Development; and~~

~~_____ (b) becomes ISO 17025:2017 accredited within 24 months.~~

~~_____ (10) The department incorporates the following materials by reference:~~

~~_____ (a) Cannabis Inflorescence: Standards of Identity, Analysis, and Quality Control (2014 Revisions) published by the American Herbal Pharmacopoeia; and~~

~~_____ (b) OECD Principles of Good Laboratory Practice and Compliance Monitoring (1997) published by the Organization for Economic Co-operation and Development.~~

~~_____ (11) An independent cannabis testing laboratory shall have written emergency procedures to be followed in case of:~~

- ~~_____ (a) fire;~~
- ~~_____ (b) chemical spill; or~~
- ~~_____ (c) other emergencies at the laboratory.~~

~~_____ (12) An independent cannabis testing laboratory shall compartmentalize each area in the facility based on function and shall limit access to the compartments to the appropriate authorized agents.~~

R68-30-5. Security Requirements.

~~_____ (1) At a minimum, a licensed independent cannabis testing laboratory shall have a security alarm system on each perimeter entry point and perimeter window.~~

~~_____ (2) At a minimum, a licensed independent cannabis testing laboratory shall have complete video surveillance system:~~

- ~~_____ (a) with minimum camera resolution of 640 x 470 pixels or pixel equivalent for analog; and~~
- ~~_____ (b) that retains footage for at least 45 days.~~
- ~~_____ (3) Cameras shall:~~

~~_____ (a) be fixed and placement shall allow for the clear and certain identification of any person and activities in controlled areas; and~~

~~_____ (b) record continuously.~~

~~_____ (4) Controlled areas included:~~

~~_____ (a) entrances and exits;~~

~~_____ (b) any areas where cannabis or cannabis products are stored;~~

~~_____ (c) any areas where cannabis or cannabis products are being tested; and~~

~~_____ (d) any areas where cannabis waste is being moved, processed, stored, or destroyed.~~

~~_____ (5) If an independent cannabis testing facility stores footage locally, the surveillance system storage device shall be secured in the facility in a lockbox, cabinet, closet, or secured in another manner to protect from employee tampering or criminal theft.~~

~~_____ (6) If an independent cannabis testing laboratory stores footage on a remote server, access shall be restricted to protect from employee tampering.~~

~~_____ (7) Any entry point shall be lighted in low light conditions sufficient to record activity occurring.~~

~~_____ (8) Any visitors to an independent cannabis testing laboratory shall be required to have a properly displayed identification badge issued by the facility at all times while on the premises of the facility.~~

~~_____ (9) Any visitors shall be escorted by an independent cannabis facility agent at all times while in the facility.~~

~~_____ (10) An independent cannabis testing laboratory shall keep and maintain a visitor's log showing:~~

- ~~_____ (a) the full name of each visitor entering the facility;~~
- ~~_____ (b) the badge number issued;~~
- ~~_____ (c) the time of arrival;~~
- ~~_____ (d) the time of departure; and~~
- ~~_____ (e) the purpose of the visit.~~

~~_____ (11) The independent cannabis testing laboratory shall keep the visitors log for a minimum of a year.~~

~~_____ (12) The independent cannabis testing laboratory shall make the visitor log available to the department upon request.~~

R68-30-6. Inventory Control.

~~_____ (1) Each test sample shall have a unique identification number in the inventory control system.~~

~~_____ (2) Each test sample shall be traceable to the lot or batch used as the base material from the cannabis production establishment.~~

~~_____ (3) Unique identification numbers may not be reused.~~

~~_____ (4) Each test sample that has been issued a unique identification number shall have a physical tag placed on it with:~~

- ~~_____ (a) the unique identification number;~~
- ~~_____ (b) the license number and name of the lab receiving the test sample;~~
- ~~_____ (c) the license number and name of the cannabis production establishment name;~~
- ~~_____ (d) the date the test sample was collected; and~~
- ~~_____ (e) the weight of the sample.~~

~~_____ (5) The tag shall be legible and placed in a position that can be clearly read and shall be kept free from dirt and debris.~~

~~_____ (6) The following shall be reconciled in the inventory control system at the close of business each day:~~

- ~~_____ (a) the date and time the test sample was received;~~
- ~~_____ (b) each sample used for testing and the test results;~~
- ~~_____ (c) the identity of the agent conducting the test;~~
- ~~_____ (d) a complete inventory of cannabis test samples;~~

NOTICES OF PROPOSED RULES

- ~~_____ (e) the weight and disposal of cannabis waste materials;~~
- ~~_____ (f) the identity of who disposed of the cannabis waste; and~~
- ~~_____ (g) the theft or loss or suspected theft or loss of test sample.~~
- ~~_____ (7) An independent cannabis testing laboratory shall document in the inventory tracking system any test samples received, and any difference between the quantity specified in the transport and quantities received.~~

R68-30-7. Independent Cannabis Testing Laboratory Agents.

- ~~_____ (1) A prospective independent cannabis testing laboratory agent shall apply to the department for a cannabis testing laboratory agent registration card on a form provided by the department.~~
- ~~_____ (2) An application is not considered complete until the background check has been completed, the registration fee has been paid, and the prospective agent has submitted the required training certificate.~~
- ~~_____ (3) The cannabis establishment agent registration card shall contain:~~
 - ~~_____ (a) the agent's full name;~~
 - ~~_____ (b) identifying information; and~~
 - ~~_____ (c) a photograph of the agent.~~
- ~~_____ (4) An independent cannabis testing laboratory is responsible to ensure that each agent has received any task specific training as outlined in the operating plan submitted to the department.~~
- ~~_____ (5) An independent cannabis testing agent shall have a properly displayed identification badge which has been issued by the department while on the facility premises or while engaged in the transportation of cannabis.~~
- ~~_____ (6) Cannabis testing laboratory agents shall have their state issued identification card in their possession to certify the information on their badge is correct.~~
- ~~_____ (7) Each cannabis testing laboratory shall maintain a list of each employee that holds a cannabis testing laboratory agent registration card and provide the list to the department upon request.~~

R68-30-8. Transportation.

- ~~_____ (1) A printed transport manifest shall accompany every transport of cannabis.~~
- ~~_____ (2) The manifest shall contain the following information:~~
 - ~~_____ (a) the cannabis production establishment address and license number of the departure location;~~
 - ~~_____ (b) physical address and license number of the receiving location;~~
 - ~~_____ (c) strain name, quantities by weight, and unique identification numbers of each cannabis material to be transported;~~
 - ~~_____ (d) date and time of departure;~~
 - ~~_____ (e) estimated date and time of arrival; and~~
 - ~~_____ (f) name and signature of each agent accompanying the cannabis.~~
- ~~_____ (3) The transport manifest may not be voided or changed after departing from the original cannabis production establishment.~~
- ~~_____ (4) A copy of the transport manifest shall be given to the independent laboratory.~~
- ~~_____ (5) The receiving independent laboratory shall ensure that the cannabis material received is as described in the transport manifest and shall record the amounts received for each strain into the inventory control system.~~
- ~~_____ (6) The receiving independent laboratory shall document at the time of receipt any differences between the quantity specified in the transport manifest and the quantities received in the inventory control system.~~

- ~~_____ (7) During transport an independent cannabis testing laboratory agent shall ensure the cannabis is:~~
 - ~~_____ (a) shielded from the public view;~~
 - ~~_____ (b) secured; and~~
 - ~~_____ (c) temperature controlled if perishable.~~
- ~~_____ (8) An independent cannabis testing laboratory shall contact the department within 24 hours if a vehicle transporting cannabis is involved in an accident that involves product loss.~~
- ~~_____ (9) Only the registered agents of the independent cannabis testing laboratory may occupy a transporting vehicle.~~

R68-30-9. Cannabis Waste Disposal.

- ~~_____ (1) Solid and liquid wastes generated during cannabis testing shall be stored, managed, and disposed of in accordance with applicable state law.~~
- ~~_____ (2) Waste water generated during cannabis testing shall be disposed of in compliance with applicable state law.~~
- ~~_____ (3) Cannabis waste generated from the cannabis plant, trim, and leaves are not considered hazardous waste unless it has been treated or contaminated with a solvent, or pesticide.~~
- ~~_____ (4) Cannabis waste shall be made unusable before leaving the independent cannabis testing laboratory, except as provided for in Subsection R68-30-9(10) and Subsection R68-30-9(11).~~
- ~~_____ (5) Cannabis waste, which is not designated as hazardous, shall be made unusable by grinding and incorporating the cannabis waste with other ground materials so the resulting mixture is at least 50% non-cannabis waste by volume or other methods approved by the department before implementation.~~
- ~~_____ (6) Materials used to grind and incorporate with cannabis fall into two categories:~~
 - ~~_____ (a) compostable; or~~
 - ~~_____ (b) non-compostable.~~
- ~~_____ (7) Compostable waste is cannabis waste to be disposed of as compost or in another organic waste method mixed with:~~
 - ~~_____ (a) food waste;~~
 - ~~_____ (b) yard waste; or~~
 - ~~_____ (c) vegetable based grease or oils.~~
- ~~_____ (8) Non-compostable waste is cannabis waste to be disposed of in a landfill or another disposal method, such as incineration, mixed with:~~
 - ~~_____ (a) paper waste;~~
 - ~~_____ (b) cardboard waste;~~
 - ~~_____ (c) plastic waste; or~~
 - ~~_____ (d) soil.~~
- ~~_____ (9) Cannabis waste includes:~~
 - ~~_____ (a) cannabis plant waste including roots, stalks, leaves, and stems;~~
 - ~~_____ (b) excess cannabis or cannabis products from any quality assurance testing;~~
 - ~~_____ (c) cannabis or cannabis products that fail to meet testing requirements; and~~
 - ~~_____ (d) cannabis or cannabis products subject to a recall.~~
- ~~_____ (10) An independent cannabis testing laboratory may transfer cannabis waste material to a cannabis testing laboratory operated by the department for use by a medical cannabis research licensee if:~~
 - ~~_____ (a) the laboratory operated by the department agrees to accept the material;~~
 - ~~_____ (b) the licensee that submitted the material to the laboratory for testing allows the use of their material for medical cannabis research;~~

- ~~_____ (c) the material passed all required tests or is clearly labeled "not for human consumption" and is accompanied by a list of known contaminants; and~~
- ~~_____ (d) the material has met the sample retention requirements of the laboratory.~~
- ~~_____ (11) The cannabis testing laboratory operated by the department may transfer any cannabis waste material to a medical cannabis research licensee if:~~
 - ~~_____ (a) the licensee that submitted the material to the laboratory for testing agrees to the use of their material for medical cannabis research;~~
 - ~~_____ (b) the material passed all required tests or is clearly labeled "not for human consumption" and is accompanied by a list of known contaminants; and~~
 - ~~_____ (c) the material has met the sample retention requirements of the laboratory.~~

R68-30-10. Change in Operation Plans.

- ~~_____ (1) An independent cannabis testing laboratory shall submit a notice, on a form provided by the department, before making any changes to:~~
 - ~~_____ (a) ownership or financial backing of the facility;~~
 - ~~_____ (b) the facility's name;~~
 - ~~_____ (c) a change in location;~~
 - ~~_____ (d) change in testing methods, equipment, remodeling, expansion, reduction or physical, non-cosmetic alteration of the lab; or~~
 - ~~_____ (e) change in written operating procedures.~~
- ~~_____ (2) An independent cannabis testing laboratory may not implement changes to the approved operation plan without department approval.~~
- ~~_____ (3) The department shall approve of requested changes unless approval would lead to a violation of the applicable laws and rules of the state.~~
- ~~_____ (4) The department shall specify the reason for the denial of approval for a change to the operation plan.~~

R68-30-11. Renewals.

- ~~_____ (1) An independent cannabis testing laboratory shall submit a notice of intent to renew and the licensing fee to the department by their license expiration date.~~
- ~~_____ (2) If the licensing fee and intent to renew are not submitted on or before the expiration date, the licensee may not continue to operate.~~
- ~~_____ (3) The department shall renew a license unless renewal would lead to a violation of the applicable laws and rules of the state.~~

R68-30-12. Proficiency Testing.

- ~~_____ (1) The department shall establish a proficiency testing program for independent cannabis testing laboratories.~~
- ~~_____ (2) Each independent cannabis testing laboratory shall participate in the designated proficiency testing program with satisfactory performance as determined by the Department.~~

R68-30-13. Violation Categories.

- ~~_____ (1) Public Safety Violations: \$3,000-\$5,000 per violation. This category is for violations which present a direct threat to public health or safety including:~~
 - ~~_____ (a) cannabis sold to an unlicensed source;~~
 - ~~_____ (b) cannabis purchased from an unlicensed source;~~
 - ~~_____ (c) refusal to allow inspection;~~
 - ~~_____ (d) refusal to participate in proficiency testing;~~

- ~~_____ (e) failure to comply with testing requirements;~~
- ~~_____ (f) failure to report testing results;~~
- ~~_____ (g) unauthorized personnel on the premises;~~
- ~~_____ (h) permitting criminal conduct on the premises;~~
- ~~_____ (i) engaging in or permitting a violation of the Title 4, Chapter 41a, Cannabis Production Establishments, that amounts to a public safety violation as described in this subsection.~~
- ~~_____ (2) Regulatory Violations: \$1,000-\$5,000 per violation. This category is for violations involving this rule and other applicable state rules including:~~
 - ~~_____ (a) failure to maintain alarm and security systems;~~
 - ~~_____ (b) failure to keep and maintain records for at least two years;~~
 - ~~_____ (c) failure to maintain traceability;~~
 - ~~_____ (d) failure to follow transportation requirements;~~
 - ~~_____ (e) failure to follow the waste and disposal requirements; or~~
 - ~~_____ (f) engaging in or permitting a violation of Title 4, Chapter 41a, Cannabis Production Establishments or this rule that amounts to a regulatory violation as described in this subsection.~~
- ~~_____ (3) Licensing Violations: \$500-\$5,000 per violation. This category is for violations involving licensing requirements including:~~
 - ~~_____ (a) an unauthorized change to the operating plan;~~
 - ~~_____ (b) failure to notify the department of changes to the operating plan;~~
 - ~~_____ (c) failure to notify the department of changes to financial or voting interests of greater than 2%;~~
 - ~~_____ (d) failure to follow the operating plan as approved by the department;~~
 - ~~_____ (e) engaging in or permitting a violation of this rule or Title 4, Chapter 41, Cannabis Production Establishments, that amounts to a licensing violation as described in this subsection; or~~
 - ~~_____ (f) 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.~~

~~**KEY: cannabis laboratory, cannabis testing**
Date of Last Change: May 6, 2024
Authorizing, and Implemented or Interpreted Law: 4-41a-701(3); 4-41a-404(3); 4-41a-405(2)(b)(iv); 4-41a-103(5)]~~

NOTICE OF PROPOSED RULE		
TYPE OF FILING: New		
Rule or Section Number:	R166-72	Filing ID: 56528

Agency Information

1. Department:	Commerce
Agency:	Artificial Intelligence Policy
Room number:	200
Building:	Heber M. Wells Bldg
Street address:	160 E 300 S
City, state and zip:	Salt Lake City, UT 84111
Mailing address:	PO Box 146701

City, state and zip:	Salt Lake City, UT 84114-6701	
Contact persons:		
Name:	Phone:	Email:
Masuda Medcalf	801-530-7663	mmedcalf@utah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule or section catchline:
R166-72. Artificial Intelligence Learning Laboratory Program
3. Purpose of the new rule or reason for the change:
Section 13-72-201 authorizes the creation of the Office of Artificial Intelligence Policy (OAIP), which, among other duties, requires the creation and administration of the artificial intelligence (AI) learning laboratory program. This proposed rule is to comply with the requirements of the statute.
4. Summary of the new rule or change:
This rule establishes the AI learning laboratory program in OAIP; the procedures, and criteria for participation; criteria for invitation, acceptance, denial, or removal of participants; requirements for continuing participation in the laboratory, including: cybersecurity requirements, reporting requirements, and conditions for extension.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
A) State budget:
During the 2024 General Session, the Legislature passed S.B. 149, Artificial Intelligence Amendments, which included an analysis of the costs and revenue to the Commerce Service Account. There is no additional anticipated cost or savings to the state budget beyond the statute's fiscal analysis statement. Accordingly, there is no need to complete the table in Section G below.
B) Local governments:
This rule is not expected to affect or have a financial impact on local governments, as the Department of Commerce does not anticipate that they will participate in the AI laboratory.

C) Small businesses ("small business" means a business employing 1-49 persons):
The Legislature passed S.B. 149 (2024), which included a fee of up to \$2,500 for participation in the artificial intelligence laboratory and a fee of up to \$800 as a potential regulatory mitigation fee. At this time, OAIP will not charge a fee for participation in the laboratory. There will be a fee for an application for regulatory mitigation, and an annual fee for regulatory mitigation participation. However, those fees are estimated to be no more than a total of \$800, and thus within the scope of S.B. 149's fiscal note. If a small business participates in the AI program, the business could be subject to regulatory mitigation fees.
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):
The Legislature passed S.B. 149 (2024), which included a fee of up to \$2,500 for participation in the artificial intelligence laboratory and a fee of up to \$800 as a potential regulatory mitigation fee. At this time, OAIP will not charge a fee for participation in the laboratory. There will be a fee for an application for regulatory mitigation, and an annual fee for regulatory mitigation participation. However, those fees are estimated to be no more than a total of \$800, and thus within the scope of S.B. 149's fiscal note. If a non-small business participates in the AI program, the business could be subject to regulatory mitigation fees. OAIP estimates this will affect approximately 10 non-small businesses paying no more than \$800 each year.
E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency):
The Legislature passed S.B. 149 (2024), which included a fee of up to \$2,500 for participation in the artificial intelligence laboratory and a fee of up to \$800 as a potential regulatory mitigation fee. At this time, OAIP will not charge a fee for participation in the laboratory. There will be a fee for an application for regulatory mitigation, and an annual fee for regulatory mitigation participation. However, those fees are estimated to be no more than a total of \$800, and thus within the scope of S.B. 149's fiscal note. If a person other than small businesses, non-small businesses, state, or local government entities participates in the AI program, the person could be subject to regulatory mitigation fees.

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

The Legislature passed S.B. 149 (2024), which included a fee of up to \$2,500 for participation in the artificial intelligence laboratory and a fee of up to \$800 as a potential regulatory mitigation fee.

At this time, OAIIP will not charge a fee for participation in the laboratory. There will be a fee for an application for regulatory mitigation, and an annual fee for regulatory mitigation participation. However, those fees are estimated to be no more than a total of \$800, and thus within the scope of S.B. 149's fiscal note.

A person affected by this rule and participating in the AI program could be subject to regulatory mitigation fees.

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

Regulatory Impact Table

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

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

The Executive Director of the Department of Commerce, Margaret W. Busse, has reviewed and approved this regulatory impact analysis.

Citation Information

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

Section 13-72-201	Subsection 13-72-302(1)	
-------------------	-------------------------	--

Public Notice Information

8. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:	07/01/2024
--	------------

9. This rule change MAY become effective on:	07/08/2024
---	------------

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

Agency Authorization Information

Agency head or designee and title:	Zachary Boyd, Director, Office of Artificial Intelligence Policy	Date:	05/10/2024
---	--	--------------	------------

R166. Commerce, Artificial Intelligence Policy, R166-72. Artificial Intelligence Learning Laboratory Program, R166-72-1. Purpose and Authority.

(1) This rule establishes procedures and standards to implement Title 13, Chapter 72, Artificial Intelligence Policy Act.

(2) This rule applies to applicants and invitees seeking to participate in the learning laboratory.

R166-72-2. Definitions.

These definitions supplement the definitions set forth in Title 13, Chapter 72, Artificial Intelligence Policy Act:

(1) "Acceptance" or "accepted" means the applicant or invitee has received a signed note of acceptance from the office.

(2) "Application form" means the learning laboratory participation application form prescribed by the office.

(3) "Demonstration period" means the initial period in which a participant abides by the terms of a mitigation agreement.

(4) "Extension request" means the extension request prescribed by the office to extend a regulatory mitigation agreement.

(5) "Invitation" means any form of communication from the office inviting a person to apply or participate in the learning laboratory.

(6) "Open call period" means a designated time frame that is set, terminated, and reset by the office, during which a person may apply to participate in the learning laboratory.

(7) "Participation agreement" means a learning laboratory participation agreement form prescribed by the office.

(8) "Person" means a person as defined in Subsection 68-3-12.5(23).

R166-72-3. Program Application Procedures.

(1) A person who intends to participate in the learning laboratory may apply during an open call period by completing and submitting an application form pursuant to Section R166-72-4.

(2) Before submitting an application, a prospective applicant may request the director to schedule a pre-application conference to discuss the application, the learning laboratory, and its requirements.

(3) An applicant or invitee is not accepted into the learning laboratory unless the applicant or invitee receives an official note of acceptance from the office.

(4) The office may request an applicant to provide additional information to consider an application.

(5) The office may require an accepted participant to sign a participation agreement.

(6)(a) The office may invite a person to participate in the learning laboratory through its own initiative.

(b) The office may accept an invited participant without requiring an application.

(c) An invitation from the office does not guarantee acceptance into the learning laboratory.

(7) Once accepted into the learning laboratory, a participant shall meet the requirements in Sections R166-72-5 and R166-72-6.

R166-72-4. Learning Laboratory Criteria.

(1) The office may consider the following criteria in determining whether to accept a person into the learning laboratory:

(a) whether the prospective participant's expertise or business activity is reasonably connected to potential regulation or legislation as it relates to the learning agenda announced by the office;

(b) the prospective participant's nexus to the state;

(c) the prospective participant's regulatory or criminal history, including any violations of state or federal law; and

(d) any other relevant factor.

(2) The office may deny or terminate participation of any prospective or current participant for any lawful reason.

R166-72-5. General Participation Requirements.

(1) While participating in the learning laboratory a participant may be required to:

(a) sign and submit a participation agreement form upon acceptance if the office requires it;

(b) submit reports requested by the office regarding various parameters of the participant's participation in the learning laboratory as determined by the office;

(c) comply with any data usage, conflicts of interest, consumer disclosure, or cybersecurity requirements prescribed by the office; and

(d) comply with any additional requirements, fees, or fines prescribed by the office that are necessary to administer the learning laboratory.

(2) The office may remove a participant from or limit participation in the learning laboratory for any reason, including:

(a) a participant's failure to meet the requirements of Section R166-72-5 or Section R166-72-6; or

(b) a participant's failure to meet the requirements of a participation agreement's Terms of Use.

R166-72-6. Regulatory Mitigation - Agreement.

(1) A participant in the learning laboratory may apply for a regulatory mitigation agreement as defined in Subsections 13-72-101(11) and (12).

(2) To qualify for a mitigation agreement, a participant shall:

(a) meet the requirements in Sections 13-72-302 and 13-72-303; and

(b) meet the following additional requirements:

(i) pay an application fee and the annual participation fee prescribed by the office;

(ii) if the applicant is an entity, be registered in at least one state; and

(iii) complete a mitigation application form prescribed by the office.

(3) The office may also consider the following factors in determining whether to grant a mitigation application:

(a) the applicant's ability to comply with reporting, data usage, cybersecurity, disclosure, and conflict requirements;

(b) whether the applicant has received approval for mitigation from other relevant state agencies, where applicable;

(c) the scope of the applicant's prior, current, or potential involvement in the learning laboratory; and

(d) any other relevant factor.

(4) The office may deny a mitigation application for any lawful reason.

R166-72-7. Regulatory Mitigation - Extension.

(1)(a) A participant who wishes to extend a mitigation agreement may submit an extension request form as prescribed by the office.

(b) The office may consider the following factors in deciding whether to grant an extension:

(i) whether the participant's prior involvement was beneficial to the learning laboratory;

(ii) the prospects of additional learning if the request for an extended mitigation agreement is granted;

(iii) any proposed or imminent law regarding artificial intelligence; and

(iv) any other relevant factor.

(2) The office may deny a request for a mitigation agreement extension for any lawful reason.

(3) Regulatory mitigation agreements and any extensions are subject to the duration requirements set forth in Section 13-72-305.

KEY: artificial intelligence, learning laboratory, regulatory mitigation

Date of Last Change: 2024

Authorizing, and Implemented or Interpreted Law: 13-72-201; 13-702-302

NOTICE OF PROPOSED RULE		
TYPE OF FILING: Amendment		
Rule or Section Number:	R277-115	Filing ID: 56513

Agency Information

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

General Information

2. Rule or section catchline:
R277-115. LEA Supervision and Monitoring Requirements of Third Party Providers and Contracts
3. Purpose of the new rule or reason for the change:
This rule is being amended to make necessary updates to the standards for a Local Education Agency (LEA) working with a third party provider to ensure the third party provider complies with applicable law.
4. Summary of the new rule or change:
The amendments specifically add an oversight categorization as 'Category 2', update LEA Requirements of Education Service Providers, and make revisions to the requirements of Third Party Provider Provision of Services.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
A) State budget:
This rule change is not expected to have fiscal impact on state government revenues or expenditures.
The oversight framework categorization is part of the Utah State Board of Education's (USBE) effort through Rule R277-111 to categorize each rule into an oversight framework category, or to delineate for stakeholders what

type of monitoring or oversight is required by USBE resulting from the rule.

This categorization does not add any requirements or resources in and of itself for the USBE or LEAs.

This rule updates to LEA requirements of education service providers and third party provider provision of services do not add to USBE workload and will not require additional staff or resources.

B) Local governments:

This rule change is not expected to have fiscal impact on local governments' revenues or expenditures.

The oversight framework categorization is part of USBE's effort through Rule R277-111 to categorize each rule into an oversight framework category, or to delineate for stakeholders what type of monitoring or oversight is required by USBE resulting from the rule.

This categorization does not add any requirements or resources in and of itself for USBE or LEAs. This rule updates to LEA requirements of education service providers and third party provider provision of services provide guidance to LEAs utilizing educational service providers.

The USBE does not estimate any increased costs for LEAs as a result of the rule changes – the updates clarify LEA responsibilities and ensure LEAs comply with their existing responsibilities to monitor and oversee contracted service providers. LEAs may need to update their procedures in monitoring third party providers, however, USBE believes this can be accomplished with existing LEA staff and resources.

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

This rule change is not expected to have fiscal impact on small businesses' revenues or expenditures.

This rule change only affects USBE and LEAs.

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

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

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

This rule change is not expected to have fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities.

This rule change only impacts USBE and LEAs.

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

There are no compliance costs for affected persons. The oversight framework categorization is part of USBE's effort through Rule R277-111 to categorize each rule into an oversight framework category, or to delineate for stakeholders what type of monitoring or oversight is required by the USBE resulting from this rule.

This categorization does not add any requirements or resources in and of itself for USBE or LEAs. USBE does not estimate any increased costs for LEAs as a result of the rule changes – the updates clarify LEA responsibilities and ensure LEAs comply with their existing responsibilities to monitor and oversee contracted service providers.

LEAs may need to update their procedures in monitoring third party providers, however, USBE believes LEAs can update their procedures with existing staff and resources as this is part of normal operating procedure.

This rule updates to LEA requirements of education service providers and third party provider provision of services do not add to USBE workload and will not require additional staff or resources.

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

Regulatory Impact Table			
Fiscal Cost	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0

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

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

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

Citation Information

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

Article X, Section 3	Subsection 53E-3-401(4)	Subsection 53E-3-401(10)
----------------------	-------------------------	--------------------------

Public Notice Information

8. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until: 07/01/2024

9. This rule change MAY become effective on: 07/08/2024

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

Agency Authorization Information

Agency head or designee and title:	Angie Stallings, Deputy Superintendent of Policy	Date:	05/15/2024
---	--	--------------	------------

R277. Education, Administration.

R277-115. LEA Supervision and Monitoring Requirements of Third Party Providers and Contracts.

R277-115-1. Authority, ~~and~~ Purpose, and Oversight Category.

(1) This rule is authorized by:

(a) 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

(b) Subsection 53E-3-401(10), which allows the Board to direct an LEA to require in a contract with a third party provider that the third party provider shall provide, upon request of the LEA, information necessary for the LEA to verify that the educational good or service complies with:

(i) Titles 53E, 53F, and 53G; and

(ii) Board rule.

(2) The purpose of this rule is[~~to~~]

~~(a)] to provide standards for an LEA working with a third party provider to ensure the third party provider complies with applicable law.~~

(3) This Rule R277-115 is categorized as Category 2 as described in Rule R277-111.

R277-115-2. Definitions.

(1) "Educational good or service" means the same as that term is defined in Section 53E-3-401.

(2) "Education service provider" means a third party provider that provides academic instruction to students that yields grades or credit.

(3) "Section 504" means Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794.

(4) "Third party provider" means a third party who provides an educational good or service on behalf of an LEA.

R277-115-3. Third Party Provider Provision of Services.

~~(1) An LEA that contracts with a third party provider to provide an educational good or service on behalf of the LEA shall:~~

~~(a) require in the LEA's contract with a third party provider that the third party provider shall provide, upon request of the LEA, information necessary for the LEA to verify that the educational good or service complies with:~~

~~(i) Titles 53E, 53F, and 53G; and~~

~~(ii) Board rule;~~

~~(b) establish monitoring and compliance procedures to ensure that a third party provider who provides educational services to a student on behalf of the LEA complies with this rule;~~

~~(c) develop a written monitoring plan to supervise the educational good or service provided by the third party provider;~~

~~(d) ensure the third party provider is complying with:~~

~~(i) federal law;~~

~~(ii) state law; and~~

~~(iii) Board rules;~~

~~(e) monitor and supervise all activities of the third party provider related to the educational good or service provided by the third party provider to the LEA; and~~

~~(f) maintain documentation of the LEA's supervisory activities consistent with the LEA's administrative records retention schedule.~~

~~(2) An LEA shall:~~

~~(a) verify the accuracy and validity of a student's enrollment verification data, prior to enrolling a student in the LEA; and~~

~~(b) provide a student and the student's parent or guardian with notification of the student's enrollment in a school or program within the LEA.~~

~~(3) In accordance with Section 63A-12-103, an LEA shall maintain records documenting:~~

~~(a) services provided by third party providers; and~~

~~(b) payments made to third party providers.~~

~~(4) An LEA has direct and full responsibility for all actions of its third party providers and the third party provider's employees for actions performed in the scope of services provided on behalf of the LEA.]~~

R277-115-4]3. LEA Requirements of Education Service Providers.

(1) An LEA shall ensure that each staff member of an education service provider:

(a) receives a background check and has ongoing monitoring in accordance with Title 53G, Chapter 11, Part 4 Background Checks; and

(b) holds appropriate license, license areas of concentration, and endorsements as set forth in Rule R277-309.

(2) An LEA shall ensure that a student identified as having a disability under the IDEA or Section 504 receiving instruction from an education service provider receives a free and appropriate public education.

(3) An LEA shall require each education service provider provide the LEA with information about any student receiving services that the education service provider suspects of having a disability, so that the LEA can conduct child find responsibilities under the IDEA.

(4)(a) An LEA shall register all students receiving services from an education service provider.

(b) An education service provider may not enroll or register a student [on behalf of]at an LEA.

(5) An LEA shall pay an education service provider on a reimbursement basis.

(6) An LEA shall:

(a) ensure appropriate coding of expenditures to an education service provider for IDEA services; and

(b) ensure that expenditures classified under Subsection (a) are reportable to the LEA and the Superintendent.

[(6)7] An LEA may not record education service provider staff as teachers with an assignment in CACTUS or USIMS.

(8) An LEA may not utilize or encumber WPU funds for students receiving services from education service providers for expenses or projects that span longer than the length of the LEA's contract with the provider, including termination clauses.

R277-115-4. Third Party Provider Provision of Services.

(1) An LEA that contracts with a third party provider to provide an educational good or service on behalf of the LEA shall:

(a) require in the LEA's contract with a third party provider that the third party provider shall provide, upon request of the LEA, information necessary for the LEA to verify that the educational good or service complies with:

(i) Titles 53E, 53F, and 53G; and

(ii) Board rule;

(b) establish monitoring and compliance procedures to ensure that a third party provider who provides educational services to a student on behalf of the LEA complies with this rule;

NOTICES OF PROPOSED RULES

(c) develop a written monitoring plan to supervise the educational good or service provided by the third party provider;
(d) ensure the third party provider is complying with:
(i) federal law;
(ii) state law; and
(iii) Board rules;
(e) monitor and supervise all activities of the third party provider related to the educational good or service provided by the third party provider to the LEA;
(f) maintain documentation of the LEA's supervisory activities consistent with the LEA's administrative records retention schedule; and
(g) review the plan described in Subsection (c) and any documentation of supervisory activities with the LEA's audit committee no less than annually.
(2) An LEA shall:
(a) verify the accuracy and validity of a student's enrollment verification data, before enrolling a student in the LEA; and
(b) provide a student and the student's parent or guardian with notification of the student's enrollment in a school or program within the LEA.
(3) In accordance with Section 63A-12-103, an LEA shall maintain records documenting:
(a) services provided by third party providers; and
(b) payments made to third party providers.
(4) In the event an LEA cancels a contract with an educational service provider, the LEA shall:
(a) continue to provide educational goods or services to enrolled students for the rest of the school year; and
(b) notify parents of the following information:
(i) the planned elimination of the specific educational good or service provided by the educational service provider;
(ii) the status of the student's enrollment; and
(iii) any steps required of a student to transfer or unenroll.
(5) When an LEA terminates a contract with an educational service provider, the LEA may incur a loss of hold harmless funds for the loss in student count the next fiscal year.
(6) An LEA has direct and full responsibility for all actions of its third party providers and the third party provider's employees for actions performed in the scope of services provided on behalf of the LEA.

R277-115-5. Corrective Action.

The Board or the Superintendent may withhold funds or require an LEA to repay public funds to the Superintendent if:
 (1) the LEA fails to comply with this rule or the law; and
 (2) the repayment is made in accordance with the procedures established in Rule R277-114.

KEY: third party providers, contracts, monitoring
Date of Last Change: 2024[April 7, 2023]
Notice of Continuation: May 10, 2024
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-401(4) and (10)

NOTICE OF PROPOSED RULE		
TYPE OF FILING: Amendment		
Rule or Section Number:	R277-301	Filing ID: 56514

Agency Information

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

General Information

2. Rule or section catchline:
R277-301. Educator Licensing
3. Purpose of the new rule or reason for the change:
This rule is being amended due to the passage of H.B. 208 during the 2024 General Session, which requires alternative pathways for educator licensure, which does not include completion of the Praxis exam.
4. Summary of the new rule or change:
The amendments specifically: 1) add an oversight categorization as "Category 4", 2) update definitions, 3) replace the definition for "Accredited school" with a definition for "Accredited institution", 4) clarify the timing of license renewals, 5) allow for one extension of an Associate license, 6) update requirements for an Associate and Out-of-State license, 7) update candidate appeal rights, and 8) make technical changes.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
A) State budget:
This rule change is not expected to have fiscal impact on state government revenues or expenditures.
The oversight framework categorization is part of the Utah State Board of Education's (USBE) effort through Rule R277-111 to categorize each rule into an oversight framework category, or to delineate for stakeholders what

type of monitoring or oversight is required by the USBE resulting from the rule.

This categorization does not add any requirements or resources in and of itself for the USBE or Local Education Agencies (LEA). Changes are made due to the passage of H.B. 208 (2024).

The USBE believes the fiscal impacts were captured in the fiscal note to H.B. 208 (2024).

Other updates to clarify license renewal timing and associate and out-of-state licenses do not add costs or resources for the USBE, LEAs, or educators.

The changes give clearer guidance and allow for greater flexibility for LEAs and educators but do not add any measurable costs or staff time.

B) Local governments:

This rule change is not expected to have fiscal impact on local governments' revenues or expenditures. The oversight framework categorization is part of USBE's effort through Rule R277-111 to categorize each rule into an oversight framework category, or to delineate for stakeholders what type of monitoring or oversight is required by the USBE resulting from the rule.

This categorization does not add any requirements or resources in and of itself for the USBE or LEAs. Changes are made due to the passage of H.B. 208 (2024). The USBE believes the fiscal impacts were captured in the fiscal note to H.B. 208 (2024).

Other updates to clarify license renewal timing and associate and out-of-state licenses do not add costs or resources for USBE, LEAs, or educators.

The changes give clearer guidance and allow for greater flexibility for LEAs and educators but do not add any measurable costs or staff time.

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

This rule change is not expected to have fiscal impact on small businesses' revenues or expenditures.

This only affects the USBE and LEAs.

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

There are no non-small businesses in the industry in question, Elementary and Secondary Schools (North American Industry Classification System (NAICS) 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. This proposed rule change is not expected to

have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses, and it does not require any expenditures of, or generate revenue for non-small businesses.

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

This rule change is not expected to have fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities.

The oversight framework categorization is part of USBE's effort through Rule R277-111 to categorize each rule into an oversight framework category, or to delineate for stakeholders what type of monitoring or oversight is required by the USBE resulting from the rule.

This categorization does not add any requirements or resources in and of itself for the USBE or LEAs. Changes are made due to the passage of H.B. 208 (2024).

The USBE believes the fiscal impacts were captured in the fiscal note to H.B. 208 (2024). Other updates to clarify license renewal timing and associate and out-of-state licenses do not add costs or resources for the USBE, LEAs, or educators. The changes give clearer guidance and allow for greater flexibility for LEAs and educators but do not add any measurable costs or staff time.

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

There are no compliance costs for affected persons.

The oversight framework categorization is part of the USBE's effort through Rule R277-111 to categorize each rule into an oversight framework category, or to delineate for stakeholders what type of monitoring or oversight is required by USBE resulting from the rule.

This categorization does not add any requirements or resources in and of itself for the USBE or LEAs. Changes are made due to the passage of H.B. 208 (2024).

The USBE believes the fiscal impacts were captured in the fiscal note to H.B. 208 (2024). Other updates to clarify license renewal timing and associate and out of state licenses do not add costs or resources for the USBE, LEAs, or educators. The changes give clearer guidance and allow for greater flexibility for LEAs and educators but do not add any measurable costs or staff time.

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

Regulatory Impact Table			
Fiscal Cost	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0
H) Department head comments on fiscal impact and approval of regulatory impact analysis:			
The State Superintendent of the Utah State Board of Education, Sydnee Dickson, has reviewed and approved this fiscal analysis.			

Citation Information

6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:		
Article X, Section 3	Section 53E-3-401	Section 53E-6-102

Public Notice Information

8. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	07/01/2024

9. This rule change MAY become effective on:	07/08/2024
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.	

Agency Authorization Information

Agency head or designee and title:	Angie Stallings, Deputy Superintendent of Policy	Date:	05/15/2024
---	--	--------------	------------

R277. Education, Administration.

R277-301. Educator Licensing.

R277-301-1. Authority, ~~and~~ Purpose, and Oversight Category.

- (1) This rule is authorized by:
 - (a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;
 - (b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and
 - (c) Section 53E-6-201, which gives the Board power to issue licenses.

(2) This rule specifies the types of licenses and license areas of concentration available and the requirements and procedures for obtaining a license, required for employment as a licensed educator in the public schools of Utah.

(3) This Rule R277-301 is categorized as Category 4 as described in Rule R277-111.

R277-301-2. Definitions.

~~_____ (1) "Accredited school" means a public or private school that:~~

- ~~_____ (a) meets standards essential for the operation of a quality school program; and~~
- ~~_____ (b) has received formal approval through a regional accrediting association.]~~

_____ (1) "Accredited institution" means an institution that:

- _____ (a) offers a competency-based postsecondary general education course online or in person; and
- _____ (b) is accredited by an organization recognized by the United States Department of Education.

(2) "Currently enrolled" means:

- (a) that an individual has been formally accepted into a Board-approved educator preparation program; and
- (b) that the program considers the individual to be an active participant.

(3) "Educator preparation program" means the same as that term is defined in Section R277-303-2.

(4) "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.
- (5) "LEA" includes, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

(6)~~(a)~~ "License areas of concentration" or "license area" means a designation on a license of the specific educational setting or role for which the individual is qualified, to include the following:

- ~~[(i)]~~(a) Early Childhood;
- ~~[(ii)]~~(b) Elementary;
- ~~[(iii)]~~(c) Secondary;
- ~~[(iv)]~~(d) School-Leadership;
- ~~[(v)]~~(e) Career and Technical Education or "CTE";
- ~~[(vi)]~~(f) School Counselor;
- ~~[(vii)]~~(g) School Psychologist;
- ~~[(viii)]~~(h) Special Education;
- ~~[(ix)]~~(i) Pre-school Special Education;
- ~~[(x)]~~(j) Deaf Education;
- ~~[(xi)]~~(k) Speech-Language Pathologist;
- ~~[(xii)]~~(l) Speech-Language Technician;
- ~~[(xiii)]~~(m) School Social Worker; and
- ~~[(xiv)]~~(n) Audiologist.

(7) "Licensing Jurisdiction" means the designated educator licensing authority in any foreign country or state of the United States of America and the Department of Defense Education Activity (DoDEA).

(8) "NASDTEC" means the National Association of State Directors of Teacher Education and Certification.

(9) "NASDTEC Stage 2 Educator License" means a license issued to an individual who holds a bachelor's degree and has completed an approved program but has not met the jurisdiction-specific requirement for a Stage 3 license of a member jurisdiction.

(10) "Renewal" means reissuing or extending the length of a license consistent with Rule R277-302.

R277-301-3. License Structure.

(1) Utah educator licenses include the following licenses:

- (a) Associate educator license;
- (b) Professional educator license; and
- (c) LEA-specific educator license.

(2) The Superintendent may only issue one single active Utah educator license to an individual.

(3) An educator license shall include at least one license area of concentration.

(4) License areas of concentration and endorsements shall have a designation of:

- (a) associate;
- (b) professional; or
- (c) LEA-specific.

(5) An associate educator license may only include associate or LEA-specific license areas of concentration and endorsements.

(6) An LEA-specific educator license may only include LEA-specific license areas of concentration and endorsements.

(7) An educator may add a license area or endorsement to an existing license or license area of concentration by meeting the requirements for an associate, professional, or LEA-specific endorsement as established in this rule.

(8) The Superintendent may establish deadlines and uniform forms and procedures for all aspects of licensing.

(9)(a) All licenses expire on June 30 of the year of expiration and a licensee may renew any time after January 1 of the same year.

(b) Notwithstanding Subsection (9)(a), an LEA-specific license may only renew after July 1 of the year of expiration.

(c) Responsibility for license renewal rests solely with the licensee.

R277-301-4. Associate Educator License Requirements.

(1) The Superintendent shall issue an associate educator license to an individual that applies for the license and that meets all requirements in this Section R277-301-4.

(2) An associate educator license, license area, or endorsement is valid ~~[for three years.]~~ until June 30 of the third school year after the Superintendent issues or renews the license.

~~[(3) The Superintendent may only renew an associate educator license if:~~

~~_____ (a) the individual has less than three years of experience in a Utah public or accredited private school; or~~

~~_____ (b) the individual is employed by a Utah public or accredited private school and the employer has requested a one year extension of the license.]~~

(3)(a) Except as provided in Subsection (4), the Superintendent may extend an associate educator license for up to two school years if an LEA requests the extension for an employee of the LEA.

(b) The Superintendent may extend an associate educator license for up to one school year for an educator with a license area in special education or related services, if the educator has up to two years of experience in special education or related services.

~~[(4) Notwithstanding Subsection (3), the]The Superintendent may not ~~[renew]~~extend an associate license with a license area in special education or related services, if the educator has three years of experience ~~[with the associate license]~~in special education or related services.~~

(5) The general requirements for an associate educator license shall include:

(a) completion of a criminal background check, including:

(i) review of any criminal offenses and clearance in accordance with Rule R277-214; and

(ii) continued monitoring in accordance with Subsection 53G-11-403(1);

(b) completion of the educator ethics review within one calendar year before the application;

(c) one of the following:

(i) a bachelor's degree or higher from ~~[a regionally]~~an accredited institution;

(ii) current enrollment in a university-based Board-approved educator preparation program that will result in a bachelor's degree or higher from ~~[a regionally]~~an accredited institution; or

(iii) skill certification in a specific CTE area as established by the Superintendent; and

(d) minimum competencies, as defined by the Superintendent.

(6) The content knowledge requirements for an associate educator license shall include:

(a) for an elementary license area, demonstration of the content competency criteria established by the Superintendent;

(b) for a secondary or CTE license area with a content endorsement, or for an endorsement being added to a professional license area, one of the following:

(i)(A) passage of a content knowledge test approved by the Superintendent, where required; or

(B) demonstration of the competency criteria established by the Superintendent if no content knowledge test is required;

(ii) a bachelor's degree or higher with a major in the content area from ~~[a regionally]~~an accredited university; or

NOTICES OF PROPOSED RULES

(iii) enrollment in a program that will result in a bachelor's degree [described in Subsection (6)(b)(ii)] and complete all requirements except completion of capstone school-based clinical experience and any co-requisite coursework;

(c) for an early childhood license area, demonstration of the content competency criteria established by the Superintendent; and

(d) for a school leadership license area, enrollment in:

(i) a university-based Board-approved educator preparation program; or

(ii) an educator preparation program administered by the Superintendent.

(7) Notwithstanding, Subsection (5)(c)(ii);

(a) an applicant for an associate educator license with the following license areas:

(i) special education (K-12);

(ii) pre-school special education;

(iii) deaf education;

(iv) audiologist;

(v) speech-language technician; or

(vi) speech-language pathologist;

(b) shall meet the following requirements for an associate educator license:

(i) demonstrate content knowledge competencies approved by the Superintendent;

(ii) complete a special education law and instruction training approved by the Superintendent;

(iii) earn a bachelor's degree in a field approved by the Superintendent; and

(iv) enroll in a preparation program as provided in Subsection (9).

(8)(a) For a special education or pre-school special education license area, an applicant for an associate educator license shall enroll in a:

(i) Board-approved non-university-based special education preparation program; or

(ii) a special education program at [~~a regionally~~]an accredited institution that will yield a NASDTEC Stage 2 educator license.

(b) For a deaf education license area, an applicant shall enroll in a deaf education program at [~~a regionally~~]an accredited institution that will yield a NASDTEC Stage 2 educator license.

(c) For a speech-language pathologist license area, an applicant shall enroll in a speech-language pathologist program at [~~a regionally~~]an accredited institution of higher education that:

(i) results in a master's degree or higher in speech-language pathology; and

(ii) will yield a NASDTEC Stage 2 educator license.

(d) For a school counselor license area, an applicant shall:

(i) enroll in a school counselor program at [~~a regionally~~]an accredited institution of higher education that:

[(+)](A) results in a masters degree or higher in school counseling; and

[(+)](B) will yield a NASDTEC Stage 2 educator license[-]; or

(ii) demonstrate minimum school counselor competencies as defined by the Superintendent.

(e) For a speech-language technician license area, an applicant shall:

(i) enroll in a speech-language technician program that is:

(A) approved by the Board; or

(B) administered by the Superintendent; or

(ii) complete the requirements of certified speech-language pathology assistant through the American Speech-Language Hearing Association.

(f) For an audiologist license area, an applicant shall enroll in an audiology program at [~~a regionally~~]an accredited institution of higher education that will yield a NASDTEC Stage 2 educator license.

(9) Notwithstanding Subsection (5)(c)(ii), an applicant for an associate educator license with a license area in school psychologist or school social worker shall meet the following requirements:

(a) demonstrate content knowledge competencies approved by the Superintendent;

(b) earn a [~~B~~]bachelor's degree; and

(c) complete all requirements for [~~a regionally~~]an accredited master's level preparation program, except completion of capstone school-based clinical experience and any co-requisite coursework.

(10) Additional requirements for an associate educator license shall include:

(a) successful completion of professional learning modules created or approved by the Superintendent in:

(i) educator ethics;

(ii) classroom management and instruction;

(iii) basic special education law and instruction;

(iv) the Utah Effective [~~Teaching~~]Educator Standards described in Rule R277-~~[530]~~330; or

(b) enrollment in a university-based Board-approved educator preparation program.

(c) Notwithstanding Subsection (11)(a), the Superintendent may waive an individual module, if the module is not necessary given the preparation of an applicant.

(11) An educator that holds a professional license area of concentration and has met the competency criteria established by the Superintendent need not complete the requirements detailed in Subsection (6).

(12) A license applicant who has received or completed license preparation activities inconsistent with this rule may present compelling information and documentation for review and approval by the Superintendent to satisfy the associate educator license requirements.

(13) The Superintendent shall designate a panel of at least three Board staff members to review an appeal made under Subsection (12).

(14) An LEA that employs an individual that holds an associate educator license shall develop a personalized professional learning plan designed to support the educator in meeting the requirements for a professional educator license no later than 60 days after beginning work in the classroom, which shall:

(a) be provided to the Superintendent upon request;

(b) include a formal discussion and observation process no later than 30 days after beginning work in the classroom; and

(c) consider:

(i) previous education related experience; and

(ii) previous educational preparation activities.

(15) An educator with an associate educator license may upgrade to a professional educator license at any time before expiration of the associate educator license if the educator meets all requirements of Section R277-301-5.

R277-301-5. Professional Educator License Requirements.

(1) The Superintendent shall issue a professional educator license to an individual that applies for the license and meets all requirements in this Section R277-301-5.

(2) A professional educator license, license area, or endorsement is valid ~~for five years~~ until June 30 of the fifth school year after the Superintendent issues or renews the license.

(3) The general requirements for a professional educator license shall include:

(a) all general requirements for an associate educator license under Subsection R277-301-5(4);

(b) completion of:

(i) a bachelor's degree or higher from ~~a regionally~~ an accredited institution; or

(ii) skill certification in a specific CTE area as established by the Superintendent;

(c) for an individual with an early childhood, elementary, or special education license area of concentration, completion of a literacy preparation assessment;

(d) for an individual with a pre-school special education license area of concentration, demonstration of emergent literacy competencies, as defined by the Superintendent; and

(e) one of the following:

(i) a recommendation from a Board-approved educator preparation program; or

(ii) a standard educator license in the area issued by a licensing jurisdiction outside of Utah that is currently valid or is renewable consistent with Section 53E-6-307.

(f) Notwithstanding, Subsection (c), a license applicant in an APPEL program who has an established professional learning plan before August 31, 2022, need not complete a literacy preparation assessment.

~~(4) If an educator preparation program makes a recommendation and the Superintendent determines that the candidate does not meet all requirements in this rule, the candidate may appeal as provided Subsection (12).~~

~~(4)5~~ The content knowledge requirements for a professional educator license, license area, and endorsement shall include:

(a) all content knowledge requirements for an associate educator license under Subsection R277-301-4(5);

(b) demonstration of all content knowledge competencies as established by the Superintendent; and

(c) passage of a content knowledge test provided by the Superintendent, where required by the Superintendent.

~~(5)6~~ An applicant for a secondary or CTE content area endorsement that holds a bachelor's degree or higher with a major in the content area from ~~a regionally~~ an accredited university need not complete the requirement described in Subsection (4)(c).

~~(6)7~~ The pedagogical requirements for a professional educator license shall include:

~~(a)~~ demonstration of all pedagogical competencies as established by the Superintendent; ~~and~~

~~(b)~~ when applicable to the license area, passage of a pedagogical performance assessment meeting standards:

~~(i)~~ established by the Superintendent; and

~~(ii)~~ approved by the Board.

~~(7)8~~ An individual holding a Utah level 1, level 2, or level 3 educator license on January 1, 2020 meets the pedagogical requirements described in Subsection ~~(6)7~~.

~~(8)~~ An individual holding a Utah level APT educator license that is employed by a Utah LEA and an individual enrolled in

~~ARL or a university based Board approved educator preparation program on January 1, 2020 may meet the content knowledge and pedagogical requirements described in this Section R277-301-6 by completing all requirements of the applicable program.]~~

(9) An individual holding a Utah professional educator license and license area in early childhood education, elementary, secondary, CTE, special education, or deaf education is considered to have met ~~the pedagogical performance assessment~~ the general teacher pedagogical competencies requirement of Subsection ~~(5)7~~ ~~(b)~~ if applying to add any of the license areas in the subsection.

(10) An individual with an associate license with a speech-language technician license area who completes a school-based clinical experience meeting requirements established by the Superintendent meets the requirements for a professional license.

(11) A license applicant who has received or completed license preparation activities inconsistent with this rule may present compelling information and documentation for review and approval or denial by the Superintendent to satisfy the professional educator license requirements.

(12) The Superintendent shall designate a panel of at least three individuals, including ~~at least two~~ the director of an LEA-based educator preparation program and a Board licensed educator[s] not employed by the Board, to review an appeal and make a recommendation to the Superintendent for the Superintendent's review and decision described in Subsection (11).

R277-301-6. Educator Licenses Issued by Licensing Jurisdictions Outside of Utah.

(1) The Superintendent shall review applications for a Utah educator license for individuals holding educator licenses issued by licensing jurisdictions outside of Utah to determine if the applicant has met the requirements for a Utah license under this rule.

(2) The Superintendent shall accept scores from an applicant that meet the Utah standard for passing on assessments from licensing jurisdictions outside of Utah that utilize the same assessment as Utah as meeting the requirements of this rule.

(3) The Superintendent shall accept scores from an applicant on reasonably equivalent content knowledge ~~or pedagogical performance~~ assessments utilized by licensing jurisdictions outside of Utah that meet the passing standard of that jurisdiction as meeting the requirements of this rule.

(4) The Superintendent shall accept demonstrations of content knowledge and pedagogical competencies from an applicant utilized by licensing jurisdictions outside of Utah that are reasonably equivalent to Utah competencies.

(5) An individual with ~~one year of successful experience in a public or accredited private school under a standard license issued by another jurisdiction~~ a NASDTEC Stage 2 educator license need not complete the content knowledge and pedagogical assessment requirements in the areas and subjects taught.

(6) An individual holding a standard license from another jurisdiction that was enrolled in a preparation program before January 1, 2020 and received the standard license before August 1, 2021 need not complete the requirements of Subsection R277-301-5(6)(b).

R277-301-7. LEA-specific Educator License Requirements.

(1) The Superintendent may issue an LEA-specific educator license to a candidate if:

(a) the LEA requesting the LEA-specific educator license has an adopted policy, posted on the LEA's website, which includes:

(i) educator preparation and support:

NOTICES OF PROPOSED RULES

(A) as established by the LEA; and
 (B) aligned with the Utah Effective Teaching Standards described in Rule R277-530;
 (ii) criteria for employing educators with an LEA-specific license; and
 (iii) compliance with all requirements of this rule;
 (b) an LEA governing board applies on behalf of the candidate;
 (c) the candidate meets all the requirements in this Section R277-301-7; and
 (d) ~~[within the first year of employment, the LEA trains the candidate on]~~the candidate successfully completes professional learning modules created or approved by the Superintendent in:
 (i) educator ethics;
 (ii) classroom management and instruction;
 (iii) basic special education law and instruction; and
 (iv) the Utah Effective ~~[Teaching]~~Educator Standards described in Rule R277-~~[530]~~330.
 (2) An LEA-specific license, license area, or endorsement is valid only within the requesting LEA for the educator's current assignment.
 (3) An LEA-specific license, license area, or endorsement is valid ~~[for three years]~~until June 30 of the third school year after the after the Superintendent issues the license.
 (4) An LEA may not issue an LEA-specific license area of concentration to an educator for the following license areas:
 (a) special education;
 (b) pre-school special education;
 (c) deaf education;
 (d) school psychologist;
 (e) school social worker;
 (f) audiologist;
 (g) speech-language technician;
 (h) speech-language pathologist; or
 (i) school counselor.
 (5) An LEA may not issue an LEA-specific endorsement in drivers education.
 (6) An LEA-specific license expires immediately if the educator's employment with the LEA that requested the license ends.
 (7) An LEA may request renewal of an LEA-specific license if an educator meets professional learning requirements established by the Superintendent.
 (8) The general requirements for an LEA-specific educator license shall include:
 (a) completion of a criminal background check, including:
 (i) review of any criminal offenses and clearance in accordance with Rule R277-214; and
 (ii) continued monitoring in accordance with Subsection 53G-11-403(1);
 (b) completion of the educator ethics review within one calendar year before the application; and
 (c) approval of the request by the LEA governing board in a public meeting no more than 60 days before the application, which includes the LEA's rationale for the request.
 (9) The content knowledge and pedagogical requirements for an LEA-specific educator license shall be established by the LEA governing board.
 (10) An LEA school that requests an LEA-specific license, license area, or endorsement shall prominently post the following information on each school's website:

(a) disclosure of the fact that the school employs individuals holding LEA-specific educator licenses, license areas, or endorsements;
 (b) an explanation of the types of licenses issued by the board;
 (c) the percentage of the types of licenses, license areas, and endorsements held by educators employed in the school-based on the employees' FTE as reported to the Superintendent; and
 (d) a link to the Utah Educator Look-up tool provided by the Superintendent in accordance with Subsection R277-312-7(6).

R277-301-9. Superintendent Annual Report to the Board.

(1) The Superintendent shall annually report to the Board on licensing, including:
 (a) educator licensing;
 (b) educator preparation; and
 (c) equitable distribution of teachers.
 (2) The Superintendent shall use a process approved by the Board to:
 (a) establish the content knowledge competency requirements required for associate and professional endorsements; and
 (b) review, adopt, and establish passing standards for all assessments required for educator licensing.
 (3) The Superintendent shall create an ethics review for all licensed educators based upon Rule R277-217, Educator Standards and Local Education Agency (LEA) Reporting.
 (4) The Superintendent may correct identified errors in licensing information with notice to the license holder.

R277-301-10. Licensee Enrollment in FBI Rapback.

(1) An individual with an assignment in CACTUS or USIMS shall have a cleared background check and current enrollment in FBI Rapback in accordance with Section 53G-11-403.
 (2) Notwithstanding Subsection (1), if an individual cannot enroll in FBI Rapback due to physiological limitations, the educator shall submit fingerprints and complete a new background check every two years.
 (3)~~(a)~~ An LEA may not receive funding for an educator who is not in compliance with this section.
(b) An LEA may be subject to corrective action under Rule R277-114 for continued non-compliance with Subsection (1).

KEY: professional competency, educator licensing
Date of Last Change: ~~2024~~June 7, 2023
Notice of Continuation: November 5, 2021
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-6-102; 53E-3-401

NOTICE OF PROPOSED RULE		
TYPE OF FILING: Amendment		
Rule or Section Number:	R277-303	Filing ID: 56515

Agency Information

1. Department:	Education
Agency:	Administration

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

General Information

2. Rule or section catchline:
R277-303. Educator Preparation Programs
3. Purpose of the new rule or reason for the change:
This rule is being amended due to the passage of H.B. 208 during the 2024 General Session, which requires the Utah State Board of Education (USBE) to provide alternative pathways that don't require educator completion of the Praxis exam.
4. Summary of the new rule or change:
The amendments specifically add an oversight categorization as a "Category 4" and update the requirements for educator preparation program requirements.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
A) State budget:
This rule change is not expected to have fiscal impacts on state government revenues or expenditures. The oversight framework categorization is part of the USBE effort through Rule R277-111 to categorize each rule into an oversight framework category, or to delineate for stakeholders what type of monitoring or oversight is required by the USBE resulting from the rule.
This categorization does not add any requirements or resources in and of itself for USBE or Local Education Agencies (LEA). Changes are made due to the passage of H.B. 208 (2024).
The USBE believes the fiscal impacts were captured in the fiscal note to H.B. 208 (2024) for the USBE, LEAs, and educators.

There are no additional measurable costs from the rule change outside the changes captured by the fiscal note to H.B. 208 (2024).

B) Local governments:

This rule change is not expected to have fiscal impact on local governments' revenues or expenditures. The oversight framework categorization is part of the USBE's effort through Rule R277-111 to categorize each rule into an oversight framework category, or to delineate for stakeholders what type of monitoring or oversight is required by USBE resulting from the rule.

This categorization does not add any requirements or resources in and of itself for the USBE or LEAs. Changes are made due to the passage of H.B. 208 (2024).

The USBE believes the fiscal impacts were captured in the fiscal note to H.B. 208 (2024) for the USBE, LEAs, and educators.

There are no additional measurable costs from the rule change outside the changes captured by the fiscal note to H.B. 208 (2024).

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

This rule change is not expected to have fiscal impact on small businesses' revenues or expenditures. This only impacts the USBE and LEAs.

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

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

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

This rule change is not expected to have fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities.

The oversight framework categorization is part of the USBE's effort through Rule R277-111 to categorize each rule into an oversight framework category, or to delineate

for stakeholders what type of monitoring or oversight is required by the USBE resulting from the rule. This categorization does not add any requirements or resources in and of itself for the USBE or LEAs.

Changes are made due to the passage of H.B. 208 (2024).

The USBE believes the fiscal impacts were captured in the fiscal note to H.B. 208 (2024) for the USBE, LEAs, and educators.

There are no additional measurable costs from the rule change outside the changes captured by the fiscal note to H.B. 208 (2024).

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

There are no compliance costs for affected persons. The oversight framework categorization is part of the USBE's effort through Rule R277-111 to categorize each rule into an oversight framework category, or to delineate for stakeholders what type of monitoring or oversight is required by the USBE resulting from the rule.

This categorization does not add any requirements or resources in and of itself for the USBE or LEAs.

Changes are made due to the passage of H.B. 208 (2024).

The USBE believes the fiscal impacts were captured in the fiscal note to H.B. 208 (2024) for the USBE, LEAs, and educators.

There are no additional measurable costs from the rule change outside the changes captured by the fiscal note to H.B. 208 (2024).

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

Regulatory Impact Table			
Fiscal Cost	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0

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

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

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

Citation Information

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

Article X, Section 3	Subsection 53E-3-401(4)	Subsection 53E-6-201(3)(a)
----------------------	-------------------------	----------------------------

Public Notice Information

8. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until: 07/01/2024

9. This rule change MAY become effective on: 07/08/2024

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

Agency Authorization Information

Agency head or designee and title:	Angie Stallings, Deputy Superintendent of Policy	Date:	05/15/2024
---	--	--------------	------------

R277. Education, Administration.**R277-303. Educator Preparation Programs.****R277-303-1. Authority, ~~and~~ Purpose and Oversight Category.**

(1) This rule is authorized by:

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

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

(c) Subsection 53E-6-201(3)(a), which directs the Board to establish the criteria for obtaining licenses; and

(d) Section 53E-6-302, which requires the Board to establish standards for approval of educator preparation programs.

(2) The purpose of this rule is to establish flexible criteria for demonstration of competency in educator preparation programs in Utah.

(3) This Rule R277-303 is categorized as Category 4 as described in Rule R277-111.

R277-303-2. Definitions.

(1) "Candidate" means an individual enrolled in an approved educator preparation program who is working toward completing the requirements for a Utah professional educator license.

(2) "Clinical experience" means a structured opportunity in which:

(a) a licensed educator mentors a program candidate;

(b) a school or district administrator or ~~university~~ institution of higher education preparation program faculty member with appropriate training evaluates program candidates; and

(c) a program candidate develops and demonstrates competency in the skills and knowledge necessary to be an effective educator.

(3) "Competency" means evidence of successful application of knowledge and skills shown through demonstration in a higher education or prek-12 classroom setting.

(4) "Completer" means a candidate who has completed licensure requirements and been endorsed for licensure by an approved educator preparation program.

(5)(a) "Educator preparation program" means a comprehensive program administered by an entity that is intended to prepare individuals to meet the requirements for a Utah professional license or license area of concentration.

(b) "Educator preparation program" may include a program developed by or associated with an institution of higher education, individual LEA, a consortium of LEAs, or the Board.

(6) "Flexibility," for alternative preparation programs, means the process by which a program exercises local decision-making to design and implement focused options to meet program and applicant licensing needs, without adding additional requirements beyond those outlined in Board rule, and allowing a teacher to demonstrate competency where reasonably possible in lieu of coursework or other requirements, consistent with the purpose of Board licensing rules.

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

(8) "License area" has the same meaning as set forth in Subsection R277-301-2(5)(a).

(9) "Mentor" means an educator with a professional license with training that may include how to advise, coach, consult, and guide the development of a new educator.

(10) "Professional license" means the educator license described in Section R277-301-6.

R277-303-3. Utah Educator Preparation Program Standards.

An approved Utah Educator Preparation Program shall meet the following standards:

(1) Program completer competency:

(a) a completer can effectively demonstrate the educator preparation competencies established in Board rule;

(b) a completer has the experience, knowledge, and skills needed to serve students with a variety of educational needs; and

(c) a completer establishes goals for their own professional growth and engages in self-assessment, goal setting, and reflection.

(2) Systems of support for candidate competency:

(a) a program provides high quality learning experiences aligned to Utah competencies and standards while offering multiple opportunities for a candidate to demonstrate that the candidate has the knowledge and skills to serve all students;

(b) a program seeks out and supports high quality clinical experiences for a candidate where the candidate has opportunities to practice and receive feedback on their knowledge and skills;

(c) a program develops and supports high quality mentors who support program candidates in demonstrating competencies in Board rule; and

(d) a program prioritizes capacity to support candidates as reflected in staffing and institutional resources.

(3) Program continuous improvement and impact:

(a) a program engages in thoughtful continuous improvement practices by reviewing program performance data and seeking opportunities for innovations and enhancement; and

(b) a program seeks partnerships with stakeholders to strengthen the Utah education system.

R277-303-4. Educator Preparation Program Review and Approval.

(1) The Superintendent shall establish uniform procedures for initial approval and review of educator preparation programs to ensure compliance with this rule.

(2) The Superintendent shall approve an educator preparation program that meets the requirements of this rule and the standards for program approval established in:

(a) Rule R277-304;

(b) Rule R277-305;

(c) Rule R277-306; and

(d) all other applicable Board rules.

(3)(a) The Superintendent shall conduct an ongoing review of approved educator preparation programs and shall renew or deny approval for a program at least every seven years.

(b) The review described in Subsection (3)(a) shall include monitoring whether:

(i) an educational preparation program is in compliance with Board rules; and

(ii) an alternative preparation program has reasonable flexibility for candidates to demonstrate required competencies.

(4) The Superintendent may grant preliminary approval to a new educator preparation program within a Utah public college or university pending approval by the Utah Board of Higher Education.

(5) The Superintendent shall make a report to the Board when an educator preparation program's initial application for approval is granted or denied.

NOTICES OF PROPOSED RULES

(6) The Superintendent may place an approved educator preparation program on probation for:

- (a) failure to meet program requirements detailed in applicable Board rules; or
- (b) failure to submit complete and accurate information in a report required under this rule.

(7) The Board may revoke the approval of a probationary program that fails to meet probationary requirements with at least one year's notice to the educator preparation program.

(8) The Superintendent may require a program or subset of programs to submit reports to inform the annual report to the Board required in Section R277-301-10.

(9) The Superintendent shall accept an approved educator preparation program's recommendations for a professional license or license area if the prospective licensee meets all other requirements of Board rule.

R277-303-5. Educator Preparation Programs.

(1) An educator preparation program that applies for approval by the Superintendent shall demonstrate how it will ensure that participants:

- (a) are prepared to meet the Utah Effective Educator Standards established in Rule R277-330; and
- (b) demonstrate all competencies applicable to the license area and subject area as established by the Superintendent.

~~[(b) successfully complete or are prepared to complete the pedagogical performance assessment required in Rule R277-301;~~

~~[(c) have met the competencies required in all applicable Board rules;~~

~~[(d) have sufficiently demonstrated the ability to work in the applicable license area and subject area; and~~

~~[(e) successfully completed or are prepared to complete a pedagogical performance assessment meeting standards established by the Superintendent and approved by the Board for all new students enrolled in the program after January 1, 2020 and recommended for a Utah educator license after September 1, 2021 in all license areas for which such an assessment is available.]~~

(2) In addition to the requirements of Subsection (1), an educator preparation program that is not also a Utah LEA shall:

- (a) have a physical location in Utah where participants attend classes; or
- (b) if the program provides only online instruction:
 - (i) have the program's primary headquarters located in Utah; and
 - (ii) be licensed to do business through the Utah Department of Commerce; and

(c) establish entry requirements that are designed to ensure that only high quality individuals enter the preparation program, which include measures of:

- (i) previous academic success;
 - (ii) disposition for employment in an educational setting;
- and

~~[(iii) basic skills in reading, writing, and mathematics;] and~~
~~[(d) include a pedagogical performance assessment meeting standards established by the Superintendent and approved by the Board for all new students enrolled in the program after January 1, 2020 and recommended for a Utah educator license after August 1, 2021 in all license areas for which such an assessment is available.]~~

(3)(a) If the Superintendent denies an application from an educator preparation program, the proposed educator preparation program may appeal the Superintendent's decision to the Board by submitting a written appeal to the Board Secretary.

(3)(a) to a standing committee to make a recommendation to the full Board for final action.

(4) An approved educator preparation program may recommend an individual that completed the program for a professional license or license area for up to five years after the individual completed the program, as long as all current license requirements have been met.

(5) If five years have passed since an individual completed an approved educator preparation program, the program may recommend the individual for a professional license or license area if the program:

- (a) reviews the individual's program; and
- (b) requires the individual to complete any additional necessary requirements to meet current programs standards before making a licensing recommendation.

~~[(6)(a) An approved educator preparation program may recommend an individual who began the program before January 1, 2020 for a professional license or license area without meeting the pedagogical performance assessment requirement in Rule R277-301, but must present documentation showing that the individual met the appropriate license requirements in effect before that date.~~

~~[(b) Subsection (6)(a) supersedes Subsections (4) and (5).]~~

R277-303-6. Superintendent Responsibilities.

(1) The Superintendent shall provide support to educator preparation programs and potential licensees to the extent that funding allows by:

- (a) maintaining a website to:
 - (i) facilitate collaboration between educator preparation programs;
 - (ii) facilitate communication between potential educators and approved programs; and
 - (iii) provide access to up-to-date research on educator preparation and education practices;
- (b) reviewing third-party preparation materials for alignment with the Utah Effective Educator Standards in Rule R277-330;

(c) working with potential licensed educators to help them become licensed educators; and

(d) ensuring that alternative preparation program applicants be grandfathered from new program requirements added after an applicant's acceptance into the program.

(2) The Superintendent shall design and maintain a model educator preparation program that:

- (a) meets all requirements of all applicable Board rules;
- (b) may be adopted by an LEA or an accredited private school, subject to Section R277-303-5; and
- (c) is overseen by staff distinct from the staff responsible for ensuring educator preparation program compliance with all applicable Board rules.

KEY: educator preparation program~~], pedagogical assessment, professional competency, programs]~~

Date of Last Change: 2024~~[October 11, 2023]~~

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

NOTICE OF PROPOSED RULE		
TYPE OF FILING: New		
Rule or Section Number:	R277-323	Filing ID: 56516

Agency Information

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

General Information

2. Rule or section catchline:
R277-323. Public Educator Evaluation
3. Purpose of the new rule or reason for the change:
This new rule is necessary as a result of the passage of S.B. 137, Teacher Empowerment, in the 2024 General Session, which requires that the Utah State Board of Education (USBE) adopt a new evaluation rating system, which only applies to school districts and the Utah Schools for the Deaf and Blind (USDB).
4. Summary of the new rule or change:
This rule is being created to provide a framework for educator evaluation systems, to describe the requirements for school district policies related to educator evaluation, and to establish requirements for determining annual summative educator effectiveness ratings.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
A) State budget:
This rule change is not expected to have fiscal impact on state government revenues or expenditures. This new rule adopts a new educator evaluation system due to legislative changes made in S.B. 137 (2024). The USBE believes that any associated costs for the USBE, Local

Education Agencies (LEA), and educators were captured in the fiscal note to S.B. 137 (2024).

There are no additional measurable costs or resources required of the USBE, LEAs, and educators as a result of this new rule.

B) Local governments:

This rule change is not expected to have fiscal impact on local governments' revenues or expenditures.

This new rule adopts a new educator evaluation system due to legislative changes made in S.B. 137 (2024).

The USBE believes that any associated costs for the USBE, LEAs, and educators were captured in the fiscal note to S.B. 137 (2024).

There are no additional measurable costs or resources required of the USBE, LEAs, and educators as a result of this new rule.

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

This rule change is not expected to have fiscal impact on small businesses' revenues or expenditures.

This only affects the USBE and LEAs.

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

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

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

This rule change is not expected to have fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities.

This new rule adopts a new educator evaluation system due to legislative changes made in S.B. 137 (2024).

The USBE believes that any associated costs for the USBE, LEAs, and educators were captured in the fiscal note to S.B. 137 (2024).

There are no additional measurable costs or resources required of the USBE, LEAs, and educators as a result of this new rule.

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

There are no compliance costs for affected persons.

This new rule adopts a new educator evaluation system due to legislative changes made in S.B. 137 (2024).

The USBE believes that any associated costs for the USBE, LEAs, and educators were captured in the fiscal note to S.B. 137 (2024).

There are no additional measurable costs or resources required of the USBE, LEAs, and educators as a result of this new rule.

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

Regulatory Impact Table

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

Total Fiscal Benefits	\$0	\$0	\$0
------------------------------	------------	------------	------------

Net Fiscal Benefits	\$0	\$0	\$0
----------------------------	------------	------------	------------

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

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

Citation Information

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

Article X, Section 3	Subsection 53E-3-401(4)	Title 53G, Chapter 11, Part 5
Subsections 53E-3-501(1)(a)(i) and (ii)		

Public Notice Information

8. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until: 07/01/2024

9. This rule change MAY become effective on: 07/08/2024

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

Agency Authorization Information

Agency head or designee and title:	Angie Stallings, Deputy Superintendent of Policy	Date:	05/15/2024
---	--	--------------	------------

R277. Education, Administration.

R277-323. Public Educator Evaluation.

R277-323-1. Authority and Purpose.

- (1) This rule is authorized by:
 - (a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;
 - (b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law;
 - (c) Title 53G, Chapter 11, Part 5, School District and Utah Schools for the Deaf and the Blind Employee Requirements, which requires the Board to make rules to establish a framework for the evaluation of educators and set policies and procedures related to educator evaluations; and

(d) Subsections 53E-3-501(1)(a)(i) and (ii), which require the Board to establish rules and minimum standards for the qualification and certification of educators and for required school administrative and supervisory services.

(2) The purpose of this rule is to:

(a) provide a framework for educator evaluation systems;

(b) describe the requirements for district policies related to educator evaluation; and

(c) establish requirements for determining annual summative educator effectiveness ratings.

R277-323-2. Definitions.

(1) "Academic growth" means demonstration of student learning through formative assessment measures identified by the LEA, school, or educator within the school year.

(2) "Administrator" has the same meaning as that term is defined in Section 53G-11-501.

(3) "Certified evaluator" means an educator with training in evaluating educator performance and demonstrated competency in using an educator evaluation tool to rate educator performance according to established standards.

(4) "Chronically absent" means that a student:

(a) was enrolled in an LEA for at least 60 calendar days; and

(b) missed 10% or more of the student's instructional days, whether the absence was excused or not.

(5) "Continued professional growth" means incremental measures of improvement relevant to the Utah Effective Educator Standards.

(6) "Educator" has the same meaning as that term is defined in Section 53G-11-501.

(7) "Educator evaluation system" means a school district's process, policies, and procedures for evaluating an educator's performance in the educator's assignments.

(8) "Formative assessment measures" means planned, ongoing processes used for educators to engage in reflection and growth of professional skills and includes opportunities to receive feedback on strengths or weaknesses of specific knowledge, skills, and abilities.

(9) "Evaluator" means an individual who is responsible for an educator's summative evaluation in accordance with this Rule R277-323.

(10) "Local board" means a school district's elected board of education or for the Utah Schools of the Deaf and the Blind, the Board.

(11) "Observation" means a formal or informal visit made by an administrator to an educator's classroom for the purpose of gathering formative information, providing feedback for growth, and informing decisions related to the educator's summative evaluation.

(12) "Performance" means the combination of an educator's professionalism consistent with:

(a) the Utah Effective Educator Standards;

(b) student academic growth; and

(c) continued professional growth as an educator.

(13) "Summative evaluation" means an evaluation that is used to make decisions or ratings of an educator's performance and that may inform decisions on salary, continued employment, personnel assignments, transfers, or dismissals, consistent with a school district's policies.

(14) "Summative evaluation rating" means an annual rating of an educator's performance that assigns one of three levels, that may be defined as:

(a) One -- The educator did not meet performance expectations;

(b) Two -- The educator partially met performance expectations by demonstrating evidence of continued professional growth or demonstrating evidence of student academic growth;

(c) Three -- The educator met performance expectations by demonstrating evidence of continued professional growth and demonstrating evidence of student academic growth.

(15) "Unsatisfactory performance" means a level one summative evaluation rating.

(16) "Utah Effective Educator Standards" means the standards established in Rule R277-330, as applicable to the assignment for which an evaluator evaluates an educator.

R277-323-3. School District Educator Evaluation Systems.

(1) A local board shall adopt a district educator evaluation system in consultation with a joint committee established by the local board as required by Section 53G-11-506.

(2) A local board shall review and approve its educator evaluation system in an open meeting.

(3) A district educator evaluation system shall:

(a) evaluate educators based on the Utah Effective Educator Standards;

(b) include a description of school district processes for gathering, using, and protecting individual educator evaluation data;

(c) include valid and reliable methods and tools to implement an evaluation;

(d) include a systematic process for evaluating all educators holding an educator license during an evaluation cycle of up to four years;

(e) include a summative evaluation rating consistent with this Rule R277-323; and

(f) take into account multiple inputs as required by Section 53G-11-507, including:

(i) self-evaluation of performance in relation to the Utah Effective Educator Standards;

(ii) student and parent input;

(iii) for administrators, feedback from teachers, including input on the effectiveness of evaluating employee performance in a school or school district for which the administrator has responsibility;

(iv) results of multiple observations done with tools aligned to the Utah Effective Educator Standards;

(v) evidence of student academic growth, as specified by the school district; and

(vi) other indicators of professional improvement as specified by the school district.

(4) A school district may use an evaluation cycle extending up to four years, which includes:

(a) a summative evaluation at least once every four years; and

(b) annual formative assessment measures, including:

(i) at least one observation conducted by an administrator;

(ii) additional observations, with feedback, which may be provided by a peer, mentor, instructional coach, administrator or other professional designated by the district; and

(iii) a planned ongoing process for the educator to engage in reflection and growth related to the Utah Effective Teaching Standards.

(5) A school district may not use year-end state testing data in determining an educator's summative evaluation rating.

(6) A school district may not use data from a student who is chronically absent in determining an educator's summative evaluation rating.

(7) A school district shall align its employee compensation system, with the district's educator evaluation system in accordance with Subsection 53G-11-518(1).

(8) To form the school district's educator evaluation system, a local school board may adopt:

(a) the Utah Model Educator Evaluation System approved by the Board;

(b) an adapted system; or

(c) a system developed by the school district consistent with this rule and Rule R277-330.

R277-323-4. Systems Reliability.

A school district shall establish an evaluator reliability process to ensure the reliability of its educator evaluation system that:

(1) identifies criteria for use in assigning evaluation ratings

(2) provides professional development opportunities for all evaluators that:

(a) assures evaluators understand the Utah Effective Educator Standards;

(b) improve evaluator proficiency in recognizing the criteria described in Subsection (1)(a); and

(c) give the evaluator an opportunity to demonstrate their abilities to rate an educator in accordance with the Utah Effective Educator Standards;

(3) designate qualified raters as certified;

(4) assure that each educator is rated by a certified evaluator; and

(5) include a process for maintaining a certified evaluator's skills.

R277-323-5. Notice and Review.

(1) At least 15 days before an educator's first evaluation, a school district shall provide an educator with:

(a) notification of the evaluation process;

(b) access to relevant evaluation instruments; and

(c) notice of potential consequences, including discipline and termination, if an educator fails to meet performance expectations.

(2) A school district's educator evaluation system shall:

(a) provide for clear and timely discussion of an evaluation with the educator;

(b) provide a written copy of the evaluation to the educator;

(c) allow an educator to respond to any part of the evaluation; and

(d) attach the educator's response to the evaluation if the response is provided in writing.

(3) An educator who is dissatisfied with an evaluation may submit a written request for review within 15 days after receiving notice of the written evaluation.

(4) A school district shall conduct a review as described in this section and Section 53G-11-508.

(5) A school district conducting a review under Subsection (4) shall:

(a) use a certified evaluator;

(i) with experience in evaluating educators; and

(ii) who is not employed by the school district; and

(b) conduct the review in accordance with Utah Effective Educator Standards.

(6) A certified evaluator described in Subsection (5)(a) shall:

(a) review the school district's educator evaluation policies and procedures;

(b) review the evaluation process conducted for the educator;

(c) review the evaluation data from the professional performance, student academic growth, and stakeholder input components;

(d) review an educator's written response, if submitted in accordance with Subsection 53G-11-508(1)(b); and

(e) report findings, in writing, to the school district's superintendent for action.

(7) The school district superintendent shall determine if the initial educator evaluation was issued in accordance with:

(a) the school district's educator evaluation policies;

(b) the requirements of the Utah Effective Educator Standards;

(c) Title 53G, Chapter 11, Employees; and

(d) this Rule R277-323.

R277-323-6. Support for Educators.

(1) If an educator receives an unsatisfactory performance rating, a school district shall provide the educator with support for academic impact improvement consistent with Title 53G, Chapter 11, Part 5, School District and Utah School for the Deaf and the Blind Employee Requirements, including:

(a) assessing the professional learning needs of the educator; and

(b) providing mentors, coaches, or instructional specialists to assist the educator in establishing timelines and benchmarks for improving academic impact.

(2) A school district may provide assistance to any educator in need of support with professional growth as an educator or student academic growth.

R277-323-7. Superintendent Responsibilities.

(1) The Superintendent shall develop a model educator evaluation system that includes performance expectations consistent with this rule.

(2) The Superintendent shall evaluate and recommend tools and measures for use by school districts in developing and implementing educator evaluation systems.

(3) The Superintendent shall annually monitor 10% of school district educator evaluation systems.

R277-323-8. School District Revisions.

A school district shall amend the district educator evaluation system to align with any future revisions to the Utah Effective Educator Standards and implement any changes within two years from the effective date of revisions to Rule R277-330.

R277-323-9. Applicability.

(1) This rule shall become effective beginning in the 2024-2025 school year, except for the following subsections, which a district shall implement no later than June 30, 2029:

(a) Subsection R277-323-3(3)(e);

(b) Subsection R277-323-3(4); and

(c) Subsection R277-323-3(6).

(2) A requirement for a school district under this Rule R277-323 is also applicable to the Utah Schools for the Deaf and the Blind.

KEY: evaluation

Date of Last Change: 2024

Authorizing, and Implemented or Interpreted Law: Article X, Section 3; 53E-3-401(4); 53G, Chapter 11, Part 5; 53E-3-501(1)(a)(i) and (ii)

NOTICE OF PROPOSED RULE		
TYPE OF FILING: Amendment		
Rule or Section Number:	R277-469	Filing ID: 56517

Agency Information

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

General Information

2. Rule or section catchline:
R277-469. Instructional Materials Commission Operating Procedures
3. Purpose of the new rule or reason for the change:
This rule is being amended due to the passage of H.B. 534 during the 2024 General Session, which repeals the State Instructional Materials Commission as of 05/01/2024.
4. Summary of the new rule or change:
The amendments specifically assign an oversight categorization as a "Category 3" and removes authorization references to Section 53E-4-402, which directs the Board to appoint an Instructional Materials Commission and directs the Commission to evaluate instructional materials for recommendation by the Board.
The amendments also make updates to several definitions, remove requirements pertaining to Instructional Materials Commission members terms of service, and make several updates related to the recommendation process for instructions materials.

Fiscal Information

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

A) State budget:

This rule change is not expected to have fiscal impact on state government revenues or expenditures.

The oversight framework categorization is part of the Utah State Board of Education's (USBE) effort through Rule R277-111 to categorize each rule into an oversight framework category, or to delineate for stakeholders what type of monitoring or oversight is required by the USBE resulting from the rule.

This categorization does not add any requirements or resources in and of itself. The amendments to the Instructional Materials commission are a result of H.B. 534 (2024) and any fiscal impacts have been captured in the fiscal note to H.B. 534 (2024) for the USBE and Local Education Agencies (LEA).

There are no additional costs or resources required by the rule change.

B) Local governments:

This rule change is not expected to have fiscal impact on local governments' revenues or expenditures. The oversight framework categorization is part of the USBE's effort through Rule R277-111 to categorize each rule into an oversight framework category, or to delineate for stakeholders what type of monitoring or oversight is required by the USBE resulting from the rule.

This categorization does not add any requirements or resources in and of itself.

The amendments to the Instructional Materials commission are a result of H.B. 534 (2024) and any fiscal impacts have been captured in the fiscal note to H.B. 534 (2024) for the USBE and LEAs.

There are no additional costs or resources required by the rule change.

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

This rule change is not expected to have fiscal impact on small businesses' revenues or expenditures.

This only affects the USBE and LEAs.

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

There are no non-small businesses in the industry in question, Elementary and Secondary Schools (North American Industry Classification System (NAICS) 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and

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

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

This rule change is not expected to have fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities.

The oversight framework categorization is part of the USBE's effort through Rule R277-111 to categorize each rule into an oversight framework category, or to delineate for stakeholders what type of monitoring or oversight is required by the USBE resulting from the rule.

This categorization does not add any requirements or resources in and of itself. The amendments to the Instructional Materials commission are a result of H.B. 534 (2024) and any fiscal impacts have been captured in the fiscal note to H.B. 534 (2024) for the USBE and LEAs.

There are no additional costs or resources required by the rule change.

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

There are no compliance costs for affected persons.

The oversight framework categorization is part of the USBE's effort through Rule R277-111 to categorize each rule into an oversight framework category, or to delineate for stakeholders what type of monitoring or oversight is required by USBE resulting from the rule.

This categorization does not add any requirements or resources in and of itself. The amendments to the Instructional Materials commission are a result of H.B. 534 (2024) and any fiscal impacts have been captured in the fiscal note to H.B. 534 (2024) for the USBE and LEAs.

There are no additional costs or resources required by the rule change.

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

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

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

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

Citation Information

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

Article X, Section 3	Subsection 53E-3-401(4)	Section 53E-4-402
Section 53E-4-408		

Public Notice Information

8. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:	07/01/2024
--	------------

9. This rule change MAY become effective on:	07/08/2024
---	------------

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

Agency Authorization Information

Agency head or designee and title:	Angie Stallings, Deputy Superintendent of Policy	Date:	05/15/2024
---	--	--------------	------------

R277. Education, Administration.

R277-469. Instructional Materials [~~Commission~~] Operating Procedures.

R277-469-1. Authority, [~~and~~] Purpose, and Oversight Category.

(1) This rule is authorized by:

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

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

~~[(c) Section 53E-4-402, which directs the Board to appoint an Instructional Materials Commission and directs the Commission to evaluate instructional materials for recommendation by the Board; and]~~

~~[(d)](c)~~ Section 53E-4-408, which directs the Board to make rules that establish the qualifications of the independent parties who may evaluate and map the alignment of the primary instructional materials and requirements for the detailed summary of the evaluation.

(2) The purpose of this rule is to:

(a) provide definitions, operating procedures, and criteria for recommending instructional materials for use in Utah public schools;

(b) provide for mapping and alignment of primary instructional materials to the Core consistent with Utah law; and

(c) provide rules for the purchase and distribution of instructional materials within the state.

(3) This Rule R277-469 is categorized as Category 3 as described in Rule R277-111.

R277-469-2. Definitions.

~~[(1) "Commission" means the Instructional Materials Commission established in accordance with Section 53E-4-402.]~~

~~[(2)](1)~~ "Core" means the core standards adopted by the Board in Rule R277-700.

~~[(3)](2)~~ "Curriculum alignment" means the assurance that the material taught in a course or grade level matches the standards, and assessments set by the state for specific courses or grade levels.

~~[(4)](3)~~ "Depository" means a business dedicated to storing and distributing resources or materials in sufficient quantities to ~~[(f)]~~ ensure rapid and efficient delivery to LEAs.

~~[(5)](4)~~(a) "Instructional materials" means systematically arranged content in text, digital, Braille and large print, or audio format which may be used within the state curriculum framework for courses of study by students in public schools.

(b) "Instructional materials" include:

(i) textbooks;

(ii) workbooks; and

(iii) digital resources~~[(f)]~~;

~~[(iv) online courses;~~

~~(v) CDs or DVDs; and~~

~~(vi) multiple forms of communication media.]~~

(c) "Instructional materials" may be used by students or teachers or both as principal sources of study to cover any portion of a course.

(d) "Instructional materials":

(i) are designed for student use;

(ii) may be accompanied by or contain teaching guides and study helps;

(iii) shall include all textbooks, workbooks, student materials, supplements, and online and digital materials necessary for a student to fully participate in coursework;

(iv) shall be high quality, research-based materials for supporting student learning; and

(v) may not be sensitive materials as defined by Subsection 53G-10-103(1)~~[(e)]~~~~[(h)]~~.

~~[(6)](5)~~ "Independent party" means an entity that is not part of or related to:

(a) the Board;

(b) Board staff;

(c) an employee or governing board member of an LEA;

(d) the creator or publisher of instructional materials under review; or

(e) anyone with a financial interest, however minimal, in instructional materials under review.

~~[(7) "Instructional Materials Commission" or "Commission" means the commission appointed by the Board in accordance with Section 53E-4-402.]~~

~~[(8)](6)~~ "Integrated instructional program" means any combination of instructional materials for students, including:

(a) textbooks;

(b) workbooks;

(c) digital resources;

(d) videos;

(e) electronic devices; or

(f) similar resources.

~~[(9)](7)~~ "Instructional materials provider" means a publisher or author and self-publisher who sells or provides instructional materials for use in Utah public schools.

~~[(10)](8)~~ "LEA" includes, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

~~[(11)](9)~~ "Mapping" means creating a visual representation listing topics in instructional materials in correlation to the standards of the Utah Core.

~~[(12)](10)~~ "National Instructional Materials Access Center" or "NIMAC" means the same as that term is defined in Subsection R277-800-2(14).

~~[(13)](11)~~ "National Instructional Materials Accessibility Standard" or "NIMAS" means the same as that term is defined in Subsection R277-800-2(15).

~~[(14)](12)~~ "Not sampled" means instructional materials that were included in a publisher bid for evaluation ~~[(by the Instructional Materials Commission)]~~, but which were not sampled to the Superintendent ~~[(or the Commission)]~~.

~~[(15)](13)~~ "Primary instructional material" means a comprehensive basal or Core textbook or integrated instructional

NOTICES OF PROPOSED RULES

program for which a publisher seeks a recommendation for Core subjects designated in Sections R277-700-4 through R277-700-6.

~~[(16)]~~(14) "Recommended instructional materials" or "RIMs" means the recommended instructional materials searchable database provided as a free service by the Board for the posting of evaluations and alignments to the Core of instructional materials submitted by publishers for review ~~[by the Commission]~~ by the Superintendent and approval of the Board.

~~[(17)]~~(15) "Recommended limited" means instructional materials that are in limited alignment with the Core requirements or are narrow or restricted in their scope and sequence.

~~[(18)]~~(16) "Recommended primary" means instructional materials that:

(a) are in alignment with content, philosophy, and instructional strategies of the Core;

(b) have been mapped and aligned to the Core, consistent with Section 53E-4-408;

(c) are appropriate for use by students as principal sources of study; and

(d) support Core requirements.

~~[(19)]~~(17) "Recommended student resource" means instructional materials aligned to the Core that are developmentally appropriate, but not intended to be the primary instructional resource, which may provide ~~[d]~~ valuable content information for students.

~~[(20)]~~(18) "Recommended teacher resource" means instructional materials that are appropriate as resource materials for use by teachers.

~~[(21)]~~(19) "Reviewed, but not recommended" means instructional materials that an LEA is strongly cautioned against using because the materials:

(a) do not align with the Core;

(b) are inaccurate in content;

(c) include misleading connotations;

(d) contain undesirable presentation; or

(e) are in conflict with existing law or rule.

(20) "Sensitive materials" means an instructional material that constitutes objective sensitive material or subjective sensitive material as described in Subsection 53G-10-103(1)(h).

~~[(22)]~~(21) "Utah State Instructional Materials Access Center" or "USIMAC" means the same as that term is defined in Subsection R277-800-2(21).

R277-469-3. Use of State Funds for Instructional Materials.

(1) An LEA may use state funds for any primary supplemental or supportive instructional materials that support Core requirements.

(2) An LEA shall select and approve instructional materials consistent with:

(a) established local board procedures and timelines;

(b) Utah Code and Board rule, including Section 53G-2-105 and Section 53G-10-103;

(c) Subsection 53G-10-402(1)(c)(iii); and

(d) Subsection 53E-4-403(4).

(3) A school or school district that uses any funding source to purchase materials that have not been recommended or selected consistent with state law, may have funds withheld to the extent of the actual costs of those materials pursuant to Subsection 53E-3-401(8)(a)(ii).

(3)(a) An LEA may use free instructional materials that are used as primary instructional materials or that are part of primary integrated instructional programs subject to the same independent party evaluation and Core mapping as basal or Core material.

(b) If an LEA receives free materials, the LEA may use the materials as student instructional materials only consistent with the law and this rule.

(4) An LEA shall include a requirement in all publisher contracts for instructional materials that the publisher shall:

(a) prepare and provide electronic files of all instructional materials in the NIMAS format to NIMAC on or before delivery of print instructional materials; or

(b) provide instructional materials that are produced in, or may be made in, specialized formats; and

(c) provide materials consistent with the Utah Code and administrative rules.

(5)(a) An LEA shall provide timely notice to all publishers with whom the LEA contracts for instructional materials that all materials shall be provided consistent with Subsection (4).

(b) An LEA's notice shall include a copy of this rule.

~~**R277-469-4. Instructional Materials Commission Members Terms of Service.**~~

~~_____ (1) The Board shall appoint members of the Instructional Materials Commission in accordance with Section 53E-4-402.~~

~~_____ (2)(a) A member appointed in accordance with Subsection (1) shall serve four year terms, staggered to ensure continuity in the efficient operation of the Commission.~~

~~_____ (b) A member may apply for reappointment to one additional term.~~

~~_____ (3) The Commission may establish subcommittees as needed.]~~

R277-469-5. [Commission]Review of Materials.

(1) The ~~[Instructional Materials Commission]~~ Superintendent shall primarily focus on reviewing materials used in subjects aligned with Core requirements to include reading, language arts, mathematics through geometry, science, in kindergarten through 12th grade, effectiveness of written expression, and other Core subject areas as assigned by the Board.

(2) The ~~[Commission]~~ Superintendent shall determine subject areas and timelines for review based on school district and charter school needs and requests, using forms and procedures provided by the Superintendent.

~~_____ (3) The Commission shall meet to review materials at least semi-annually.]~~

~~[(4)]~~(3) Following its evaluation of a submitted item, the ~~[Commission]~~ Superintendent shall recommend that the Board classify materials in one of the following categories:

(a) Recommended primary;

(b) Recommended limited;

(c) Recommended teacher resource;

(d) Recommended student resource;

(e) Reviewed, but not recommended; or

(f) Not sampled.

R277-469-6. Criteria for Recommendation of Instructional Materials Following Mid-Party Evaluation of Core Curriculum.

(1) The ~~[Instructional Materials Commission]~~ Superintendent and the Board, in reviewing whether to recommend instructional materials, may consider whether the instructional materials:

(a) are consistent with Core requirements;

(b) are mapped and aligned to the Core and state-adopted assessments if planned for use as primary materials;

(c) are high quality, research-based, and proven to be effective in supporting student learning;

(d) provide an objective and balanced viewpoint on issues;

(e) include enrichment and extension possibilities;

(f) are appropriate to varying levels of learning;

(g) are accurate and factual;

(h) are arranged chronologically or systematically, or both;

(i) ~~meets the requirements of Section 53E-2-204.1[reflect the pluralistic character and culture of the American people and provide accurate representation of diverse ethnic groups];~~

(j) are not sensitive materials as defined in Subsection 53G-10-103(1)(~~g~~)(h);

(k) are not prohibited discriminatory practice as described in Section 53B-1-118;

(~~l~~)(l) are consistent with the principles of individual freedom as defined in Section 53G-10-206; and

(~~m~~)(m) are of acceptable technical quality.

(2) A publisher, when submitting new primary material to be evaluated by the Superintendent, shall submit an electronic version of that material in NIMAS file format to NIMAC for use in conversion into Braille, large print, and other formats for students with print disabilities.

(3) The Superintendent may require an LEA to provide a report of instructional materials purchased by the LEA or a school in the previous five years.

(4) The Superintendent may initiate a formal or informal audit of instructional materials purchased to determine purchase or use of instructional materials consistent with the law or this rule.

R277-469-7. Agreements and Procedures for LEAs.

(1) A local board shall establish a policy for selection and purchase of instructional materials.

(2) As part of any materials adoption process or procurement contract for purchasing instructional materials, an LEA shall provide instructional materials to all students, including blind students and other students with disabilities, in a timely manner.

(a) A publisher shall provide materials in electronic files to NIMAC to make materials available to eligible students.

(b) An LEA shall include NIMAS contract language in all contracts with publishers for Core materials.

(c) An LEA may purchase instructional materials from the publisher that are produced in, or may be in, specialized formats for eligible students.

(3) An LEA shall require a detailed Core curriculum alignment before the purchase of primary instructional materials.

R277-469-8. Qualifications for Core Curriculum Alignment Independent Parties.

(1) A primary instructional materials provider shall contract with an independent party in accordance with Subsection 53E-4-408(1)(a).

(2) An independent party may only employ or contract with a reviewer who has a degree or an endorsement specific to the subject area of the primary instructional materials.

(3) A publisher shall provide proof of an independent party's credentials to the Superintendent upon request.

R277-469-9. Detailed Summary Requirements.

(1) An independent party shall submit a summary required under Subsection 53E-4-408(1)(b) in a searchable, digital resource database format designated by the Superintendent.

(2) A summary required under Subsection 53E-4-408(1)(b) shall:

(a) include detailed alignment information that includes, at a minimum:

(i) the title of the material;

(ii) the ISBN number;

(iii) the publisher's name;

(iv) the name and grade of the Core document used to align the material;

(v) the overall percentage of coverage of the Core;

(vi) the overall percentage of coverage in ancillary resources of the material to the Core;

(vii) the percentage of coverage of the Core in the material for each standard, objective and indicator in the Core with corresponding page numbers;

(viii) percentage of coverage of the Core not covered in the material but covered in the ancillary resources for each standard; and

(ix) objective and indicator in the Core with corresponding page numbers or URLs; and

(b) provide the detailed alignment information listed in Subsection (a)(iv) for the student text for all editions of the text that are used in Utah public schools;

(c) provide the detailed alignment information listed in Subsection (a)(iv) for a teacher edition of text, if a teacher edition is used in Utah public schools; and

(d) provide an assurance, including a personal signature, that the work was completed personally and as required by the licensed and endorsed reviewer.

R277-469-10. Agreements and Procedures for Publishers.

(1) A publisher desiring to sell primary instructional materials to Utah school districts shall comply with the requirements of Section 53E-4-408 and this rule.

(2)(a) A publisher seeking to sell recommended materials to Utah schools or school districts shall maintain on deposit the number of books necessary to meet the anticipated needs within the state at an instructional materials depository in the business of selling instructional materials to schools or school districts in Utah.

(b) A publisher shall submit verification of compliance with Subsection (2)(a) to the Superintendent through the publisher's contracted depository ~~prior to~~ before the Superintendent posting a review of the materials on RIMs.

(3) A publisher may make a depository agreement with one or more depository.

(4) Notwithstanding Subsection (2), a publisher may sell instructional materials to schools or school districts in Utah directly or through means other than a designated depository.

(5) A publisher need not store digital and online resources within the state, but shall guarantee timely resource availability of a placed order and shall provide digital and online resource orders without shipping charges.

(6) If a revised edition of recommended materials retains the original title and authorship, the publisher may request its substitution for the edition currently recommended providing that:

(a) the original contract price and contract date do not change and the original contract price applies for the substituted materials;

(b) the revised edition is compatible with the earlier edition, permitting use of either or both in the same classroom;

(c) a sample copy of the revised edition is provided to the Superintendent for examination purposes; and

NOTICES OF PROPOSED RULES

(d) the publisher submits a revised electronic edition in NIMAS file format to the NIMAC if the Superintendent approves the substitution request.

(7) The ~~[Commission]~~Superintendent shall make the final determination about the substitution of a new edition for a previously recommended edition~~[with assistance from the Superintendent]~~.

(8) A publisher's contract price for materials recommended by the ~~[Commission]~~Superintendent and the Board shall apply for five years from the contract date.

[R277-469-11. Request for Reconsideration of Recommendation.

~~(1) The Superintendent shall provide a school district, school, or publisher with the evaluations and recommendations resulting from the initial review of the Commission.~~

~~(2) A school district, school, or publisher may, within 30 days of the Commission's initial recommendation, request to have materials reviewed again during the Commission's next review cycle.~~

~~(3)(a) During the period of the reconsideration request, the Superintendent shall classify materials only tentatively.~~

~~(b) The Superintendent shall not post tentatively classified materials to RIMs until recommended through the official Commission process.~~

~~(4) A school district, school, or publisher may be asked to send a second set of sample materials to the Superintendent as part of a reconsideration request.~~

~~(5) Any written information provided by a school district, school, or publisher shall be available to the advisory committees during the second review.~~

~~(6) After the second review by the subject area advisory committee, the Commission shall vote on the advisory committee's recommendation at the next scheduled meeting.~~

~~(7) If the Commission votes to change the recommendation, the Superintendent shall notify the Board of the action at the next scheduled Board meeting.~~

~~(8) The Superintendent shall send a school district, school, or publisher written notification of the final recommendation and new evaluation.~~

~~(9) If the Commission and Board approve materials following a request for reconsideration, the Superintendent shall post the evaluation to RIMs.]~~

KEY: instructional materials

Date of Last Change: ~~2024~~**October 11, 2023**

Notice of Continuation: September 15, 2022

Authorizing, and Implemented or Interpreted Law: Art X, Sec 3; 53E-4-402; 53E-4-408; 53E-3-401(4)

NOTICE OF PROPOSED RULE		
TYPE OF FILING: Amendment		
Rule or Section Number:	R277-480	Filing ID: 56518

Agency Information

1. Department:	Education
Agency:	Administration
Building:	Board of Education
Street address:	250 E 500 S

City, state and zip:	Salt Lake City, UT 84111	
Mailing address:	PO Box 144200	
City, state and zip:	Salt Lake City, UT 84114-4200	
Contact persons:		
Name:	Phone:	Email:
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule or section catchline:
R277-480. Charter School Revolving Account
3. Purpose of the new rule or reason for the change:
This rule is being amended to align with current practices surrounding the charter school revolving loan.
4. Summary of the new rule or change:
The amendments specifically assign the rule an oversight categorization as "Category 2" and make updates to the requirements for the Charter School Revolving Account Committee, which involves updates to the Charter School Revolving Account application requirements.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
A) State budget:
This rule change is not expected to have fiscal impact on state government revenues or expenditures.
The oversight framework categorization is part of the Utah State Board of Education's (USBE) effort through Rule R277-111 to categorize each rule into an oversight framework category, or to delineate for stakeholders what type of monitoring or oversight is required by the USBE resulting from the rule.
This categorization does not add any requirements or resources in and of itself. The language referencing State Finance is removed and updated to reflect the existence of the charter school closure reserve account, which was created by the legislature to mitigate risks from charter schools that close.
These changes align with current practice and do not affect USBE budgets or staff resources.

<p>B) Local governments:</p> <p>This rule change is not expected to have fiscal impact on local governments' revenues or expenditures.</p> <p>The oversight framework categorization is part of the USBE's effort through Rule R277-111 to categorize each rule into an oversight framework category, or to delineate for stakeholders what type of monitoring or oversight is required by the USBE resulting from the rule.</p> <p>This categorization does not add any requirements or resources in and of itself. The language referencing State Finance is removed and updated to reflect the existence of the charter school closure reserve account, which was created by the legislature to mitigate risks from charter schools that close.</p> <p>These changes align with current practice and will only impact charter schools who are closing or defaulting on a charter school revolving loan.</p> <p>The USBE does not believe there are any additional costs for Local Education Agencies (LEAs) as closing charter schools would already access the charter school closure reserve account to meet obligations as necessary.</p>
<p>C) Small businesses ("small business" means a business employing 1-49 persons):</p> <p>This rule change is not expected to have fiscal impact on small businesses' revenues or expenditures.</p> <p>This only affects the USBE and LEAs.</p>
<p>D) Non-small businesses ("non-small business" means a business employing 50 or more persons):</p> <p>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.</p>
<p>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):</p> <p>This rule change is not expected to have fiscal impacts on revenues or expenditures for persons other than small businesses, businesses, or local government entities.</p> <p>This only affects the USBE and LEAs.</p>

<p>F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):</p> <p>There are no compliance costs for affected persons.</p> <p>The oversight framework categorization is part of the USBE's effort through Rule R277-111 to categorize each rule into an oversight framework category, or to delineate for stakeholders what type of monitoring or oversight is required by the USBE resulting from the rule.</p> <p>This categorization does not add any requirements or resources in and of itself. The language referencing State Finance is removed and updated to reflect the existence of the charter school closure reserve account, which was created by the legislature to mitigate risks from charter schools that close.</p> <p>These changes align with current practice and will only impact charter schools who are closing or defaulting on a charter school revolving loan.</p> <p>The USBE does not believe there are any additional costs for LEAs as closing charter schools would already access the charter school closure reserve account to meet obligations as necessary.</p>																																																				
<p>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.)</p> <table border="1"> <thead> <tr> <th colspan="4">Regulatory Impact Table</th> </tr> <tr> <th>Fiscal Cost</th> <th>FY2024</th> <th>FY2025</th> <th>FY2026</th> </tr> </thead> <tbody> <tr> <td>State Government</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> <tr> <td>Local Governments</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> <tr> <td>Small Businesses</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> <tr> <td>Non-Small Businesses</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> <tr> <td>Other Persons</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> <tr> <td>Total Fiscal Cost</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> <tr> <th>Fiscal Benefits</th> <th>FY2024</th> <th>FY2025</th> <th>FY2026</th> </tr> <tr> <td>State Government</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> <tr> <td>Local Governments</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> <tr> <td>Small Businesses</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> <tr> <td>Non-Small Businesses</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> </tbody> </table>	Regulatory Impact Table				Fiscal Cost	FY2024	FY2025	FY2026	State Government	\$0	\$0	\$0	Local Governments	\$0	\$0	\$0	Small Businesses	\$0	\$0	\$0	Non-Small Businesses	\$0	\$0	\$0	Other Persons	\$0	\$0	\$0	Total Fiscal Cost	\$0	\$0	\$0	Fiscal Benefits	FY2024	FY2025	FY2026	State Government	\$0	\$0	\$0	Local Governments	\$0	\$0	\$0	Small Businesses	\$0	\$0	\$0	Non-Small Businesses	\$0	\$0	\$0
Regulatory Impact Table																																																				
Fiscal Cost	FY2024	FY2025	FY2026																																																	
State Government	\$0	\$0	\$0																																																	
Local Governments	\$0	\$0	\$0																																																	
Small Businesses	\$0	\$0	\$0																																																	
Non-Small Businesses	\$0	\$0	\$0																																																	
Other Persons	\$0	\$0	\$0																																																	
Total Fiscal Cost	\$0	\$0	\$0																																																	
Fiscal Benefits	FY2024	FY2025	FY2026																																																	
State Government	\$0	\$0	\$0																																																	
Local Governments	\$0	\$0	\$0																																																	
Small Businesses	\$0	\$0	\$0																																																	
Non-Small Businesses	\$0	\$0	\$0																																																	

NOTICES OF PROPOSED RULES

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

Citation Information

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

Article X, Section 3	Subsection 53E-3-401(4)	Subsection 53F-9-203(2)(b)
----------------------	-------------------------	----------------------------

Public Notice Information

8. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:	07/01/2024
--	------------

9. This rule change MAY become effective on:	07/08/2024
---	------------

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

Agency Authorization Information

Agency head or designee and title:	Angie Stallings, Deputy Superintendent of Policy	Date:	05/15/2024
---	--	--------------	------------

R277. Education, Administration.

R277-480. Charter School Revolving Account.

R277-480-1. Authority, ~~and~~ Purpose, and Oversight Category.

- (1) This rule is authorized by:
 - (a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;
 - (b) Subsection 53E-3-401(4), which allows the Board to adopt rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and
 - (c) Subsection 53F-9-203(2)(b), which requires the Board to administer the Charter School Revolving Account.
- (2) The purpose of this rule is to:
 - (a) establish procedures for administering the Charter School Revolving Account;
 - (b) determine membership of the Charter School Revolving Account Committee; and

(c) determine loan amounts and loan repayment conditions.

(3) This Rule R277-480 is categorized as Category 2 as described in Rule R277-111.

R277-480-2. Definitions.

- (1) "Charter school" means a public school created in accordance with ~~the provisions of~~ Title 53G, Chapter 5, Charter Schools.
- (2) "Charter School Revolving Account" means a restricted account created within the Uniform School fund to provide assistance to charter schools to:
 - (a) meet school building construction and renovation needs; and
 - (b) pay for expenses related to the start up of a new charter school or the expansion of an existing charter school.
- (3) "Charter School Revolving Account Committee" means the committee established by the Board under Subsection 53F-9-203(6).
- (4) "Executive Director" means the Executive Directors of the State Charter School Board or the Executive Director's designee.
- ~~(4)~~(5)(a) "Urgent facility need" means an unexpected exigency at a charter school that is entitled to priority under Subsection 53F-9-203(5) because it affects the health and safety of students.
 - (b) An "urgent facility need" may include:
 - (i) an unforeseen condition that precludes a school's qualification for an occupancy permit; or
 - (ii) an unforeseen circumstance that keeps the school from satisfying provisions of public safety, public health, or public school laws or Board rules.

R277-480-3. Charter School Revolving Account Committee.

- (1) The Board shall establish a Charter School Revolving Account Committee in accordance with ~~Subsection~~Section 53F-9-203~~(6)~~.
- (2) The State Charter School Board shall submit a list of at least three nominees per vacancy who meet the requirements of ~~Subsection~~Section 53F-9-203~~(6)(b)~~ for appointment by the Board consistent with timelines established by the Board.
- (3) The Board shall ~~annually~~ accept nominations of individuals provided by the State Charter School Board who meet the qualifications of ~~Subsection~~Section 53F-9-203~~(6)(b)~~.
- (4) The Board may only select Charter School Revolving Account Committee members who satisfy conditions of ~~Subsection~~Section 53F-9-203~~(6)~~.
- (5) Charter School Revolving Account Committee members shall serve two-year terms.
- (6) The Executive Director shall be a non-voting Charter School Revolving Account Committee member.

R277-480-4. Charter School Revolving Account Application and Conditions.

- (1) The Charter School Revolving Account Committee shall develop a loan application that is consistent with Section 53F-9-203, including criteria for urgent facility needs.
- (2) The Charter School Revolving Account Committee may request any criteria or information from an applicant that the committee finds necessary and helpful in making final recommendations to the State Charter School Board and the Board.

(3)(a) The Charter School Revolving Account Committee shall accept applications for loans annually by April 30, subject to eligibility criteria and availability of funds.

(b) If the Charter School Revolving Account Committee does not distribute all available funds during its initial application process, the committee may set deadlines to review additional applications.

(4) To apply for a loan, a charter school shall submit the information requested on the Board's most current loan application form together with the requested supporting documentation.

(5) A charter school's application shall include a resolution from the governing board of the charter school that the governing board, at a minimum:

(a) agrees to enter into the loan as provided in the application materials;

(b) agrees to the interest established by the Charter School Revolving Account Committee and repayment schedule of the loan designated by the Charter School Revolving Account Committee and the Board;

(c) agrees that loan funds shall only be used consistent with the purposes of Section 53F-9-203 and the approved charter;

(d) agrees to any[~~and all~~] inspections, audits or financial reviews ordered by the Charter School Revolving Account Committee or the Board; and

(e) agrees to all terms required for the loan by the State Division of Finance, including:

(i) servicing by the State Division of Finance;

(ii) payment of an annual servicing fee; and

(iii) agreement to execute an electronic funds transfer agreement for monthly payments by the school[~~;~~ and

~~(iv) in the case of default, agreement to terms established by the State Division of Finance for collection].~~

(6) The Charter School Revolving Account Committee shall establish terms and conditions for loan repayment, consistent with Section 53F-9-203. [~~Terms shall include:~~

(7) The terms established under Subsection (6) shall include a tiered schedule of loan fund distribution as follows:

(a) 50[~~percent~~]%(up to \$150,000) disbursed no more than 12 months prior to August 15 in the school's first year of operations;

(b) 25[~~percent~~]%(up to \$75,000) disbursed no more than six months prior to August 15 in the school's first year of operation;

(c) the balance of loan funds disbursed no more than three months prior to August 15 in the school's first year of operations.

(8) The loan amount to a charter school board awarded under Section 53F-9-203 may not exceed:

(a) \$1,000 per pupil based on the most recent October 1 enrollment count for operational schools; or

(b) \$1,000 per pupil based on approved enrollment capacity of the first year of operation for pre-operational schools; or

(c) \$300,000 of the total of all current loan awards by the Board to a charter school board.

(9) If a loan recipient defaults on a loan made under this rule, the debt may be secured by funds contributed by charter schools to the Charter School Closure Reserve Account under Section 53F-9-307 after the defaulting school has made reasonable effort to resolve its debts and liquidate its assets as required by law.

R277-480-5. Charter School Revolving Account Committee Recommendations and Board Approval.

(1) The Charter School Revolving Account Committee shall make recommendations to the State Charter School Board and the Board only upon receipt of complete and satisfactory information

from the applicant and upon a majority recommendation from the Charter School Revolving Account Committee.

(2) The submission of intentionally false, incomplete or inaccurate information from a loan applicant may result in:

(a) immediate cancellation of any previous loan;

(b) the requirement for immediate repayment of any funds received;

(c) denial of subsequent applications for a 12-month period from the date of the initial application; and

(d) a recommendation to a school's authorizer to consider revocation of the school's charter.

(3) The Superintendent and Executive Director shall review recommendations from the Charter School Revolving Account Committee.

(4) The Charter School Revolving Account Committee shall submit recommendations for loan funding to the State Charter School Board for review.

(5) The State Charter School Board shall submit final recommendations to the Board no more than 90 days after submission of all information and materials from the loan applicant to the Charter School Revolving Account Committee.

(6) Either the State Charter School Board or the Board may request additional information from loan applicants or [~~a reconsideration of a recommendation by~~]the Charter School Revolving Account Committee.

(7) The Board's approval or denial of a loan application constitutes the final administrative action in the charter school building revolving loan process.

KEY: charter schools, revolving account

Date of Last Change: 2024[July 2, 2019]

Notice of Continuation: May 10, 2024

Authorizing, and Implemented or Interpreted Law: Art X, Sec 3; 53F-9-203(2)(b); 53E-3-401(4)

NOTICE OF PROPOSED RULE		
TYPE OF FILING: Amendment		
Rule or Section Number:	R277-490	Filing ID: 56519

Agency Information

1. Department:	Education	
Agency:	Administration	
Building:	Board of Education	
Street address:	250 E 500 S	
City, state and zip:	Salt Lake City, UT 84111	
Mailing address:	PO Box 144200	
City, state and zip:	Salt Lake City, UT 84114-4200	
Contact persons:		
Name:	Phone:	Email:
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov

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

General Information

2. Rule or section catchline:

R277-490. Beverley Taylor Sorenson Elementary Arts Learning Program (BTSALP)

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

This rule is being amended due to the passage of H.B. 1 from the 2024 General Session, which requires the Utah State Board of Education (USBE) to establish a uniform Beverley Taylor Sorenson (BTS) grant amount.

4. Summary of the new rule or change:

The amendments specifically add an oversight categorization of "Category 3", and also establish the grant amount based on elementary school teacher average costs statewide or prior year certified BTS salaries.

The amendments specify that if the actual cost of an arts educator's salary plus benefits exceeds the uniform amount, the Local Education Agency (LEA) will pay the difference with local funds. The language in this rule provides that the "uniform amount" not include funding an educator receives under the Educator Salary Adjustment, as described in Section 53F-2-405.

Language in this rule has also been added to clarify what excess funds may be used for if there is program funding available after staff distribute the uniform amount to participating LEAs.

Fiscal Information

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

A) State budget:

This rule change is not expected to have fiscal impact on state government revenues or expenditures.

The oversight framework categorization is part of the Utah State Board of Education's (USBE) effort through Rule R277-111 to categorize each rule into an oversight framework category, or to delineate for stakeholders what type of monitoring or oversight is required by the USBE resulting from the rule.

This categorization does not add any requirements or resources in and of itself. The changes to the BTS Arts program are due to the passage of H.B. 1 (2024) requiring a uniform grant amount. This does impact LEA allocations but the USBE believes that the fiscal impacts were captured in the fiscal note to H.B. 1 (2024) for the USBE and LEAs.

B) Local governments:

This rule change is not expected to have fiscal impacts on local governments' revenues or expenditures.

The oversight framework categorization is part of the USBE's effort through Rule R277-111 to categorize each rule into an oversight framework category, or to delineate for stakeholders what type of monitoring or oversight is required by the USBE resulting from the rule.

This categorization does not add any requirements or resources in and of itself. The changes to the BTS Arts program are due to the passage of H.B. 1 (2024) requiring a uniform grant amount.

This does impact LEA allocations but the USBE believes that the fiscal impacts were captured in the fiscal note to H.B. 1 (2024) for the USBE and LEAs.

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

This rule change is not expected to have fiscal impacts on small businesses' revenues or expenditures.

This only affects the USBE and LEAs.

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

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

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

This rule change is not expected to have fiscal impacts on revenues or expenditures for persons other than small businesses, businesses, or local government entities.

This only affects the USBE and LEAs.

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

There are no compliance costs for affected persons.

The oversight framework categorization is part of USBE's effort through Rule R277-111 to categorize each rule into an oversight framework category, or to delineate for stakeholders what type of monitoring or oversight is required by the USBE resulting from the rule.

This categorization does not add any requirements or resources in and of itself. The changes to the BTS Arts program are due to the passage of H.B. 1 (2024) requiring a uniform grant amount.

This does impact LEA allocations but the USBE believes that the fiscal impacts were captured in the fiscal note to H.B. 1 (2024) for the USBE and LEAs.

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

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

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

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

Citation Information

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

Article X, Section 3	Subsection 53E-3-401(4)	Section 53F-2-506
----------------------	-------------------------	-------------------

Public Notice Information

8. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:	07/01/2024
--	------------

9. This rule change MAY become effective on:

07/08/2024

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

Agency Authorization Information

Agency head or designee and title:	Angie Stallings, Deputy Superintendent of Policy	Date:	05/15/2024
---	--	--------------	------------

R277. Education, Administration.
R277-490. Beverley Taylor Sorenson Elementary Arts Learning Program [(BTSALP)](BTS Arts).
R277-490-1. Authority, [and] Purpose, and Oversight Category.

(1) This rule is authorized by:

- (a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;
- (b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and
- (c) Section 53F-2-506, which directs the Board to establish a [grant]funding program for LEAs to hire qualified arts professionals to encourage student participation in the arts in Utah public schools and embrace student learning in Core subject areas.

(2) The purpose of this rule is:

- (a) to implement the [BTSALP]BTS Arts model in public schools through LEAs and consortia that submit [grant]funding applications to hire arts educators who are paid on an LEA's licensed teacher salary schedule;
- (b) to distribute funds to LEAs to purchase supplies and equipment as provided for in Subsections 53F-2-506(4) and (6);
- (c) to fund activities at endowed universities to provide pre-service training, professional development, research, and leadership for arts educators and arts education in Utah public schools; and
- (d) to appropriately monitor, evaluate, and report programs and program results.

(3) This Rule R277-490 is categorized as Category 3 as described in Rule R277-111.

R277-490-2. Definitions.

(1)(a) "Arts educator" or "qualified school arts program educator" means an educator who:

(i) holds a current:

(A) Associate, Professional, or LEA-specific educator license as described in Rule R277-301; and

(B)(I) K-12 art form specific endorsement;

(II) elementary arts educator's art form specific endorsement; or

(III) qualifications for a state approved endorsement plan to complete the endorsement requirements; and

(ii) is employed by an LEA or consortium participating in the program.

(b) "Arts educator" or "qualified school arts program educator" does not include a paraprofessional or other individual without a current Associate, Professional, or LEA-specific educator license described in Rule R277-301.

(1)(2) "Arts equipment and supplies" includes musical instruments, recording and play-back devices, cameras, projectors, computers to be used in the program, CDs, DVDs, teacher reference books, and art-making supplies.

(2)(3) "Arts Program coordinator" or "coordinator" means an individual, employed full-time, who is responsible to:

(a) coordinate arts programs for an LEA or consortium;

(b) inform arts teachers;

(c) organize arts professional development including organizing arts local learning communities;

(d) oversee, guide, and organize the gathering of assessment data;

(e) represent the LEA or consortium arts program; and

(f) provide general leadership for arts education throughout the LEA or consortium.

(3)(4) "Beverly Taylor Sorenson Elementary Arts Learning Program model," "[BTSALP]BTS Arts model," or "Program" means a program in grades K-6 including the following components:

(a) a qualified arts educator to work collaboratively with the regular classroom teacher to deliver quality, sequential, and developmental arts instruction in alignment with the state fine arts core standards;

(b) regular collaboration between the classroom teacher and arts educator in planning arts integrated instruction; and

(c) other activities that may be proposed by an LEA on a [grant]funding application and approved by the Board.

(4)(5) "Endowed university" has the same meaning as defined in Subsection 53F-2-506(1)(b).

~~_____ (5) "Highly qualified school arts program educator" or "arts educator" means an educator who holds a current:~~

~~_____ (a) Associate, Professional, or LEA Specific educator license as described in Rule R277-301; and~~

~~_____ (b)(i) k-12 art form specific endorsement;~~

~~_____ (ii) elementary specialist art form specific endorsement; or~~

~~_____ (iii) qualifications for a state approved endorsement plan to complete the endorsement requirements.~~

~~_____ (6) "Matching funds" means funds that equal at least 20% of the total costs for salary plus benefits incurred by an LEA or consortium to fund the LEA or consortium's arts educator.]~~

(6)(a) "Total arts educator salary amount plus benefits for arts educators statewide" means the sum of the total arts educator salary amount, plus benefits, for arts educators statewide during the most recent school year, not including funding an arts educator

receives under the educator salary adjustment described in Section 53F-2-405.

(b) When calculating the total arts educator salary amount plus benefits for arts educators statewide, the Superintendent shall take into account the full-time or part-time status of each arts educator to determine the total arts educator salary amount.

R277-490-3. Arts Educator [Grant]Program - LEA Consortium.

(1) LEAs may form a consortium to employ arts educators appropriate for the number of students served.

(2) An LEA or a consortium of LEAs may submit a [grant]funding request consistent with [time lines]timelines provided in this rule.

(3) An LEA or a consortium shall develop [its]the LEA or consortium's proposal consistent with the [BTSALP]BTS Arts model outlined under Subsection R277-490-2(3).

(4) A consortium [grant]funding request shall explain the necessity or greater efficiency and benefit of an arts educator serving several elementary schools within a consortium of LEAs.

(5) A consortium [grant]funding request shall explain a schedule for each [specialist]arts educator to serve the group of schools within several of the LEAs similarly to an arts educator in a single school.

(6) A consortium [grant]funding request shall provide information for a consortium arts educator's schedule that minimizes the arts educator's travel and allows the arts educator to be well integrated into several schools.

(7) An LEA's [grant]funding application [shall]may include the collaborative development of the application with the LEA's partner endowed university and school community councils [if matching funds come from School LAND Trust Funds].

R277-490-4. Arts Educator [Grant]Program Timelines.

(1) [An]A new LEA or [a-]consortium shall [complete a]submit a completed program [grant]funding application [annually]to the Superintendent by January 31.

(2)(a) An LEA or consortium requesting a renewal of the LEA or consortium's program shall submit a renewal application to the Superintendent once every three years by the January 31 before the end of the LEA or consortium's funding sunset.

(b) In a year where an LEA or consortium is not required to submit an application to the Superintendent, the LEA or consortium shall submit a notice of intent to continue in the program to the Superintendent.

[(2)](3) The [Board]Superintendent shall [grant]provide funding priority to renewal applications.

~~_____ (3) An LEA or consortium shall submit a completed application requesting funding to the Superintendent by May 1 annually.]~~

(4) The [Board]Superintendent shall designate an LEA or a consortium for funding no later than June 1 annually.

R277-490-5. Distribution of Funds for Arts Educator -- Uniform Amount.

~~_____ (1) A program LEA or consortium shall submit a projection of salaries, including benefits, of all arts educators the LEA or consortium expects to employ in the coming school year by May 1 annually.~~

~~_____ (2) A program LEA or consortium shall submit complete information of salaries, including benefits, of all arts educators employed by the LEA or consortium no later than September 30 annually.~~

~~(3)(a) If a program LEA or consortium provides matching funds, the Superintendent shall distribute funds to program grant recipients annually up to 80% of the salaries plus benefits for approved hires in the program, and not to exceed the amount projected in accordance with Subsection (1), consistent with Subsection 53F-2-506(5).~~

~~(b) The Superintendent shall determine the exact percentage awarded following review of available program funding and exact costs for continuing programs.~~

~~(c) The Superintendent may not award funds to an LEA for a new arts educator unless program funding provides 80% funding for all continuing grants.~~

~~(4) The Superintendent shall annually set the upper limit on a grant amount, which may not exceed the increase in the WPU.~~

~~(5) A grant recipient shall provide matching funds for each arts educator funded through the program.~~

~~(6) Notwithstanding Rule R277-424, an LEA grant recipient may not charge indirect costs to the BTSALP.]~~

(1)(a) The Superintendent shall annually determine a uniform amount as required in Subsection 53F-2-506(4) by April 15 to distribute to participating LEAs to support the program.

(b) The uniform amount described in Subsection (1)(a) shall be the average statewide arts educator salary plus benefits, which is equal to the quotient of:

(i) the total arts educator salary amount plus benefits for arts educators statewide from the most recent school year; divided by

(ii) the number of arts educators participating in the program during the most recent school year.

(c) Before distributing the uniform amount described in this Subsection (1) to LEAs, the Superintendent shall set aside an amount to distribute to endowed universities as described in Section R277-490-8.

(d) After setting aside the amount described in Subsection (1)(c), if the funding available for distribution is less than the amount needed to distribute the full uniform amount described in Subsection (1)(b) for each participating arts educator, the Superintendent shall reduce the uniform amount based on the available funds for distribution for the upcoming school year.

(e) When determining the amount per arts educator to be distributed to an LEA or consortium, the Superintendent shall take into account the full-time or part-time status of each arts educator to establish the LEA or consortium's allocation of program funds.

(2) The Superintendent shall distribute the lesser of the following to an LEA or consortium per arts educator:

(a) the uniform amount described in this Subsection (1); or

(b) the actual salary plus benefits for the applicable arts educator.

(3) As required in Subsection 53F-2-506(5), if the uniform amount described in Subsection (1) provides less funding than the cost of an LEA's arts educator's salary plus benefits, the LEA shall pay the difference in the cost of the arts educator's salary plus benefits and the uniform amount.

(4) If there are funds available after the distribution described in this Section R277-490-5, the Superintendent may use the funds to:

(a) distribute funds to an LEA or consortium for arts educator supplies and equipment as described in Section R277-490-6; or

(b) engage in other activities that improve the quantity and quality of integrated arts education as allowed in Subsection 53F-2-506(4).

R277-490-6. Distribution of Funds for Arts Educator Supplies and Equipment.

(1) The ~~Board~~Superintendent shall distribute funds for arts educator supplies and equipment to an LEA or consortium as available.

(2) A ~~grant~~funding recipient shall distribute funds to participating schools as provided in the approved LEA or consortium ~~grant~~funding and consistent with LEA procurement policies.

(3) A ~~grant~~funding recipient shall require arts educators to provide adequate documentation of arts supplies purchased consistent with the ~~grant~~funding recipient's plan, this rule, and the law.

(4) Summary information about effective supplies and equipment shall be provided in the school or consortium evaluation of the program.

R277-490-7. LEA or Consortium Employment of Arts Coordinators.

(1)(a) An LEA or consortium may apply for funds to employ arts coordinators in the LEA or consortium.

(b) These are intended as small stipends for educators who are already employed in rural districts to help support arts education and the implementation of ~~BTSALP~~BTS Arts.

(2) An applicant shall explain:

(a) how an arts coordinator will be used, consistent with the ~~BTSALP~~BTS Arts model;

(b) what requirements an arts coordinator must meet; and

(c) what training will be provided, and by whom.

(3) The Superintendent shall notify an LEA that receives a ~~grant~~funding award no later than June 1 annually.

R277-490-8. Endowed University Participation in the ~~BTSALP~~BTS Arts.

(1) The Superintendent may consult with endowed chairs and integrated arts advocates regarding program development and guidelines.

(2) An endowed university may apply for ~~grant~~funds to fulfill the purposes of this program, which include:

(a) delivery of high quality professional development to participating LEAs;

(b) the design and completion of research related to the program;

(c) providing the public with elementary arts education resources; and

(d) other program related activities as may be included in a ~~grant~~funding application and approved by the ~~Board~~Superintendent.

(3) An endowed university ~~grant~~funding application shall include documentation of collaborative development of a plan for delivery of high quality professional development to participating LEAs.

(4) The Superintendent shall determine the LEAs assigned to each endowed university.

(5) The ~~Board~~Superintendent may award no more than 10% of the total legislative appropriation for ~~grants~~funds to endowed universities.

(6) Notwithstanding Rule R277-424, a higher education ~~grant~~funding recipient may not charge indirect costs to the ~~BTSALP~~BTS Arts.

NOTICES OF PROPOSED RULES

(7) The Superintendent shall monitor the activities of the [grantees]funding recipients to ensure compliance with [grant]funding rules, fulfillment of [grant]funding application commitments, and appropriate fiscal procedures.

(8) An endowed university shall cooperate with the Superintendent in the monitoring of [its grant]the endowed university's funding.

(9) An endowed university that receives [grant]program funds shall consult, as requested by the Superintendent, in the development and presentation of an annual written program report as required in statute.

R277-490-9. LEAs Cooperation with the Superintendent for ~~[BTSALP]BTS Arts~~.

(1) A ~~[BTSALP]BTS Arts~~ staff member may visit a school receiving [a grant]funding to observe implementation of the [grant]funding.

(2) A ~~[BTSALP]BTS Arts~~ school shall cooperate with the Superintendent to allow visits of members of the Board, legislators, and other invested partners to promote elementary arts integration.

(3) An LEA shall accurately report the number of students impacted by the program [grant]funding and report on the delivery systems to those students as requested by the Superintendent.

(4)(a) An LEA found to be out of compliance with the terms of the [grant]funding requirements will be notified within 30 days of the discovery of non-compliance.

(b) An LEA found to be non-compliant will be given 30 days to correct the issues.

(c) If non-compliance is not resolved within that time frame, an LEA is subject to losing the [grant]program funds for the school or schools found to be non-compliant.

KEY: arts programs, endowed universities, [grants]funding, public schools

Date of Last Change: ~~2024~~April 8, 2024

Notice of Continuation: December 15, 2022

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-401(4); 53F-2-506

NOTICE OF PROPOSED RULE		
TYPE OF FILING: Repeal		
Rule or Section Number:	R277-531	Filing ID: 56520

Agency Information

1. Department:	Education
Agency:	Administration
Building:	Board of Education
Street address:	250 E 500 S
City, state and zip:	Salt Lake City, UT 84111
Mailing address:	PO Box 144200
City, state and zip:	Salt Lake City, UT 84114-4200

Contact persons:		
Name:	Phone:	Email:
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule or section catchline:
R277-531. Public Educator Evaluation Requirements (PEER)
3. Purpose of the new rule or reason for the change:
This rule is being repealed as a result of the Utah State Board of Education (USBE) adoption of Rule R277-323, Public Educator Evaluation.
4. Summary of the new rule or change:
This rule is no longer necessary because of the adoption of Rule R277-323. This rule is repealed in its entirety.
(EDITOR'S NOTE: The proposed new Rule R277-323 is under ID 56516 in this issue, June 1, 2024, of the Bulletin.)

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
A) State budget:
This rule change is not expected to have fiscal impacts on state government revenues or expenditures.
This rule is repealed due to the adoption of Rule R277-323, which adopts a new educator evaluation system due to legislative changes made in S.B. 137, Teacher Empowerment, from the 2024 General Session.
The Utah State Board of Education (USBE) believes that any associated costs for the USBE, Local Education Agencies (LEAs), and educators were captured in the fiscal note to S.B. 137 (2024).
There are no additional measurable costs or resources required of the USBE, LEAs, and educators as a result of the new rule.
B) Local governments:
This rule change is not expected to have fiscal impact on local governments' revenues or expenditures.
This rule is repealed due to the adoption of Rule R277-323, which adopts a new educator evaluation system due to S.B. 137 (2024).

The USBE believes that any associated costs for the USBE, LEAs, and educators were captured in the fiscal note to S.B. 137 (2024).

There are no additional measurable costs or resources required of the USBE, LEAs, and educators as a result of the new rule.

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

This rule change is not expected to have fiscal impact on small businesses' revenues or expenditures.

This only affects the USBE and LEAs.

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

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

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

This rule change is not expected to have fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities.

This rule is repealed due to the adoption of Rule R277-323, which adopts a new educator evaluation system due to S.B. 137 (2024).

The USBE believes that any associated costs for the USBE, LEAs, and educators were captured in the fiscal note to S.B. 137 (2024).

There are no additional measurable costs or resources required of the USBE, LEAs, and educators as a result of the new rule.

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

There are no compliance costs for affected persons.

This rule is repealed due to the adoption of Rule R277-323, which adopts a new educator evaluation system due to S.B. 137 (2024).

The USBE believes that any associated costs for the USBE, LEAs, and educators were captured in the fiscal note to S.B. 137 (2024).

There are no additional measurable costs or resources required of the USBE, LEAs, and educators as a result of the new rule.

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

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

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

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

Citation Information

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

Article X, Section 3	Subsection 53E-3-401(4)	Subsection 53E-3-501(1)(a)(i)
-------------------------	----------------------------	----------------------------------

Public Notice Information

8. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:	07/01/2024
--	------------

9. This rule change MAY become effective on:	07/08/2024
---	------------

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

Agency Authorization Information

Agency head or designee and title:	Angie Stallings, Deputy Superintendent of Policy	Date:	05/15/2024
---	---	--------------	------------

R277. Education, Administration.

[R277-531. Public Educator Evaluation Requirements (PEER).

R277-531-1. Authority and Purpose.

- (1) This rule is authorized by:
 - (a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;
 - (b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law;
 - (c) Subsections 53E-3-501(1)(a)(i) and (ii), which require the Board to establish rules and minimum standards for the qualification and certification of educators and for required school administrative and supervisory services; and
 - (d) Section 53G-11-504, which directs that the Board adopt rules to guide school district employee evaluations.
- (2) The purpose of this rule is to provide a statewide educator evaluation system framework that includes required Board directed expectations and components and additional school district determined components and procedures to ensure the availability of data about educator effectiveness.
- (3) The process shall:
 - (a) focus on the improvement of high quality instruction and improved student achievement;
 - (b) include common data that can be aggregated and disaggregated to inform Board and school district decisions about retention, preparation, recruitment, and improved professional learning practices; and
 - (c) ensure school districts engage in a consistent process statewide of educator evaluation.

R277-531-2. Definitions.

- (1) "Educator" means an individual licensed under Section 53E-6-201 and who meets the requirements of Rule R277-301.
- (2) "Educator Evaluation Program" means a school district's process, policies, and procedures for evaluating an

educator's performance according to the educator's various assignments.

- (3) "Formative evaluation" means an evaluation that provides an educator with information and assessments on how to improve the educator's performance.
- (4) "Instructional quality data" means data acquired through observation of an educator's instructional practices.
- (5) "Joint educator evaluation committee" means the local committee described under Section 53G-11-506 that develops and assesses a school district evaluation program.
- (6) "School administrator" means an educator:
 - (a) serving in a position that requires a Utah Educator License with an Administrative area of concentration; and
 - (b) who supervises Level 2 educators.
- (7) "Summative evaluation" means an evaluation that is used to make annual decisions or ratings of an educator's performance and may inform decisions on salary, confirmed employment, personnel assignments, transfers, or dismissals.
- (9) "Utah Effective Educator Standards" means:
 - (a) the Effective Teaching Standards established in Section R277-530-5;
 - (b) the Educational Leadership Standards established in Section R277-530-6; and
 - (c) the Educational School Counselor Standards established in Section R277-530-7.
- (10) "Valid and reliable measurement tool" means an instrument that has proved consistent over time and uses non-subjective criteria that require minimal interpretation.

R277-531-3. Public Educator Evaluation Framework.

- (1) The Board provides the public education evaluation framework described in this section, which includes general evaluation system areas and additional discretionary components required in a school district's educator evaluation system.
 - (2) A school district shall:
 - (a) have a joint educator evaluation committee;
 - (b) base the school district's educator evaluation system on the Utah Effective Educator Standards in Rule R277-530;
 - (c) establish and articulate performance expectations individually for all licensed school district educators;
 - (d) use valid and reliable measurement tools including, at a minimum:
 - (i) observations of instructional quality;
 - (ii) evidence of student growth;
 - (iii) parent and student input; and
 - (iv) other indicators as determined by the school district;
 - (e) provide an annual rating of educator performance using uniform statewide terminology and definitions, and include summative and formative components;
 - (f) direct the revision or alignment of all related school district policies, as necessary, to be consistent with the school district Educator Evaluation System;
 - (g) use valid, reliable, and research-based measurements that shall:
 - (i) employ a variety of measurement tools;
 - (ii) measure student growth for educators;
 - (iii) provide evaluation for non-instructional licensed educators and administrators; and
 - (h) provide both formative and summative evaluation data.
 - (3) A school district may consider data gathered from tools to inform decisions about employment and professional learning.

~~(4) A school district shall discuss and protect the confidentiality of educator data in the evaluation process.~~

~~(5)(a) A school district evaluation system shall provide for clear and timely notice to educators of the components, timelines, and consequences of the evaluation process; and~~

~~(b) A school district evaluation system shall provide for timely discussion with evaluated educators to include professional growth plans as required in Rule R277-500 and evaluation conferences.~~

~~(6) A school district evaluation system shall provide support for instructional improvement, including:~~

~~(a) assessing the professional learning needs of educators; and~~

~~(b) identifying educators who do not meet expectations for instructional quality and providing support as appropriate at the school district level, which may include providing educators with mentors, coaches, and specialists in effective instruction, and setting timelines and benchmarks to assist educators toward greater improved instructional effectiveness and student achievement.~~

~~(7) A school district evaluation system shall maintain records and documentation of required educator evaluation information.~~

~~(8) A school district evaluation system shall require the evaluation of all licensed educators at least once a year in accordance with Section R277-533.~~

~~(9) A school district evaluation system shall provide at least an annual rating for each licensed educator, including teachers, school administrators, and other non-teaching licensed positions, using Board directed statewide evaluation terminology and definitions.~~

~~(10) A school district evaluation system shall include the following specific educator performance criteria:~~

~~(a) school district determined instructional quality measures;~~

~~(b) complete integration of student academic growth score; and~~

~~(c) other measures as determined by the school district, including data required from student or parent input.~~

~~(11) A school district evaluation system shall identify potential employment consequences, including discipline and termination, if an educator fails to meet performance expectations.~~

~~(12) A school district evaluation system shall include a review or appeals procedure for an educator to challenge the process of a summative evaluation that provides for adequate and timely due process for the educator consistent with Subsection 53G-11-508(2).~~

~~(13) A school district may include additional components in its evaluation system.~~

~~(14) A local board of education shall review and approve its school district's proposed evaluation systems in an open meeting prior to the local board's submission to the Board.~~

~~(15) A school district shall report educator effectiveness data to the Superintendent annually, on or before June 30.~~

R277-531-4. Board Support and Monitoring of LEA Evaluation Systems.

The Superintendent, under supervision of the Board, shall:

(1) develop a model educator evaluation system that includes performance expectations consistent with this rule;

(2) evaluate and recommend tools and measures for use by school districts as they develop and initiate their local educator evaluation systems; and

~~(3) annually monitor 25% of the school districts' evaluation systems.~~

R277-531-5. Compensation.

~~(1) A school district shall implement an employee compensation system, no later than the 2018-19 school year, that is aligned to the school district's educator evaluation system.~~

~~(2) An educator's annual advancement on an adopted salary schedule shall be based primarily upon an evaluation system that differentiates among four levels of performance as described in Section 53G-11-507 and R277-533, unless the educator:~~

~~(a) is a provisional educator; or~~

~~(b) is in the first year of an assignment, including a new subject, grade level, or school.~~

KEY: educators, evaluations, requirements

Date of Last Change: November 26, 2021

Notice of Continuation: June 4, 2021

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-501(1)(a)(i); 53E-3-401(4)

NOTICE OF PROPOSED RULE		
TYPE OF FILING: Repeal		
Rule or Section Number:	R277-533	Filing ID: 56521

Agency Information

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

General Information

2. Rule or section catchline:
R277-533. Educator Evaluation Systems
3. Purpose of the new rule or reason for the change:
This rule is being repealed as a result of the Utah State Board of Education (USBE) adoption of Rule R277-323, Public Educator Evaluation.

4. Summary of the new rule or change:
 This rule is no longer necessary because of the adoption of Rule R277-323. This rule is repealed in its entirety.
 (EDITOR'S NOTE: The proposed new Rule R277-323 is under ID 56516 in this issue, June 1, 2024, of the Bulletin.)

Fiscal Information

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

A) State budget:

This rule change is not expected to have fiscal impact on state government revenues or expenditures.

This rule is repealed due to the adoption of Rule R277-323, which adopts a new educator evaluation system due to legislative changes made in S.B. 137 (2024). The Utah State Board of Education (USBE) believes that any associated costs for the USBE, Local Education Agencies (LEAs), and educators were captured in the fiscal note to S.B. 137 (2024).

There are no additional measurable costs or resources required of the USBE, LEAs, and educators as a result of the new rule.

B) Local governments:

This rule change is not expected to have fiscal impact on local governments' revenues or expenditures.

This rule is repealed due to the adoption of Rule R277-323, which adopts a new educator evaluation system due to legislative changes made in S.B. 137 (2024).

The USBE believes that any associated costs for the USBE, LEAs, and educators were captured in the fiscal note to S.B. 137 (2024).

There are no additional measurable costs or resources required of the USBE, LEAs, and educators as a result of the new rule.

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

This rule change is not expected to have fiscal impact on small businesses' revenues or expenditures.

This only affects the USBE and LEAs.

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

There are no non-small businesses in the industry in question, Elementary and Secondary Schools (North American Industry Classification System (NAICS) 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and

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

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

This rule change is not expected to have fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities.

This rule is repealed due to the adoption of Rule R277-323, which adopts a new educator evaluation system due to legislative changes made in S.B. 137 (2024).

The USBE believes that any associated costs for the USBE, LEAs, and educators were captured in the fiscal note to S.B. 137 (2024).

There are no additional measurable costs or resources required of the USBE, LEAs, and educators as a result of the new rule.

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

There are no compliance costs for affected persons.

This rule is repealed due to the adoption of Rule R277-323, which adopts a new educator evaluation system due to legislative changes made in S.B. 137 (2024).

The USBE believes that any associated costs for the USBE, LEAs, and educators were captured in the fiscal note to S.B. 137 (2024).

There are no additional measurable costs or resources required of the USBE, LEAs, and educators as a result of the new rule.

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

Regulatory Impact Table

Fiscal Cost	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0

Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0
H) Department head comments on fiscal impact and approval of regulatory impact analysis:			
The State Superintendent of the Utah State Board of Education, Sydnee Dickson, has reviewed and approved this fiscal analysis.			

Citation Information

6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:		
Article X, Section 3	Section 53E-3-401	Title 53G, Chapter 11, Part 5

Public Notice Information

8. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	07/01/2024
9. This rule change MAY become effective on:	07/08/2024
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.	

Agency Authorization Information

Agency head or designee and title:	Angie Stallings, Deputy Superintendent of Policy	Date:	05/15/2024
---	--	--------------	------------

R277. Education, Administration.

~~**[R277-533. Educator Evaluation Systems.**~~

~~**R277-533-1. 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) Title 53G, Chapter 11, Part 5, Educator Evaluations, which requires the Board to make rules to establish a framework for the evaluation of educators and set policies and procedures related to educator evaluations; 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) specify the requirements for district Educator Evaluation Systems Policies;~~
 - ~~_____ (b) describe the required components of district Educator Evaluation Systems; and~~
 - ~~_____ (c) establish requirements for how the Annual Summative Educator Evaluation Rating is reported for districts and charter schools.~~

~~**R277-533-2. Definitions.**~~

- ~~_____ (1) "Administrator" has the same meaning as that term is defined in Subsection 53G-11-501(1).~~
- ~~_____ (2) "Certified rater" means an educator who has been trained in evaluating educator performance and has demonstrated competency in using an educator evaluation tool to rate educator effectiveness according to established standards.~~
- ~~_____ (3) "Educator" has the same meaning as that term is defined in Subsection 53G-11-501(6).~~
- ~~_____ (4) "Evaluator" means a person who is responsible for an educator's overall evaluation, including:~~
 - ~~_____ (a) professional performance;~~
 - ~~_____ (b) student growth;~~
 - ~~_____ (c) stakeholder input; and~~
 - ~~_____ (d) other indicators of professional improvement.~~
- ~~_____ (5) "Rater" means a person who conducts an observation of an educator related to an educator's evaluation.~~
- ~~_____ (6) "School district" includes the Utah Schools for the Deaf and the Blind.~~
- ~~_____ (7) "System" means a school district's educator evaluation system.~~

~~**R277-533-3. School District Educator Evaluation Systems.**~~

- ~~_____ (1) A local school board shall adopt a district educator evaluation system in consultation with a joint committee established by the local school board as described in Section 53G-11-506.~~
- ~~_____ (2) A district educator evaluation system shall:~~
 - ~~_____ (a) include the components required in Section 53G-11-507;~~
 - ~~_____ (b) include the following four differentiated levels of performance:~~
 - ~~_____ (i) highly effective;~~

NOTICES OF PROPOSED RULES

- ~~_____ (ii) effective;~~
- ~~_____ (iii) emerging/minimally effective; and~~
- ~~_____ (iv) not effective;~~
- ~~_____ (e) use multiple lines of evidence in evaluation, including:~~
 - ~~_____ (i) professional performance, as described in Section R277-533-4;~~
 - ~~_____ (ii) student academic growth, as described in Section R277-533-5;~~
 - ~~_____ (iii) stakeholder input, as described in Section R277-533-5; and~~
 - ~~_____ (iv) other indicators of professional improvement as required by the school district;~~
- ~~_____ (d) provide a process for an educator to request a review of the implementation of the educator's evaluation, as described in:~~
 - ~~_____ (i) Section 53G-11-508; and~~
 - ~~_____ (ii) Section R277-533-8;~~
- ~~_____ (e) include multiple observations as described in Section R277-533-4; and~~
- ~~_____ (f) provide a description of the methods for gathering, using, and protecting educator data.~~
- ~~_____ (3) To form the school district's system, a local school board may adopt:~~
 - ~~_____ (a) the Utah Model Educator Evaluator System established by the Board;~~
 - ~~_____ (b) an adapted system; or~~
 - ~~_____ (c) a school district developed system, consistent with Rules R277-530, R277-531, and this rule.~~
- ~~_____ (4) An educator is responsible for:~~
 - ~~_____ (a) improving the educator's performance, using resources offered by the school district; and~~
 - ~~_____ (b) demonstrating acceptable levels of improvement in any designated area of deficiency.~~

R277-533-4. Evaluators and Standards for Education Observations.

- ~~_____ (1) A school district's system shall include observations.~~
- ~~_____ (2) The school district shall use observation tools that:~~
 - ~~_____ (a) are aligned with the Utah Effective Educator Standards described in Rule R277-530 at the indicator level; and~~
 - ~~_____ (b) include multiple supervisor observations at appropriate intervals.~~
- ~~_____ (3) A school district's evaluation system shall include an opportunity for an educator to contribute additional information to inform their rating at several intervals throughout the process.~~
- ~~_____ (4) To ensure a valid evaluation system, a school district shall establish a school district rater reliability process that:~~
 - ~~_____ (a) creates standardized ratings established by a committee of expert raters to be used for rater professional development and certification;~~
 - ~~_____ (b) provides professional development opportunities to all raters and evaluators of licensed educators to:~~
 - ~~_____ (i) improve a rater or evaluator's abilities; and~~
 - ~~_____ (ii) give the rater or evaluator an opportunity to demonstrate the rater's abilities to rate an educator in accordance with the Utah Effective Educator Standards described in Rule R277-530;~~
 - ~~_____ (c) designates qualified raters as certified;~~
 - ~~_____ (d) assures that an educator is rated by a certified rater;~~
 - ~~_____ (e) requires a school district to offer a rater opportunities to improve the rater's skills through instruction and practice; and~~
 - ~~_____ (f) maintains high standards of rater accuracy.~~

R277-533-5. Student Academic Growth and Stakeholder Input.

- ~~_____ (1) A school district shall ensure that a student academic growth measurement includes the following three required components:~~
 - ~~_____ (a) learning goals measuring long term outcomes linked to the appropriate specific content knowledge and skills from the Utah Core Standards;~~
 - ~~_____ (b) assessments; and~~
 - ~~_____ (c) targets for incremental monitoring of student academic growth.~~
- ~~_____ (2)(a) A school district's system shall include stakeholder input for educators, principals, and administrators, including annual input from students and parents.~~
- ~~_____ (b) In addition to the stakeholder input described in Subsection (2)(a), stakeholder input for principals and other administrators shall include input from teachers and support professionals.~~

R277-533-6. Computing the Annual Summative Rating.

- ~~_____ (1) A school district shall base an educator's component ratings on:~~
 - ~~_____ (a) actual observations of the educator's performance; and~~
 - ~~_____ (b) educator, evaluator, student academic growth, or other stakeholder data gathered, calculated, or observed that is aligned with standards and rubrics.~~
- ~~_____ (2) A school district shall report summative scores annually for all educators using the following approved terminology for reporting:~~
 - ~~_____ (a) highly effective 3;~~
 - ~~_____ (b) effective 2;~~
 - ~~_____ (c) minimal/emerging effective 1; and~~
 - ~~_____ (d) not effective 0.~~

R277-533-7. Minimal or Emerging Effective Category.

- ~~_____ If an evaluator rates an educator's performance within the minimal or emerging effective category, the rater shall:~~
 - ~~_____ (1) designate an educator as emerging effective if:~~
 - ~~_____ (a) the educator:~~
 - ~~_____ (i) holds a Level 1 educator license; or~~
 - ~~_____ (ii) is being served by the school district's Entry Years Enhancement (E.Y.E.) program described in Rule R277-522; or~~
 - ~~_____ (b) the educator:~~
 - ~~_____ (i) received a new or different teaching or leadership assignment within the last school year; or~~
 - ~~_____ (ii) is developing in that area; or~~
 - ~~_____ (2) designate an educator as minimally effective if the educator:~~
 - ~~_____ (a) holds a Level 2 educator license; and~~
 - ~~_____ (b) is teaching or leading in a familiar assignment.~~

R277-533-8. Evaluation Reviews.

- ~~_____ (1) An educator who is not satisfied with a summative evaluation may request a review in writing of the summative evaluation within 15 calendar days after receiving the written summative evaluation.~~
- ~~_____ (2) A school district shall conduct a review of an educator's summative evaluation:~~
 - ~~_____ (a) as described in this section; and~~
 - ~~_____ (b) the requirements of Section 53G-11-508.~~
- ~~_____ (3) A review described in Subsection (2) shall be conducted:~~

- ~~(a) by a certified rater;~~
- ~~(i) with experience evaluating educators; and~~
- ~~(ii) not employed by the school district; and~~
- ~~(b) in accordance with the Utah Effective Educator Standards described in Rule R277-530.~~
- ~~(4) A certified rater described in Subsection (3) shall:~~
 - ~~(a) review:~~
 - ~~(i) the school district's educator evaluation policies and procedures;~~
 - ~~(ii) the evaluation process conducted for the educator;~~
 - ~~(iii) the evaluation data from the professional performance, student growth, and stakeholder input components; and~~
 - ~~(iv) an educator's written response, if submitted as described in Subsection 53G-11-508(1)(b); and~~
 - ~~(b) report the certified rater's findings, in writing, to the school district's superintendent for action.~~
- ~~(5) The school district shall determine if the initial educator evaluation was issued in accordance with:~~
 - ~~(a) the school district's educator evaluation policies;~~
 - ~~(b) the requirements of the performance standards;~~
 - ~~(c) Title 53G, Chapter 11, Employees;~~
 - ~~(d) Rule R277-531; and~~
 - ~~(e) this rule.~~

~~R277-533-9. Educator Evaluation Data.~~

- ~~(1) A school district shall report information described in Section 53G-11-511 to the Superintendent annually on or before June 30 to be included in the Superintendent's annual report as required by Section 53G-11-511.~~
- ~~(2) Data reported in accordance with Subsection (1) shall be classified as private under Title 63G, Chapter 2, Government Records Access and Management Act.~~

~~R277-533-10. Applicability to Charter Schools.~~

~~A charter school shall comply with the requirements of Subsection R277-533-6(2) and Section R277-533-9.~~

~~KEY: educators, evaluations~~

~~Date of Last Change: March 7, 2024~~

~~Notice of Continuation: November 17, 2020~~

~~Authorizing, and Implemented or Interpreted Law: Art X, See 3; 53E-3-401; Title 53G, Chapter 11, Part 5]~~

NOTICE OF PROPOSED RULE		
TYPE OF FILING: Amendment		
Rule or Section Number:	R277-602	Filing ID: 56522

Agency Information

1. Department:	Education
Agency:	Administration
Building:	Board of Education
Street address:	250 E 500 S
City, state and zip:	Salt Lake City, UT 84111
Mailing address:	PO Box 144200

City, state and zip:	Salt Lake City, UT 84114-4200	
Contact persons:		
Name:	Phone:	Email:
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule or section catchline:
R277-602. Carson Smith Scholarships -- Funding and Procedures
3. Purpose of the new rule or reason for the change:
This rule is being amended due to the passage of S.B. 44 in the 2024 General Session, which changed the requirements for the Carson Smith Scholarship.
4. Summary of the new rule or change:
The amendments specifically add an oversight categorization of "Category 4", and also make necessary changes in order to incorporate new legislative requirements.
The amendments clarify language in this rule, specifying that while current participants may continue to receive funding under the program, future applicants will be considered under the new Carson Smith Opportunities Scholarship, which is the successor to the Special Needs Opportunity Scholarship program.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
A) State budget:
This rule change is not expected to have fiscal impacts on state government revenues or expenditures.
The oversight framework categorization is part of the Utah State Board of Education's (USBE) effort through Rule R277-111 to categorize each rule into an oversight framework category, or to delineate for stakeholders what type of monitoring or oversight is required by the USBE resulting from the rule.
This categorization does not add any requirements or resources in and of itself. The changes to the Carson Smith scholarship do have impacts that were captured in the fiscal note to S.B. 44 (2024).
The USBE does not believe there are any additional measurable impacts as a result of the rule change for the USBE, Local Education Agencies (LEAs), or other persons.

B) Local governments:

This rule change is not expected to have fiscal impact on local governments' revenues or expenditures.

The oversight framework categorization is part of USBE's effort through Rule R277-111 to categorize each rule into an oversight framework category, or to delineate for stakeholders what type of monitoring or oversight is required by the USBE resulting from the rule.

This categorization does not add any requirements or resources in and of itself. The changes to the Carson Smith scholarship do have impacts that were captured in the fiscal note to S.B. 44 (2024).

The USBE does not believe there are any additional measurable impacts as a result of the rule change for the USBE, LEAs, or other persons.

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

This rule change is not expected to have fiscal impact on small businesses' revenues or expenditures.

This only affects the USBE and LEAs.

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

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

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

This rule change is not expected to have fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities.

The oversight framework categorization is part of the USBE's effort through Rule R277-111 to categorize each rule into an oversight framework category, or to delineate for stakeholders what type of monitoring or oversight is required by the USBE resulting from the rule.

This categorization does not add any requirements or resources in and of itself. The changes to the Carson

Smith scholarship do have impacts that were captured in the fiscal note to S.B. 44 (2024).

The USBE does not believe there are any additional measurable impacts as a result of the rule change for the USBE, LEAs, or other persons.

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

There are no compliance costs for affected persons.

The oversight framework categorization is part of the USBE's effort through Rule R277-111 to categorize each rule into an oversight framework category, or to delineate for stakeholders what type of monitoring or oversight is required by the USBE resulting from the rule.

This categorization does not add any requirements or resources in and of itself. The changes to the Carson Smith scholarship do have impacts that were captured in the fiscal note to S.B. 44 (2024).

The USBE does not believe there are any additional measurable impacts as a result of the rule change for the USBE, LEAs, or other persons.

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

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

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

Citation Information

6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:		
Article X, Section 3	Subsection 53E-3-401(4)	Section 53F-4-3
Section 53E-4-202		

Public Notice Information

8. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	07/01/2024

9. This rule change MAY become effective on:	07/08/2024
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.	

Agency Authorization Information

Agency head or designee and title:	Angie Stallings, Deputy Superintendent of Policy	Date:	05/15/2024
---	--	--------------	------------

R277. Education, Administration.

R277-602. Carson Smith Scholarships -- Funding and Procedures.

R277-602-1. Authority, ~~and~~ Purpose, and Oversight Category.

- (1) This rule is authorized by:
 - (a) Utah Constitution Article X, Section 3, which vests general control and supervision of the public school system under the Board;
 - (b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and
 - (c) Section 53F-4-305, which authorizes the Board to make rules establishing:

- (i) the eligibility of students to participate in the Carson Smith ~~[s]~~ Scholarship program; and
- (ii) the application process for the scholarship program.
- (2) The purpose of this rule is to:
 - (a) outline responsibilities of a parent, an LEA, an eligible private school, and the Board in providing choice for a parent of a special needs student who chooses to have a student served in a private school; and
 - (b) provide accountability for the citizenry in the administration and distribution of the scholarship funds.
- (3) This Rule R277-602 is categorized as Category 4 as described in Rule R277-111.

R277-602-2. Definitions.

- (1) "Appeal" means an opportunity to discuss or contest a final administrative decision consistent with and expressly limited to the procedures of this rule.
- (2) "Appeals Committee" means a committee comprised of:
 - (a) the Carson Smith Scholarship coordinator;
 - (b) the Board's Special Education Director;
 - (c) one individual appointed by the Superintendent; and
 - (d) two Board-designated special education advocates.
- (3) "Assessment" means a formal testing procedure carried out under prescribed and uniform conditions that measures a student's academic progress, consistent with Subsection 53F-4-303(1)(f).
- (4) "Assessment team" means the individuals designated under Subsection 53F-4-301(1).
- (5) "Days" means school days unless specifically designated otherwise in this rule.
- (6) "Eligible student" means ~~[a student]~~ an existing scholarship recipient who meets the qualifications described in Section 53F-4-302.
- (7) "Enrollment" means that:
 - (a) the student has completed the school enrollment process;
 - (b) the school maintains required student enrollment information and documentation of age eligibility;
 - (c) the student is scheduled to receive services at the school;
 - (d) the student attends regularly; and
 - (e) the school has accepted the student consistent with Rule R277-419 and the student's IEP.
- (8) "Private school that has previously served a student with a disability" means an approved Carson Smith school that:
 - (a) has enrolled a student within the last three years under the Carson Smith Scholarship program;
 - (b) has enrolled a student within the last three years who has received special education services under an Individual Services Plan (ISP) from an LEA where the school is geographically located; or
 - (c) can provide other evidence to the Board that is determinative of having enrolled a student with a disability within the last three years.
- (9) "Warrant" means payment by check to a private school.

R277-602-3. Parent Responsibilities and Payment Provisions.

- ~~(1) To receive a scholarship, a parent of a student shall submit an application by the deadline described in Subsection 53F-4-302(4), on a form specified by the Superintendent to:~~
 - ~~(a) the LEA that the student is or was enrolled in; or~~

~~(b) if the student was not enrolled in an LEA in the school year prior to the school year in which the scholarship is sought, the school district that is responsible for the education of the student under the Individuals with Disabilities Education Act, 20 U.S.C. Sec. 1414.~~

~~(2) Along with the application described in Subsection (1), a parent shall submit documentation that:~~

- ~~(a) the parent is a resident of the state;~~
- ~~(b) the student is at least three years of age before September 2 of the year of enrollment;~~
- ~~(c) the student is not more than 21 years of age and has not graduated from high school; and~~
- ~~(d) the student has official acceptance at an eligible private school, as described in Section 53F-4-303.~~

~~(3) Any intentional falsification, misinformation, or incomplete information provided on the application may result in the cancellation of the scholarship to the student and non-payment to the private school.]~~

~~(4)1(a) The Superintendent shall make a scholarship payment in accordance with Section 53F-4-304 and this rule.~~

~~(b) The Superintendent may distribute a scholarship payment to a private school through electronic transfer after the Superintendent is able to verify the scholarship student's attendance at the private school through a Board provided software application.~~

~~(5)2(a) A parent shall notify the Board in writing within five days if the student does not continue in enrollment in an eligible private school for any reason, including:~~

- ~~(i) parent or student choice;~~
- ~~(ii) suspension or expulsion of the student; or~~
- ~~(iii) the student has unexcused absences during [all of] the prior [40]ten consecutive school days.~~

~~(b) In accordance with Subsection 53F-4-304(4), if a student does not continue in enrollment, the Superintendent may:~~

- ~~(i) modify the payment to the private school; or~~
- ~~(ii) if payment has already been made for that quarter, request reimbursement from the private school for an amount equal to the portion of the scholarship attributable to the number of remaining days in the quarter.~~

~~(3) If a student discontinues enrollment, the student is no longer eligible to receive a scholarship under the Carson Smith program.~~

~~(6)4 A parent shall cooperate and respond within 10 days to an enrollment cross-checking request from the Superintendent.~~

~~(7)5 [The]A parent shall notify the Superintendent in writing by May 1 annually to indicate the student's continued enrollment.~~

R277-602-4. LEA Responsibilities.

~~(1) An LEA that receives a student's scholarship application consistent with Subsection 53F-4-302(4) shall:~~

- ~~(a) forward the application to the Superintendent no more than 10 days following receipt of the application;~~
- ~~(b) verify enrollment of the student seeking a scholarship in a previous school year within a reasonable time following contact by the Superintendent;~~
- ~~(c) verify the existence of the student's IEP and level of service to the Superintendent within a reasonable time;]~~

~~(1) An LEA that receives a request for evaluation for continued Carson Smith program eligibility shall [(d)]provide personnel to participate on an assessment team to:~~

~~(i)a make the determination described in Section 53F-4-302; or~~

~~(b) determine whether a student who previously received a Carson Smith Scholarship is entitled to receive the scholarship during the subsequent eligibility period.~~

~~(3)2 A Carson Smith Scholarship student may not participate in an extracurricular or co-curricular activity at an LEA, consistent with the parent's assumption of full responsibility for a student's services under Subsection 53F-4-302(5).~~

~~(4)3 In accordance Subsection 53F-4-302(8), a Carson Smith Scholarship student may participate in the Statewide Online Education Program described in Part 5, Statewide Online Education Program in the same manner as other private school students as described in Section 53F-4-507.~~

~~(5)4 A Carson Smith Scholarship student is eligible to receive equitable services under the Individuals with Disabilities Education Act.~~

~~(6)5 An LEA shall cooperate with the Superintendent in cross-checking Carson Smith Scholarship student enrollment information to ensure scholarship payments are not erroneously made.~~

~~(7)a6 An LEA shall provide written notice to a parent of a student who has an IEP of the availability of a scholarship to attend a private school in accordance with Subsection 53F-4-302(10).~~

~~(b) The written notice shall consist of the following statement: A local education agency is required by Utah law, Subsection 53F-4-302(10), to inform parents of students with IEPs enrolled in public schools, of the availability of a scholarship to attend a private school through the Carson Smith Scholarship Program.]~~

~~(7) As set forth in Subsection 53F-4-302(11), after the 2023-24 school year, neither an LEA, nor the Superintendent may accept a new application for Carson Smith program participation.~~

R277-602-5. State Board of Education Responsibilities.

~~(1) No later than April 1, the Superintendent shall provide an application containing acknowledgments required under Subsection 53F-4-302(5), for a parent seeking a Carson Smith Scholarship:~~

- ~~(a) online;~~
- ~~(b) at the Board office; and~~
- ~~(c) at LEA offices.~~

~~(2) The Superintendent shall provide a determination that a private school meets the eligibility requirements of Section 53F-4-303 as soon as possible but no more than 30 calendar days after the private school submits an application and completes documentation of eligibility.]~~

~~(3)1 The Superintendent may:~~

- ~~(a) provide reasonable timelines [within the application]for satisfaction of private school requirements;~~
- ~~(b) issue letters of warning;~~
- ~~(c) require the school to take corrective action within a time frame set by the Superintendent;~~
- ~~(d) suspend the school from the program consistent with Section 53F-4-306;~~

~~(e) establish an appropriate penalty for a private school that fails to comply with requirements described in Title 53F, Chapter 4, Part 3, Carson Smith Scholarships for Students with Special Needs, including:~~

- ~~(i) providing an affidavit under Section 53F-4-306;~~
- ~~(ii) administering assessments or reporting an assessment to a parent or assessment team under Subsection 53F-4-303(1)(f);~~
- ~~(iii) employing teachers with credentials required under Subsection 53F-4-303(g);~~

(iv) providing to a parent relevant credentials of teachers under Subsection 53F4-303(i); or

(v) requiring a completed criminal background and ongoing monitoring under Title 53G, Chapter 11, Part 4, Background Checks and take appropriate action consistent with information received; or

(f) initiate a complaint and hold an administrative hearing, as appropriate, and consistent with this rule.

([4]2) The Superintendent shall make a list of eligible private schools updated annually and available no later than June 1 of each year.

([5]3) On or before July 1, the Superintendent shall annually publish information regarding the level of funding available for scholarships for the fiscal year.

([6]4) The Superintendent may mail a scholarship payment directly to a private school in accordance with Subsection 53F-4-304(8) as soon as reasonably possible.

R277-602-6. Responsibilities of Private Schools that Receive Carson Smith Scholarships.

(1) To be eligible to enroll a scholarship student, a private school shall[~~z~~

~~(a)] meet the criteria described in Section 53F-4-303[; and~~
~~(b) submit an application and appropriate documentation by the deadline established in Section 53F-4-303 to the Superintendent on a form designated by the Superintendent].~~

(2) A private school shall annually:

(a) obtain an audit and report from a licensed independent certified public accountant that conforms with the following requirements:

(i) the audit shall be performed in accordance with generally accepted auditing standards;

(ii) the financial statements shall be presented in accordance with generally accepted accounting principles; and

(iii) the audited financial statements shall be as of a period within the last 12 months; or

(b) contract with an independent licensed certified public accountant to conduct an agreed upon procedures engagement described in Subsection (4);

(3) The Superintendent shall annually publish:

(a) an agreed upon procedures document for a new private school to apply for eligibility to accept Carson Smith Scholarship students; and

(b) an agreed upon procedures document for a continuing private school to apply for continued eligibility to accept Carson Smith Scholarship students.

(4) A private school that seeks to enroll Carson Smith Scholarship students shall submit an agreed upon procedures document described in Subsection (3):

(a) for a new private school seeking eligibility to accept Carson Smith Scholarship students for the first time, by the May 1 prior to the fiscal year that the private school is seeking eligibility; and

(b) for a school seeking continued eligibility to accept Carson Smith Scholarship students, by the November 30 prior to the school year in which they are reapplying.

(5)(a) ~~[A private school that seeks to enroll a Carson Smith Scholarship student shall, in concert with the parent seeking a Carson Smith Scholarship for a student, initiate the assessment team meetings required under Section 53F-4-302.~~

~~(b)]~~ A private school who receives notification of pending eligibility shall schedule a meeting at a time and location mutually

acceptable to the private school, the applicant parent, and participating public school personnel.

([e]b)(i) A private school and public school shall confidentially maintain documentation regarding an assessment team meeting, including documentation of:

(A) a meeting for a student denied a scholarship or service; and

(B) a student admitted into a private school and the student's level of service.

(ii) Upon request by the Superintendent, a private school and public school shall provide the documentation described in Subsection (3)(c)(i) to the Superintendent for purposes of determining student scholarship eligibility or for verification of compliance.

(6) A private school that receives a scholarship payment shall provide complete student records in a timely manner to another private school or a public school that requests student records if a parent transfers a student under Subsection 53F-4-302(7).

(7) A private school shall notify the Board within five days if the student does not continue in enrollment in an eligible private school for any reason, including:

(a) parent or student choice;

(b) suspension or expulsion of the student; or

(c) the student has unexcused absences during ~~[all of]~~ the prior ten consecutive school days.

(8) A private school shall satisfy health and safety laws and codes required by Subsection 53F-4-303(1)(d), including:

(a) the adoption of emergency preparedness response plans that include training for school personnel and parent notification for fire drills, natural disasters, and school safety emergencies; and

(b) compliance with Rule R392-200, Design, Construction, Operation, Sanitation, and Safety of Schools.

(9)(a) An approved eligible private school that changes ownership shall submit a new application for eligibility to receive a Carson Smith Scholarship payment from the Superintendent:

(i) that demonstrates that the school continues to meet the eligibility requirements of Section 53F-4-303 and this rule; and

(ii) within 60 calendar days of the date that an agreement is signed between previous owner and new owner.

(b) If the Superintendent does not receive the application within the time described in Subsection (7)(a)(ii):

(i) the new owner of the school is presumed ineligible to receive continued Carson Smith Scholarship payments from the Superintendent;

(ii) at the discretion of the Board, the Superintendent may reclaim any payments made to a school within the previous 60 calendar days; and

(iii) the private school shall submit a new application for eligibility to enroll Carson Smith Scholarship students consistent with the requirements and timelines of this rule.

R277-602-7. Carson Smith Scholarship Appeals.

(1)(a) A parent of an eligible student or a parent of a prospective eligible student may appeal only the following actions under this rule:

(i) an alleged violation by the Superintendent of Sections 53F-4-301 through 53F-4-308 or this rule; or

(ii) an alleged violation by the Superintendent of a required timeline.

(b) An appellant has no right to additional elements of due process beyond the specific provisions of this rule.

NOTICES OF PROPOSED RULES

(2) The Appeals Committee may not grant an appeal contrary to Sections 53F-4-301 through 53F-4-308.

(3) A parent shall submit an appeal:

(a) in writing to the Board's Carson Smith Scholarship Coordinator at: Utah State Board of Education, 250 East 500 South, P.O. Box 144200, Salt Lake City, UT 84114-4200; and

(b) within 15 calendar days of written notification of the final administrative action described in Subsection (1)(a).

(4)(a) The appeal opportunity does not include an investigation required under or similar to an IDEA state complaint investigation.

(b) Nothing in the appeals process established under this rule shall be construed to limit, replace, or adversely affect parental appeal rights available under IDEA.

(5) The Appeals Committee shall:

(a) consider an appeal within 15 calendar days of receipt of the written appeal;

(b) transmit the decision to a parent no more than ten calendar days following consideration by the Appeals Committee; and

(c) finalize an appeal as expeditiously as possible in the joint interest of schools and students involved.

(6) The Appeals Committee's decision is a final administrative action.

KEY: special needs students, scholarships

Date of Last Change: 2024~~October 16, 2018~~

Notice of Continuation: July 14, 2020

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

NOTICE OF PROPOSED RULE		
TYPE OF FILING: Amendment		
Rule or Section Number:	R277-626	Filing ID: 56523

Agency Information

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

General Information

2. Rule or section catchline:
R277-626. Special Needs Opportunity Scholarship Program
3. Purpose of the new rule or reason for the change:
This rule is being amended as a result of the passage of S.B. 44 in the 2024 General Session.
4. Summary of the new rule or change:
The amendments specifically add an oversight categorization as "Category 4" and incorporate new legislative changes by updating to the requirements pertaining to the Carson Smith Opportunities Scholarship program.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
A) State budget:
This rule change is not expected to have fiscal impact on state government revenues or expenditures. The oversight framework categorization is part of the Utah State Board of Education's (USBE) effort through Rule R277-111 to categorize each rule into an oversight framework category, or to delineate for stakeholders what type of monitoring or oversight is required by the USBE resulting from the rule.
This categorization does not add any requirements or resources in and of itself. The changes to the Carson Smith scholarship do have impacts that were captured in the fiscal note to S.B. 44 (2024).
The USBE does not believe there are any additional measurable impacts as a result of the rule change for the USBE, Local Education Agencies (LEAs), or other persons.
B) Local governments:
This rule change is not expected to have fiscal impact on local governments' revenues or expenditures.
The oversight framework categorization is part of the USBE's effort through Rule R277-111 to categorize each rule into an oversight framework category, or to delineate for stakeholders what type of monitoring or oversight is required by the USBE resulting from the rule.
This categorization does not add any requirements or resources in and of itself. The changes to the Carson Smith scholarship do have impacts that were captured in the fiscal note to S.B. 44 (2024).

The USBE does not believe there are any additional measurable impacts as a result of the rule change for the USBE, LEAs, or other persons.

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

This rule change is not expected to have fiscal impact on small businesses' revenues or expenditures.

This only impacts the USBE and LEAs.

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

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

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

This rule change is not expected to have fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities.

The oversight framework categorization is part of the USBE's effort through Rule R277-111 to categorize each rule into an oversight framework category, or to delineate for stakeholders what type of monitoring or oversight is required by the USBE resulting from the rule.

This categorization does not add any requirements or resources in and of itself. The changes to the Carson Smith scholarship do have impacts that were captured in the fiscal note to S.B. 44 (2024).

The USBE does not believe there are any additional measurable impacts as a result of the rule change for the USBE, LEAs, or other persons.

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

There are no compliance costs for affected persons.

The oversight framework categorization is part of the USBE's effort through R277-111 to categorize each rule into an oversight framework category, or to delineate for

stakeholders what type of monitoring or oversight is required by the USBE resulting from the rule.

This categorization does not add any requirements or resources in and of itself. The changes to the Carson Smith scholarship do have impacts that were captured in the fiscal note to S.B. 44 (2024).

The USBE does not believe there are any additional measurable impacts as a result of the rule change for the USBE, LEAs, or other persons.

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

Regulatory Impact Table

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

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

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

Citation Information

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

Article X, Section 3	Subsection 53E-3-401(4)	Title 53E, Chapter 7, Part 4
Section 53E-4-202		

Public Notice Information

8. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:	07/01/2024
--	------------

9. This rule change MAY become effective on:	07/08/2024
---	------------

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

Agency Authorization Information

Agency head or designee and title:	Angie Stallings, Deputy Superintendent of Policy	Date:	05/15/2024
---	---	--------------	------------

R277. Education, Administration.

R277-626. ~~[Special Needs Opportunity]~~Carson Smith Opportunities Scholarship Program.

R277-626-1. Authority, and Purpose, and Oversight Category.

(1) This rule is authorized by:

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

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

(c) Section 53E-7-404, which requires the Board to make rules to implement the ~~[Special Needs Opportunity]~~Carson Smith Opportunities 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]~~Carson Smith Opportunities Scholarship Program.

(3) This Rule R277-626 is categorized as Category 4 as described in Rule R277-111.

R277-626-2. Definitions.

(1) "Eligible student" has the same meaning as defined in ~~[Subsection 53E-7-401(1)]~~Section 53E-7-401.

(2) "Home-based scholarship student" has the same meaning as defined in Section 53E-7-401.

(~~[2]~~3) "Program donation" means a donation to a scholarship granting organization in accordance with Section 53E-7-405.

(4) "Qualifying provider has the same meaning as defined in Section 53E-7-401.

(~~[3]~~5) "Qualifying school" has the same meaning as defined in ~~[Subsection 53E-7-401(7)]~~Section 53E-7-401.

(~~[4]~~6) "Request for proposals" or "RFP" has the same meaning as defined Subsection 63G-6a-103(70).

(~~[5]~~7) "Scholarship expense" has the same meaning as defined in ~~[Subsection 53E-7-401(11)]~~Section 53E-7-401.

(~~[6]~~8)(a) "Scholarship granting organization" or "SGO" has the same meaning as defined in ~~[Subsection 53E-7-401(11)]~~Section 53E-7-401.

(b) An SGO may not be a qualifying school or qualifying provider.

(~~[7]~~9) "Scholarship student" has the same meaning as defined in ~~[Subsection 53E-7-401(12)]~~Section 53E-7-401.

~~[(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(2).

(2) The Superintendent shall provide all information required to the Utah State Tax Commission in accordance with Subsection 53E-7-404(~~[4]~~3)(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]~~Carson Smith Opportunities 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.

Authorizing, and Implemented^[5] or Interpreted Law: Art X, Sec 3; 53E-3-401(4); Title 53E, Chapter 7, Part 4

(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 or qualifying provider.

(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 or qualifying provider.

(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 or qualifying provider, the SGO shall:

(a) notify the Superintendent; and

(b) obtain reimbursement of scholarship money from the qualifying school or qualifying provider.

(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 or qualifying provider charges [~~for the 2020-21 through the 2023-24 school years~~] annually;

(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;

(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 qualifying provider or an employee of a qualifying school or qualifying provider 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 Last Change: 2024[~~December 5, 2023~~]

NOTICE OF PROPOSED RULE		
TYPE OF FILING: Amendment		
Rule or Section Number:	R277-733	Filing ID: 56524

Agency Information

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

General Information

2. Rule or section catchline:
R277-733. Adult Education Programs
3. Purpose of the new rule or reason for the change:
This rule is being amended to update the incorporated by reference document, "Utah Adult Education Policy and Procedures Guide".
4. Summary of the new rule or change:
Amendments to this rule include an addition of an oversight categorization of "Category 4" and updates to the incorporated document, "Utah Adult Education Policy and Procedures Guide", which are needed because adult education programs are required to use National Reporting System (NRS) approved assessments in programs and those assessments have changed.
Specific updates to this rule's incorporated document include the addition of NRS approved assessments, changes to some of the records retention policies, as well as guidance and policy surrounding the use of adult education funds for participant child and dependent care and transportation.
In addition, some additional minor changes have been made to the incorporated document to add clarity.

Fiscal Information

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

A) State budget:

This rule change is not expected to have fiscal impact on state government revenues or expenditures.

The oversight framework categorization is part of the Utah State Board of Education's (USBE) effort through Rule R277-111 to categorize each rule into an oversight framework category, or to delineate for stakeholders what type of monitoring or oversight is required by the USBE resulting from the rule.

This categorization does not add any requirements or resources in and of itself. The changes to the incorporated document update to reflect changes to the National Reporting Systems approved assessments, records retention, and guidance on care and transportation are updates to reflect current practices and changes to federal assessments.

Additionally, the rule change clarifies that charter schools with students in grades 9-12 can apply to become an eligible provider. These changes to the incorporated document and definition of eligible provider do not add measurable costs or savings for the USBE, Local Education Agencies (LEA), or other persons as they reflect current practice and provide guidance related to current federal regulations.

B) Local governments:

This rule change is not expected to have fiscal impact on local governments' revenues or expenditures.

The oversight framework categorization is part of the USBE's effort through Rule R277-111 to categorize each rule into an oversight framework category, or to delineate for stakeholders what type of monitoring or oversight is required by the USBE resulting from the rule.

This categorization does not add any requirements or resources in and of itself.

The changes to the incorporated document update to reflect changes to the National Reporting Systems approved assessments, records retention, and guidance on care and transportation are updates to reflect current practices and changes to federal assessments.

Additionally, the rule change clarifies that charter schools with students in grades 9-12 can apply to become an eligible provider. These changes to the incorporated document and definition of eligible provider do not add measurable costs or savings for the USBE, LEAs, or other persons as they reflect current practice and provide guidance related to current federal regulations.

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

This rule change is not expected to have fiscal impact on small businesses' revenues or expenditures.

This only affects the USBE and LEAs.

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

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

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

This rule change is not expected to have fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities.

The oversight framework categorization is part of the USBE's effort through Rule R277-111 to categorize each rule into an oversight framework category, or to delineate for stakeholders what type of monitoring or oversight is required by the USBE resulting from the rule.

This categorization does not add any requirements or resources in and of itself. The changes to the incorporated document update to reflect changes to the National Reporting Systems approved assessments, records retention, and guidance on care and transportation are updates to reflect current practices and changes to federal assessments.

Additionally, the rule change clarifies that charter schools with students in grades 9-12 can apply to become an eligible provider. These changes to the incorporated document and definition of eligible provider do not add measurable costs or savings for the USBE, LEAs, or other persons as they reflect current practice and provide guidance related to current federal regulations.

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

There are no compliance costs for affected persons.

The oversight framework categorization is part of the USBE's effort through Rule R277-111 to categorize each rule into an oversight framework category, or to delineate for stakeholders what type of monitoring or oversight is required by the USBE resulting from the rule.

This categorization does not add any requirements or resources in and of itself. The changes to the incorporated document update to reflect changes to the National Reporting Systems approved assessments, records retention, and guidance on care and transportation are updates to reflect current practices and changes to federal assessments.

Additionally, the rule change clarifies that charter schools with students in grades 9-12 can apply to become an eligible provider. These changes to the incorporated document and definition of eligible provider do not add measurable costs or savings for the USBE, LEAs, or other persons as they reflect current practice and provide guidance related to current federal regulations.

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

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

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

Citation Information

6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:		
Article X, Section 3	Subsection 53E-3-401(4)	Section 53E-10-202
Subsection 53E-3-501(1)	Section 53F-2-401	Section 53E-10-205

Incorporations by Reference Information

7. Incorporations by Reference:	
A) This rule adds, updates, or removes the following title of materials incorporated by references:	
Official Title of Materials Incorporated (from title page)	Utah Adult Education Policies and Procedures Guide
Publisher	Utah State Board of Education
Issue Date	May 2024

Public Notice Information

8. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	07/01/2024

9. This rule change MAY become effective on:	
	07/08/2024
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.	

Agency Authorization Information

Agency head or designee and title:	Angie Stallings, Deputy Superintendent of Policy	Date:	05/15/2024
---	--	--------------	------------

R277. Education, Administration.
R277-733. Adult Education Programs.
R277-733-1. Authority, [and] Purpose, and Oversight Category.
 (1) This rule is authorized by:

NOTICES OF PROPOSED RULES

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

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

(c) Section 53E-10-202 which vests general control and supervision over adult education in the Board;

(d) Subsection 53E-3-501(1), which allows the Board to adopt minimum standards for programs; and

(e) Section 53F-2-401, which vests the Board with responsibility to provide education to persons in the custody of the Utah Department of Corrections.

(2) The purpose of this rule is to describe curriculum, program standards, allocation formulas, and operation procedures for the adult education program for adult education students both in and out of state custody.

(3) This Rule R277-733 is categorized as Category 4 as described in Rule R277-111.

R277-733-2. Incorporation of Utah Adult Education Policies and Procedures Guide by Reference.

(1) The rule incorporates by reference the Utah Adult Education Policies and Procedures Guide, May ~~2023~~2024 Revision, which provides day-to-day operating standards and technical assistance to eligible providers for operation of adult education programs.

(2) A copy of the guide is located at:

(a)

~~[https://www.schools.utah.gov/administrativerules/documentsincorporated]~~<https://www.schools.utah.gov/administrativerules/documentsincorporated>; and

(b) the Utah State Board of Education - 250 East 500 South, Salt Lake City, Utah 84111.

R277-733-3. Definitions.

(1) "Adult" means an individual 18 years of age or over.

(2) "Adult education" means organized educational programs below the post-secondary level, other than regular full-time K-12 secondary education programs:

(a) provided by an LEA or an eligible provider;

(b) provided for out-of-school youth, 16 years of age and older, or adults who have or have not graduated from high school; and

(c) provided to improve literacy levels and to further high school level education.

(3) "Adult Basic Education" or "ABE" means a program of instruction at or below the 8.9 academic grade level, which prepares adults for advanced education and training.

(4) "Adult Education and Family Literacy Act" or "AEFLA" means Title II of the Workforce Innovation Opportunity Act of 2014, which provides the principle source of federal support for:

(a) academic instruction and education services below the post-secondary level to receive a high school diploma or its recognized equivalent; and

(b) transition to post-secondary education, training, and employment.

(5) "Adult Secondary Education" or "ASE" means a program of academic instruction at the 9.0 grade level or above in Board approved subjects for an eligible adult education student who is seeking an Adult Education Secondary Diploma or its equivalent.

~~[(6)](6) "College and Career Readiness Plan" or "CCRP" means a plan developed by a student in consultation with an adult education program counselor, teacher, and administrator that:~~

~~[(a)](a) is initiated at the time of entrance into an adult education program;~~

~~[(b)](b) identifies a student's skills and objectives;~~

~~[(c)](c) identifies a career pathway strategy to guide a student's course selection; and~~

~~[(d)](d) links a student to post-secondary education, training, or employment using a program defined adult education transition process.]~~

~~[(7)](6) "Custody," for purposes of this rule, means the status of being legally in the control of another adult person or public agency.~~

~~[(8)](7)(a) "Eligible adult education student" means an individual who provides documentation that the individual:~~

~~(i) is a primary and permanent resident of Utah;~~

~~(ii) is one of the following:~~

~~(A) 17 years of age or older, and whose high school class has graduated;~~

~~(B) under 18 years of age and is married;~~

~~(C) has been emancipated or adjudicated as an adult; or~~

~~(D) an out-of-school youth 16 years of age or older who has not graduated from high school; and~~

~~(iii) meets any of the following:~~

~~(A) is basic skills deficient;~~

~~(B) does not have a secondary school diploma, its recognized equivalent, or an equivalent level of education; or~~

~~(C) is an ELL; or~~

~~(b) A non-resident eligible adult education student in accordance with an individual agreement between an eligible provider and another state.~~

~~[(9)](8) "Eligible Provider":~~

~~(a) for purposes of state funding eligibility, means a:~~

~~(i) school district; or~~

~~(ii) charter school if:~~

~~(A) the charter school enrolls students in grades 9 through 12; and~~

~~(B) the charter school applies and is approved as an adult education provider in accordance with this Rule R277-733; and~~

~~(b) for purposes of federal funding eligibility, may include:~~

~~[(+)](i) an LEA;~~

~~[(+)](ii) a community-based or faith-based organization;~~

~~[(+)](iii) a voluntary literacy organization;~~

~~[(+)](iv) an institution of higher education;~~

~~[(+)](v) a public or private non-profit agency;~~

~~[(+)](vi) a library;~~

~~[(+)](vii) a public housing authority;~~

~~[(+)](viii) a non-profit institution not described in Subsections [(+)](8)(b)(i) through [(+)](vii) that can provide adult education and literacy activities to eligible adult education students;~~

~~[(+)](ix) a consortium or coalition of providers identified in Subsections [(+)](8)(b)(i) through [(+)](viii); or~~

~~[(+)](x) a partnership between an employer and a provider identified in Subsections [(+)](8)(b)(i) through [(+)](ix).~~

~~[(+)](9) "English Language Learner" or "ELL" means an individual:~~

~~(a) who has limited ability in reading, writing, speaking, or comprehending the English language and whose native language is a language other than English; or~~

~~(b) who lives in a family or community where a language other than English is the dominant language.~~

~~[(11) "FERPA" means the Family Educational Rights and Privacy Act, 20 USC 1232g, and its implementing regulations.]~~

~~[(12)](10) "Inmate" means an offender who is incarcerated in state or county correctional facilities located throughout the state.~~

~~[(13)](11) "High School Equivalency Exam" or "HSE" means a Board approved examination whose modules are aligned with current high school core standards and adult education College and Career Readiness standards.~~

~~[(14)](12) "Out-of-school youth" means a student 16 years of age or older who has not graduated from high school and is no longer enrolled in a K-12 program of instruction.~~

~~[(15)](13) "Utah High School Completion Diploma" means a diploma issued by the Board and distributed by a Board approved contractor to an individual who has passed all subject modules of an HSE exam at an HSE testing center.~~

~~[(16) "Utah Online Performance Indicators for Adult Education" or "UTopia" means a statewide database for tracking adult education student progress and outcomes.]~~

~~[(17)](14) "Weighted pupil unit" or "WPU" means the basic per pupil unit used to calculate the amount of state funds for which a school district is eligible.~~

R277-733-4. Federal Adult Education Funds.

The Superintendent shall follow the standards and procedures contained in AEFLA and the WIOA state plan adopted by the Board pursuant to AEFLA to administer federal funding of adult education programs.

R277-733-5. Compliance with State and Federal Laws.

Adult education programs shall comply with state and federal law and administrative regulations and follow the procedures contained in the Utah Adult Education Policies and Procedures Guide described in Section R277-733-2.

R277-733-6. State Fund Distribution, Carryover, and Recapture.

(1) The Superintendent shall allocate state funds for adult education in accordance with Section 53F-2-401.

(2) An LEA may carryover 10% of the state adult education funds allocated to the LEA's adult education programs with written approval from the Superintendent.

(3) An LEA shall submit a request to carryover funds for approval.

(4) The Superintendent shall consider excess funds in determining an LEA's allocation for the next fiscal year.

(5) The Superintendent shall recapture an LEA's fund balances in excess of 10% annually.

(6) The Superintendent shall allocate recaptured funds to an LEA's adult education program through the supplemental award process described in Section R277-733-10.

R277-733-7. Adult Education Pupil Accounting.

An LEA administered adult education program shall receive WPU funding for a student consistent with the criteria and rate outlined in the Utah Adult Education Policies and Procedures Guide described in Section R277-733-2.

R277-733-8. Program, Curriculum, Outcomes, and Student Mastery.

(1) The Utah Adult Education Program shall offer courses consistent with the Elementary and Secondary General Core under Rule R277-700.

(2) An LEA shall ensure adult secondary education includes the following prerequisite courses:

(a) ELL competency AEFLA levels one through six; or

(b) ABE competency AEFLA levels one through four.

(3) An LEA shall establish policies allowing or disallowing adult education student participation in graduation activities or ceremonies.

(4) An LEA may establish reasonable timelines and may require adequate and timely documentation of authenticity for credits and grades submitted from other eligible providers.

(5) An LEA adult education program is the final decision-making authority for the awarding of credit and grades from non-accredited sources.

(6) An eligible provider shall offer an adult education student seeking a Utah High School Completion Diploma a course of academic instruction designed to prepare the student to take an HSE exam.

(7) Following completion of requirements for a Utah Adult Education Secondary Diploma or a Utah High School Completion Diploma, an eligible provider shall only allow a student to continue in an adult education program if:

(a) the student's academic skills are less than 9.0 grade level in an academic area of reading, math or English; and

(b) the student lacks sufficient mastery of basic educational skills to enable the student to function effectively in society.

R277-733-9. Adult Education Programs--Tuition and Fees.

(1) An eligible provider may charge a tuition or fee consistent with Section 53E-10-205 and the Utah Adult Education Policies and Procedures Guide described in Section R277-733-2.

(2) An eligible provider may not:

(a) commingle or report fees and tuition collected from adult education students with community education funds or any other public education fund;

(b) count collected fees and tuition toward meeting federal matching, cost sharing, or maintenance of effort requirements related to the adult education program's award; and

(c) calculate carryover balance amounts using funds collected from fees and tuition.

(3) An eligible provider receiving state or federal adult education funds shall ensure that fees and tuition collected are:

(i) returned or delegated, except for indirect costs, to the local adult education program;

(ii) used solely and specifically for adult education programming; and

(iii) not withheld and maintained in a general maintenance and operation fund.

R277-733-10. Providing Corrections Education.

(1) The Board may contract to provide educational services inmates with:

(a) local school boards;

(b) state post-secondary educational institutions;

(c) other state agencies; or

(d) private providers recommended by a local school board.

(2) A contract made in accordance with Subsection (1) shall be in writing and shall provide for:

(a) services to students in an appropriate environment for student behavior and educational performance;

(b) compliance with relevant Board standards;

NOTICES OF PROPOSED RULES

(c) program monitoring by the Superintendent in accordance with Rule R277-733; and

(d) coordination of services with non-custodial programs to enable an inmate in custody to continue the inmate's public-school education with minimal disruption following discharge.

(3) A school district may sub-contract with local educational service providers for the provision of educational services to students in custody.

(4) Custodial status does not qualify an individual for services under the IDEA.

(5) When a student inmate is transferred to a new program, the sending program shall update and finalize all school records in [Utah]the Board's adult education student information system releasing the student's records as soon as possible after receiving notice of the transfer.

(6) An educational service provider shall only disclose educational records of a student inmate, before or after release from custody, consistent with FERPA.

(7) A transcript or diploma prepared for an inmate in custody shall:

(a) include the name of the contracted educational agency which also provides service to non-custodial offenders; and

(b) not reference the inmate's custodial status.

(8) A corrections education provider shall keep an inmate's education records which refer to custodial status, inmate court records, and related matters separate from permanent school records.

R277-733-11. Supplemental Awards.

An LEA may receive a supplemental award if the LEA:

(1) has an adult education program with no carryover funds;

(2) demonstrates that the award funds will only be used for special program needs or professional development; and

(3) provides in writing the level of need for the award.

R277-733-12. State Workforce Development Board.

(1) The Superintendent shall represent adult education programs on the State Workforce Development Board as a voting member, in accordance with WIOA.

(2) The Superintendent may assign Board staff to State Workforce Development Board WIOA committees to implement the State's WIOA Unified Plan.

R277-733-13. Oversight, Monitoring, Evaluation, and Reports.

(1) The Board may designate up to 2% of the total legislative appropriation for oversight, monitoring, and evaluation of adult education programs.

(2) The Superintendent may recommend that the Board withhold state or federal funds in accordance with Rule R277-114 for noncompliance with:

(a) Board rule;

(b) adult education state policy and procedures;

(c) associated reporting timelines; and

(d) program monitoring outcomes, as defined by the Board, including:

(i) lack of program improvement; and

(ii) unsuccessful student outcomes.

KEY: adult education

Date of Last Change: ~~2024 July 11, 2023~~

Notice of Continuation: January 13, 2022

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-10-202; 53E-3-501(1); 53E-3-401(4); 53F-2-401; 53E-10-205

NOTICE OF PROPOSED RULE		
TYPE OF FILING: Amendment		
Rule or Section Number:	R277-929	Filing ID: 56525

Agency Information

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

General Information

2. Rule or section catchline:
R277-929. State Council on Military Children
3. Purpose of the new rule or reason for the change:
This rule is being amended to make necessary updates to the application process for Utah's Purple Star Schools.
4. Summary of the new rule or change:
The amendments specifically add an oversight categorization of "Category 3", and also make several updates to program requirements outlined in the rule.
These updates include addition of a requirement that Purple Star Schools submit an annual report on a form provided by the Superintendent by March 31 annually, and also specify that the Superintendent may rescind a school's purple star designation if the school fails to file an annual report or is found to be out of compliance.

Fiscal Information

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

<p>A) State budget:</p> <p>This rule change is not expected to have fiscal impact on state government revenues or expenditures.</p> <p>The oversight framework categorization is part of the Utah State Board of Education's (USBE) effort through Rule R277-111 to categorize each rule into an oversight framework category, or to delineate for stakeholders what type of monitoring or oversight is required by the USBE resulting from the rule. This categorization does not add any requirements or resources in and of itself.</p> <p>The rule changes include a report and that the USBE may rescind a school's purple star designation are based on participant school feedback and do not add measurable costs for participating schools, Local Education Agencies (LEAs), the USBE, or other persons. The report can be completed with existing staff and resources.</p>
<p>B) Local governments:</p> <p>This rule change is not expected to have fiscal impact on local governments' revenues or expenditures.</p> <p>The oversight framework categorization is part of the USBE's effort through Rule R277-111 to categorize each rule into an oversight framework category, or to delineate for stakeholders what type of monitoring or oversight is required by the USBE resulting from the rule. This categorization does not add any requirements or resources in and of itself.</p> <p>The rule changes to include a report and that the USBE may rescind a school's purple star designation are based on participant school feedback and do not add measurable costs for participating schools, LEAs, the USBE, or other persons. The report can be completed with existing staff and resources.</p>
<p>C) Small businesses ("small business" means a business employing 1-49 persons):</p> <p>This rule change is not expected to have fiscal impact on small businesses' revenues or expenditures.</p> <p>This only applies to the USBE and LEAs.</p>
<p>D) Non-small businesses ("non-small business" means a business employing 50 or more persons):</p> <p>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.</p>

<p>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):</p> <p>This rule change is not expected to have fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities.</p> <p>The oversight framework categorization is part of the USBE's effort through Rule R277-111 to categorize each rule into an oversight framework category, or to delineate for stakeholders what type of monitoring or oversight is required by the USBE resulting from the rule. This categorization does not add any requirements or resources in and of itself.</p> <p>The rule changes to include a report and that the USBE may rescind a school's purple star designation are based on participant school feedback and do not add measurable costs for participating schools, LEAs, the USBE, or other persons.</p> <p>The report can be completed with existing staff and resources.</p>																
<p>F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):</p> <p>There are no compliance costs for affected persons.</p> <p>The oversight framework categorization is part of the USBE's effort through R277-111 to categorize each rule into an oversight framework category, or to delineate for stakeholders what type of monitoring or oversight is required by the USBE resulting from the rule. This categorization does not add any requirements or resources in and of itself.</p> <p>The rule changes include a report and that the USBE may rescind a school's purple star designation are based on participant school feedback and do not add measurable costs for participating schools, LEAs, the USBE, or other persons.</p> <p>The report can be completed with existing staff and resources.</p>																
<p>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.)</p> <table border="1"> <thead> <tr> <th colspan="4">Regulatory Impact Table</th> </tr> <tr> <th>Fiscal Cost</th> <th>FY2024</th> <th>FY2025</th> <th>FY2026</th> </tr> </thead> <tbody> <tr> <td>State Government</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> <tr> <td>Local Governments</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> </tbody> </table>	Regulatory Impact Table				Fiscal Cost	FY2024	FY2025	FY2026	State Government	\$0	\$0	\$0	Local Governments	\$0	\$0	\$0
Regulatory Impact Table																
Fiscal Cost	FY2024	FY2025	FY2026													
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
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0
H) Department head comments on fiscal impact and approval of regulatory impact analysis:			
The State Superintendent of the Utah State Board of Education, Sydnee Dickson, has reviewed and approved this fiscal analysis.			

Citation Information

6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:		
Article X, Section 3	Subsection 53E-3-401(4)	

Public Notice Information

8. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	07/01/2024
9. This rule change MAY become effective on:	07/08/2024
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.	

Agency Authorization Information

Agency head or designee and title:	Angie Stallings, Deputy Superintendent of Policy	Date:	05/15/2024
---	--	--------------	------------

R277. Education, Administration.

R277-929. State Council on Military Children.

R277-929-1. Authority, ~~and~~ Purpose, and Oversight Category.

- (1) This rule is authorized by:
 - (a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;
 - (b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and
 - (c) Section 53E-3-920.1, which requires the Board to create a state council in accordance with the Interstate Compact on Educational Opportunity for Military Children.
- (2) The purpose of this rule is to:
 - (a) establish a state council for military children; and
 - (b) establish a purple star schools designation for Utah schools meeting eligibility criteria.
- (3) This Rule R277-929 is categorized as Category 3 as described in Rule R277-111.

R277-929-2. Definitions.

- (1) "Commissioner" means the compact commissioner appointed by the Governor in accordance with Section 53E-3-921.
- (2) "Compact" means Title 53E, Chapter 3, Part 9, Interstate Compact on Educational Opportunity for Military Children.
- (3) "Designated staff point of contact" means a counselor, administrator, teacher, or other staff member who is familiar with the needs of military students and the protections afforded to service members' children under the compact.
- (4) "State council" means the State Council for Military Children created through this rule.

R277-929-3. Establishment of State Council.

- (1) There is hereby created the State Council for Military Children.
- (2) The state council shall:
 - (a) coordinate implementation of the compact among[st]:
 - (i) state agencies;
 - (ii) LEAs; and
 - (iii) military installations;
 - (b) safeguard the interests of military impacted students within the state;
 - (c) make recommendations for laws and policies to benefit military impacted students; and
 - (d) promote awareness of compact rights and protections with military families.
- (3)(a) The Superintendent shall invite the individuals identified in Subsection 53E-3-909(1) to participate in the state council.
- (b) The Superintendent may invite other individuals with interest or expertise in working with military students to participate in the state council.
- (4) The Superintendent shall coordinate with the Commissioner to schedule meetings of the state council.

(5) The state council shall meet on an annual basis or with such other frequency as may be required by compact rules.

(6) The Commissioner shall be responsible for filing all required reports with the national compact office.

R277-929-4. Purple Star Schools.

(1) There is hereby created a purple star schools designation for Utah schools that excel in protecting the educational needs of students from military families.

(2) The Commissioner shall establish an application process for Utah schools interested in the purple star schools designation.

(3) The Commissioner shall review purple star school applications with the state council created in Section R277-929-3 and make recommendations for the purple star school designation.

(4) The Superintendent shall award the purple star school designation to a Utah school that:

(a) has a designated staff point of contact for military students and families who acts as the primary link between a military family and the school;

(b) has a dedicated page on its school website featuring information and resources for military families;

(c) has a student-led transition program to include a student transition team coordinator;

(d) provides professional development for additional staff on special considerations for military students and families; and

(e) meets at least one of the following criteria:

(i) the school shall commit to hold a school-wide military recognition event;

(ii) the school's governing board shall pass a resolution publicizing support for military students and families; or

(iii) the school shall ~~partner~~ coordinate with ~~a~~ the school liaison ~~office~~ program from Hill Air Force Base or Dugway Proving Grounds to provide opportunities for active duty parents to volunteer in the school.

(5)(a) The Superintendent shall approve a seal for schools with a purple star school designation.

(b) A purple star school may use the approved seal on school letterhead, the school's website, and other school publications.

(6) The Superintendent shall publish a list of schools receiving the purple star designation on the Board's website.

~~(7)(a) The Commissioner shall review a school's purple star school designation with the state council every three years.~~

~~(b) The Superintendent may extend or remove a school's purple star designation based on the results of the state council's review.]~~

(7) A purple star school recognized under this section shall submit an annual report on a form provided by the Superintendent by March 31 annually.

(8) The Superintendent may rescind a school's purple star school designation if:

(a) the school fails to file an annual report under Subsection (7); or

(b) the school is out of compliance with a requirement in Subsection (4).

KEY: state council, military, compact

Date of Last Change: 2024[February 9, 2021]

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

NOTICE OF PROPOSED RULE		
TYPE OF FILING: New		
Rule or Section Number:	R277-932	Filing ID: 56526

Agency Information

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

General Information

2. Rule or section catchline:
R277-932. Information on Public School Options
3. Purpose of the new rule or reason for the change:
This rule is being created in order to specify "Public School Options" webpage requirements.
4. Summary of the new rule or change:
This new rule requires the Utah State Board of Education (USBE) to maintain a webpage that provides transparency for the public about all available public education options.
This new rule also requires Local Education Agencies (LEAs) to place a link to the USBE's public school options webpage on the LEA website.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
A) State budget:
This rule change has an estimated cost for the USBE of approximately \$15,000 for one-time custom development by the USBE's website hosting platform.
After the website is established, it can be maintained with existing USBE resources.

B) Local governments:

This rule change is not expected to have fiscal impact on local governments' revenues or expenditures.

While Local Education Agencies (LEA) are required to place a link to the public school options webpage on their webpage, there can be quickly accomplished by LEA staff on their existing websites and there is no measurable cost to LEAs.

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

This rule change is not expected to have fiscal impact on small businesses' revenues or expenditures.

This only affects the USBE and LEAs.

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

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

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

This rule change is not expected to have fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities.

This only affects the USBE and LEAs.

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

The compliance costs are \$15,000 one-time for the USBE for custom development by the USBE's website hosting platform.

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

Regulatory Impact Table			
Fiscal Cost	FY2024	FY2025	FY2026
State Government	\$0	\$15,000	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$15,000	\$0
Fiscal Benefits	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	(\$15,000)	\$0

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

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

Citation Information

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

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

Public Notice Information

8. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:	07/01/2024
--	------------

9. This rule change MAY become effective on:	07/08/2024
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.	

Agency Authorization Information

Agency head or designee and title:	Angie Stallings, Deputy Superintendent of Policy	Date:	05/15/2024
---	--	--------------	------------

R277. Education, Administration.

R277-932. Information on Public School Options.

R277-932-1. Authority, Purpose, and Oversight Category.

- (1) This rule is authorized by:
 - (a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board; 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:
 - (a) direct the Superintendent to maintain a webpage to make transparent to the public all available public education options; and
 - (b) require LEAs to place a link to the Board's public school options webpage on the LEA's website.
- (3) This Rule R277-932 is categorized as Category 2 as described in Rule R277-111.

R277-932-2. Information on Public School Options Webpage Requirements.

- (1) The Superintendent shall provide a webpage as part of the State Board website that lists public school options for Utah parents.
- (2) The webpage provided under Subsection (1) shall include a link to the website of:
 - (a) each K-12 public school; and
 - (b) each SOEP provider, which is certified in accordance with Section R277-726-11.
- (3) The webpage provided under Subsection (1) should allow geographic searches of Utah schools and include online school options.
- (4) An LEA shall place a link to the public school options webpage required under Subsection (1) on the LEA's student information portal, accessible by parents, to the extent technically possible, and on the LEA's website.

KEY: public school options, webpage

Date of Last Change: 2024

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

NOTICE OF PROPOSED RULE		
TYPE OF FILING: Amendment		
Rule or Section Number:	R311-203	Filing ID: 56497

Agency Information

1. Department:	Environmental Quality	
Agency:	Environmental Response and Remediation	
Building:	Multi Agency State Office Building	
Street address:	195 N 1950 W	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 144840	
City, state and zip:	Salt Lake City, UT 84114-4840	
Contact persons:		
Name:	Phone:	Email:
David Wilson	385-251-0893	djwilson@utah.gov
Morgan Atkinson	801-979-2512	mpatrickson@utah.gov

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

General Information

2. Rule or section catchline:
R311-203. Petroleum Storage Tanks: Technical Standards
3. Purpose of the new rule or reason for the change:
The purpose of this rule change is to allow the agency to continue issuing certificates of compliance (COC) to all regulated facilities, as well as to clarify some wording and make the rule more concise and easier for the regulated community to understand. Leak detection and testing requirements are essential for the agency to continue issuing COCs for Aboveground Petroleum Storage Tanks (APSTs) and brings parity with the existing requirements for Underground Storage Tanks (USTs) and APSTs participating in the Environmental Assurance Program (EAP). Additionally, the agency has found some of the spill prevention testing requirements are not applicable for all regulated PSTs, so the requirement is removed where not applicable.
4. Summary of the new rule or change:
The changes: 1) clarify Subsection R311-203-2(6) by changing "is not in service" to "was out of service"; 2) move Subsection R311-203-2(6)(f) to its own Subsection R311-203-2(8) where it fits better in context; 3) remove the wording from Subsection R311-203-5(10) that requires certain Leak Detection and Testing for only

APSTs using EAP as their financial responsibility mechanism and now will apply to all APSTs; and
 4) modify wording in Subsection R311-203-5(10)(b) to remove the periodic testing requirement for spill prevention equipment on APSTs.

The spill prevention standard in the International Fire Code is still applicable.

Fiscal Information

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

A) State budget:

In Subsection R311-203-5(10): There is no anticipated cost or savings to the state budget because all state PST facilities are required by statute to be on the EAP and meet these leak detection standards.

In Subsection R311-203-5(10)(b): There is a direct fiscal benefit to state-owned facilities with APSTs which will not be required to test their spill buckets every 3 years. There are approximately 30 facilities with APSTs owned by state government that participate in the EAP. Each site has an average of 3 APSTs each that will be affected by this rule. The approximate total benefit for all these facilities combined is \$9,000 every 3 years. This estimate was reached using the average contractor cost for a facility with 3 APSTs being \$300 every 3 years.

Other changes will have no anticipated cost or savings to the state budget, because they just fix minor errors and clarify certain rules.

B) Local governments:

In Subsection R311-203-5(10): This proposed rule change is not expected to have any fiscal impact on local governments' revenues or expenditures because Insurance Companies offering an alternate form of Financial Assurance will likely required them to meet similar leak detection standards.

The fiscal cost to meet the requirements for 07/01/2026 is inestimable due to variation in type of APST facilities which may require upgrades to meet these standards that are already required to meet International Fire Code as adopted pursuant to Utah State Fire Code Section 15A-5-103.

In Subsection R311-203-5(10)(b): There is a direct fiscal benefit to local government-owned facilities with APSTs which will not be required to test their spill buckets every 3 years. There are approximately 22 facilities with APSTs owned by local governments that participate in the EAP.

Each site has an average of 3 APSTs each that will be affected by this rule. The approximate total benefit for all these facilities combined is \$6,600 every 3 years. This

estimate was reached using the average contractor cost for a facility with 3 APSTs being \$300 every 3 years.

Other changes will have no anticipated cost or savings to the local government's budget, because they just fix minor errors and clarify certain rules.

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

In Subsection R311-203-5(10): This proposed rule change is not expected to have any fiscal impacts on small businesses' revenues or expenditures because Insurance Companies offering an alternate form of Financial Assurance will likely required them to meet similar leak detection standards.

The fiscal cost to meet the requirements for 07/01/2026 is inestimable due to variation in type of APST facilities which may require upgrades to meet these standards which are already required to meet International Fire Code as adopted pursuant to Utah State Fire Code Section 15A-5-103.

In Subsection R311-203-5(10)(b): There is a direct fiscal benefit to small business owned facilities with APSTs which will not be required to test their spill buckets every 3 years. There are approximately 100 facilities with APSTs owned by small businesses that participate in the EAP.

Each site has an average of 3 APSTs each that will be affected by this rule. The approximate total benefit for all these facilities combined is \$30,000 every 3 years. This estimate was reached using the average contractor cost for a facility with 3 APSTs being \$300 every 3 years.

Other changes will have no anticipated cost or savings to the small businesses budget, because they just fix minor errors and clarify certain rules.

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

In Subsection R311-203-5(10): This proposed rule change is not expected to have any fiscal impacts on non-small businesses revenues or expenditures because Insurance Companies offering an alternate form of Financial Assurance will likely required them to meet similar leak detection standards.

The fiscal cost to meet the requirements for 07/01/2026 is inestimable due to variation in type of APST facilities which may require upgrades to meet these standards which are already required to meet International Fire Code as adopted pursuant to Utah State Fire Code Section 15A-5-103.

In Subsection R311-203-5(10)(b): There is a direct fiscal benefit to non-small business owned facilities with APSTs which will not be required to test their spill buckets every 3 years. There are approximately 80 facilities with APSTs owned by non-small business that participate in the EAP.

Each site has an average of 3 APSTs each that will be affected by this rule. The approximate total benefit for all these facilities combined is \$18,000 every 3 years. This estimate was reached using the average contractor cost for a facility with 3 APSTs being \$300 every 3 years.

Other changes will have no anticipated cost or savings to the non-small businesses budget, because they just fix minor errors and clarify certain rules.

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 rule changes are not expected to have any fiscal impacts on other persons because the rule changes will not apply to these entities.

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

In Subsection R311-203-5(10)(b): Benefit to affected persons for not requiring spill bucket (SB) tests is \$100/SB every 3 years.

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

Regulatory Impact Table			
Fiscal Cost	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$9,000
Local Governments	\$0	\$0	\$6,600
Small Businesses	\$0	\$0	\$30,000
Non-Small Businesses	\$0	\$0	\$18,000

Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$63,600
Net Fiscal Benefits	\$0	\$0	\$63,600

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

The Executive Director of the Department of Environmental Quality, Kim Shelley, has reviewed and approved this regulatory impact analysis.

Citation Information

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

Section 19-6-105	Section 19-6-403	Section 19-6-408
------------------	------------------	------------------

Public Notice Information

8. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until: 07/01/2024

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

Date:	Time:	Place (physical address or URL):
06/10/2024	02:00 PM	Multi Agency State Office Building, 195 N 1950 W, Salt Lake City, UT, Room 1015

To the agency: If more space is needed for a physical address or URL, refer readers to Box 4 in General Information. If more than two hearings will take place, continue to add rows.

9. This rule change MAY become effective on: 07/12/2024

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

Agency Authorization Information

Agency head or designee and title:	Brent Everett, Director	Date:	05/09/2025
---	-------------------------	--------------	------------

R311. Environmental Quality, Environmental Response and Remediation.
R311-203. Petroleum Storage Tanks: Technical Standards.
R311-203-1. Definitions.

Definitions are found in Rule R311-200.

R311-203-2. Notification.

(1) The owner or operator of an UST must notify the director when:

- (a) new USTs are brought into use;
- (b) the owner or operator changes;
- (c) changes are made to the tank or piping system; and
- (d) release detection, corrosion protection, or spill or overfill prevention systems are installed, changed, or upgraded.

(2) Notifications must be submitted on the current approved notification form.

(3) Notifications submitted to meet the requirements of Subsection R311-203-2(1) shall be submitted within 30 days of the completion of the work or the change of ownership.

(4) To satisfy the requirement of Section 19-6-407 the certified installer shall:

(a) complete the appropriate section of the form to be submitted by the owner or operator, and ensure that the notification form is submitted by the owner or operator within 30 days of completion of the installation; or

(b) provide separate notification to the director within 60 days of the completion of the installation.

(5) The owner or operator of an APST that is in service on or after May 5, 2021, must notify the director according to the requirements of Subsection 19-6-407(2).

(6) The owner or operator of an APST that ~~is~~ was ~~not~~ in out of service before May 5, 2021,

(a) must notify the director according to the requirements of Subsection 19-6-407(2)(a)(i);

(b) is subject to delivery prohibition requirements in Section R311-206-8;

(c) is subject to closure requirements under Subsections 19-6-407(2)(a)(iii) and (iv) and Section R311-204-2;

(d) must demonstrate the tank has been emptied of any regulated substance to the lowest discharge point on the tank;

(e) is subject to release reporting requirements as outlined in Subsection 19-6-407(2)(a)(iv); and

~~[(f) must notify local emergency responders of a spill or overfill exceeding 25 gallons within 24 hours.]~~

(7) The owner or operator of an APST that is not in service before May 5, 2021, is not subject to the requirements of Subsection 19-6-407(2)(c) and Section 19-6-412 unless the owner or operator elects to bring the APST back in service.

(8) The owner or operator of an APST must notify within 24 hours local emergency responders of a spill or overfill exceeding 25 gallons.

R311-203-3. New Installations, Permits.

(1) Certified UST installers must notify the director at least ten business days, or another time period approved by the director, before commencing any of the following activities:

- (a) the installation of a full UST system or tank only;
- (b) the installation of underground product piping for one or more tanks at a facility, separate from the installation of one or more tanks at a facility;
- (c) the internal lining of a previously-existing tank;
- (d) the installation of a cathodic protection system on one or more previously-existing tanks at a facility;
- (e) the installation of a bladder in a tank;
- (f) any retro-fit, replacement, or installation that requires the cutting of a manway into the tank;
- (g) the installation of a spill prevention or overfill prevention device;

(h) the installation of a leak detection monitoring system; or

(i) the installation of a containment sump or under-dispenser containment.

(2) The UST installation company must submit to the director an UST installation permit fee of \$200 when any of the activities listed in Subsections R311-203-3(1)(a) through R311-203-3(1)(f) is performed on an UST system that has not qualified for a certificate of compliance before the commencement of the work.

(3) The fees assessed under Subsection 19-6-411(2)(a)(i) will be determined based on the number of full UST installations performed by the installation company in the 12 months previous to the fee due date.

(a) installations for which the fee assessed under Subsections 19-6-411(2)(a)(ii) and R311-203-3(3) is charged shall count toward the total installations for the 12-month period.

(4) For the purposes of Subsections 19-6-411(2)(a)(ii), 19-6-407(1)(c), and R311-203-2(4), an installation is considered complete when:

(a) in the case of installation of a new UST system, tank only, or product piping only, the new installation first holds a regulated substance; or

(b) in the case of installation of the components listed in Subsections R311-203-3(1)(d) through R311-203-3(1)(f), the new installation is functional and the UST holds a regulated substance and is operational.

(5) If, before completion of an installation for which an UST installation permit fee is required, the owner or operator decides to install additional UST system components, the installer shall notify the director of the change.

(a) when additions are made, the UST installation permit fee shall be increased based on the additional number of tanks to be installed in accordance with Subsection 19-6-411(2)(a)(i) and the Department of Environmental Quality Fee Schedule, as approved annually by the Legislature.

(6) The number of UST installation companies performing work on a particular installation will not be a factor in determining the UST installation permit fee for that installation.

(a) each installation company must be identified on the UST installation permit.

(7) When a new UST system, tank only, product piping only, or new cathodic protection system is installed, the owner or operator must submit to the director an as-built drawing that meets the requirements of Subsection R311-200-1(2)(b).

R311-203-4. Petroleum Storage Tank Registration Fee.

(1) Registration fees will be assessed by the Department against tanks which are not permanently closed for the entire fiscal year, and will be billed per facility.

(2) Registration fees are due on July 1 of the fiscal year for which the assessment is made, or, for PSTs brought into use after the beginning of the fiscal year, registration fees are due when the tanks are brought into use, as a requirement for receiving a certificate of compliance.

(3) The director may waive all or part of the penalty assessed under Subsection 19-6-408(5) if no fuel has been dispensed from the tank on or after July 1, 1991 and if the tank has been properly closed according to Rules R311-204 and R311-205, or in other circumstances as approved by the director.

(4) The director shall issue a certificate of registration to owners or operators for individual PSTs at a facility if:

(a) the tanks are in use or are temporarily closed as outlined in 40 CFR Part 280 Subpart G; and

(b) the PST registration fee has been paid.

(5) Pursuant to Subsection 19-6-408(5)(c), past due PST registration fees, late payment penalties and interest must be paid before the director may issue or re-issue a certificate of compliance regardless of whether there is a new owner or operator at the facility.

(a) the director may decline active collection of past due registration fees, late payment penalties and interest if a certificate of compliance is not issued and the new owner or new operator properly closes the PSTs within one year of becoming the new owner or operator of the facility.

(6) A UST will be assessed the higher registration fee established under Section 63J-1-504 if it is found to be out of compliance with the EPA Technical Compliance Rate during an inspection, and remains out of compliance for six months or greater following the initial inspection.

(a) the higher registration fee is due July 1 following the documented six-month period of non-compliance.

(7) When the director is notified of the existence of a previously unregistered regulated PST, the director shall assess the applicable notification fee and PST registration fee for the current fiscal year.

(a) if the PST is properly permanently closed within 90 days of the notification of the existence of the PST, the director may decline active collection of pastdue registration fees, late payment penalties, and interest for previous fiscal years.

R311-203-5. PST Testing Requirements.

(1) Tank tightness testing. The testing method must be able to test the PST system at the maximum level that could contain regulated substances.

(a) tanks with overfill prevention devices that prevent product from entering the upper portion of the tank may be tested at the maximum level allowed by the overfill device.

(2) Spill prevention equipment. An individual who conducts a test of spill prevention equipment to meet the requirements of 40 CFR 280.35(a)(1)(ii) must report the test results using:

(a) the form "Utah Spill Prevention Test"; or

(b) the form "Appendix C-3 Spill Bucket Integrity Testing Hydrostatic Test Method Single and Double-Walled Vacuum Test Method," found in PEI RP1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities;" or

(c) another form approved by the director.

(3) Containment sump testing. An individual who conducts a test of a containment sump used for interstitial monitoring to meet the requirements of 40 CFR 280.35(a)(1)(ii) or a test of a piping containment sump or under-dispenser containment to meet the requirements of Section R311-206-11 must report the test results using:

(a) the form "Utah Containment Sump Test"; or

(b) the form "Appendix C-4 Containment Sump Integrity Testing Hydrostatic Testing Method," found in PEI RP1200; or

(c) another form approved by the director.

(4) When a sump sensor is used as an automatic line leak detector, the secondary containment sump must be tested for tightness annually according to the manufacturer's guidelines or standards, or by another method approved by the director.

(a) the sensor shall be located as close as is practicable to the lowest portion of the sump.

(5) Cathodic protection testing. Cathodic protection tests must meet the inspection criteria outlined in 40 CFR 280.31(b), or other criteria approved by the director. The tester who performs the test must provide the following information:

(a) location of at least three test points per tank;

(b) location of one remote test point for galvanic systems;

(c) test results in volts or millivolts;

(d) pass or fail determination for each tank, line, flex connector, or other UST system component tested;

(e) the criteria by which the pass or fail determination is made;

(f) a site plat showing locations of test points; and

(g) a re-test of any cathodic protection system is required within six months of any below-grade work that may harm the integrity of the system.

(6) UST testers performing tank and line tightness testing must include the following as part of the test report:

(a) pass or fail determination for each tank or line tested;

(b) measured leak rate;

(c) test duration;

(d) product level for tank tests;

(e) pressure used for pressure tests;

(f) type of test; and

(g) test equipment used.

(7) overfill prevention equipment inspection. An individual who conducts an inspection of overfill prevention equipment to meet the requirements of 40 CFR 280.35(a)(2) must report the results using:

(a) the form "Appendix C-5 UST Overfill Equipment Inspection Automatic Shutoff Device and Ball Float Valve," found in PEI RP1200, when the overfill prevention is provided by either an automatic shutoff device or a ball float valve;

(b) the form "Appendix C-6 Overfill Alarm Operation Inspection," found in PEI RP1200, when overfill prevention is provided by an overfill alarm; or

(c) another form approved by the director.

(8) Automatic tank gauge inspection. An individual who conducts an inspection of automatic tank gauges to meet the requirements of 40 CFR 280.40(a)(3) must report the results using:

(a) the form "Appendix C-7 Automatic Tank Gauge Operation Inspection," found in PEI RP1200, and if the PST system or any portion thereof is interstitially monitored, "Appendix C-8: Liquid Sensor Functionality Testing," found in PEI RP1200; or

(b) another form approved by the director.

(9) Automatic line leak detector testing. An individual who conducts a test of automatic line leak detectors to meet the requirements of 40 CFR 280.40(a)(3) must report the results using:

(a) the form "Appendix C-9 Mechanical and Electronic Line Leak Detector Performance Tests," found in PEI RP1200; or

(b) another form approved by the director.

(10) Leak Detection and Testing Requirements for APSTs[~~using the EAP for financial responsibility~~]:

(a) line tightness testing or monthly monitoring is required for underground piping associated with APSTs.

(i) an individual who conducts a tightness test of product lines must perform the test as set forth in 40 CFR 280.44(b).

(ii) when pressurized underground product piping is connected to an APST that is not double-walled, sensor equipped, and monitored monthly, the product piping must be tested for tightness annually. The test must meet the requirements of Subsection R311-203-5(6).

(b) spill prevention equipment associated with an APST must meet the standards set forth in International Fire Code (IFC) 2306.6.2.6 referenced in the Utah State Fire Code adopted pursuant to Section 15A-5-103[~~and be double-walled and monitored monthly, or have an integrity test performed every three years. The test must meet the requirements of Subsection R311-203-5(2)].~~

(c) beginning July 1, 2026, an APST resting on the ground must perform monthly interstitial monitoring, a monthly 0.2 gallon per hour release detection test, or a tank tightness test every 5 years. The test must meet the requirements of Subsection R311-203-5(1).

(d) beginning July 1, 2026, if applicable, APSTs and associated piping are required to have cathodic protection that meets the standards set forth in IFC 5704.2.7.9 and National Fire Protection Agency (NFPA) 30.23.3.5 and must have a passing cathodic protection test every 3 years. The test must meet the requirements of Subsection R311-203-5(5).

(e) beginning July 1, 2026, an APST shall have an overflow prevention device that meets the standards set forth in IFC 2306.6.2.3, 5704.2.7.5.8 and 5704.2.927.5 and must have an overflow prevention equipment inspection performed every three years. The overflow prevention equipment inspection must meet the requirements of Subsection R311-203-5(7).

(f) beginning July 1, 2026, an APST with pressurized underground product piping shall have an automatic line leak detector that meets the standards set forth in IFC 2306.7.7.1 and must have an automatic line leak detector test performed annually. The test must meet the requirements of Subsection R311-203-5(9).

R311-203-6. Secondary Containment and Under-Dispenser Containment.

(1) Secondary containment for tanks and piping.

(a) to meet the requirements of Subsection 42 USC 6991b(i) of the Solid Waste Disposal Act, tanks and product piping that are installed as part of an UST system after October 1, 2008 and before January 1, 2017 must have secondary containment if the installation is located 1,000 feet or less from an existing community water system or an existing potable drinking water well.

(b) the secondary containment installed under Subsection R311-203-6(1) must meet the requirements of 40 CFR 280.42(b), and shall be monitored monthly for releases from the tank and piping.

(i) monthly monitoring must meet the requirements of 40 CFR 280.43(g).

(c) containment sumps for piping installed under Subsection R311-203-6(1) are required:

(i) at the submersible pump or other location where the piping connects to the tank;

(ii) where the piping connects to a dispenser, or otherwise goes aboveground; and

(iii) where double-walled piping that is required under Subsection R311-203-6(1) connects with existing piping.

(d) containment sumps for piping that is installed under Subsection R311-203-6(1) must:

(i) contain submersible pumps, check valves, unburied risers, flexible connectors, and other transitional components that connect the piping to the tank, dispenser, or existing piping; and

(ii) meet the requirements of Subsection R311-203-6(2)(b).

(e) in the case of a replacement of tank or piping, only the portion of the UST system being replaced is subject to the requirements of Subsection R311-203-6(1).

(i) if less than 100% of the piping from a tank to a dispenser is replaced, the requirements of Subsection R311-203-6(1) applies to new product piping that is installed.

(ii) the closure requirements of Rule R311-205 apply to product piping that is taken out of service.

(iii) when new piping is connected to existing piping that is not taken out of service, the connection between the new and existing piping must be secondarily contained, and monitored for releases according to 40 CFR 280.43(g).

(f) the requirements of Subsection R311-203-6(1) do not apply to:

(i) piping that meets the requirements for "safe suction" piping in 40 CFR 280.41(b)(2); or

(ii) piping that connects two or more tanks to create a siphon system.

(g) the requirements of Subsection R311-203-6(1) apply to emergency generator USTs installed after October 1, 2008.

(2) Under-dispenser containment.

(a) to meet the requirements of Subsection 42 USC 6991b(i) of the Solid Waste Disposal Act, new motor fuel dispenser systems installed after October 1, 2008 and before January 1, 2017, and connected to an UST, must have under-dispenser containment if the installation is located 1,000 feet or less from an existing community water system or an existing potable drinking water well.

(b) the under-dispenser containment must:

(i) be liquid-tight on its sides, bottom, and at penetrations;

(ii) be compatible with the substance conveyed by the piping; and

(iii) allow for visual inspection and access to the components in the containment system, or be continuously monitored for the presence of liquids.

(c) if an existing dispenser is replaced, the requirements of Subsection R311-203-6(2) apply to the new dispenser if any equipment used to connect the dispenser to the PST system is replaced.

(i) this equipment includes unburied flexible connectors, risers, and other transitional components that are beneath the dispenser and connect the dispenser to the product piping.

(3) The requirements of Subsections R311-203-6(1) and R311-203-6(2) do not apply if the installation is located more than 1,000 feet from an existing community water system or an existing potable drinking water well.

(a) the PST owner or operator must provide to the director documentation to show that the requirements of Subsections R311-203-6(1) and R311-203-6(2) do not apply to the installation.

(b) the documentation shall be provided at least 60 days before the beginning of the installation, and shall include:

(i) a detailed to-scale map of the proposed installation that demonstrates that no part of the installation is within 1,000 feet of any community water system, potable drinking water well, or any well the owner or operator plans to install at the facility; and

(ii) a certified statement by the owner or operator explaining who researched the existence of a community water system or potable drinking water well, how the research was conducted, and how the proposed installation qualifies for an exemption from the requirements of Subsections R311-203-6(1) and R311-203-6(2).

(4) To determine whether the requirements of Subsections R311-203-6(1) and R311-203-6(2) apply, the distance from the UST installation to an existing community water system or existing potable drinking water well shall be measured from the closest part of the new UST, piping, or motor fuel dispenser system to:

(a) the closest part of the nearest community water system, including:

- (i) the location of the wellheads for groundwater and the location of the intake points for surface water;
 - (ii) water lines, processing tanks, and water storage tanks;
- and

(iii) water distribution/ and service lines under the control of the community water system operator, or

(b) the wellhead of the nearest existing potable drinking water well.

(5) If a new UST facility is installed, and is not within 1,000 feet of an existing community water system or an existing potable drinking water well, the requirements of Subsections R311-203-6(1) and R311-203-6(2) apply if the owner or operator installs a potable drinking water well at the facility that is within 1,000 feet of the UST, piping, or motor fuel dispenser system, regardless of the sequence of installation of the UST system, dispenser system, and well.

(6) To meet the requirements of 40 CFR 280.20, tanks and product piping that are installed or replaced as part of an UST system on or after January 1, 2017 must be secondarily contained and use interstitial monitoring in accordance with 40 CFR 280.43(g).

R311-203-7. Operator Inspections.

(1) Owners and operators must perform periodic inspections in accordance with 40 CFR 280.36.

(a) inspections must be conducted by or under the direction of the designated Class B operator.

(b) the Class B operator must ensure that documentation of each inspection is kept and made available for review by the director.

(2) The individual who conducts inspections to meet the requirements of 40 CFR 280.36(a)(1) or 208.36(a)(3) shall use the form "UST Operator Inspection- Utah" or another form approved by the director.

(3) An UST facility whose tanks are properly temporarily closed according to 40 CFR 280.70 and Section R311-204-4 must have an annual operator inspection.

(4) An owner or operator who conducts visual checks of tank top containment sumps and under-dispenser containment sumps for compliance with piping leak detection in accordance with 40 CFR 280.43(g) must conduct the visual checks monthly and report the results on the operator inspection form.

R311-203-8. Unattended Facilities.

(1) An UST facility that:

(a) normally has no employee on site or is open to dispense fuel at times when no employee or trained operator is on site must have:

(i) a sign posted in a conspicuous place, giving the name and telephone number of the facility owner, operator, or local emergency responders; and

(ii) an emergency shutoff device in a readily accessible location, if the facility dispenses fuel.

KEY: fees, hazardous substances, petroleum, underground storage tanks

Date of Last Change: ~~2024~~September 27, 2022

Notice of Continuation: March 8, 2022

Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-403; 19-6-408

NOTICE OF PROPOSED RULE		
TYPE OF FILING: Amendment		
Rule or Section Number:	RR311-206	Filing ID: 56499

Agency Information

1. Department:	Environmental Quality	
Agency:	Environmental Response and Remediation	
Building:	Multi Agency State Office Building	
Street address:	195 N 1950 W	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 144840	
City, state and zip:	Salt Lake City, UT 84114-4840	
Contact persons:		
Name:	Phone:	Email:
David Wilson	385-251-0893	djwilson@utah.gov
Morgan Atkinson	801-979-2512	mpatkinson@utah.gov

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

General Information

2. Rule or section catchline:
R311-206. Petroleum Storage Tanks: Certificate of Compliance and Financial Assurance Mechanisms
3. Purpose of the new rule or reason for the change:
The purpose of this rule change is to allow the agency to require leak detection at all regulated facilities, as well as clarifying the instances when the agency is allowed to place a delivery prohibition tag on a tank.
Adding leak detection requirements for Aboveground Petroleum Storage Tanks (APSTs) brings parity with the existing requirements for Underground Storage Tanks (USTs) and APSTs participating in the Environmental Assurance Program (EAP).
The previous wording of the delivery prohibition section of the rule did not allow for delivery prohibition in certain circumstances which tank manufacturers and other states' storage tank programs recommend delivery prohibition. The new wording fixes this issue.
4. Summary of the new rule or change:
In Subsection R311-206-3(1)(b)(i): Expands the leak detection requirement to all APST facilities and not only those on the Environmental Assurance Program (EAP).

In Subsection R311-206-4(6): Delete the subpart that lists the leak detection requirements for APSTs on the EAP because they can already be found in Subsection R311-203-5(10).

Change adds a subpart Subsection R311-206-8(4) authorizing the placement of a delivery prohibition tag on PSTs that fail a PST Test or show physical evidence of a release of product.

Change simplifies the confusing wording of Subsection R311-206-8(3).

Fiscal Information

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

A) State budget:

In Subsection R311-206-3(1)(b)(i) and Subsection R311-206-4(6): This rule change is not expected to have any fiscal impacts on state revenues or expenditures because all state PST facilities are required by statute to participate in the Environmental Assurance Program (EAP).

In Subsection R311-206-8(4): The cost to state budget is inestimable because the likelihood or frequency of a release from PSTs is unknown.

Other changes will have no anticipated cost or savings to the state budget because they just fix minor errors and clarify certain rules.

B) Local governments:

In Subsection R311-206-3(1)(b)(i) and Subsection R311-206-4(6): This rule change is expected to have an inestimable fiscal cost to local government-owned facilities with APSTs that do not participate in the EAP.

Insurance companies who provide financial Assurance (FA) will likely require these facilities to meet certain leak detection standards that are similar or stricter than those set forth in rule.

In Subsection R311-206-8(4): The cost to local governments is inestimable because the likelihood or frequency of a release from PSTs is unknown.

Other changes will have no anticipated cost or savings to local governments because they just fix minor errors and clarify certain rules.

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

In Subsection R311-206-3(1)(b)(i) and Subsection R311-206-4(6): This rule change is expected to have an inestimable fiscal cost to small businesses owned facilities with APSTs that do not participate in the EAP. Insurance companies who provide financial Assurance (FA) will likely require these facilities to meet certain leak detection

standards that are similar or stricter than those set forth in rule.

In Subsection R311-206-8(4): The cost to small businesses budget is inestimable because the likelihood or frequency of a release from PSTs is unknown.

Other changes will have no anticipated cost or savings to small business because they just fix minor errors and clarify certain rules.

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

In Subsection R311-206-3(1)(b)(i) and Subsection R311-206-4(6): This rule change is expected to have an inestimable fiscal cost to non-small businesses-owned facilities with APSTs that do not participate in the EAP. Insurance companies who provide financial Assurance (FA) will likely require these facilities to meet certain leak detection standards that are similar or stricter than those set forth in the rule.

In Subsection R311-206-8(4): The cost to non-small businesses is inestimable because the likelihood or frequency of a release from PSTs is unknown.

Other changes will have no anticipated cost or savings to non-small businesses because they just fix minor errors and clarify certain rules.

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 rule changes are not expected to have any fiscal impact on other persons because the rule changes will not apply to these entities.

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

Any costs to affected persons that choose to not participate in the EAP is inestimable. Insurance companies providing FA will likely require these facilities to meet certain leak detection standards that are similar or stricter than those set forth in rule. The cost to affected person for delivery prohibition to a PST is inestimable because the likelihood or frequency of a release from PSTs is unknown.

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

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

Citation Information

6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:		
Subsection 19-6-105	Subsection 19-6-403	Subsection 19-6-410.5
Subsection 19-6-428		

Public Notice Information

8. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:	07/01/2024	
B) A public hearing (optional) will be held:		
Date:	Time:	Place (physical address or URL):
06/10/2024	2:00 PM	Multi Agency State Office Building, 195 N 1950 W, Salt Lake City, UT, Room 1015
To the agency: If more space is needed for a physical address or URL, refer readers to Box 4 in General Information. If more than two hearings will take place, continue to add rows.		

9. This rule change MAY become effective on:	07/12/2024
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.	

Agency Authorization Information

Agency head or designee and title:	Brent Everett, Director	Date:	05/08/2024
---	-------------------------	--------------	------------

R311. Environmental Quality, Environmental Response and Remediation.

R311-206. Petroleum Storage Tanks: Certificate of Compliance and Financial Assurance Mechanisms.

R311-206-1. Definitions.

Definitions are found in Rule R311-200.

R311-206-2. Declaration of Financial Assurance Mechanism.

(1) To demonstrate financial assurance, as required by Section 19-6-412 and Subsection 19-6-407(2)(c), owners or operators of petroleum storage tanks must:

(a) declare they will participate in the EAP and meet the requirements for participation in the EAP under Sections 19-6-410.5, 19-6-428 and R311-206-4; or

(b) demonstrate financial assurance that meets the coverage amounts specified in 40 CFR 280.93, by an allowable method specified in Section R311-206-5.

(2) For the purposes of Subsection 19-6-412(6), tanks at a facility must be covered by the same financial assurance mechanism, and must be considered to be in one area, unless the director determines there is sufficient information so that releases from different tanks at the facility could be accurately differentiated.

R311-206-3. Requirements for Issuance of Certificates of Compliance.

(1) The director shall issue a certificate of compliance to an owner or operator for individual petroleum storage tanks at a facility if:

(a) the owner or operator has a certificate of registration;

(b) the owner or operator must certify that the PST is in substantial compliance with state and federal statutes, rules, and regulations applicable to PST systems;

~~[(i) APSTs using the EAP for financial responsibility, the owner or operator may meet the requirements outlined in Subsection R311-206-4(6).]~~

(c) the tank tightness test, as required by Section 19-6-413 conducted within six months before the tank was registered or within 60 days after the date the tank was registered, indicates that each individual PST is not leaking;

(d) the owner or operator has submitted a letter to the director stating that based on customary business inventory practices there has been no release from the tank;

(e) the owner or operator has submitted a completed application according to a form provided and approved by the director, and participates in the EAP or demonstrates that the financial assurance that will be used meets the requirements of Subsection R311-206-2(1)(b) and Section R311-206-5;

(f) the owner or operator has met the requirements for the financial assurance mechanism chosen, including payment of applicable fees;

(g) the owner or operator has submitted an as-built drawing, for newly-installed systems, that meets the requirements of Subsection R311-200-1(2)(d) or a site plat, for existing systems, that meets the requirements of Subsection R311-200-1(2)(ccc); and

(h) the owner or operator has, for newly-installed tanks, submitted the completed tank manufacturer's installation checklist.

R311-206-4. Requirements for Environmental Assurance Program Participants.

(1) In accordance with Subsection 19-6-411(1)(a), the annual facility throughput rate, if reported, shall be reported to the director as a specific number of gallons, based on the throughput for the previous calendar year.

(2) In accordance with Subsection 19-6-411(1)(b), when a petroleum storage tank is initially registered with the director, any petroleum storage tank fee for that tank for the current fiscal year is due when the tank is brought into use, as a requirement for receiving a certificate of compliance.

(3) In accordance with Subsection 19-6-411(2)(a)(i), if an installation company receives its annual permit after the beginning of the fiscal year, the annual fee must be paid for the entire year.

(4) Auditing of PST facility throughput records.

(a) owners and operators must retain for seven years the monthly tank throughput records of the facility.

(b) tank throughput records shall include financial and product documentation for receipts, deliveries, transfers, and inventories.

(c) the director may audit or commission an audit, by an independent auditor, of records which support the amount of throughput, for each tank at a participant's facility.

(i) records must be made available at the department for inspection within 30 calendar days after receiving notice from the director.

(ii) audits may be determined by random selection or for particular reasons, including suspicion or discovery of inaccuracies in throughput reports, aggregating throughput reports, having a release, or filing a claim.

(iii) auditing tank throughput may be accomplished by any method approved by the director.

(iv) costs of an independent audit shall be paid by the owner or operator.

(5) Owners or operators eligible for participation in the EAP must demonstrate financial assurance for the difference between

coverage provided by the EAP and coverage amounts required by 40 CFR 280 Subpart H.

(a) if the owner or operator chooses self-insurance as the mechanism for demonstrating financial assurance for the difference, they must document a tangible net worth of \$10,000 upon request and to the satisfaction of the director.

(i) the director may require the owner or operator to submit an independent audit to demonstrate new worth for self-insurance.

(A) the owner or operator will bear the expense for the audit.

(B) the criteria for an audit are the same as set forth in Subsection R311-206-4(4)(b).

(b) an owner or operator may also select and document another mechanism specified in 40 CFR 280.94 to demonstrate financial assurance for the difference.

(c) the processing fee requirement referenced in Subsection R311-206-5(2) is not applicable because the administrative cost is covered by the EAP fee.

~~[(6) For a facility with an APST using the EAP for financial responsibility, the director shall issue a certificate of compliance to an owner or operator for individual APSTs, if:~~

~~(a) before July 1, 2026, the owner or operator:~~

~~(i) documents compliance with spill prevention equipment requirements and submits a spill prevention equipment test; and~~

~~(ii) documents compliance with applicable leak detection and testing requirements outlined in Section R311-203-5.~~

~~(b) on or after July 1, 2026, the owner or operator:~~

~~(i) if applicable, documents compliance with cathodic protection requirements and submits a cathodic protection test, if required by Subsection R311-203-5(10)(d) indicating that the cathodic protection system is functioning properly;~~

~~(ii) documents compliance with overfill prevention requirements and submits an overfill prevention equipment inspection per Subsection R311-203-5(10)(e);~~

~~(iii) documents compliance with automatic line leak detector and submits an automatic line leak detector test, if required by Subsection R311-203-5(10)(f), indicating that each individual automatic line leak detector is functioning properly; and~~

~~(iv) documents compliance with APST secondary containment requirements as outlined in International Fire Code 2306.5 & 5704.2.10 referenced in the Utah State Fire Code pursuant to Section 15A-5-103.]~~

R311-206-5. Requirements for Owners and Operators Demonstrating Financial Assurance by Other Methods.

(1) Owners and operators who elect to utilize an alternate form of financial assurance must meet the minimum coverage amounts using one or a combination of mechanisms as outlined in 40 CFR 280.94.

(a) owners and operators must submit to the director the documents required by 40 CFR 280.111 to be kept and maintained for the mechanism used.

(b) formats, calculations, letters, reporting, and record keeping shall be done in accordance with each applicable financial assurance mechanism specified in 40 CFR 280 subpart H.

(c) if the financial assurance documentation submitted to the director is not in accordance with 40 CFR 280 subpart H, it shall be rejected and shall be invalid.

(2) The processing fee established in Subsection 19-6-408(2) for each new or changed financial assurance document submitted for approval shall be included with the financial assurance document and shall be payable to the Department.

(a) processing fees for subsequent reviews of financial assurance documents are due on July 1 of the fiscal year for which the review is required.

(b) pursuant to 40 CFR 280.97, if the financial assurance mechanism is an insurance policy, the insurer is liable for payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third party, with right of reimbursement by the insured for such payment made by the insurer.

(i) this provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in 40 CFR 280.95 through 280.102 and 280.104 through 280.107.

(ii) a showing of financial assurance for the deductible, if such a showing is made, shall be treated as a separate financial assurance mechanism subject to the processing fee requirement referenced in Subsection R311-206-5(2).

(c) if an owner or operator desires to make any material change to the financial assurance document, the change shall be approved by the director, and an additional processing fee shall be paid in circumstances as determined by the director.

(3) Evidence of a current and approved financial assurance mechanism must be reported to the director as follows:

(a) owners and operators using the financial test of self-insurance must submit the "Letter from Chief Financial Officer" to the director within the maximum 120-day period specified in 40 CFR 280.95.

(b) owners and operators using insurance and risk retention group coverage for financial assurance must submit the coverage policy in its entirety, with the current Certificate of Insurance or Endorsement specified in 40 CFR 280.97(b), to the director within 30 days of acceptance of such policy by the insurer or risk retention group.

(i) if the insurance policy or risk retention group coverage is canceled, the insurer or risk retention group shall provide written notice of cancellation or other termination of coverage required by 40 CFR 280.97(b)(1)2.d. and 280.97(b)(2)2.d. to the director as well as the insured.

(ii) the insurer must have a rating of A- or greater by A.M. Best Co.

(c) owners and operators using an irrevocable letter of credit must submit proof of the letter of credit, standby trust fund, and formal certification of acknowledgement to the director within 30 days of issuance from the issuing institution.

(d) owners and operators using a fully funded trust fund for financial assurance must submit proof of the trust fund and formal certification of acknowledgement to the director within 30 days after implementation of the trust fund.

(e) owners and operators using a guarantee for financial assurance shall submit the Guarantee document, standby trust fund, and certification of acknowledgement to the director within 30 days of issuance.

(i) the owner or operator must also submit the guarantor's letter from the chief financial officer within the 120-day period specified in 40 CFR 280.95.

(f) owners and operators using a surety bond for financial assurance must submit the surety bond document, standby trust fund, and certification of acknowledgement to the director within 30 days of issuance.

(g) guarantees and surety bonds may be used as financial assurance mechanisms in Utah only if the requirement of 40 CFR Part 280.94(b) is met.

(h) owners and operators using one of the local government methods specified in 40 CFR 280.104 through 280.107 must submit the letter from the chief financial officer and associated documents to the director within 120 days of the end of the owner, operator, or guarantor's fiscal year.

(4) The director may require reports of financial condition or any other information relative to justification of the financial assurance mechanism from the owner or operator at any time.

(a) information requested must be reported to the director within 30 calendar days after receiving the request.

(b) owners and operators must maintain evidence of all financial assurance mechanisms as specified in 40 CFR 280.111.

(c) owners and operators must keep records of all financial assurance mechanisms in accordance with 40 CFR 280.111 and 280.113.

(d) the director may audit or commission an audit of records supporting the financial assurance mechanism at any time.

(i) audits may be determined by random selection or for specific reasons, including the occurrence of a release or suspected release, deficiencies in complying with regulations or orders, or the suspicion or discovery of inaccuracies.

(ii) auditing of financial assurance methods may be accomplished by any method approved by the director.

(5) Any costs of securing a selected financial assurance mechanism and generating and providing the necessary reporting evidence of an assurance mechanism to the director is the sole responsibility of the owner or operator.

(6) Processing of the alternate financial assurance mechanism documents may be accomplished utilizing any method approved by the director.

R311-206-6. Voluntary Admission of Eligible Exempt Underground Petroleum Storage Tanks and Eligible Exempt Aboveground Storage Tanks Containing Petroleum to the Environmental Assurance Program.

(1) Owners or operators of eligible exempt USTs specified in Subsection 19-6-415(1)(a) may voluntarily participate in the EAP by:

(a) performing a site check in accordance with Rule R311-205;

(b) meeting the requirements of Subsections 19-6-428(3)(a), 19-6-415(1) and R311-206-3(1);

(c) properly performing release detection according to the requirements of 40 CFR Part 280 Subpart D; and

(d) meeting the upgrade requirements in 40 CFR 280.21 or the new tank requirements in 40 CFR 280.20, as applicable.

(2) Owners or operators of eligible exempt aboveground storage tanks containing petroleum may voluntarily participate in the EAP by

(a) performing a site check in accordance with Rule R311-205; and

(b) meeting the requirements of Subsections 19-6-415(2) and 19-6-428(3)(a), and Sections R311-206-3 and R311-206-4.

R311-206-7. Revocation and Lapsing of Certificates.

(1) The director shall revoke a certificate of compliance or registration if the director determines that the owner or operator has willfully submitted a fraudulent application or is not in compliance with any requirement pertaining to the certificate.

(2) A PST owner or operator who has had a certificate of compliance revoked under Section 19-6-414 or Subsection R311-206-7(1) may have the certificate reissued by the director after the

owner or operator demonstrates compliance with Subsections 19-6-412(2), 19-6-428(3), and Section R311-206-3.

(3) A PST owner or operator who has had a certificate of compliance lapse under Subsection 19-6-408(5)(c) may have the certificate reissued by the director after the owner or operator demonstrates compliance with Sections 19-6-412 and R311-206-3.

(4) A PST owner or operator who has had eligibility to receive payments for claims against the fund lapse under Subsection 19-6-411(3)(c)(ii) must:

(a) meet the requirements of Subsection 19-6-428(3); and
 (b) pay fees, interest, and penalties due to reinstate eligibility.

(5) Upon permanent closure of a tank which is covered by the Petroleum Storage Tank Fund, the eligibility to make a claim against the Petroleum Storage Tank Fund will terminate as specified in Section R311-207-2.

(a) permanently closed tanks are not eligible to be reissued a certificate of compliance.

(6) In accordance with Section 19-6-414, the director may revoke a certificate of compliance for the owner's or operator's failure to comply with the following requirements as outlined in 40 CFR 280:

- (a) release reporting;
- (b) abatement;
- (c) investigation;
- (d) corrective action; or
- (e) other measures to bring the release site under control.

R311-206-8. Delivery Prohibition.

(1) In accordance with Subsections 19-6-411(7) and 19-6-407(2)(d)(ii), the director shall authorize the placement of a delivery prohibition tag identifying a tank:

(a) for which the certificate of compliance has been revoked in accordance with Section 19-6-414;

(b) for which the certificate of compliance has lapsed for non-payment of fees in accordance with Subsection 19-6-408(5);

(c) that has never qualified for a certificate of compliance, and is not a new installation under Subsection R311-206-8(1)(d); or

(d) that is a new installation, and has not been issued a certificate of compliance.

(2) For USTs, in accordance with Subsection 19-6-403(1)(b)(i), the director shall authorize the placement of a delivery prohibition tag to be placed on the UST as soon as practicable after the determination is made that a tank does not have:

(a) spill prevention equipment required under 40 CFR 280.20(c) or 280.21(d);

(b) overflow prevention equipment required under 40 CFR 280.20(c) or 280.21(d);

(c) equipment required for tank or piping leak detection in accordance with 40 CFR 280 Subpart D; or

(d) equipment required for tank or piping corrosion protection in accordance with 40 CFR 280 Subpart B or C.

(3) For APSTs, out of service after May 5, 2021, the director shall authorize the placement of a delivery prohibition tag ~~to be placed on the APST~~ as soon as practicable ~~after the determination that the APST was not in service after May 5, 2021~~.

(4) For PSTs, the director shall authorize the placement of a delivery prohibition tag to be placed on the PST as soon as practicable after the determination that a release from a PST is ongoing. The determination may be made by:

(a) failed tests as defined by "PST Testing" in R311-200-1(ss); or

(b) visual presence, odors, inventory loss, or otherwise apparent contamination of environmental media.

(4)5 The delivery prohibition tag shall be placed on the tank fill or in a visible location near the tank fill.

(5)6 A person who delivers or accepts delivery of a regulated substance or petroleum into a tank marked with a delivery prohibition tag shall be subject to the penalties outlined in Section 19-6-416, unless authorized under Subsection R311-206-8(5)8).

(6)7 The director may issue written approval for a delivery of petroleum to:

(a) provide ballast for a new tank during installation, or
 (b) allow for the tank tightness test required under Section 19-6-413.

(7)8 The delivery prohibition tag must remain in place until the director issues:

(a) for tanks that have a tag in place in accordance with Subsection R311-206-8(1):

(i) a new certificate of compliance for the tank; and
 (ii) written authorization to remove the delivery prohibition tag; or

(b) for tanks that have a tag in place in accordance with Subsection R311-206-8(2):

(i) written authorization to remove the delivery prohibition tag.

(8)9 If a delivery prohibition tag is removed without the authorization specified in Subsection R311-206-8(6)8)(a)(ii) or R311-206-8(6)8)(b)(i), the PST owner or operator is subject to:

- (a) a re-inspection and any applicable fees; and
- (b) placement of a new delivery prohibition tag on the tank.

R311-206-9. Removing Participating Tanks from the Environmental Assurance Program.

(1) Owners and operators of PSTs who have voluntarily elected to participate in the EAP may cease participation in the EAP and be exempted from the requirements described in Section R311-206-4 by:

(a) permanently closing tanks as outlined in 40 CFR 280, subpart G and Rules R311-204 and R311-205; or

(b) meeting the following requirements:

(i) demonstrating compliance with Section R311-206-5;

and
 (ii) notifying the director in writing at least 30 days before the date of cessation of participation in the EAP, and specifying the date of cessation.

(A) the director may waive the 30-day requirement if the owner or operator has already documented current financial assurance under Section R311-206-5 for other petroleum storage tanks owned or operated by the owner or operator.

(B) the date of cessation of participation in the EAP may occur after the date designated in Subsection R311-206-9(1)(b)(ii) if the owner or operator does not document compliance with Section R311-206-5 by the date originally designated.

(2) prorata refunds will not be given.

(3) For tanks being removed voluntarily from the EAP, the date of cessation of participation in the EAP shall be the date on which coverage under the EAP ends.

(a) subsequent claims for payments from the Petroleum Storage Tank Fund must be made in accordance with Sections 19-6-424 and R311-207-2.

(4) For any facility that participates in the EAP and is sold to a company with facilities that do not participate in the EAP, the

date of termination of coverage is the closing date for the real estate transaction.

(a) the purchaser shall provide documentation of the closing date to the director within 30 days of closing.

R311-206-10. Participation in the Environmental Assurance Program After a Period of Non-participation.

(1) Owners and operators not participating in the EAP must, before any subsequent participation in the EAP, meet the following requirements:

- (a) notify the director of the intent to participate in the EAP;
- (b) comply with the requirements of Subsection 19-6-428(3); and
- (c) meet the requirements of Section R311-206-3 to qualify for a new certificate of compliance.

R311-206-11. Environmental Assurance Fee Rebate.

(1) To meet the requirements of Subsection 19-6-410.5(5)(d), for each UST Facility participating in the EAP, a risk value will be calculated according to the "Environmental Assurance Program Risk Factor Table and Calculation," which is incorporated by reference.

(a) the table, dated June 2, 2014, contains risk factors and the formula for risk value calculation.

(2) The risk value for each facility participating in the EAP shall be:

- (a) calculated on a facility basis;
- (b) valid for the calendar year;
- (c) based on the facility characteristics as of December 15 of the prior calendar year; and
- (d) determined, at sites with mixed equipment, by considering the highest risk-valued petroleum storage tank system component for each risk factor.

(3) To qualify as secondarily contained for purposes of risk calculation, tanks shall:

- (a) meet the requirements for secondary containment in 40 CFR 280.20; and
- (b) meet one of the following:
 - (i) use an interstitial sensor and documentation of monthly interstitial monitoring; or
 - (ii) documentation of monthly visual checks of a brine-filled interstitial space.

(4) To qualify as secondarily contained for purposes of risk calculation, piping shall:

- (a) meet the requirements for secondary containment outlined in 40 CFR 280.20; and
- (b) meet one of the following:
 - (i) maintain monthly records of monitoring of the interstice by vacuum, pressure, or liquid filled interstitial space, or
 - (ii) use an interstitial monitoring method not listed in Subsection R311-206-11(4)(b)(i).

(5) To qualify as secondarily contained for purposes of risk calculation, piping containment sumps, and under-dispenser containment shall be double-walled with monthly documentation of monitoring of the space between the walls.

(6) Each facility that participates in the EAP may be eligible for a rebate of a portion of the Environmental Assurance Fee according to the rebate schedule in "Environmental Assurance Fee Rebate Table," dated June 2, 2014, which is incorporated by reference.

(7) A facility that begins participation in the EAP after January 1 of a calendar year shall have its risk value calculated for that year based on the risk factors in place at the facility on the date the facility begins participation in the EAP.

(8) The Environmental Assurance Fee rebate does not apply to APSTs until July 1, 2026 as per Subsections 19-6-410.5(5)(d) and 19-6-410.5(5)(e).

KEY: petroleum, underground storage tanks

Date of Last Change: 2024[April 14, 2023]

Notice of Continuation: March 8, 2022

Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-403; 19-6-410.5; 19-6-428

NOTICE OF PROPOSED RULE		
TYPE OF FILING: Amendment		
Rule or Section Number:	R313-17	Filing ID: 56501

Agency Information

1. Department:	Environmental Quality	
Agency:	Waste Management and Radiation Control, Radiation	
Room number:	Second Floor	
Building:	MASOB	
Street address:	195 N 1950 W	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 144880	
City, state and zip:	Salt Lake City, UT 84114-4880	
Contact persons:		
Name:	Phone:	Email:
Tom Ball	385-454-5574	tball@utah.gov
Spencer Wickham	385-499-4895	swickham@utah.gov

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

General Information

2. Rule or section catchline:
R313-17. Administrative Procedures
3. Purpose of the new rule or reason for the change:
These rule changes are being proposed to clarify the types of licensing actions that are major licensing actions and thus require an environmental assessment.

These changes make updates that are consistent with the Conference of Radiation Control Program Directors (CRCPD) Suggested State Regulations and Utah's agreement with the NRC.

4. Summary of the new rule or change:

Changes are made to Subsection R313-17-2(1)(a) to correct licensing categories so that they are consistent with federal regulations.

Changes are made to Subsection R313-17-2(1)(a)(F) to clarify that changes to engineering design, construction, or process controls that are likely to significantly impact public health, public safety or the environment are included in activities that the director shall give public notice regarding.

Changes are made to Subsection R313-17-2(1)(a)(I) to make the requirement clearer.

Changes are made to Subsection R313-17-2(1)(a)(J) to clarify that the director shall give public notice and an opportunity to comment on a licensing action that would allow for possession or use of any matter, other than natural or native ore, that will be processed primarily for its source material content in a licensed uranium or thorium mill.

Changes are made to Subsections R313-17-2(2) through (5) to clarify the public notice and comment process used by the director.

Section R313-17-3 is given a new title, and the language is amended to clarify that review of licensing and permitting actions are governed by Rule R305-7 and Section 19-1-301.5 of the Utah Code.

Additionally, the Division of Waste Management and Radiation Control, Radiation is correcting formatting and typographical errors found in the rule.

Fiscal Information

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

A) State budget:

There are no anticipated costs or savings to the state budget based on the amendments to this rule.

The amendments do not add any new processes or requirements for state agencies, nor do they remove any existing processes or requirements.

B) Local governments:

There are no anticipated costs or savings to local governments based on the amendments to this rule.

The amendments do not add any new processes or requirements that local governments would need to comply with, nor do they remove any existing processes or requirements.

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

There is 1 small business in Utah that must comply with this regulation. However, it is not anticipated that the changes being made to this rule will result in any cost or savings to this business because they do not add any new requirements to this rule, nor do they remove any existing requirements.

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

There are 4 non-small businesses in Utah that must comply with this regulation. However, it is not anticipated that the changes being made to this rule will result in any cost or savings to any of these businesses because they do not add any new requirements to this rule, nor do they remove any existing requirements.

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**):

It is not anticipated that the changes being made to this rule will result in any cost or savings to any persons other than small businesses, non-small businesses, state, or local government entities because there aren't any of these entities in Utah that are affected by these rule changes.

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

There are no compliance costs for affected persons due to this rule amendment. The changes simply add clarification to requirements so that entities that must comply with the rules can do so in an effective and efficient manner and will understand the processes and procedures being used by the agency.

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

Regulatory Impact Table

Fiscal Cost	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0

Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0
H) Department head comments on fiscal impact and approval of regulatory impact analysis:			
The Executive Director of the Department of Environmental Quality, Kimberly D. Shelley, has reviewed and approved this regulatory impact analysis.			

Citation Information

6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:		
Subsection 19-3-104(4)	Section 19-1-301	Section 19-1-301.5

Public Notice Information

8. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	07/01/2024
9. This rule change MAY become effective on:	07/15/2024
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.	

Agency Authorization Information

Agency head or designee and title:	Douglas J. Hansen, Division Director	Date:	05/09/2024
---	--------------------------------------	--------------	------------

R313. Environmental Quality, Waste Management and Radiation Control, Radiation.

R313-17. Administrative Procedures.

R313-17-2. Public Notice and Public Comment Period.

(1) The [D]director shall give public notice of and provide an opportunity to comment on the following:

(a) A proposed major licensing action for license categories [2b](2)(b) and (c), [4a, b, c, d](4)(a) through (c) and (6) identified in Section R313-70-7[;];

(i) [M]major licensing actions include:

(A) [P]pending issuance of a new license[;];

(B) [P]pending issuance of a license renewal[;];

(C) [P]pending approval of a license termination[;];

(D) [A]an increase in process, storage, or disposal capacity[;];

(E) [A]a geographic expansion[;];

(F) [A]a change in engineering design, construction, or process controls that [will more than]is likely to:

(I) significantly impact public health, public safety or the environment as compared to impacts previously evaluated; or

(II) cause an individual to receive a higher total effective dose equivalent; or

(III) increase the annual quantity of radioactive effluents released to the environment[;];

(G) [A]a decrease in environmental monitoring or sampling frequency[;];

(H) [P]pending approval of reclamation, decontamination or decommissioning plans[;];

(I) [P]pending approval of or changes to corrective actions to control or remediate existing radioactive material contamination[; not already] to the extent not already authorized by a license[;];

(J) a licensing action that would allow for possession or use of any matter, other than natural or native ore, that will be processed primarily for its source material content in a licensed uranium or thorium mill; or

(K) a[A] licensing issue the [D]director [deems is]considers to be of significant public interest.

(b) The initial proposed registration of an ionizing radiation producing machine [which]that operates at a kilovoltage potential (kVp) greater than 200 in an open beam configuration. Subsection R313-17-2(1)(b) does not apply to ionizing radiation producing machines used in the healing arts.

(c) Board activities that may have significant public interest and the [B]board requests the [D]director to take public comment on those proposed activities.

(2) The [D]director may elect to give public notice of and provide an opportunity to comment [on]for any licensing action[s] described in Section R313-70-7 that is not subject to[that do not include the actions in] Subsection R313-17-2(1)(a)(i)[, for all license categories identified in Section R313-70-7].

(3) Public notice shall allow at least 30 days for public comment. The director may extend the public comment period for good cause. Notice of extensions shall be provided as set forth in Subsection R313-17-2(5)(b).

NOTICES OF PROPOSED RULES

(4) Public notice may ~~describe~~ include more than one action listed in Subsection R313-17-2(1) and may combine notice of a public hearing with notice of the proposed action. After considering public comments, however, the director may issue separate final permit orders as to any action that was combined for purposes of public notice, hearing, and comment.

(5) Public notice shall be given by one or more of the following methods:

(a) [P]publication in a newspaper of general circulation in the area affected by the proposed action~~;~~ or

(b) [P]publication on the Division of Waste Management and Radiation Control website~~;~~ or

~~(c) Distribution by an electronic mail server.~~

R313-17-3. ~~Administrative Procedures~~ Review of Licensing and Permitting Actions.

~~Administrative proceedings under the Radiation Control Act are~~ Except for actions involving permit or license terminations, the review of permit orders is governed by Section 19-1-301.5 and Rule R305-7.

KEY: administrative procedures, comment, hearings, adjudicative proceedings

Date of Last Change: 2024~~February 17, 2015~~

Notice of Continuation: April 8, 2021

Authorizing, and Implemented or Interpreted Law: 19-3-104(4); 19-1-301 and 19-1-301.5

NOTICE OF PROPOSED RULE		
TYPE OF FILING: Amendment		
Rule or Section Number:	R313-24	Filing ID: 56502

Agency Information

1. Department:	Environmental Quality	
Agency:	Waste Management and Radiation Control, Radiation	
Room number:	Second Floor	
Building:	MASOB	
Street address:	195 N 1950 W	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 144880	
City, state and zip:	Salt Lake City, UT 84114-4880	
Contact persons:		
Name:	Phone:	Email:
Tom Ball	385-454-5574	tball@utah.gov
Spencer Wickham	385-499-4895	swickham@utah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule or section catchline:
R313-24. Uranium Mills and Source Material Mill Tailings Disposal Facility Requirements

3. Purpose of the new rule or reason for the change:
These rule changes are being proposed to provide clarity around the environmental assessment process and make updates that are consistent with the Conference of Radiation Control Program Directors (CRCPD) Suggested State Regulations.

4. Summary of the new rule or change:
Section R313-24-3 is being renamed and amended to clarify when an application for a new license, license renewal, or major licensing action that involves construction must be filed with the director and that the application must include an environmental report as required by Section R313-24-4.

The new language also states that construction is prohibited unless the director has provided approval. Previous language under Subsection R313-24-3(2) stated that construction prior to issuance of the license or amendment shall be grounds for denial of the license or amendment.

Section R313-24-4 is being renamed and amended to provide more detail about what is required to be included in the applicant's environmental report. The requirement to submit an environmental report was previously contained in Section R313-24-3.

Section R313-24-5 is being added to provide additional details regarding the director's environmental analysis of the environmental report and the processes involved. The requirement for the director to provide a written analysis of the environmental report was previously contained in Section R313-24-3.

The original Section R313-24-4 is renumbered as Section R313-24-6.

Additionally, the Division of Waste Management and Radiation Control, Radiation is correcting formatting and typographical errors found in the rule.

Fiscal Information

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

A) State budget:
There are no anticipated costs or savings to the state budget based on the amendments to this rule.

The amendments do not add any new processes or requirements for state agencies, nor do they remove any existing processes or requirements.

B) Local governments:

There are no anticipated costs or savings to local governments based on the amendments to this rule.

The amendments do not add any new processes or requirements that local governments would need to comply with, nor do they remove any existing processes or requirements.

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

There are no small businesses in Utah that must comply with this regulation and the division is not aware of any small businesses that are considering applying for a license that would have to comply with these rules. Therefore, it is not anticipated that the changes being made to the rule will result in any cost or savings to any small businesses.

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

There are 4 non-small businesses in Utah that must comply with this regulation. However, it is not anticipated that the changes being made to the rule will result in any cost or savings to any of these businesses because they do not add any new requirements to the rule, nor do they remove any existing requirements.

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**):

It is not anticipated that the changes being made to the rule will result in any cost or savings to any persons other than small businesses, non-small businesses, state, or local government entities because there aren't any of these entities in Utah that are directly affected by these rule changes.

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

There are no compliance costs for affected persons due to this rule amendment. The changes simply add clarification to requirements so that entities that must comply with the rules can do so in an effective and efficient manner and will understand the processes and procedures being used by the agency.

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

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

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

The Executive Director of the Department of Environmental Quality, Kimberly D. Shelley, has reviewed and approved this regulatory impact analysis.

Citation Information

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

Section 19-3-104	Section 19-6-107	
------------------	------------------	--

Public Notice Information

8. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:	07/01/2024
--	------------

9. This rule change MAY become effective on:	07/15/2024
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.	

Agency Authorization Information

Agency head or designee and title:	Douglas J. Hansen, Division Director	Date:	05/09/2024
---	--------------------------------------	--------------	------------

R313. Environmental Quality, Waste Management and Radiation Control, Radiation.

R313-24. Uranium Mills and Source Material Mill Tailings Disposal Facility Requirements.

R313-24-3. ~~Environmental~~ ~~Analysis~~ Construction Requirements.

(1) ~~Each new license application, renewal, or major amendment shall contain an environmental report describing the proposed action, a statement of its purposes, and the environment affected. The environmental report shall present a discussion of the following:~~

- ~~(a) An assessment of the radiological and nonradiological impacts to the public health from the activities to be conducted pursuant to the license or amendment;~~
- ~~(b) An assessment of any impact on waterways and groundwater resulting from the activities conducted pursuant to the license or amendment;~~
- ~~(c) Consideration of alternatives, including alternative sites and engineering methods, to the activities to be conducted pursuant to the license or amendment; and~~
- ~~(d) Consideration of the long-term impacts including decommissioning, decontamination, and reclamation impacts, associated with activities to be conducted pursuant to the license or amendment.~~

~~(2) Commencement of construction prior to issuance of the license or amendment shall be grounds for denial of the license or amendment.~~

~~(3) The Director shall provide a written analysis of the environmental report which shall be available for public notice and comment pursuant to R313-17-2. Any application for a new license, license renewal, or a major licensing action identified in Subsection R313-17-2(1)(a)(i) that involves construction shall be:~~

- ~~(a) filed with the director at least nine months before the anticipated beginning of construction of the plant or facility; and~~
- ~~(b) accompanied by the environmental report required by Section R313-24-4.~~

~~(2) Construction, as defined in Section R313-12-3, is prohibited unless the director has provided the necessary licensing and approvals for the construction.~~

R313-24-4. Applicant's Environmental Report.

(1) For each new license application, application for renewal, or major licensing action identified in Subsection R313-17-2(1)(a)(i), the applicant shall submit an environmental report. In the director's discretion, the director may require the submission of an environmental report for any other licensing action within the scope of Rule R313-24.

(2) The environmental report shall include specific information and data to assist the director in the identification and evaluation of the short-term and long-range environmental impacts

of the proposed action, including impact mitigation measures, in sufficient detail for the director to prepare the environmental analysis described in Section R313-24-5. The environmental report shall contain the information the director considers necessary to prepare the environmental analysis.

(3) To the extent the director considers that the information is relevant to the proposed action, the environmental report shall include specific references to, and analysis of, existing environmental information, data, or analyses in the historical administrative record. The director may require the submission of supplemental information and analysis to update previous analyses and information.

(4) The environmental report shall provide an assessment of the following impacts on the environment:

(a) the radiological and non-radiological impacts to the public health and the environment from the activities to be conducted pursuant to the proposed action;

(b) any impact on waterways and groundwater resulting from the activities to be conducted pursuant to the proposed action;

(c) alternatives to the activities to be conducted pursuant to the proposed action; and

(d) the long-term impacts of the proposed action, such as decommissioning, decontamination, and reclamation impacts associated with activities to be conducted pursuant to the proposed action, specifically including the management of any byproduct material.

(5) Examples of specific types of proposed actions where the environmental report would be expected to include detailed supporting data and analysis include:

(a) the siting and construction of a new facility; or

(b) with respect to any existing licensed facility, any new, significant change to the applicant's operations, plans, safety modeling, and similar factors as compared to environmental impacts previously evaluated.

(6) Before accepting the applicant's environmental report submitted under Section R313-24-4 and performing environmental analysis under Section R313-24-5, the director may, in the director's discretion, conduct a preliminary public comment process regarding matters addressed in the environmental report, as provided in Section R313-24-4.

(a) Formal publication via newspaper is not required. Notice of the opportunity to submit comments published on the public notice page of the Division of Waste Management and Radiation Control website shall be acceptable. However, the director shall make reasonable efforts to provide actual notice to identifiable stakeholders who may have an interest in the matters addressed in the environmental report, including Native American Tribes, businesses, local, state, and federal governmental agencies, citizen and community groups, or any other person who has requested a notice.

(b) The notice and comment opportunity shall be limited to the matters addressed in the environmental report available at that time.

(c) As part of the director's environmental analysis under Section R313-24-5, the director shall include a written response to any comments received during the preliminary public process regarding the environmental report.

(d) The submission of comments on the environmental report is not required. The failure to submit preliminary comments shall be without prejudice to any person's right to submit comments during the general public comment process described in Subsection R313-24-4(e).

(e) Any person shall have the right to submit comments regarding the proposed action, including the environmental report

and the director's environmental analysis, in connection with the formal public notice, hearing, and comment process described in Subsection R313-24-5(4).

R313-24-5. Director's Environmental Analysis.

(1) For each new license application, application for renewal, or other licensing action for which an environmental report is required, the director shall perform an independent analysis and prepare a written environmental analysis that includes the following elements, including consideration of environmental impact mitigation measures, as applicable:

(a) an assessment of the radiological and non-radiological impacts to the public health and the environment from the activities to be conducted pursuant to the proposed action;

(b) an assessment of any impact on waterways and groundwater resulting from the activities to be conducted pursuant to the proposed action;

(c) consideration of alternatives to the activities to be conducted pursuant to the proposed action; and

(d) consideration of the long-term impacts such as decommissioning, decontamination, and reclamation impacts associated with activities to be conducted pursuant to the proposed action, specifically including the management of any byproduct material, as defined by 42 U.S.C. Section 2014(e)(2).

(2) In preparing the environmental analysis, the director may rely upon and incorporate by reference the environmental report prepared by the applicant as required by Section R313-24-4, and any previous Environmental Impact Statement (EIS) or other relevant environmental analysis prepared by the applicant, or by any federal, state, or local agencies, to the extent the agencies have jurisdiction over the matters.

(3) The environmental analysis, or any part of the environmental analysis, shall be prepared directly by or under supervision of the director.

(4) The director shall make available to the public, in connection with any public notice and comment period under Section R313-17-2, any information or analysis provided or prepared under Sections R313-24-4 and R313-24-5, including any environmental analysis that the director has relied upon or incorporated by reference under Subsection R313-24-5(2). If the proposed action is subject to a question and answer hearing under Section R313-17-4, the director shall make available to the public the information or analysis performed under Sections R313-24-4 and R313-24-5 at least 60 days before the date for the hearing.

(5) Following any public comment period and question and answer hearing associated with licensing actions subject to Rule R313-24, the director shall, after reviewing the public comments received, issue a written final decision.

R313-24-[4]6. Clarifications or Exceptions.

For the purposes of Rule R313-24, 10 CFR 40.2a through 40.4; 40.12; 40.20(a); 40.21; 40.26(a) through (c); 40.31(h); the introductory paragraph of 40.36 and 40.36(a),(b),(d) and (f); 40.41(c); the introduction to 40.42(k) and 40.42(k)(3)(i); 40.46; 40.61(a) and (b); 40.65; and Appendix A to Part 40 (2015) are incorporated by reference with the following clarifications or exceptions:

(1) The exclusion and substitution of the following:

(a) Exclude 10 CFR 40.26(c)(1) and replace with "(1) The provisions of Sections R313-12-51, R313-12-52, R313-12-53, R313-19-34, R313-19-50, R313-19-61, R313-24-1, Rules R313-14, R313-

15, R313-18, and R313-24 (incorporating 10 CFR 40.2a, 40.3, 40.4, and 40.26 by reference)";

(b) In Appendix A to 10 CFR 40, exclude Criterion 5B(1) through 5H, Criterion 7A, Criterion 13, and replace the excluded Criterion with "Utah Administrative Code, R317-6, Ground Water Quality Protection"; and

(c) In Appendix A to 10 CFR 40, exclude Criterion 11A through 11F and Criterion 12[5].

(2) The substitution of the following:

(a) "10 CFR 40" for reference to "this part" as found throughout the incorporated text;

(b) "[D]director" for reference to "Commission" in the first and fourth references contained in 10 CFR 40.2a, in 10 CFR 40.3, 40.20(a), 40.26, 40.36(f), 40.41(c), 40.46 (a), 40.61, and 40.65; and "[D]director" for reference to "NRC" in 10 CFR 40.36(b);

(c) "Rules R313-19, R313-21, or R313-22" for "Section 62 of the Act" as found in 10 CFR 40.12(a);

(d) "[Rule]Section R313-15-402" for reference to "10 CFR 20.1402" and "[Rule]Section R313-15-403" for reference to "10 CFR 20.1403" in 10 CFR 40.36(d);

(e) "[Rule]Section R313-15-1109" for reference to "10 CFR 20.2108" in 10 CFR 40.36(f);

(f) "Rules R313-21 or R313-22" for reference to "the regulations in this part" in 10 CFR 40.41(c);

(g) "Section R313-19-100" for reference to "part 71 of this chapter" as found in 10 CFR 40.41(c);

(h) In 10 CFR 40.42(k)(3)(i), "Sections R313-15-401 through R313-15-406" for reference to "10 CFR part 20, subpart E";

(i) "source material milling" for reference to "uranium milling, in production of uranium hexafluoride, or in a uranium enrichment facility" as found in 10 CFR 40.65(a);

(j) "[D]director" for reference to "appropriate NRC Regional Office shown in Appendix D to 10 CFR part 20 of this chapter, with copies to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555," as stated in 10 CFR 65(a)(1);

(k) "require the licensee to" for reference to "require to" in 10 CFR 40.65(a)(1); and

(l) [F]in Appendix A to 10 CFR part 40, the following substitutions:

(i) "Section R313-12-3" for reference to "Sec. 20.1003 of this chapter" as found in 10 CFR 40.36(f) and in the first paragraph of the introduction to Appendix A;

(ii) "Utah Administrative Code, Rule R317-6, Ground Water Quality Protection" for ground water standards in "Environmental Protection Agency in 40 CFR part 192, subparts D and E" as found in the Introduction, paragraph 4; or "Environmental Protection Agency in 40 CFR part 192, subparts D and E (48 FR 45926; October 7, 1983)" as found in Criterion 5;

(iii) "[D]director as defined in Subsection 19-5-102(6)" for reference to "Commission" in the definition of "compliance period," in paragraph five of the introduction and in Criterion 5A(3);

(iv) "[D]director" for reference to "Commission" in the definition of "closure plan", in paragraph five of the introduction, and in Criteria 6(2), 6(4), 6(6), 6A(2), 6A(3), 9, and 10 of Appendix A;

(v) "license issued by the [D]director" for reference to "Commission license" in the definition of "licensed site," in the introduction to Appendix A;

(vi) "[D]director" for reference to "NRC" in Criterion 4D;

(vii) "representatives of the [D]director" for reference to "NRC staff" in Criterion 6(6);

NOTICES OF PROPOSED RULES

(viii) "[D]irector-approved" for reference to "Commission-approved" in Criterion 6A(1) and Criterion 9;

(ix) "[D]irector" for reference to "appropriate NRC regional office as indicated in Criterion 8A" as found, Criterion 8, paragraph 2 or for reference to "appropriate NRC regional office as indicated in Appendix D to 10 CFR part 20 of this chapter, or the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555," as stated in Criterion 8A; and

(x) "[D]irector" for reference to "the Commission or the State regulatory agency" in Criterion 9, paragraph 2.

KEY: environmental analysis, uranium mills, tailings, byproduct material

Date of Last Change: ~~2024~~**March 15, 2016**

Notice of Continuation: **October 19, 2021**

Authorizing, and Implemented or Interpreted Law: **19-3-104; 19-6-107**

NOTICE OF PROPOSED RULE		
TYPE OF FILING: Amendment		
Rule or Section Number:	R414-60-7	Filing ID: 56511

Agency Information

1. Department:	Health and Human Services	
Agency:	Integrated Healthcare	
Building:	Cannon Health Building	
Street address:	288 N 1460 W	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 143102	
City, state and zip:	Salt Lake City, UT 84114-3102	
Contact persons:		
Name:	Phone:	Email:
Craig Devashrayee	801-538-6641	cdevashrayee@utah.gov
Mariah Noble	385-214-1150	mariahnoble@utah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule or section catchline:
R414-60-7. Reimbursement
3. Purpose of the new rule or reason for the change:
This proposed amendment addresses a significant disruption to the pharmacy point of sale system affecting Medicaid users in the state.

The purpose of this change is to allow the Medicaid Division director flexibility to waive the 24-day limit on pharmacy dispensing fees if there is a significant disruption to the pharmacy point of sale system.

4. Summary of the new rule or change:

This amendment allows the Medicaid Division director flexibility to waive the 24-day limit on pharmacy dispensing fees due to the system interruption to the pharmacy point of sale system that resulted in extensive downtime and increased administrative workload for pharmacy providers.

It also updates the agency name within the rule title, updates an outdated link, and reformats existing information for clarity and consistency with the Rulewriting Manual for Utah.

Fiscal Information

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

A) State budget:

For the three weeks of the most recent pharmacy point of sale disruption, 8,518 prescriptions were filled without a dispensing fee paid, four of which were for hemophilia clotting factor prescriptions, because of the current rule not allowing for payment within the 24-day period.

With dispensing fees of \$10 for most prescriptions, and \$716 for hemophilia clotting factor prescriptions, it is estimated that the cost to the state budget to implement this rule change could be around \$88,000, the amount necessary to pay outstanding dispensing fees from this most recent disruption.

Note that this does not take all reimbursement factors into account such as claims paid at usual and customary (U&C) or gross amount due which are not eligible for dispensing fees.

B) Local governments:

There is no anticipated fiscal impact to local governments, as they would not pay the pharmacy the dispensing fee.

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

Small businesses such as independent pharmacies would benefit from this rule change as they would see increased dispensing fees for prescriptions filled during a pharmacy disruption point of sale outage period.

The amount of benefit cannot be estimated for this group as data is not available for how many small businesses filled a prescription during the most recent disruption.

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

Non-small businesses filling prescriptions would benefit from this rule change as they would see increased dispensing fees for prescriptions filled during a pharmacy disruption point of sale outage period.

The amount of benefit cannot be estimated for this group as data is not available for how many non-small businesses filled a prescription during the most recent disruption.

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

Persons other than small businesses, non-small businesses, state, or local government entities such as tribal organizations or charitable organizations would benefit from this rule change, as they would see increased dispensing fees for prescriptions filled during a pharmacy disruption point of sale outage period.

The amount of benefit cannot be estimated for this group as data is not available for how many persons other than small businesses, non-small businesses, state, or local government entities filled a prescription during the most recent disruption.

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

There is no estimated compliance cost for affected persons, as this rule change is removing a current restriction during an outage period and there is no data to estimate this kind of impact.

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

Regulatory Impact Table			
Fiscal Cost	FY2024	FY2025	FY2026
State Government	\$0	\$88,000	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$88,000	\$0
Fiscal Benefits	FY2024	FY2025	FY2026

State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	(\$88,000)	\$0

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

The Executive Director of the Department of Health and Human Services, Tracy S. Gruber, has reviewed and approved this fiscal analysis.

Citation Information

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

Section 26B-1-213	Section 26B-3-108	
-------------------	-------------------	--

Public Notice Information

8. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until: 07/01/2024

9. This rule change MAY become effective on: 07/08/2024

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

Agency Authorization Information

Agency head or designee and title:	Tracy S. Gruber, Executive Director	Date:	05/14/2024
---	--	--------------	------------

R414. Health and Human Services, [~~Health Care Financing, Coverage and Reimbursement Policy~~ Integrated Healthcare.

R414-60. Medicaid Policy for Pharmacy Program.

R414-60-7. Reimbursement.

(1) A pharmacy may not submit a charge to Medicaid that exceeds the pharmacy's usual and customary charge.

(2) Covered outpatient drugs are reimbursed as outlined in Attachment 4.19-B of the [Utah] Medicaid State Plan.

NOTICES OF PROPOSED RULES

(3) A pharmacy that participates in the 340B program and uses medications obtained through the 340B program to bill Medicaid[?] must submit the acquisition cost of the medication on the claim.

(4) A pharmacy that participates in the federal supply schedule and uses medications obtained through the schedule to bill Medicaid[?] must submit the acquisition cost of the medication on the claim unless the claim is reimbursed as a bundled charge or all-inclusive rate.

(5) A pharmacy that obtains and uses medications at a nominal price must submit the acquisition cost of the medication on the claim.

(6)(a) Dispensing fees are outlined in Attachment 4.19-B of the [Utah] Medicaid State Plan.

- (b) Medicaid pays the lesser of:
 - (i) the assigned dispensing fee; or
 - (ii) the submitted dispensing fee.

(7)(a) Medicaid pays a pharmacy only one dispensing fee every 24 days for each covered outpatient drug.

(b) In the event the Medicaid point of sale system experiences a system interruption that results in extensive downtime and increased administrative workload for pharmacy providers, the Medicaid division director may waive the 24-day limit on dispensing fees.

(8)(a) Medicaid pays a provider that immunizes a Medicaid member who is 19 years of age or older[?] for the cost of the immunization plus a dispensing fee.

- (b) Medicaid pays the lesser of:
 - (i) the allowed charges; or
 - (ii) the submitted charges.

(9) A provider that immunizes a Medicaid member who is 18 years of age or younger[?] may only be eligible for a dispensing fee with no reimbursement for the immunization. Immunizations for Medicaid members who are 18 years of age or younger must be obtained through the Vaccines for Children program.

(10) Diabetic supplies listed on the Utah Medicaid PDL are reimbursed at the lesser of:

- (a) the wholesale acquisition cost with no dispensing fee;
- (b) or the billed charges.

(11) Pursuant to Section 58-17b-805, a dispensing medical practitioner may prescribe and dispense medication directly to a patient if providing outpatient cancer therapy. Details of reimbursement are found on the Medicaid website at [http://health.utah.gov/\[medicaid\]/stplan/lookup/CoverageLookup.php](http://health.utah.gov/[medicaid]/stplan/lookup/CoverageLookup.php).

KEY: Medicaid

Date of Last Change: ~~2024~~**[October 11, 2023]**

Notice of Continuation: **March 11, 2022**

Authorizing, and Implemented or Interpreted Law: **26B-1-213; 26B-3-108**

NOTICE OF PROPOSED RULE		
TYPE OF FILING: Amendment		
Rule or Section Number:	R428-1	Filing ID: 56510

Agency Information

1. Department:	Health and Human Services	
Agency:	Data, Systems and Evaluation, Research and Evaluation, Health Care Statistics	
Room number:	106	
Building:	Cannon Building	
Street address:	288 N 1460 W	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO 144004	
City, state and zip:	Salt Lake City, UT 84114-4004	
Contact persons:		
Name:	Phone:	Email:
Mike Martin	801-538-9205	mikemartin@utah.gov
Lori Savoie	385-242-6404	lsavoie@utah.gov
Mariah Noble	385-214-1150	mariahnoble@utah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule or section catchline:
R428-1. Health Data Plan and Incorporated Documents
3. Purpose of the new rule or reason for the change:
The purpose of this filing is to update this rule to comply with H.B. 41 from the 2024 General Session, which transfers the authority for rule adoption from the Health Data Committee (HDC) to the Department of Health and Human Services (DHHS), and to update the Data Submittal Guide (DSG) for the All Payer Claims Database (APCD) from Version 4.1 to Version 4.2.
These DSG changes were reviewed by the Payer Advisory Subcommittee, populated by representatives of data submitters to Utah's All Payer Claims Database, at a meeting on 11/01/2023 and also received unanimous consent by the HDC, an advisory group to DHHS, at its meeting on 11/21/2023.
4. Summary of the new rule or change:
This filing transfers authority for rule adoption from HDC to DHHS, updates the statutory reference for this authority, and updates material incorporated by reference to clarify technical requirements expected for compliance and codify effective dates for the APCD (Version 4.1 and Version 4.2) DSG.

Fiscal Information

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

A) State budget:

This rule filing updates the versions of documents incorporated by reference and will not create any cost or savings impact to the state budget, as the change will not increase or decrease the state's workload and can be carried out with the existing budget.

Based on an internal review, the DHHS has determined that the transfer of authority for rule adoption from HDC to DHHS will not introduce a cost or savings.

B) Local governments:

This rule filing has no fiscal impact on local governments, as they are neither directly nor indirectly affected by this rule and this rule does not require services from local governments.

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

This rule filing has no fiscal impact to small businesses, as any business that would potentially be impacted has more than 50 employees. As a result, this rule will have no effect on small business costs or savings.

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

As a result of this rule filing, some data suppliers will need to program changes to their system in order to comply with the updated guidelines.

According to agency research with APCD data carriers, some suppliers may incur a cost, while others report \$0 as an estimate for compliance.

Based on the nature of the changes and discussions with current submitters to the Utah APCD, the DHHS estimates a compliance cost of \$1,610.56 (\$100.66 per hour x 16 hours) per carrier to comply with proposed APCD DSG 4.2.

DHHS anticipates that some APCD carriers will need to make programming changes to implement the additional flexibility and clarifications required by this rule filing.

By agreement with the APCD data suppliers, changes to the APCD DSG are limited to once per calendar year, so the APCD suppliers ordinarily anticipate changes such as this as part of their normal business process in preparation for next year. The fiscal burden of these changes is consistent with that understanding.

Based on the estimated compliance cost and the current APCD submission roster, DHHS estimates a one-time industry cost of \$67,643.52 (42 active carriers x \$1,610.56) to comply with the proposed incorporation by reference of APCD DSG 4.2.

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

This rule change is not expected to have any independent fiscal impact on revenues or expenditures for persons other than small businesses, non-small businesses, state, or local government entities.

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

As there are no other affected persons, there are no other estimated compliance costs. The only anticipated compliance cost is \$1,610.56 for each carrier, specified in Box 5D above.

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

Regulatory Impact Table

Fiscal Cost	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$67,643.52	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$67,643.52	\$0
Fiscal Benefits	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	(\$67,643.52)	\$0

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

The Executive Director of the Department of Health and Human Services, Tracy S. Gruber, has reviewed and approved this regulatory impact analysis.

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

Agency Authorization Information

Agency head or designee and title:	Tracy S. Gruber, Executive Director	Date:	05/14/2024
---	-------------------------------------	--------------	------------

Citation Information

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

Section		
26B-8-501.1		

R428. Health and Human Services, Data, Systems and Evaluation, Research and Evaluation, Health Care Statistics. R428-1. Health Data Plan and Incorporated Documents.

R428-1-1. Authority.

This rule is promulgated in accordance with Title 26B, Chapter 8, Part 5, Utah Health Data Authority Act.

R428-1-2. Purpose.

This rule incorporates documents related to the collection, analysis, and dissemination of data covered in Title 26B, Chapter 8, Part 5, Utah Health Data Authority Act.

R428-1-3. Health Data Plan Adoption.

As required by Section ~~[26B-1-413]~~26B-8-501.1, the ~~[Health Data Committee]~~Department of Health and Human Services adopts by rule the ~~[h]Health [e]Data [p]Plan~~ dated ~~[October 3]~~December 6, 1991.

R428-1-4. Incorporation by Reference.

The following documents incorporated by reference:

- (1) "Utah Healthcare Facility Data Submission Guide" means Utah Healthcare Facility Data Submission Guide, Version 2.1.1 for data submissions required on or after March 1, 2021;
- (2) "NCQA Survey Specifications" means HEDIS Measurement Year 2020, Vol. 3: Specifications for Survey Measures, published by NCQA;
- (3) "NCQA HEDIS Specifications" means HEDIS Measurement Year 2020, Volume 5: HEDIS Compliance Audit: Standards, Policies, and Procedures, published by NCQA;
- (4) "Data Submission Guide for Claims Data" means:
 - (a) Utah All-Payer Claims Database Data Submission Guide Version 4.1~~[0]~~ for data submissions required before March 1, 2024~~[3]~~; and
 - (b) Utah All-Payer Claims Database Data Submission Guide Version 4.2~~[+]~~ for data submissions required on or after March 1, 2024~~[3]~~.

Incorporations by Reference Information

7. Incorporations by Reference:

A) This rule adds, updates, or removes the following title of materials incorporated by references:

Official Title of Materials Incorporated (from title page)	Utah All-Payer Claims Database Data Submission Guide
Publisher	Department of Health and Human Services, Health Information and Analysis Programs
Issue Date	03/01/24
Issue or Version	4.2

B) This rule adds, updates, or removes the following title of materials incorporated by references:

Official Title of Materials Incorporated (from title page)	Utah All-Payer Claims Database Data Submission Guide
Publisher	Department of Health and Human Services, Health Information and Analysis Programs
Issue Date	03/01/23
Issue or Version	4.1

Public Notice Information

8. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:	07/01/2024
--	------------

KEY: APCD, health, health policy, health planning

Date of Last Change: 2024~~[November 8, 2023]~~

Notice of Continuation: August 13, 2021

Authorizing, and Implemented or Interpreted Law: ~~[26B-1-413]~~26B-8-501.1

9. This rule change MAY become effective on:	07/08/2024
---	------------

NOTICE OF PROPOSED RULE

TYPE OF FILING: Amendment

Rule or Section Number:	R436-13	Filing ID:	56509
--------------------------------	----------------	-------------------	--------------

Agency Information

1. Department:	Health and Human Services	
Agency:	Data, Systems and Evaluation, Vital Records and Statistics	
Room number:	140	
Building:	Cannon Health	
Street address:	288 N 1460 W	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 141012	
City, state and zip:	Salt Lake City, UT 84114-1012	
Contact persons:		
Name:	Phone:	Email:
Linda S. Winger	801-538-6262	Lindaw@utah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule or section catchline:
R436-13. Disclosure of Records
3. Purpose of the new rule or reason for the change:
Following the recodification of the Department of Health and Human Services' (Department) statute in the 2023 General Session, the agency is amending this rule to update citations and add penalties for the violation of this rule.
4. Summary of the new rule or change:
This proposed rule changes the citation to match the new numbering of the Department's statute in the 2023 General Session.
Additionally, this amendment adds information on the penalty for issuing copies of all or part of a record where there is not a direct, tangible, and legitimate interest This penalty was previously located in Rule R436-16.
Additionally, the proposed rule makes style and formatting changes in compliance with the Rulewriting Manual for Utah.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
A) State budget:
There is no anticipated cost or savings to the state budget, as this change does not alter existing practices for the state and adds penalty information directly into this rule that was previously included in Rule R436-16.

B) Local governments:																				
There is no anticipated cost or savings to local governments, as this change does not alter existing practices and adds penalty information directly into this rule that was previously included in Rule R436-16.																				
C) Small businesses ("small business" means a business employing 1-49 persons):																				
This rule change is not expected to have a fiscal impact on small businesses, as small businesses do not issue copies of vital records.																				
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):																				
This rule change is not expected to have a fiscal impact on non-small businesses, as non-small businesses do not issue copies of vital records.																				
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 other persons, as this change does not alter existing practices and adds penalty information directly into this rule that was previously included in Rule R436-16.																				
F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):																				
There are no anticipated compliance costs for affected persons, as this change does not alter existing practices and adds penalty information directly into this rule that was previously included in Rule R436-16.																				
Any fiscal penalties for violation of this rule have been in practice previous to this rule change.																				
G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)																				
Regulatory Impact Table																				
<table border="1"> <thead> <tr> <th>Fiscal Cost</th> <th>FY2024</th> <th>FY2025</th> <th>FY2026</th> </tr> </thead> <tbody> <tr> <td>State Government</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> <tr> <td>Local Governments</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> <tr> <td>Small Businesses</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> <tr> <td>Non-Small Businesses</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> </tbody> </table>	Fiscal Cost	FY2024	FY2025	FY2026	State Government	\$0	\$0	\$0	Local Governments	\$0	\$0	\$0	Small Businesses	\$0	\$0	\$0	Non-Small Businesses	\$0	\$0	\$0
Fiscal Cost	FY2024	FY2025	FY2026																	
State Government	\$0	\$0	\$0																	
Local Governments	\$0	\$0	\$0																	
Small Businesses	\$0	\$0	\$0																	
Non-Small Businesses	\$0	\$0	\$0																	

NOTICES OF PROPOSED RULES

Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0
H) Department head comments on fiscal impact and approval of regulatory impact analysis:			
The Executive Director of the Department of Health and Human Services, Tracy S. Gruber, has reviewed and approved this regulatory impact analysis.			

Citation Information

6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:		
Section 26B-8-125	Section 26B-1-224	

Public Notice Information

8. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	07/01/2024
9. This rule change MAY become effective on:	
	07/08/2024
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.	

Agency Authorization Information

Agency head or designee and title:	Tracy S. Gruber, Executive Director	Date:	05/14/2024
---	-------------------------------------	--------------	------------

R436. Health and Human Services, ~~Center for Health Data~~Data, Systems, and Evaluation, Vital Records and Statistics.

R436-13. Disclosure of Records.

R436-13-1. Purpose and Authority.

(1) This rule sets forth who has a direct and tangible interest in a vital record.

(2) Authority for this rule is found in Section ~~[26-2-22]~~26B-8-125.

R436-13-2. Integrity of Vital Records.

To protect the integrity of vital records:

(1) The State Registrar and other custodians of vital records ~~[shall]~~may not permit inspection of, or disclose information contained in vital statistics records, or copy or issue a copy of all or part of any such record, unless the applicant has a direct and tangible interest in such record. In addition to the definition of direct, tangible, and legitimate interest as defined in Section ~~[26-2-22]~~26B-8-125, those who may or may not have a direct and tangible interest are as follows:

(a) The registrant, a member of the immediate family, the guardian, or a designated legal representative shall be considered to have a direct and tangible interest. ~~[-]~~Others may demonstrate a direct and tangible interest when information is needed for determination or protection of a personal or property right.

(b) The natural parents of adopted children, when neither has custody, ~~[shall]~~may not be considered to have a direct and tangible interest.

(c) Commercial firms or agencies requesting listings of names and addresses ~~[shall]~~may not be considered to have a direct and tangible interest.

(2) The State Registrar may provide copies of certificates or disclose data from vital statistics records to federal, state, county, or municipal agencies of government requesting such data in the conduct of their official duties. ~~[-]~~Certificate copies or individual identifiable information may not be given by the receiving government agency to other agencies or individuals~~[,]~~ or used for purposes not authorized at the time of the request.

(3) The State Registrar or local custodian ~~[shall]~~may not issue a certified copy of a record until an online or signed paper application has been received from the applicant.

(4) When determining whether a genealogist under Subsection ~~[26-2-22]~~26B-8-125(1)(a) has demonstrated a direct, legitimate, and tangible interest in a record, the custodian of vital records may consider various relevant factors including the following:

(a) the genealogist shares a common ancestor with the subject of the vital record, the subject is deceased, and the subject has no living immediate family;

(b) the genealogist's stated interest in the vital record;

(c) inability to find information sought in the vital record from other sources; or

(d) the genealogist can provide a written contract for professional genealogical services on behalf of the subject or the subject's immediate family members.

(5) Nothing in this rule shall be construed to permit disclosure of information contained in the "Information for Medical and Health Use Only" section of the birth and fetal death certificates or the "Information for Statistical Purposes Only" section of the Certificate of Marriage or Certificate of Divorce, Dissolution of Marriage, or Annulment unless specifically authorized by the State

Registrar for statistical or research purposes or if authorized by a court of competent jurisdiction.

R436-13-3. Identity Verification of Individuals Receiving Health Care Services.

~~In accordance with Subsection 26-1-30(30),~~ The State Registrar may disclose information contained in vital records to health care providers, public health authorities, and health care insurers, including a qualified network as defined in Subsection ~~26B-8-411[26-1-37]~~(1), to coordinating among themselves to verify the identity of the individuals they serve. This authority includes computerized matching methods to:

- (1) distinguish living from deceased individuals who have received health care services; and
- (2) disambiguate individual identities.

R436-13-4. Penalty for Disclosing Data Contrary to Law.

A person violates this rule and is subject to the penalties provided in Section 26B-1-224, including both administrative and civil penalties if the person issues all or part of a vital record when there is not a direct, tangible, or legitimate interest in the record.

KEY: vital statistics, copying processes, standards

Date of Last Change: 2024|~~March 16, 2022~~

Notice of Continuation: March 21, 2023

Authorizing, and Implemented or Interpreted Law: ~~26-2-22~~|26B-8-125; 26B-1-224

NOTICE OF PROPOSED RULE		
TYPE OF FILING: Amendment		
Rule or Section Number:	R657-5	Filing ID: 56506

Agency Information

1. Department:	Natural Resources	
Agency:	Wildlife Resources	
Room number:	Suite 2110	
Building:	Department of Natural Resources	
Street address:	1594 W North Temple	
City, state and zip:	Salt Lake City, UT 84114-6301	
Mailing address:	PO Box 146301	
City, state and zip:	Salt Lake City, UT 84114-6301	
Contact persons:		
Name:	Phone:	Email:
Staci Coons	801-450-3093	stacicoons@utah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule or section catchline:
R657-5. Taking Big Game
3. Purpose of the new rule or reason for the change:
This rule is being amended pursuant to Regional Advisory Council and Wildlife Board meetings conducted annually for taking public input and reviewing the Division of Wildlife Resources' (DWR) rule pursuant to taking Big Game.
4. Summary of the new rule or change:
The proposed amendments to this rule: 1) adds definitions for "commercial antler buyer", "shed antler" and "shed horn"; 2) requires certificate of registrations for commercial antler buyers; 3) clarifies the legality of antler markets, including commercial dog chews, jewelry, antler crafts, etc.; 4) changes "unlawful to use" to "unlawful to possess" night vision devices from July 31 to December 31 while taking or locating big game; 5) removes the requirement for taking off and landing on only improved airstrips; 6) removes the requirement to plug bighorn sheep; 7) removes the requirement to physically check in a management buck or cactus buck deer; and 8) technical corrections as needed.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
A) State budget:
With this rule amendment, approximately 50 to 100 commercial antler buyers will be required to purchase a Certificate of Registration (COR), the administrative costs to process the COR's can be completed with the increased budget due to the annual COR fee of \$150 per COR obtained, therefore, DWR believes that these amendments can be enacted without a cost or savings impact to the state budget or DWR's budget.
B) Local governments:
Local governments are not directly or indirectly impacted by these proposed amendments because this rule does not create a situation requiring services from local governments.
C) Small businesses ("small business" means a business employing 1-49 persons):
The proposed rule amendments will directly impact small businesses that operate in the antler buying business. DWR estimates that there are approximately 50 to 100 licensed antler businesses that would be required to purchase a COR to collect and sell antlers in Utah. The cost of the COR is \$150 annually.

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

The proposed rule amendments will not directly impact non-small businesses because a service is not required of them.

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 amendments do not have the potential to create a cost impact to those individuals wishing to participate in the hunting of big game in Utah, because the amendments remove current restrictions that can be implemented without a cost.

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

The DWR has determined that this amendment will create additional costs for those participating in the commercial buying and selling of shed antlers, as they will be required to purchase a COR annually to continue the practice. The annual cost is \$150.

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

Regulatory Impact Table			
Fiscal Cost	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$7,500 - \$15,000	\$7,500 - \$15,000	\$7,500 - \$15,000
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$7,500 - \$15,000	\$7,500 - \$15,000.00	\$7,500 - \$15,000
Fiscal Benefits	FY2024	FY2025	FY2026
State Government	\$7,500 - \$15,000	\$7,500 - \$15,000	\$7,500 - \$15,000
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0

Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$7,500 - \$15,000	\$7,500 - \$15,000	\$7,500 - \$15,000
Net Fiscal Benefits	\$0	\$0	\$0

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

After conducting a thorough analysis, it was determined that this proposed rule amendment will result in a measurable fiscal impact to businesses. The Executive Director of the Department of Natural Resources, Joel Ferry, has reviewed and approved this fiscal analysis.

Citation Information

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

Section 23A-2-304	Section 23A-2-305	
-------------------	-------------------	--

Public Notice Information

8. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until: 07/01/2024

9. This rule change MAY become effective on: 07/08/2024

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

Agency Authorization Information

Agency head or designee and title:	J. Shirley, Division Director	Date:	05/13/2024
---	-------------------------------	--------------	------------

R657. Natural Resources, Wildlife Resources.

R657-5. Taking Big Game.

R657-5-1. Purpose and Authority.

(1) Under authority of Sections 23A-2-304 and 23A-2-305, the Wildlife Board has established:

(a) this rule for taking deer, elk, pronghorn, moose, bison, bighorn sheep, and Rocky Mountain goat.

(b) appropriate weapons or devices to take big game and restrictions to weapons or devices to take big game.

(2) Specific dates, areas, methods of take, requirements, and other administrative details which may change annually are published in the guidebook of the Wildlife Board for taking big game.

R657-5-2. Definitions.

(1) Terms used in this rule are defined in Section 23A-1-101.

(2) In addition:

(a) "Antlerless deer" means a deer without antlers or with antlers five inches or shorter.

(b) "Antlerless elk" means an elk without antlers or with antlers five inches or shorter.

(c) "Antlerless elk control permit" means a permit allowing an individual to harvest an antlerless elk on an antlerless elk control unit.

(d) "Antlerless moose" means a moose with antlers shorter than its ears.

(e) "Arrow quiver" means a portable arrow case that completely encases all edges of the broadheads.

(f) "Buck deer" means a deer with antlers longer than five inches.

(g) "Buck pronghorn" means a pronghorn with horns longer than five inches.

(h) "Bull elk" means an elk with antlers longer than five inches.

(i) "Commercial Antler Buyer" means an individual or entity that buys antlers or horns for reselling for financial gain.

(j) "Bull moose" means a moose with antlers longer than its ears.

([j]k) "Cow bison" means a female bison.

([k]l) "Doe pronghorn" means a pronghorn without horns or with horns five inches or shorter.

([l]m) "Draw-lock" means a mechanical device used to hold and support the draw weight of a conventional or compound bow at any increment of draw until released by the archer using a trigger mechanism and safety attached to the device.

([m]n) "Drone" means an autonomously controlled, aerial vehicle of any size or configuration that is capable of controlled flight without a human pilot aboard.

([n]o)(i) "Night Vision Device" means any device that enhances visible or non-visible light, including: night vision, thermal imaging, infrared imaging, or electronics that enhance the visible or non-visible light spectrum.

(ii) "Night Vision Device" does not include trail cameras as defined in Subsection (x).

([o]p) "Ewe" means a female bighorn sheep or any bighorn sheep younger than one year of age.

([p]q) "Hunter's choice" means either sex may be taken.

([q]r) "Immediate family member" means the landowner's or lessee's spouse, child, son-in-law, daughter-in-law, father, mother, father-in-law, mother-in-law, brother, sister, brother-in-law, sister-in-law, stepchild, grandchild, grandfather, and grandmother.

([r]s) "Limited entry hunt" means any hunt published in the hunt tables of the guidebook of the Wildlife Board for taking big game, which is identified as limited entry and does not include general or once-in-a-lifetime hunts.

([s]t) "Limited entry permit" means any permit obtained for a limited entry hunt by any means, including conservation permits, wildlife expo permits, sportsman permits, cooperative wildlife management unit permits and limited entry landowner permits.

([t]u) "Once-in-a-lifetime hunt" means any hunt published in the hunt tables of the guidebook of the Wildlife Board for taking big game, which is identified as once-in-a-lifetime, and does not include general or limited entry hunts.

([u]v) "Once-in-a-lifetime permit" means any permit obtained for a once-in-a-lifetime hunt by any means, including conservation permits, wildlife expo permits, sportsman permits, cooperative wildlife management unit permits and limited entry landowner permits.

([v]w) "Ram" means a male desert bighorn sheep or Rocky Mountain bighorn sheep older than one year of age.

[_____](w) _____(x) "Shed antler" means an antler that:

(a) has been dropped naturally from a big game animal as part of the big game animal's annual life cycle; and

(b) has a rounded base commonly known as the antler button or burr attached which signifies a natural life cycle process.

(y) "Shed horn" means:

(a) the sheath from a pronghorn that has been dropped naturally as part of the animal's annual life cycle; or

(b) a bighorn sheep, mountain goat, or bison horn naturally detached from the horn core.

(z) "Spike bull" means a bull elk which has at least one antler beam with no branching above the ears. Branched means a projection on an antler longer than one inch, measured from its base to its tip.

([x]aa) "Stalking" means when game has been located and the hunter engages in deliberate movements, on foot, in an effort to harvest the located game.

([y]bb) "Trail camera" means a device that is not held or manually operated by a person and is capable of capturing images, video, or location data of wildlife using heat, or motion to trigger the device.

R657-5-7. Prohibited Weapons and Devices.

(1) A person may not use any weapon or device to take big game other than those expressly permitted in this rule.

(2) A person may not use the following prohibited weapons or devices to take big game:

(a) a firearm capable of being fired fully automatic;

(b) any light enhancement device or aiming device that casts a visible beam of light;

(c) a firearm equipped with a computerized targeting system that marks a target, calculates a firing solution and automatically discharges the firearm at a point calculated most likely to hit the acquired target; or

(d) a projectile for which the path can be altered or electronically tracked after it is sent in motion.

(3) Nothing in this section shall be construed as prohibiting laser range finding devices or illuminated sight pins for archery equipment.

(4) The following restrictions are placed on the use of specialized hunting technologies and equipment.

(a) A person may not ~~use~~ possess any night vision device, or a device capable of night vision, while taking, locating, or attempting to locate ~~or attempt to locate a~~ any big game animal between July 31 and ~~January~~ December 31;

(b) A person may not:

(i) place, maintain, or use a trail camera as prohibited in Section 23A-5-307;

(ii) engage in the sale or purchase of trail camera or other non-handheld device media, including images, video, location, time or date data to take, aid in the take or attempted take of big game; or

(iii) engage in the storage and sale or purchase of stored media, including images, video, location, time, or date data to take, aid in the take or attempted take of big game.

(c) A person may not:

NOTICES OF PROPOSED RULES

- (i) use visual enhancement technology, such as nanotechnology, except for basic ~~[devises]~~devices used solely for magnification;
- (ii) use pattern recognition technology, such as artificial intelligence;
- (iii) use live feed aerial imagery; or
- (iv) use electronically amplified calls or sounds.

R657-5-14. Use of Vehicle or Aircraft.

- (1)(a) A person may not use an airplane, drone, or any other airborne vehicle or device, or any motorized terrestrial or aquatic vehicle, including snowmobiles and other recreational vehicles, except a vessel as provided in Subsection (c), to take protected wildlife.
- (b) A person may not take protected wildlife being chased, harmed, harassed, rallied, herded, flushed, pursued or moved by any vehicle, device, or conveyance listed in Subsection (a).
- (c) Big game may be taken from a vessel provided:
 - (i) the motor of a motorboat has been completely shut off;
 - (ii) the sails of a sailboat have been furled; and
 - (iii) the vessel's progress caused by the motor or sail has ceased.

(2) A person may not use any type of aircraft, drone, or other airborne vehicle or device between July 31 and January 31 to locate, or attempt to observe or locate any protected wildlife.

~~[(3)(a) This section does not apply to the operation of an aircraft, drone, or other airborne vehicle or device used for the purposes of transporting hunters, equipment, or legally harvested wildlife, provided the aircraft takes off and lands only from an improved airstrip, where there is no attempt or intent to locate protected wildlife.]~~

~~[(b)] (3) Hunters that are transported by aircraft into an area may not hunt protected wildlife until the following day.~~

~~[(c) For the purposes of this section, "improved airstrip" means a take off and landing area with a graded or otherwise mechanically improved surface free of barriers or other hazards that is traditionally used by pilots for the purposes of air travel.]~~

R657-5-20. Purchasing or Selling Big Game or its Parts.

- (1) A person may only purchase, sell, offer or possess for sale, barter, exchange or trade any big game or its parts as follows:
 - (a) antlers, heads and horns of legally taken big game may be purchased or sold only on the dates published in the guidebook of the Wildlife Board for taking big game;
 - (b) untanned hides of legally taken big game may be purchased or sold only on the dates published in the guidebook of the Wildlife Board for taking big game;
 - (c) tanned hides of legally taken big game may be purchased or sold at any time; and
 - (d) legally obtained shed antlers and horns may be purchased or sold at any time ~~[-] in a whole or altered state.~~
 - (e) a Certificate of Registration is required for commercial antler buyers.

(2)(a) Protected wildlife that is obtained by the division by any means may be sold or donated at any time by the division or its agent.

(b) A person may purchase or receive protected wildlife from the division, which is sold or donated in accordance with Subsection (2)(a), at any time.

(3) A person selling or purchasing antlers, heads, horns or untanned hides shall keep transaction records stating:

- (a) the name and address of the person who harvested the animal;
 - (b) the transaction date; and
 - (c) the permit number of the person who harvested the animal.
- (4) Subsection (3) does not apply to scouting programs or other charitable organizations using untanned hides.

R657-5-21. Possession of Antlers and Horns.

- (1) A person may possess antlers or horns or parts of antlers or horns only from:
 - (a) lawfully harvested big game;
 - (b) antlers or horns lawfully obtained as provided in Section R657-5-20; or
 - (c) shed antlers or shed horns.

(2)(a) A person may gather shed antlers or shed horns or parts of shed antlers or shed horns ~~[at any time. An authorization is required to gather shed antlers or shed horns or parts of shed antlers or shed horns during]~~only on the [shed antler and shed horn season] dates published in the guidebook of the Wildlife Board for taking big game.

(b) A person must complete a wildlife harassment and habitat destruction prevention course annually to obtain the required authorization to gather shed antlers during the antler gathering season.

~~[(3) "Shed antler" means an antler which:~~

~~[(a) has been dropped naturally from a big game animal as part of its annual life cycle; and~~

~~[(b) has a rounded base commonly known as the antler button or burr attached which signifies a natural life cycle process.~~

~~[(4) "Shed horn" means the sheath from the horn of a pronghorn that has been dropped naturally as part of its annual life cycle. No other big game species shed their horns naturally.]~~

(c) During winter conditions in which winter deer feeding triggers are met in accordance with the Emergency Big Game Winter Feeding Policy, a statewide emergency shed antler and shed horn gathering closure will be implemented.

(d) Shed antlers or shed horns may be collected if interfering with normal agricultural practices on private property.

R657-5-40. Desert Bighorn and Rocky Mountain Bighorn Sheep Ram Hunts.

(1) To hunt a ram desert bighorn sheep or a ram Rocky Mountain bighorn sheep, a hunter must obtain the respective permit.

(2)(a) A person who has obtained a ram desert bighorn sheep permit may not obtain any other desert bighorn sheep permit or hunt during any other desert bighorn sheep.

(b) A person who has obtained a ram Rocky Mountain bighorn sheep permit may not obtain any other Rocky Mountain bighorn sheep permit or hunt any other Rocky Mountain bighorn sheep.

(3) Ram desert bighorn sheep and ram Rocky Mountain bighorn sheep permits are considered separate once-in-a-lifetime hunting opportunities.

(4)(a) A ram desert bighorn sheep permit allows a person to take one desert bighorn ram within the area, during the seasons, and using the weapon type prescribed by the Wildlife Board.

(b) A ram Rocky Mountain sheep permit allows a person to take one Rocky Mountain bighorn ram within the area, during the seasons, and using the weapon type prescribed by the Wildlife Board.

~~[(5)] Successful hunters must deliver the horns of the bighorn sheep to a division office within 72 hours of leaving the hunting area. A numbered seal will be permanently affixed to the horn indicating legal harvest.~~

~~[(6)]~~ (5)(a) A person who has obtained a desert bighorn sheep or Rocky Mountain bighorn sheep permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a desert bighorn sheep or Rocky Mountain bighorn sheep.

(b) Desert bighorn sheep or Rocky Mountain bighorn sheep permit holders must report hunt information by telephone, or through the division's website.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, or cooperative wildlife management unit permit or bonus point in the following year.

(d) Late questionnaires may be accepted pursuant to Subsection R657-42-9(2).

R657-5-45. Management Buck Deer Hunt.

(1) For the purposes of this section "management buck" means any buck deer with three points or less on at least one antler above and including the first fork in the antler. A point means a projection longer than one inch, measured from its base to its tip. The eye guard is not counted as a point.

(2) Management buck deer permits shall be distributed pursuant to Rule R657-62.

(3) Management buck deer permit holders may take one management buck deer during the season, in the area and with the weapon type specified on the permit. Management buck deer hunting seasons, areas, and weapon types are published in the guidebook of the Wildlife Board for taking big game.

(4)(a) A person who has obtained a management buck deer permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a management buck deer.

(b) Management buck deer permit holders must report hunt information by telephone, or through the division's website.

~~[(5)(a)] Management buck deer permit holders who successfully harvest a management buck deer, as defined in Subsection (1)(a) must have their animal inspected by the division.~~

~~[(b)] Successful hunters must deliver the head and antlers of the deer they harvest to a division office for inspection within 72 hours after the date of kill.~~

~~[(6)]~~ (5) Management buck deer permit holders may not retain possession of any harvested buck deer that fails to satisfy the definition requirements in Subsection (1)(a).

~~[(7)(c)]~~ (6) A person who has obtained a management buck deer permit may not hunt during any other deer hunt or obtain any other deer permit, except as provided in Section R657-5-27.

R657-5-46. Cactus Buck Deer Hunt.

(1) For the purposes of this section "cactus buck" means a buck deer with velvet covering at least 50% of the antlers during the season dates established by the Wildlife Board for a cactus buck deer hunt.

(2)(a) Cactus buck deer permit holders may take one cactus buck deer during the season, in the area, and with the weapon type specified on the permit.

(b) Cactus buck deer hunting seasons, areas, and weapon types are published in the guidebooks of the Wildlife Board for taking big game.

(3)(a) A person who has obtained a cactus buck deer permit must report hunt information within 30 calendar days after the end of the hunting season, regardless of whether the permit holder was successful or unsuccessful in harvesting a cactus buck deer.

(b) Cactus buck deer permit holders must report hunt information by telephone, or through the division's website.

~~[(4)(a)] Cactus buck deer permit holders who successfully harvest a cactus buck deer, as defined in Subsection (1)(a), must have their animal inspected by the division.~~

~~[(b)] Successful hunters must deliver the head and antlers of the deer they harvest to a division office for inspection within 72 hours after the date of harvest.~~

~~[(5)]~~ (4) Cactus buck deer permit holders may not retain possession of any harvested buck deer that fails to satisfy the definition requirements in Subsection (1).

~~[(6)(2)]~~ (5) A person who has obtained a cactus buck deer permit may not hunt during any other deer hunt or obtain any other deer permit, except as provided in Section R657-5-27.

KEY: wildlife, game laws, big game seasons

Date of Last Change: [February 7,] 2024

Notice of Continuation: September 8, 2020

Authorizing, and Implemented or Interpreted Law: 23A-2-304; 23A-2-305; 23A-11-201; 23A-11-202

NOTICE OF PROPOSED RULE		
TYPE OF FILING: Amendment		
Rule or Section Number:	R746-409	Filing ID: 56505

Agency Information

1. Department:	Public Service Commission
Agency:	Administration
Building:	Heber M. Wells Building
Street address:	160 E 300 S, 4th Floor
City, state and zip:	Salt Lake City, UT 84111
Mailing address:	PO Box 4558
City, state and zip:	Salt Lake City, UT 84114-4558

Contact persons:		
Name:	Phone:	Email:
John Delaney	801-530-6724	jdolaney@utah.gov

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

General Information

2. Rule or section catchline:
R746-409. Pipeline Safety

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

Rule R746-409 of the Public Service Commission (PSC) Administrative Procedures Act Rules incorporates by reference provisions of the Code of Federal Regulations (CFR) pertaining to pipeline safety.

The federal guidelines for states participating in the Federal Pipeline Safety Grant program have changed since 09/01/2021. As a participant, the state of Utah must, therefore, update this rule to adopt amendments that have been added to the federal regulations after the date currently shown in this state rule.

This rule amendment also makes nonsubstantive changes to the entire rule text for adherence to the Rulewriting Manual for Utah standards.

4. Summary of the new rule or change:

Amendments have been added to Parts 190, 191, and 192 of the Code of Federal Regulations since September 1, 2021.

Part 190 -- Administrative Rulemaking -- Criminal Referrals. The Pipeline and Hazardous Materials Safety Administration (PHMSA) is incorporating within its regulations language noting its employees' ability to refer actual or possible criminal activity in connection with PHMSA's jurisdictional statutes directly to the DOT Office of Inspector General. This subpart is applicable to PHMSA employees.

Part 191 -- Safety of Gas Gathering Pipelines: Extension of Reporting Requirements, Regulation of Large, High-Pressure Lines, and Other Related Amendments. PHMSA is revising the Federal Pipeline Safety Regulations to improve the safety of onshore gas gathering pipelines. This final rule addresses Congressional mandates, Government Accountability Office recommendations, and public input received as part of the rulemaking process. The amendments in this final rule extend reporting requirements to all gas gathering operators and apply a set of minimum safety requirements to certain gas gathering pipelines with large diameters and high operating pressures.

The rule does not affect offshore gas gathering pipelines.

Parts 191 and 192 -- Safety of Gas Gathering Pipelines: Extension of Reporting Requirements, Regulation of Large, High-Pressure Lines, and Other Related Amendments: Response to a Petition for Reconsideration; Technical Corrections; Issuance of Limited Enforcement Discretion. PHMSA is alerting the public to its 04/01/2022 response denying a petition for reconsideration of the final rule titled "Safety of Gas Gathering Pipelines: Extension of Reporting Requirements, Regulation of Large, High-Pressure Lines, and Other Related Amendments."

This final rule also makes clarifications and two technical corrections to that rulemaking.

Lastly, this final rule memorializes a limited enforcement discretion in connection with that rulemaking's amendment of the regulatory definition of "incidental gathering."

Part 191 - Technical corrections. PHMSA is issuing corrections of certain changes to incident and annual reporting requirements for offshore gathering pipelines in its 11/15/2021 final rule titled "Safety of Gas Gathering Pipelines: Extension of Reporting Requirements, Regulation of Large, High-Pressure Lines, and Other Related Amendments."

Part 192 - Pipeline Safety: Requirement of Valve Installation and Minimum Rupture Detection Standards. PHMSA is revising the Federal Pipeline Safety Regulations applicable to most newly constructed and entirely replaced onshore gas transmission, Type A gas gathering, and hazardous liquid pipelines with diameters of 6 inches or greater.

In the revised regulations, PHMSA requires operators of these lines to install rupture-mitigation valves (i.e., remote control or automatic shut-off valves) or alternative equivalent technologies, and establishes minimum performance standards for those valves' operation to prevent or mitigate the public safety and environmental consequences of pipeline ruptures.

This final rule establishes requirements for rupture-mitigation valve spacing, maintenance and inspection, and risk analysis. The final rule also requires operators of gas and hazardous liquid pipelines to contact 9-1-1 emergency call centers immediately upon notification of a potential rupture and conduct post-rupture investigations and reviews.

Operators must also incorporate lessons learned from such investigations and reviews into operators' personnel training and qualifications programs, and in design, construction, testing, maintenance, operations, and emergency procedure manuals and specifications.

PHMSA is promulgating these regulations in response to congressional directives following major pipeline incidents where there were significant environmental consequences or losses of human life. The revisions are intended to achieve better rupture identification, response, and mitigation of safety, greenhouse gas, and environmental justice impacts.

Part 192 - Pipeline Safety: Safety of Gas Transmission Pipelines: Repair Criteria, Integrity Management Improvements, Cathodic Protection, Management of Change, and Other Related Amendments and Correction to Definition. PHMSA is revising the Federal Pipeline

Safety Regulations to improve the safety of onshore gas transmission pipelines.

This final rule addresses several lessons learned following the Pacific Gas and Electric Company incident that occurred in San Bruno, CA, on 09/09/2010, and responds to public input received as part of the rulemaking process. The amendments in this final rule clarify certain integrity management provisions, codify a management of change process, update and bolster gas transmission pipeline corrosion 5 Federal Register / Vol. 87, No. 68 / Friday, April 8, 2022 / Rules and Regulations 20940 DPU Memorandum 6 control requirements, require operators to inspect pipelines following extreme weather events, strengthen integrity management assessment requirements, adjust the repair criteria for high consequence areas, create new repair criteria for non-high consequence areas, and revise or create specific definitions related to the above amendments.

Part 192 - Pipeline Safety: Safety of Gas Transmission Pipelines: Repair Criteria, Integrity Management Improvements, Cathodic Protection, Management of Change, and Other Related Amendments: Technical Corrections; Response to Petitions for Reconsideration. PHMSA is making necessary technical corrections to ensure consistency within, and the intended effect of, a recently issued final rule titled "Safety of Gas Transmission Pipelines: Repair Criteria, Integrity Management Improvements, Cathodic Protection, Management of Change, and Other Related Amendments." PHMSA also alerts the public to its 11/18/2022, and 04/19/2023, responses to petitions for reconsideration of this final rule.

Part 192 - Correcting Amendments: Pipeline Safety: Requirement of Valve Installation and Minimum Rupture Detection Standards: Technical Corrections. PHMSA is issuing editorial and technical corrections clarifying the regulations promulgated in its 04/08/2022, final rule titled "Pipeline Safety: Requirement of Valve Installation and Minimum Rupture Detection Standards" for certain gas, hazardous liquid, and carbon dioxide pipelines.

The final rule also codifies the results of judicial review of that final rule.

Fiscal Information

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

A) State budget:

\$0. It should not affect the state budget because operators will continue to remain compliant with the federal and state pipeline safety rules without incurring any more than negligible cost increases, if any.

The amendment updates a current rule that already adopts federal safety regulations pertaining to pipeline

safety to incorporate recent federal amendments in the state rule.

B) Local governments:

\$0. It should not affect local governments because operators will continue to remain compliant with the federal and state pipeline safety rules without incurring any more than negligible cost increases, if any.

The amendment updates a current rule that already adopts federal safety regulations pertaining to pipeline safety to incorporate recent federal amendments in the state rule.

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

\$0. It should not affect small businesses because operators will continue to remain compliant with the federal and state pipeline safety rules without incurring any more than negligible cost increases, if any.

The amendment updates a current rule that already adopts federal safety regulations pertaining to pipeline safety to incorporate recent federal amendments in the state rule.

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

\$0. It should not affect non-small businesses because operators will continue to remain compliant with the federal and state pipeline safety rules without incurring any more than negligible cost increases, if any.

The amendment updates a current rule that already adopts federal safety regulations pertaining to pipeline safety to incorporate recent federal amendments in the state rule.

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**):

\$0. Businesses that perform work subject to the federal safety regulations may incur costs to comply under the existing rule, which is already incorporated by reference pursuant to Section 54-13-3. However, the amendments to the rule since 09/01/2021 are not anticipated to add any more than negligible cost increases, if any. Therefore, the amendment should have no fiscal impact.

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

\$0. Businesses that perform work subject to the federal safety regulations may incur costs to comply under the existing rule, which is already incorporated by reference pursuant to Section 54-13-3. However, the amendments

to the rule since 09/01/2021 are not anticipated to add to any costs. Therefore, the amendment should have no fiscal impact.

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

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

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

The PSC Chair, Jerry D. Fenn, and Commissioners, David R. Clark and John S. Harvey, Ph.D., have reviewed and approved this regulatory impact analysis.

The amendments to Section R746-409-1 since 09/01/2021 are not anticipated to add any more than negligible cost increases, if any. Therefore, the amendment should have no fiscal impact.

Citation Information

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

Section 54-13-3	Section 54-13-5	Section 54-13-6
-----------------	-----------------	-----------------

Incorporations by Reference Information

7. Incorporations by Reference:	
A) This rule adds, updates, or removes the following title of materials incorporated by references:	
Official Title of Materials Incorporated (from title page)	Code of Federal Regulations, Title 49
Publisher	Office of the Federal Register
Issue Date	2023

Public Notice Information

8. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:	07/01/2024
--	------------

9. This rule change MAY become effective on:	07/08/2024
---	------------

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

Agency Authorization Information

Agency head or designee and title:	Jerry D. Fenn, PSC Chair	Date:	05/10/2024
---	-----------------------------	--------------	------------

R746. Public Service Commission, Administration.

R746-409. Pipeline Safety.

R746-409-1. General Provisions.

A. Scope and Applicability -- Pursuant to Title 54, Chapter 13, Natural Gas Pipeline Safety, ~~the following rules~~ Rule R746-409 shall apply to persons engaged in the transportation of gas as defined in CFR Title 49, Parts 191 and 192.

B. Adoption of parts of CFR Title 49 -- The Commission ~~adopts and~~ incorporates by ~~this~~ reference the following parts of CFR Title 49, effective September 1, 202~~4~~³:

1. Part 190 with the exclusion of Part 190.223, which is superseded by Section 54-13-8, Violation of chapter -- Penalty;

2. Part 191;
3. Part 192;
4. Part 193;
5. Part 198; and
6. Part 199.

C. Persons engaged in the transportation of gas, including distribution of gas through a master-metered system, shall comply with the requirements of CFR Title 49, identified in Subsection R746-409-1~~(B)~~, including ~~all~~ the minimum safety standards.

R746-409-2. Definitions.

~~For purposes of these rules, the following terms shall bear the following meanings.~~ The following definitions apply to this rule:

A. "Authorized Inspector" means a person employed or authorized by the Commission or the director of the Division.

B. "CFR" means the Code of Federal Regulations~~[s]~~.

C. "Commission" means the Public Service Commission of Utah~~[s]~~.

D. "Division" means the Division of Public Utilities, Utah Department of Commerce~~[s]~~.

E. "Federally Reportable Incident" has the same meaning set forth in CFR Title 49, Part 191.3,~~[s]~~ Definitions, Incident.

F. "Operator" has the same meaning set forth in CFR Title 49, Part 191.3, Definitions, Operator.

G. "Part 190" means CFR Title 49, Part 190, Pipeline Safety Programs and Rulemaking Procedures.

H. "Part 191" means CFR Title 49, Part 191, Transportation of Natural and Other Gas by Pipeline; Annual Reports, Incident Reports, and Safety-Related Condition Reports.

I. "Part 192" means CFR Title 49, Part 192, Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards.

J. "Part 198" means CFR Title 49, Part 198, Regulations for Grants to Aid State Pipeline Safety Programs.

K. "Part 199" means CFR Title 49, Part 199, Drug and Alcohol Testing.

L. "Pipeline Facility" has the same meaning set forth in CFR Title 49, Part 191.3, Definitions, Pipeline ~~facility~~ or Pipeline system.

M. "State Reportable Incident" means an event that falls within the definition of a federally reportable incident or a safety-related condition as identified in CFR Title 49, Part 191.23, Reporting safety-related conditions, or meets one or more of the following:

1. Results in damage to any segment of:
a. steel main, ~~twelve~~ 12 inches or greater in diameter~~[s]~~;

or

b. transmission pipeline;

or

2. Requires removal from service or repair of any segment

or

a. steel main, ~~twelve~~ 12 inches or greater in diameter~~[s]~~;

b. transmission pipeline;

3. Results in property damage of \$15,000 or more, including the loss to the operator, ~~and~~ others, or both, but excluding the cost of gas that is lost;

4. Results in the loss of gas service to ten or more customers; or

5. Results in the known evacuation of any highly populated areas including commercial businesses, office buildings, eateries, schools, churches, or public meeting places.

N. "Transportation of Gas" has the same meaning set forth in CFR Title 49, Part 191.3, Definitions, Transportation of gas.

R746-409-3. Inspections.

A. Access for inspection

1. During Normal Business Hours -- During normal business hours, an authorized inspector, upon presentation of appropriate credentials, may enter an operator's offices and pipeline facilities to inspect and examine the records and pipeline facilities, if the records and pipeline facilities are relevant to determining

compliance with applicable state and federal pipeline safety statutes, rules, and regulations.

2. Outside of Normal Business Hours -- For incidents occurring outside of normal business hours, an authorized inspector, upon presentation of appropriate credentials, may enter an operator's pipeline facilities involved in or associated with an incident to inspect and examine the pipeline facilities, if inspection of the pipeline facility is relevant to determining compliance with applicable state and federal pipeline safety statutes, rules, and regulations.

B. Reasons for Inspection -- Inspections are ordinarily conducted pursuant to one of the following:

1. Routine inspection, including ~~but not limited to~~ a compliance inspection;

2. A complaint received from a member of the public;

3. Information obtained from a previous inspection;

4. A pipeline incident; or

5. When ~~deemed~~ considered appropriate by the Commission.

C. Testing -- To the extent necessary to carry out its responsibilities, the Commission may require testing of portions of intrastate pipeline facilities ~~which~~ that have been involved in or affected by an incident.

D. Further Action -- When information obtained from an authorized inspector or from other appropriate sources ~~indicates~~ shows that further action is warranted, the Division shall issue a warning letter to an operator and, if necessary, initiate proceedings, including ~~but not limited to~~ seeking the issuance of Commission subpoenas to compel the production of records and the taking of testimony, hearings, and related procedures, before the Commission.

R746-409-4. Reporting and Notification Requirements.

A. An operator must comply with the notification and reporting requirements contained in Part 191 and Section R746-409-4.

B. Telephonic notification to the Division.

1. For incidents requiring immediate notice under Part 191.5, an operator must also provide contemporaneous telephonic notification of the ~~same~~ information required under Part 191.5 to the Division at (844)-GAS-2525 or (844)-427-2525.

2. State Reportable Incidents. An operator ~~must~~ shall provide telephonic notice to the Division at (844)-GAS-2525 or (844)-427-2525 of ~~all~~ each state reportable incident~~[s]~~, including the location and known details ~~at the time of~~ when reporting, at the earliest practicable moment when safely possible following discovery.

C. Written Reports required by Part 191. For ~~all~~ the reports required under Part 191, including updates and supplemental reports, an operator shall contemporaneously furnish these reports to the Commission and the Division in accordance with Subsection R746-409-4~~-(F)~~.

D. Excavation Damage Quarterly Report. Each operator with more than 10,000 customers shall file a quarterly excavation damage report within 60 days after the end of ~~the~~ each quarter with the Commission and the Division in accordance with Subsection R746-409-4~~-(F)~~ on a form approved by the Division.

E. Reports Relating to Safety Issues. An operator shall prepare and file reports relating to safety issues as requested and described by the Commission or the Division in accordance with Subsection R746-409-4~~-(F)~~.

F. Filing of Written Reports:

NOTICES OF PROPOSED RULES

1. ~~[A]~~Each required written report[s] shall be filed with the Commission in accordance with the Commission's filing requirements posted on the Commission's website at <https://www.jpsc.utah.gov/> ~~at the "Filing Req" tab under the Document column labeled "Pipeline Safety."~~

2. ~~[A]~~Each required written report[s] shall be filed electronically with the Division at the following e-mail address: pipelinesafety@utah.gov.

R746-409-5. Written Plans.

~~[A.]~~An operator must develop and implement ~~[a]~~the plans required in Parts 192 and 199, including operations and maintenance plans, emergency response plans, public awareness plans, operator qualifications plans, anti-drug and alcohol misuse plans, and integrity management plans, including ~~[b]both transmission and distribution[]~~. These plans must be made available to the Commission or the Division upon request.

R746-409-6. Remedies.

A. Rules of Practice and Procedure -- The Commission's Administrative Procedures Act Rule, ~~[Subsection]Rule~~ R746-1, shall govern and control proceedings before the Commission regarding pipeline safety, with the exception of the additional remedies and procedures ~~[specified herein]~~ named in Section R746-409-6.

B. Hazardous Facility Order -- If the Commission finds, after notice and a hearing, that a particular intrastate pipeline facility is hazardous to life or property, it may issue a Hazardous Facility Order requiring the owner or operator of the intrastate pipeline facility to take corrective action. Civil penalties set forth in Section 54-13-8 may also be imposed. Corrective action may include suspended or restricted use of the facility, physical inspection, testing, repair, replacement, or other action as may be appropriate.

C. Waiver of Notice and Hearing -- The Commission may waive the requirement for notice and hearing in Subsection R746-409-6(B) ~~[above]~~ before issuing an order pursuant to this section when it or the Division determines that the failure to do so would result in the likelihood of serious harm to life or property. However, the Commission shall include in the order an opportunity for hearing as soon as practicable after issuance of the order.

D. Hazardous Conditions -- The Commission may find an intrastate pipeline facility to be hazardous under ~~[paragraph 2 of this]~~ Subsection R746-409-6(B) if:

1. Under the facts and circumstances the Commission determines the particular facility is hazardous to life or property; or

2. The intrastate pipeline facility, or a component ~~[there]~~of, has been constructed or operated with equipment, material, or technique ~~[which]~~that the Commission determines is hazardous to life or property, unless the operator involved demonstrates to the satisfaction of the Commission that, under the particular facts and circumstances involved, ~~[such]~~that equipment, material, or technique is not hazardous to life or property.

E. Considerations -- In making a determination under ~~[paragraph]~~ Subsection R746-409-6(D)(2) ~~[of this section]~~, the Commission may consider, if relevant:

1. The characteristics of the pipe and other equipment used in the intrastate pipeline facility involved, including its age, manufacturer, or physical properties, including its resistance to corrosion and deterioration, and the method of its manufacture, construction, or assembly;

2. The nature of the materials transported by the facility, including their corrosive and deteriorative qualities, the sequence in

which the materials are transported, and the pressure required for the transportation;

3. The aspects of the areas in which the intrastate pipeline facility is located, in particular the climatic and geologic conditions, including soil characteristics, associated with the areas, and the population density and population and growth patterns of ~~[such]~~these areas;

4. A recommendation of the National Transportation Safety Board issued in connection with an investigation conducted by the board;

5. Other factors as the Commission may consider appropriate.

F. Contents of Hazardous Facility Order -- A Hazardous Facility Order issued by the Commission shall contain the following information:

1. A finding that the pipeline facility is hazardous to life or property;

2. The relevant facts ~~[which]~~that form the basis for the finding;

3. The legal basis for the order;

4. The nature and description of particular corrective action required of the respondent;

5. The date by which the required action must be taken or ~~[completed]~~finished and, ~~[where]~~when appropriate, the duration of the order.

G. No Longer Hazardous -- The Commission shall rescind or suspend a Hazardous Facility Order when~~ever~~ it determines that the facility is no longer hazardous to life or property.

KEY: rules and procedures, safety, pipelines

Date of Last Change: ~~July 22, 2022~~2024

Notice of Continuation: March 10, 2021

Authorizing, and Implemented or Interpreted Law: 54-13-3; 54-13-5; 54-13-6

NOTICE OF PROPOSED RULE		
TYPE OF FILING: Amendment		
Rule or Section Number:	R784-1	Filing ID: 56527

Agency Information

1. Department:	Higher Education (Utah Board of)	
Agency:	Salt Lake Community College	
Building:	AAb	
Street address:	4600 S Redwood Road	
City, state and zip:	Taylorsville, UT 84123	
Mailing address:	PO Box 30808	
City, state and zip:	Salt Lake City, UT 84130	
Contact persons:		
Name:	Phone:	Email:
Jen Hughes	801-957-4637	Jen.Hughes@slcc.edu

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

General Information

2. Rule or section catchline:
R784-1. Government Records Access and Management Act Rules
3. Purpose of the new rule or reason for the change:
Subsection references, contact information, and references to forms required for Government Records Access and Management Act (GRAMA) requests are incorrect.
4. Summary of the new rule or change:
These substantive changes remove outdated contact information and include accurate contact information. References to the use of required forms have been removed to reflect current practices.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
A) State budget:
There is no anticipated cost or savings to the state budget, as this rule is clerical in nature and will have no impact on how the Higher Education (Utah Board of) (Department) functions or the parties this applies to.
B) Local governments:
This rule change is not expected to have a fiscal impact on local governments' revenues or expenditures.
This rule change only clarifies pre-existing requirements.
C) Small businesses ("small business" means a business employing 1-49 persons):
This rule change does not introduce any new costs to small businesses.
It confirms the pre-existing Salt Lake Community College fee schedule for direct and indirect costs of duplicating or compiling a record.
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):
The proposed rule changes do not introduce any new costs to non-small businesses, nor will a service be required of them to implement the amendments.
The rule changes only clarify pre-existing requirements.
E) Persons other than small businesses, non-small businesses, state, or local government entities

("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an **agency**):

This amendment does not introduce any new costs to other persons.

It confirms the pre-existing Salt Lake Community College fee schedule for direct and indirect costs of duplicating or compiling a record.

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

There are no compliance costs for affected persons.

The changes simply add clarification to requirements and policy.

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

Regulatory Impact Table

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

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

The President of the Salt Lake Community College, Deneece Huftalin, has reviewed and approved this regulatory impact analysis.

Citation Information

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

Section 63G-2-204	Section 63G-12-104	
----------------------	-----------------------	--

Public Notice Information

8. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:	07/01/2024
--	------------

9. This rule change MAY become effective on:	07/08/2024
---	------------

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

Agency Authorization Information

Agency head or designee and title:	Chris Lacombe, General Counsel	Date:	05/15/2024
---	-----------------------------------	--------------	------------

R784. ~~Regents (Board of)~~ Higher Education (Utah Board of), Salt Lake Community College.

R784-1. Government Records Access and Management Act Rules.

R784-1-1. Purpose.

The purpose of the following rule[s] is to provide procedures for access to government records at Salt Lake Community College.

R784-1-2. Authority.

The authority for the following rule is Section 63G-2-204 and Section 63A-12-104 of the Government Access and Management Act (GRAMA), effective July 1, 1992.

R784-1-3. Allocation of Responsibility Within Entity.

Salt Lake Community College, ~~{~~including ~~all~~ campuses, centers, satellites, and locations~~}~~ shall be considered a single governmental entity and the President of Salt Lake Community College shall be considered the head.

R784-1-4. Requests for Access.

~~(1[a])~~ Requests for access to government records of Salt Lake Community College ~~should~~ shall be written and made to the ~~Office of Risk Management in the Administration Building Room~~

~~150~~college's designated records officer. ~~Response to a request submitted~~ GRAMA requests sent to other persons within Salt Lake Community College ~~may go unfilled or responses~~ may be delayed.

~~(2[b])~~ Students requesting their own records and employees requesting their own official personnel file are exempted from using the written request outlined in this document.

~~(3[e])~~ Any appeals of denied requests will be reviewed by ~~an Appeals Officer~~ the Chief Administrative Officer. Requests for appeal should be written and made to the ~~Institutional Advancement Vice President in the Administration Building Room 011A~~ Chief Administrative Officer. See Subsections 63G-2-205~~(4)(2)(c)~~ and 63G-2-401~~(204)(1)(6)~~.

R784-1-5. Fees.

A fee schedule for the direct and indirect costs of duplicating or compiling a record may be obtained from Salt Lake Community College by contacting the ~~Office of Risk Management in the Administration Building Room 150~~ records officer. Salt Lake Community College may require payment of past fees and future estimated fees before beginning to process a request if fees are expected to exceed \$50~~(.00)~~, or if the requester has not paid fees from previous requests.

R784-1-6. Waiver of Fees.

Fees for duplication and compilation of a record may be waived under certain circumstances described in Subsection 63G-2-203~~(4)(3)~~. ~~Requests for this waiver of fees may be made to the Office of Risk Management in the Administration Building Room 150.~~

R784-1-7. Request for Access for Research Purposes.

Access to private or controlled records for research purposes is allowed by Subsection 63G-2-202(8). Requests for access to such records for research purposes may be made to the ~~Office of Risk Management in the Administration Building Room 150~~ records officer.

R784-1-8. Requests for Intellectual Property Records.

Materials, to which Salt Lake Community College owns the intellectual property rights, may be duplicated and distributed in accordance with Subsection 63G-2-201~~(1)(0)~~. Decisions with regard to these rights will be made by the Office of ~~Risk Management in the Administration Building Room 150~~ the General Counsel. Any questions regarding the duplication and distribution of such materials should be addressed to that office.

R784-1-9. Requests to Amend a Record.

An individual may contest the accuracy or completeness of a document pertaining to ~~him/her~~ them pursuant to Section 63G-2-603. Such requests should be made to the ~~Office of Risk Management in the Administration Building Room 150~~ records officer.

R784-1-10. Appeals of Request to Amend a Record.

Appeals of requests to amend a record shall be handled as informal hearings under the Utah Administrative Procedures Act.

R784-1-11. Time Period Under GRAMA.

~~All w~~ Written requests made to the ~~Office of Risk Management~~ records officer will be responded to according to the time periods specified under GRAMA 63G-2-204. Response to a

request submitted to other persons within Salt Lake Community College may be delayed.

[R784-1-12. Forms:

~~_____ (a) The forms described as follows shall be completed by requester in connection with records requests.~~

~~_____ (1) SLCC GRAMA Request for Records form is for use by all entities requesting records from SLCC. This form is intended to assist entities, who request records, to comply with the requirements of Section 63G-2-204(1) regarding the contents of a request.]~~

KEY: GRAMA, SLCC

Date of Last Change: ~~[March 18, 1999]~~2024

Notice of Continuation: February 16, 2024

Authorizing, and Implemented or Interpreted Law: 63G-2-204; 63G-12-104

End of the Notices of Proposed Rules Section

NOTICES OF CHANGES IN PROPOSED RULES

After an agency has published a **PROPOSED RULE** in the *Utah State Bulletin*, it may receive comment that requires the **PROPOSED RULE** to be altered before it goes into effect. A **CHANGE IN PROPOSED RULE** allows an agency to respond to comments it receives.

As with a **PROPOSED RULE**, a **CHANGE IN PROPOSED RULE** is preceded by a **RULE ANALYSIS**. This analysis provides summary information about the **CHANGE IN PROPOSED RULE** including the name of a contact person, anticipated cost impact of the rule, and legal cross-references.

While the law does not designate a comment period for a **CHANGE IN PROPOSED RULE**, it does provide for a 30-day waiting period. An agency may accept additional comments during this period and, at its option, may designate a comment period or may hold a public hearing. The 30-day waiting period for **CHANGES IN PROPOSED RULES** published in this issue of the *Utah State Bulletin* ends July 01, 2024.

Following the **RULE ANALYSIS**, the text of the **CHANGE IN PROPOSED RULE** is usually printed. The text shows only those changes made since the **PROPOSED RULE** was published in an earlier edition of the *Utah State Bulletin*. Additions made to the rule appear underlined (*example*). Deletions made to the rule appear struck out with brackets surrounding them (~~*example*~~). A row of dots in the text between paragraphs (.) indicates that unaffected text, either whole sections or subsections, was removed to conserve space. If a **CHANGE IN PROPOSED RULE** is too long to print, the Office of Administrative Rules may include only the **RULE ANALYSIS**. A copy of rules that are too long to print is available from the agency or from the Office of Administrative Rules.

From the end of the 30-day waiting period through September 30, 2024, an agency may notify the Office of Administrative Rules that it wants to make the **CHANGE IN PROPOSED RULE** effective. When an agency submits a **NOTICE OF EFFECTIVE DATE** for a **CHANGE IN PROPOSED RULE**, the **PROPOSED RULE** as amended by the **CHANGE IN PROPOSED RULE** becomes the effective rule. The agency sets the effective date. The date may be no fewer than 30 days nor more than 120 days after the publication date of the **CHANGE IN PROPOSED RULE**. If the agency designates a public comment period, the effective date may be no fewer than seven calendar days after the close of the public comment period nor more than 120 days after the publication date. Alternatively, the agency may file another **CHANGE IN PROPOSED RULE** in response to additional comments received. If the Office of Administrative Rules does not receive a **NOTICE OF EFFECTIVE DATE** or another **CHANGE IN PROPOSED RULE** by the end of the 120-day period after publication, the **CHANGE IN PROPOSED RULE** filing, along with its associated **PROPOSED RULE**, lapses.

CHANGES IN PROPOSED RULES are governed by Section 63G-3-303, Rule R15-2, and Sections R15-4-3, R15-4-4, R15-4-5b, R15-4-7, R15-4-9, and R15-4-10.

The Changes in Proposed Rules Begin on the Following Page

NOTICE OF CHANGE IN PROPOSED RULE		
Rule or Section Number:	R392-304	Filing ID: 56273
Date of Previous Publication:	02/01/2024	

Agency Information

1. Department:	Health and Human Services	
Agency:	Population Health, Environmental Health	
Room number:	Second Floor	
Building:	Cannon Health Building	
Street address:	288 N 1460 W	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 142102	
City, state and zip:	Salt Lake City, UT 84114-2102	
Contact persons:		
Name:	Phone:	Email:
Karl Hartman	801-538-6191	khartman@utah.gov
Sarah Cheshire	801-538-6191	scheshire@utah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule or section catchline:
R392-304. Artificial Swimming Lagoons
3. Reason for this change:
As described in Box 4 below, the Department of Health and Human Services (Department) has amended some of the proposed revisions in response to public comments received.
This proposed rule represents a consensus approach of Utah public health agencies and reflects a reasonable balance between safety and risk, and the availability of public resources.
Artificial swimming lagoons are new to Utah. As such, this proposed change in proposed rule (CPR) uses performance-based provisions rather than prescriptive measures that are typically outlined in other Utah rules promulgated under Title R392.

In addition, the Department recognizes that further development, revision, or amendment of this rule may be warranted in the future as the Department continues to monitor the health and safety considerations of these facilities and adapt to emerging information, and design and technological innovation.

4. Summary of this change:

The Department has made the following amendments in response to public comments received:

Surf lagoons were added to the list of water bodies to which this rule does not apply. Definitions for surf lagoon and surfer were also added for clarification.

Subsection R392-304-5(1)(e) was clarified to describe requirements for adequate fencing and barriers, showers, hand sinks, toilets, and dressing areas.

Section R392-304-10 was amended to describe the requirements of the provision instead of referring to the current pool rule.

Section R392-304-16 was revised to state that a circulation system is not required, but if a circulation system is used to meet water quality standards, then it must meet the requirements of this rule.

Section R392-304-17 was revised to state that a filtration system is not required, but if a filtration system is used to meet water quality standards, then it must meet the requirements of this rule.

Subsection R392-304-20(1)(b) was clarified to include specific requirements of the Plumbing Code, which were added to Table 3. This subsection also clarifies how the minimum number of toilets, handwash sinks, and drinking fountains are calculated.

Finally, the provision prohibiting food within 10 feet of the water's edge was removed.

(EDITOR'S NOTE: The original proposed new rule upon which this change in proposed rule (CPR) was based was published in the February 1, 2024, issue of the Utah State Bulletin, on page 32. Underlining in the rule below indicates text that has been added since the publication of the proposed new rule mentioned above; strike-out indicates text that has been deleted. You must view the CPR and the proposed new rule together to understand all of the changes that will be enforceable should the agency make this rule effective.)

Fiscal Information

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

<p>A) State budget:</p> <p>This CPR filing is not anticipated to have any cost or savings.</p> <p>Requirements for state government introduced in the original filing of the new rule have not changed, as this filing clarifies existing definitions and updates language for accessibility. As such this filing is not expected to have any fiscal impact on state government.</p>
<p>B) Local government:</p> <p>There is no anticipated cost or savings as a result of this filing.</p> <p>Any requirements for local governments introduced in the original filing of the new rule have not changed, as this filing clarifies existing definitions and updates language for accessibility. As such this rule is not expected to have any impact on local governments.</p>
<p>C) Small businesses ("small business" means a business employing 1-49 persons):</p> <p>This rule is not expected to have any impact on small businesses because there is only one applicable business currently operating, and it is considered a non-small business.</p>
<p>D) Non-small businesses ("non-small business" means a business employing 50 or more persons):</p> <p>There is no anticipated cost or savings as a result of this change in proposed rule filing.</p> <p>As stated in the original filing, the single Artificial Swimming Lagoon facility currently operating in Utah meets the definition of a non-small business. Though neither filing requires a permit, a regulating agency may opt to require a permit at a future date.</p> <p>There may be costs associated with operating permit fees, though the exact cost is inestimable due to a lack of data, but it is unlikely to be higher than \$2,500 annually. This estimate was reflected in the original filing's regulatory impact table.</p>
<p>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):</p> <p>There is no anticipated cost or savings because the proposed changes do not affect existing operations for other persons.</p>

<p>F) Compliance costs for affected persons:</p> <p>There are no compliance costs, as this filing does not affect other persons.</p>																																																												
<p>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.)</p>																																																												
<p>Regulatory Impact Table</p> <table border="1"> <thead> <tr> <th>Fiscal Cost</th> <th>FY2024</th> <th>FY2025</th> <th>FY2026</th> </tr> </thead> <tbody> <tr> <td>State Government</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> <tr> <td>Local Governments</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> <tr> <td>Small Businesses</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> <tr> <td>Non-Small Businesses</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> <tr> <td>Other Persons</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> <tr> <td>Total Fiscal Cost</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> </tbody> </table> <table border="1"> <thead> <tr> <th>Fiscal Benefits</th> <th>FY2024</th> <th>FY2025</th> <th>FY2026</th> </tr> </thead> <tbody> <tr> <td>State Government</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> <tr> <td>Local Governments</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> <tr> <td>Small Businesses</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> <tr> <td>Non-Small Businesses</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> <tr> <td>Other Persons</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> <tr> <td>Total Fiscal Benefits</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> <tr> <td>Net Fiscal Benefits</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> </tbody> </table>	Fiscal Cost	FY2024	FY2025	FY2026	State Government	\$0	\$0	\$0	Local Governments	\$0	\$0	\$0	Small Businesses	\$0	\$0	\$0	Non-Small Businesses	\$0	\$0	\$0	Other Persons	\$0	\$0	\$0	Total Fiscal Cost	\$0	\$0	\$0	Fiscal Benefits	FY2024	FY2025	FY2026	State Government	\$0	\$0	\$0	Local Governments	\$0	\$0	\$0	Small Businesses	\$0	\$0	\$0	Non-Small Businesses	\$0	\$0	\$0	Other Persons	\$0	\$0	\$0	Total Fiscal Benefits	\$0	\$0	\$0	Net Fiscal Benefits	\$0	\$0	\$0
Fiscal Cost	FY2024	FY2025	FY2026																																																									
State Government	\$0	\$0	\$0																																																									
Local Governments	\$0	\$0	\$0																																																									
Small Businesses	\$0	\$0	\$0																																																									
Non-Small Businesses	\$0	\$0	\$0																																																									
Other Persons	\$0	\$0	\$0																																																									
Total Fiscal Cost	\$0	\$0	\$0																																																									
Fiscal Benefits	FY2024	FY2025	FY2026																																																									
State Government	\$0	\$0	\$0																																																									
Local Governments	\$0	\$0	\$0																																																									
Small Businesses	\$0	\$0	\$0																																																									
Non-Small Businesses	\$0	\$0	\$0																																																									
Other Persons	\$0	\$0	\$0																																																									
Total Fiscal Benefits	\$0	\$0	\$0																																																									
Net Fiscal Benefits	\$0	\$0	\$0																																																									
<p>H) Department head comments on fiscal impact and approval of regulatory impact analysis:</p> <p>The Executive Director of the Department of Health and Human Services, Tracy S. Gruber, has reviewed and approved this regulatory impact analysis.</p>																																																												

Citation Information

<p>6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:</p>			
<table border="1"> <tr> <td>Section 26B-1-202</td> <td>Section 26B-7-402</td> <td></td> </tr> </table>	Section 26B-1-202	Section 26B-7-402	
Section 26B-1-202	Section 26B-7-402		

Incorporations by Reference Information

7. Incorporations by Reference:	
A) This rule adds, updates, or removes the following title of materials incorporated by references:	
Official Title of Materials Incorporated (from title page)	NFPA 70, National Electrical Code
Publisher	National Fire Protection Association
Issue Date	2017

B) This rule adds, updates, or removes the following title of materials incorporated by references:	
Official Title of Materials Incorporated (from title page)	NSF/ANSI 61 - 2016: Drinking Water System Components - Health Effects
Publisher	NSF International
Issue Date	January 05, 2016
Issue or Version	2016

Public Notice Information

8. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	07/01/2024

9. This rule change MAY become effective on:	07/08/2024
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.	

Agency Authorization Information

Agency head or designee and title:	Tracy S. Gruber, Executive Director	Date:	05/15/2024
---	-------------------------------------	--------------	------------

R392. Health and Human Services, Population Health, Environmental Health.

R392-304. Artificial Swimming Lagoons.

R392-304-1. Authority and Purpose.

- (1) This rule is authorized by Sections 26B-1-202 and 26B-7-402.
- (2) This rule establishes minimum standards for the sanitation, design, construction, operation, and maintenance of an artificial swimming lagoon, as defined by this rule, and provides for the prevention and control of hazards associated with artificial

swimming lagoons that are likely to adversely affect public health and wellness including risk factors contributing to injury, sickness, death, disability, and the spread of disease.

R392-304-2. Applicability.

- (1) Unless exempted in Subsection R392-304-2(2), this rule applies to any person or entity who owns or operates an artificial swimming lagoon.
 - (2) This rule does not apply to:
 - (a) natural water bodies, including public ponds, lakes, reservoirs, streams, rivers, or canals;
 - (b) privately owned waters that do not fit the definition of an artificial swimming lagoon, such as:
 - (i) privately owned water ski parks; ~~[-or]~~
 - (ii) surf lagoons; or
 - (i) privately owned ponds, lakes, reservoirs, streams, canals, rivers, or other similar bodies of water; or
 - (c) a body of water whose primary intent is already regulated by another rule promulgated under Title R392, Health and Human Services, Population Health, Environmental Health.

R392-304-3. Definitions.

- (1) "Artificial swimming lagoon" or "ASL" means an artificial body of water used for recreational purposes, including swimming, with more than 30,000 square feet of surface area that:
 - (a) is a man-made water impoundment often designed to visually mimic a natural body of water, such as a large pond or small lake;
 - (b) includes at least one or more designated swimming areas;
 - (c) incorporates a water containment system constructed of an impervious material such as a liner, concrete shell, or another impervious material;
 - (d) provides an artificial water treatment system to control water quality, including pathogenic microorganisms, that includes a disinfection system and a method or combination of methods for:
 - (i) circulation;
 - (ii) filtration;
 - (iii) skimming; or
 - (iv) turbidity control; and
 - (e) prevents the growth or habitat of aquatic animal life and aquatic vegetation.
 - (2) "Bather" means a person at an artificial swimming lagoon who has contact with water of a designated swimming area through spray or partial or total immersion. The term bather as defined, also includes staff members^[7] and refers to those users who can be exposed to contaminated water and those who can potentially contaminate the water.
 - (3) "Bather load" means the number of persons allowed by the operator to use the designated swimming area of an artificial swimming lagoon at any one time or specified period.
 - (4) "Closed-loop system" means a water recirculation system in which water is introduced into the lagoon and is treated and recirculated for continuous use in the lagoon. A closed-loop system is not a flow-through system.
 - (5) "Deck" means an area immediately adjacent to or attached to the lagoon that is specifically constructed or installed for sitting, standing, or walking. The term does not include a sandy beach area adjacent to a sloped entry.

NOTICES OF CHANGES IN PROPOSED RULES

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

(7) "Designated swimming area" or "DSA" means a pool located within an artificial swimming lagoon that is visually separated from other areas of ~~the~~ lagoon by a rope, float line, or another method except when the entire artificial swimming lagoon is identified as a designated swimming area.

(8) "Diving area" means the area of a DSA that is designated and designed for diving.

(9) "Executive committee" means the applicable Governance executive committee.

(10) "Executive ~~D~~irector" means the Utah Department of Health and Human Services executive director or a designated representative.

(11) "Facility" means any premises, building, equipment, and accessory object related to the operation of an artificial swimming lagoon.

(12) "Free available chlorine" or "free chlorine residual" means the portion of the total available chlorine that is not combined with other molecules and is present as hypochlorous acid (HOCl) and hypochlorite ion (OCI).

(13) "Governance" means the committee described in Subsection 26B-1-207(3).

(14) "Local health officer" means the health officer of the local health department having jurisdiction or a designated representative.

(15) "Local health department" has the meaning defined in Subsection 26A-1-102(5).

(16) "mg/L" means milligrams per liter and is an equivalent measure to parts per million (ppm).

(17) "Operator" means a person or entity who owns, manages, or controls an artificial swimming lagoon or a designated representative.

(18) "Oxidation" means the process of changing the chemical structure of water contaminants to allow the contaminant to be more readily removed from the water or made more soluble in the water.

(19) "Oxidation Reduction Potential" or "ORP" means a measure of the tendency for a solution to either gain or lose electrons; higher, or more positive, oxidation-reduction potential indicates more potential for oxidation. This technology is commonly used in automatic disinfectant feed controllers.

(20) "Plumbing Code" means International Plumbing Code as incorporated and amended in Title 15A, State Construction and Fire Codes Act.

(21) "Plumbing fixture" means a receptacle or device ~~that is~~ connected to the potable water supply system of the facility, including drinking fountains, handwashing stations, and showers.

(22) "Pool" means an artificially constructed structure designed for total or partial bather immersion in~~[-]~~ or contact with water~~[-, that is]~~ designated for recreational swimming, wading, or bathing.

(23) "Requester" means a person who requests a variance on behalf of a regulated individual, business, or entity.

(24) "Restroom facility" means a room or space that contains not less than one toilet and one handwashing station.

(25)(a) "Shower" means a device that sprays non-recirculated, potable water on the body to remove biological, physical, or chemical contaminants from bathers.

(b) "Cleansing Shower" means a shower within a hygiene facility using warm water and soap. The purpose of this type of shower is to remove contaminants, including perianal fecal material, sweat, skin cells, personal care products, and dirt~~[-]~~ before bathers enter an artificial swimming lagoon.

(c) "Rinse Shower" means a shower typically located on the pool deck area with ambient temperature water. The primary purpose is to remove dirt, sand, or organic material before entering the designated swimming area of an artificial swimming lagoon to reduce the introduction of contaminants and the formation of disinfection by-products.

~~_____ (26) _____~~ (26) "Surf lagoon" means a large aquatic venue dedicated to surfing on a surfboard or similar surfing or wave-riding device with equipment that generates traveling and surfable waves and is used only by surfers and not bathers.

(27) "Surfer" means a person at a surf lagoon who has contact with water either through spray or partial or total immersion, surfs on a surfboard or other similar surfing or wave-riding device, and can be exposed to contaminated water or can potentially contaminate the water.

(28) "Underwater shelf" means a horizontal non-sloping floor connected to the edge of the designated swimming area of an artificial swimming lagoon that is between four and 24 inches below the deck surface, which creates a shallow area for bathers to lounge and play.

(29~~[7]~~) "Variance" means a written document issued by the ~~D~~epartment in response to a request meeting the requirements of Section R392-304-23 that authorizes a modification or waiver of one or more requirements of a rule promulgated under Title R392, Health and Human Services, Population Health, Environmental Health.^[2]

R392-304-4. General Requirements.

(1) Any artificial swimming lagoon regulated under Section R392-304-2 shall meet the requirements of this rule.

(2) If the ~~E~~xecutive ~~D~~irector or local health officer determines that any facility is dangerous, unsafe, unsanitary, a nuisance, or a menace to life, health, or property, the ~~E~~xecutive ~~D~~irector or local health officer may order construction or operational changes consistent with the requirements of this rule to existing facilities.

R392-304-5. Design Requirements and Plan Approval.

The operator shall ensure that:

(1) construction plans are certified and stamped by a designing engineer or architect who is licensed by the Utah Division of Professional Licensing (DOPL) and contains the following verifications:

(a) the structure is stable;

(b) the shape of a DSA and location of appurtenances are designed such that the following are not impaired:

(i) DSA water circulation;

(ii) DSA water quality; and

(iii) bather safety;

(c) each DSA is designed with a circulation system, meeting the requirements of Section R392-304-16, that incorporates treatment and filtration equipment, as required in Sections R394-304-17 and R392-304-18;

(d) in climates where a facility is subject to freezing temperatures, parts of the facility subject to freezing damage is

designed to provide protection from damage due to freezing; and
 (e) the facility has ~~adequate~~ fencing ~~and~~ or barriers, ~~showers, hand sinks, toilets, and dressing~~ to prevent unauthorized access to designated swimming areas; and

(f) the facility has showers, hand sinks, toilets, and dressing areas designed, constructed and maintained as required in Section R392-304-20; and

(2) the DSA is constructed in accordance with the certified and stamped plans required in Subsection ~~R392-304-5(1)(a)~~.

R392-304-6. Plumbing.

The operator shall ensure that:

(1) each plumbing fixture is:

(a) supplied with potable water adequate for human consumption and other domestic uses; and

(b) designed, installed, and operated according to the requirements set forth by:

(i) the Plumbing Code;

(ii) the Utah Department of Environmental Quality, Division of Drinking Water under Title R309, Drinking Water; and

(iii) local health department regulations; and

(2) the drinking water system is protected against backflow contamination.

R392-304-7. Artificial Swimming Lagoon Source Water Quality.

(1) If the source water for the DSA of an artificial swimming lagoon is not from a public drinking water system as described in Rule R309-100[7] Administration: Drinking Water Program, the operator shall:

(a) collect a sample of the source water;

(b) submit the collected sample for analysis to a laboratory that is certified under Rule R444-14, Certification of Environmental Laboratories; and

(c) have laboratory analysis performed initially and for each five-year period thereafter to determine the levels of contaminants listed in Table 1.

(2) If the source water analysis report described in Subsection ~~R392-304-7(1)~~ indicates that a contaminant level is greater than or equal to any of the standards in Table 1, the operator shall:

(a) discontinue the use of the source water; or

(b) implement an ongoing treatment process to provide source water that complies with Table 1.

TABLE able 1 Source Water Contaminants and MCLs	
Contaminant	Maximum Contaminant Level (MCL)
Antimony	0.006 mg/L
Arsenic	0.010 mg/L
Barium	2 mg/L
Beryllium	0.004 mg/L
Cadmium	0.005 mg/L
Chromium	0.1 mg/L
Copper	1.3 mg/L
Cyanide, as free cyanide	0.2 mg/L
Fluoride	4.0 mg/L
Lead	0.015 mg/L
Mercury	0.002 mg/L

Nitrate	10 mg/L
Nitrite	1 mg/L
Selenium	0.05 mg/L
Thallium	0.002 mg/L

(3) The operator shall maintain a closed-loop system for water recirculation.

(4) If the water source for the DSA of an artificial swimming lagoon is connected to a public or private potable water source, the operator shall ensure that:

(a) the water source system is protected from a backflow or back-siphonage event with a backflow preventer, such as an air gap, a mechanical backflow prevention device, or another means or method in accordance with Plumbing Code; and

(b) the backflow preventer does not connect to the discharge side of a recirculation pump of an artificial swimming lagoon.

R392-304-8. Wastewater.

The operator shall ensure that an artificial swimming lagoon facility complies with Section R392-302-7.

R392-304-9. Solid Waste.

The operator shall ensure that an artificial swimming lagoon facility complies with Section R392-302-8.

R392-304-10. Construction Materials.

(1) The operator shall ensure that each DSA of an artificial swimming lagoon and the appurtenances necessary for its proper function and operation ~~comply with the construction material requirements described in Section R392-302-9,~~ are constructed of materials that are:

(a) inert;

(b) non-toxic to humans;

(c) impervious;

(d) durable; and

(e) resistant to the effects of wear and deterioration from chemical, physical, radiological, and mechanical actions, including freezing.

(2) The operator shall ensure that the interior surface of an artificial swimming lagoon is:

(a) able to withstand the stresses associated with normal use and regular maintenance, including complete emptying without shoring or additional support; and

(b) a color that, from the deck or side of the artificial swimming lagoon, a bather is visible at the deepest point and the following items can be identified:

(i) algae growth, debris, or dirt;

(ii) cracks in the surface finish; and

(iii) depth markings.

(3) If a logo or other decorative color is placed on the floor or wall of the DSA of an artificial swimming lagoon, the operator shall ensure that the color or design does not hinder the detection of a bather in distress, algae growth, sediment, or other objects.

(4) The operator shall ensure that each interior surface of a DSA, area of egress, or safety shelf area is:

(a) designed and constructed in a manner that provides a smooth, easily cleanable, non-abrasive, and slip-resistant surface; and

NOTICES OF CHANGES IN PROPOSED RULES

(b) free of cracks or open joints, except for structural expansion joints.

(5) When using an artificial liner for a containment system in an artificial swimming lagoon, the operator shall ensure that the liner meets the NSF/ANSI Standard 61-2016, Drinking Water System Components - Health Effects, as incorporated by reference in this rule, or an equivalent standard.

(6) The operator shall ensure that the design and construction of electrical systems installed in an artificial swimming lagoon meet the requirements of the NFPA 70, National Electrical Code 2017, Article 680, as incorporated by reference in this rule.

R392-304-11. Floor Slopes.

The operator shall ensure that the floor slope of each DSA of an artificial swimming lagoon complies with Section R392-302-10.

R392-304-12. Walls.

The operator shall ensure that the walls of each DSA of an artificial swimming lagoon comply with Section R392-302-11.

R392-304-13. Underwater Seating and Underwater Shelves.

(1) The operator shall ensure that each underwater seat or bench located in a DSA complies with Subsection R392-302-11(6).

(2) The operator shall ensure that each underwater lounge chair is:

- (a) specifically designed and constructed for immersion in water;
- (b) constructed with slip-resistant materials;
- (c) installed in such a manner that:
 - (i) the chair back is above the designed water level; and
 - (ii) the underwater lounge chair does not constitute a safety hazard for bathers; and

(d) visually set apart to be visible to persons on the ground above the lounge chair.

(3) The operator shall ensure that each underwater shelf;

(a) has a line that marks the extent of the shelf within two inches of its leading edge on both the horizontal and vertical surface, except in the case of a horizontal shelf that terminates with a sloping floor surface, and the line is:

- (i) two inches in width; and
- (ii) a contrasting dark color for maximum visual distinction;

(b) has a maximum depth of 24 inches; and

(c) does not constitute a safety hazard.

(4) If the underwater shelf terminates with a sloping floor surface, the operator shall ensure that the floor surface complies with Section R392-304-11.

R392-304-14. Designated Swimming Area Entry and Exits.

(1) The operator shall ensure that, except for a DSA with a sloped entry, each DSA with a perimeter greater than 75 feet:

(a) has no fewer than two means of entry and exit, such as a wheelchair ramp, a set of stairs with a handrail, recessed steps with grab rails, or a ladder;

(b) has entry and exit points that are not more than 75 feet apart from each other; and

(c) has entry and exit points that comply with Section R392-302-13.

(2) The operator shall ensure that each sloped entry and exit point complies with Subsection R392-302-13(7).

(3) A DSA may have fewer than two means of entry and exit if the perimeter of a DSA is less than 75 feet.

R392-304-15. Decks and Walkways.

The operator shall ensure that:

(1) a deck or walkway is provided at each entry or exit into the DSA, except for a sloped entry, zero entry, or beach entry; and

(2) where a deck is provided, each deck shall:

(a) be at least four feet wide;

(b) slope away from the artificial swimming lagoon to a deck drain at a grade of 1/4 inch to 3/8 inch per linear foot;

(c) be constructed of material that is:

(i) rated to withstand frequent and heavy exposure to water;

(ii) rated for outdoor use; and

(iii) slip-resistant; and

(d) be free of open joints or gaps larger than 1/4 inch or vertical elevations exceeding 1/4 inch, except for expansion joints, which shall be filled with appropriate materials to allow for expansion.

R392-304-16. Circulation.

~~(1) The operator shall ensure that:~~

~~(1) except for periods of maintenance,] when a circulation system is [provided and in continuous operation that provides skimming, filtration, and] used to meet water [circulation;~~

~~(2)] quality standards required in Section R392-304-18, the circulation system is:~~

~~(a) in continuous operation to provide skimming, filtration, or water circulation, except for periods of maintenance; and~~

~~(b) designed and constructed to comply with Subsections R392-302-19(1)(h) through R392-302-19(1)(l);]~~

~~(3)] (2) The operator shall ensure that:~~

~~(a) the piping in an artificial swimming lagoon complies with Subsection R392-302-19(3); and~~

~~(b)] any suction outlet fitting assembly used in the DSA of an artificial swimming lagoon circulation system complies with the ANSI/APSP/ICC-16 2017, American National Standard for Suction Outlet Fitting Assemblies (SOFA) for Use in Pools, Spas, and Hot Tubs along with the provisional amendment approved on March 19, 2021, [which is] incorporated by reference in this rule.~~

R392-304-17. Filtration.

The manager shall ensure that ~~[an artificial swimming lagoon has] when a filtration system serving a DSA [that] is used in an artificial swimming lagoon to meet water quality standards required in Section R392-304-18, the filtration system complies with Section R392-302-23, except for requirements for design rate of flow, and that:~~

(1) each filter is designed to be easily cleaned according to the manufacturer's instructions; and

(2) the operator has easy access to the filtration surfaces for inspection and maintenance.

R392-304-18. Designated Swimming Area Water Quality and Disinfection.

(1) The operator shall ensure that the DSA of an artificial swimming lagoon has sufficient clarity to easily see the deepest part of the DSA ~~when the water is static~~. This may be measured by a Secchi disk or a four-inch by four-inch marker tile.

(2) The operator shall ensure that the DSA of an artificial swimming lagoon is treated by a disinfectant that complies with Subsections R392-302-25(1)(a) through R392-302-25(1)(f), except that:

(a) the minimum concentrations for the DSA treatment chemicals are found in Table 2 in this rule rather than Table 3 in Rule R392-302; and

(b) the maximum concentration for cyanuric acid described in Subsection R392-302-25(1)(f)(ii)(B) is reduced to 50 milligrams per liter.

(3) The operator shall install automated, manual, or remotely managed chemical feed controllers that comply with Subsections R392-302-24(1)(a), R392-302-24(3)(c), and R392-302-24(4)(b).

(4) The operator shall install an ORP controller that complies with Subsection R392-302-24(2) to monitor the oxidizing potential of the water if an oxidizer is used for disinfection.

(5) The operator shall provide a portable poolside water quality test kit that is:

(a) compatible with the disinfectant in use;

(b) maintained in and stored according to the manufacturer's instructions; and

(c) protected from extreme heat and cold, exposure to water, chemicals, or any other element or environment that could adversely affect the efficacy of the test kit.

(6) The operator may use a remote water quality testing system, but may not substitute the remote testing system results for onsite operation and maintenance.

(7)(a) The operator shall perform testing at a frequency that verifies the DSA is meeting the water quality conditions required in Table 2.

(b) At a minimum, tests for disinfectant levels and pH in each DSA shall be performed before the area is open for bather use and at least every 24 hours of operation.

(8) The operator shall:

(a) collect a water sample from each DSA at least once per month;

(b) submit the sample to a laboratory approved under Rule R444-14, Certification of Environmental Laboratories, to perform total coliform and heterotrophic plate count testing; and

(c) ensure that the collected sample is analyzed in a laboratory for total coliform and heterotrophic plate count using methods allowed under Section R444-14-4.

(9) The operator shall review the sample results to determine if the sample has failed the bacteriological quality standard as determined by the following sample failure criteria:

(a) the sample contains more than 200 colony forming units (CFUs) per milliliter, as determined by the heterotrophic plate count; or

(b) the sample indicates the presence of coliform bacteria or contains more than one CFU of coliform bacteria per 100 milliliters.

(10)(a) For any test that does not meet the chemical, bacteriological, or physical parameters described in this section, the operator shall repeat the test within 24 hours of receiving the initial test results.

(b) If the repeat testing shows that the water continues to be outside of the parameters described in this section, the manager shall close any DSA to swimming and contact recreation until additional testing results show that the water quality parameters are within the required range.

TABLE 2 Chemical parameters in each DSA of an ASL		
Parameter	Minimum Value	Maximum Value
Free chlorine	0.5 ppm	10.0 ppm
Bromine	2.5 ppm	8.0 ppm
Combined chlorine	None	0.5 ppm
pH	7.0	7.8
Cyanuric acid	None	50 ppm

R392-304-19. Bather Load.

(1) The operator shall ensure that 15 square feet of surface area per bather is provided if the depth of the DSA is four feet or less.

(2) The operator shall ensure that 25 square feet of surface area per bather is provided if the depth of the DSA is greater than four feet.

(3) The operator shall post a sign, as required in Subsection R392-304-22(1), stating the maximum bather load for each DSA.

R392-304-20. Facility Operations.

(1) The operator shall ensure that:

(a) each bather has access to a toilet and handwashing station in a restroom facility that:

(i) is located with convenient access for bathers;

(ii) is located no further than 200 feet walking distance and in clear view of each DSA; and

(iii) is clearly identified; and

(b) the minimum number of toilets, handwash sinks, and drinking fountains provided ~~complies with Plumbing Code~~;

(i) complies with Plumbing Code as described in Table 3; and

(ii) is calculated based on the designed peak bather load described in Section R392-304-19.

(2) The operator shall ensure that:

(a) each restroom facility is supplied with:

(i) soap and toilet tissue in suitable dispensers;

(ii) individual disposable towels or other hand drying fixture, such as an air dryer; and

(iii) a solid, durable, covered, and easily cleanable waste receptacle; and

NOTICES OF CHANGES IN PROPOSED RULES

- (b) each plumbing fixture is:
 - (i) designed to be easily cleanable, and withstand frequent cleaning and disinfecting; and
 - (ii) maintained in an operable, clean, and sanitary condition.
- (3) The operator shall ensure that:
 - (a) each restroom is constructed of materials that have smooth, non-slip surfaces, and are impervious to moisture;
 - (b) the floor of a restroom and shower facility slopes to a drain and is constructed to prevent accumulation of water;
 - (c) carpeting is not installed on restroom or shower floors; and
 - (d) junctions between walls and floors are covered.
- (4) The operator shall ensure that a minimum of one rinse shower is provided for each DSA of an artificial swimming lagoon that:
 - (a) is located near an entry point to the DSA; and
 - (b) the floor is sloped to drain wastewater away from the DSA into a sanitary sewer or storm sewer, according to applicable plumbing codes.
- (5) If the operator provides a cleansing shower, the cleansing shower facility shall comply with Subsection R392-302-28(4).
- (6) If the operator provides dressing rooms, the dressing room facility shall comply with Section R392-302-27.
- (7) The operator shall ensure that when a DSA is open for bather use, the following auxiliary facilities are available:
 - (a) restroom facilities;
 - (b) rinse showers;
 - (c) dressing rooms, if applicable; and
 - (d) cleansing showers, if applicable.
- (8) The operator shall ensure that a DSA open during nighttime hours, as described in Subsection R392-304-20(8)(9), has the following areas illuminated for visibility:
 - (a) depth markers;
 - (b) safety signs;
 - (c) facility entrances;
 - (d) restroom facilities;
 - (e) safety equipment; and
 - (f) deck areas and walkways.
- (9) If a DSA is open to bathers during nighttime hours, which are 30 minutes before sunset to 30 minutes after sunrise, the operator shall ensure that:
 - (a) 15 horizontal foot candles (161 lux) are provided at the water surface of the designated swimming area; and
 - (b) each auxiliary facility described in Subsection R392-304-20(6) is illuminated.
- (10) The operator shall ensure that an artificial swimming lagoon is managed by a qualified technician who has been certified or recertified by a training and testing program approved by the [D]department.
- (11) The operator shall develop an operation, maintenance, and sanitation plan that includes:
 - (a) the following staffing roles and responsibilities:
 - (i) individuals assigned to perform and record testing;
 - (ii) location within the DSA where the testing parameters are collected;
 - (iii) testing frequency; and
 - (iv) record keeping of testing results; and

- (b) an emergency action plan with:
 - (i) procedures for daily bather supervision;
 - (ii) injury prevention and response;
 - (iii) emergency actions; and
 - (iv) response to an accidental fecal release.
- (12) The operator shall ensure that records pertaining to the daily operation of the artificial swimming lagoon are retained and accessible for inspection according to Subsection R392-302-34(2).
 - ~~(13) The operator shall ensure that food or drink is not consumed within ten feet of the water's edge of any DSA of an artificial swimming lagoon.~~
 - ~~(14)~~ (13) The operator shall ensure that glass, ceramic, or breakable containers are not allowed within the interior of the artificial swimming lagoon fencing or barrier described in Subsection R392-304-21(11)(a).

<u>TABLE 3</u>	
<u>Minimum number of toilets, handwash sinks, and drinking fountains</u>	
<u>Minimum number of toilets</u>	
<u>Male</u>	<u>Female</u>
<u>1 toilet per 75 bathers for the first 1,500 bathers; and 1 toilet per 120 bathers for the remainder exceeding 1,500 bathers</u>	<u>1 toilet per 40 bathers for the first 1,520 bathers; and 1 toilet per 60 bathers for the remainder exceeding 1,520 bathers</u>
<u>If providing unisex facilities, the ratio shall be 1 toilet per 40 bathers for the first 1,520 bathers; and 1 toilet per 60 bathers for the remainder exceeding 1,520 bathers.</u>	
<u>Minimum number of handwash sinks</u>	
<u>Male</u>	<u>Female</u>
<u>1 handwash sink per 200 bathers</u>	<u>1 handwash sink per 150 bathers</u>
<u>If providing unisex facilities, the ratio shall be 1 handwash sink per 150 bathers.</u>	
<u>Minimum number of drinking fountains</u>	
<u>1 drinking fountain per 1,000 bathers</u>	

R392-304-21. Safety Standards.

- (1) The operator shall ensure that each chemical used for water treatment, including disinfection and pH control, is labeled, stored, and handled according to the manufacturer's chemical Safety Data Sheet (SDS).
- (2) The operator shall ensure that chemicals are stored in an area that is:

- (a) closed to unauthorized access; and
- (b) protected from:
 - (i) exposure to moisture;
 - (ii) extreme temperatures;
 - (iii) accidental spills; and
 - (iv) exposure to incompatible materials.
- (3) The operator shall ensure that trained individuals handling water quality chemicals are provided with personal protective equipment.

(4) The operator shall ensure that trained lifeguard service personnel are provided for a DSA of an artificial swimming lagoon during periods of use that:

- (a) the DSA is open to the general public;
- (b) the DSA is used for recreation of youth groups, such as youth camps, childcare, or school groups;
- (c) bathers enter the water from any height above the deck or wall, including diving boards, drop slides, zip lines, or climbing walls;
- (d) the DSA allows unsupervised children under the age of 14 years; or
- (e) alcohol is sold or served within the artificial swimming lagoon fencing or barrier described in Subsection R392-304-21(11)(a).

(5) If lifeguard service is not required as described in Subsection R392-304-21(4), the operator shall post a sign, as required in Subsection R392-304-22(3), near each entrance of a DSA indicating that there is no lifeguard on duty.

(6) If lifeguard service is required as outlined in Subsection R392-304-21(4), the operator shall have a lifeguard action plan that:

- (a) defines the number of lifeguards necessary for proper surveillance of each DSA;
- (b) establishes lifeguard certifications and qualifications; and
- (c) describes the zones of surveillance, rotation procedures, and alteration of lifeguard tasks.

(7) The operator shall ensure that lifesaving equipment described in Subsection R392-304-21(7)(c):

- (a) is placed in a conspicuous location near each DSA;
- (b) complies with Subsections R392-302-30(2) and R392-302-30(3); and
- (c) includes the following equipment:
 - (i) a Coast Guard-approved ring buoy with an attached rope at least 50 feet in length;
 - (ii) a life pole or shepherd's crook-type pole with blunted ends that is a minimum length of 12 feet; and
 - (iii) a first aid kit that:
 - (A) is accessible to bathers;
 - (B) is stored in a manner that prevents contamination;
 - (C) is restocked as needed; and
 - (D) includes a minimum of the following unexpired items:
 - (I) adhesive bandages of various sizes and applications;
 - (II) compression bandages;
 - (III) sterile gauze pads;
 - (IV) medical tape;
 - (V) scissors;
 - (VI) instant cold packs;
 - (VII) antiseptic wipes;

- (VIII) sting relief wipes;
- (IX) eyewash solution;
- (X) single-use gloves; and
- (XI) tweezers.

(8) The operator shall ensure that emergency phone numbers, including 911, are posted to comply with Subsection R392-304-22(3).

(9) The operator shall ensure that:

- (a) the DSA maximum water depth is plainly marked; and
- (b) depth markings are placed in a manner that notifies bathers of water depths before entering the DSA of an artificial swimming lagoon.

(10) If diving areas are included in the design of a DSA, the operator shall ensure that each diving area and appurtenance complies with Subsection R392-302-12(1).

(11) The operator shall ensure that fencing or barriers:

- (a) are installed to prevent unauthorized entry into the artificial swimming lagoon from the perimeter of the facility; and
- (b) comply with the applicable local regulations and ordinances.

R392-304-22. Signs.

(1) The operator shall ensure that:

(a) signs required in this rule are placed in a conspicuous area, as described in Subsection R392-304-22(1)(c), to alert and inform bathers of expected and prohibited behaviors and other applicable information;

(b) signs are written in a lettering style, stroke width, spacing, and contrast with the background such that the sign is clearly visible; and

(c) a sign that states the location of restroom facilities, emergency exits, and safety rules is placed:

- (i) at the entrance of the artificial swimming lagoon facility; and
- (ii) at access points of each DSA;

(2) The operator shall ensure that each rules of conduct sign complies with Subsection R392-304-22(1) and includes the following language:

(a) "Animals are prohibited inside the artificial swimming lagoon facility";

(b) "Glass or ceramic containers are prohibited inside the artificial swimming lagoon facility";

(c) "Bathers must shower before entering the water";

(d) "Entering the water if ill with diarrhea is prohibited"; and

(e) "Diapering shall only be done in designated restroom facilities".

(3) The operator shall ensure that each safety sign complies with Subsection R392-304-22(1) and includes the following:

(a) maximum bather load;

(b) emergency phone numbers, including 911;

(c) "No lifeguard on duty", if applicable;

(d) hours of operation;

(e) maximum depth of the artificial swimming lagoon; and

(f) any other additional restrictions such as:

(i) watercraft rules;

(ii) personal flotation device recommendations; or

(iii) floating platform rules.

R392-304-23. Variances.

(1) A person may request a variance when a technology, process, procedure, or other variation otherwise not allowed by this rule would provide alternative design, construction, or operational conditions that maintain protection of the health and safety of the public and the environment in a manner that is at least equivalent to the current requirements.

(2) Any request for a variance shall follow the process outlined in this section.

(3) The requester shall provide data showing that any alternative technology, process, or procedure will be at least as protective of the health and safety of the public and the environment as the current requirements. Each variance request shall be submitted to the [D]department and shall include at least the following:

(a) name of the business for which the variance is being requested;

(b) designated point of contact and contact information of the business for which the variance is being requested;

(c) location of the facility or establishment for which the variance is being requested;

(d) citation of each rule section or subsection~~[-of rule]~~ to which the variance is being requested;

(e) a statement as to why the applicant cannot comply with the rule section or subsection~~[-of rule]~~ to which the variance is being requested;

(f) the nature and duration of the variance being requested;

(g) a statement of how the intent of the rule will be met and the reasons why the health and safety of the public and the environment would not be endangered or jeopardized if the variance was granted;

(h) technical justification or a detailed explanation of the variance conditions that provide the protection of the health and safety of the public and the environment for each applicable rule section or subsection~~[-of rule]~~;

(i) a full description of any policies, procedures, or equipment that the applicant proposes to use to rectify any potential increase in risks to the health and safety of the public and the environment created by granting the variance; and

(j) operation and maintenance requirements of the variance condition.

(4) Upon receiving a variance request that meets the requirements of Subsections R392-304-23(1)~~[-(2), and]~~ through (3), the [D]department shall:

(a) notify the local health officer having jurisdiction that a variance request was received; and

(b) present the variance request to the local health officer having jurisdiction and the executive committee.

(5) The executive committee may:

(a) make an immediate determination based on the information contained in the variance request; or

(b) form an ad hoc committee to:

(i) evaluate the variance request; and

(ii) produce a written report to be presented to the executive committee for consideration.

(6) After deliberation of the variance request information or ad hoc committee report, the executive committee shall provide a recommendation to Governance to:

(a) reject the variance request with a written justification; or

(b) approve the variance request with or without additional provisions.

(7) Governance may recommend to the [E]executive [D]director to:

(a) reject the variance request without further consideration with a written justification; or

(b) approve the variance request with provisions as recommended by the executive committee.

(8) The [E]executive [D]director may consider a variance after Governance makes a recommendation and when it reasonably appears that:

(a) the health and safety of the public and the environment will not be endangered by granting of such a variance;

(b) adequate alternative provisions have been made to protect the health and safety of the public and the environment;

(c) the variance will result in protection of the health and safety of the public and the environment consistent with the design, construction, or operational standards and intent of current requirements; and

(d) the variance does not adversely affect statewide regulation.

(9) If the [E]executive [D]director approves the variance request:

(a) the [D]department shall provide the requester and each local health officer having jurisdiction with a variance approval letter signed by the [E]executive [D]director that includes a description of any conditions, restrictions, or requirements pertaining to the variance; and

(b) the [E]executive [D]director or local health officer shall include the variance as a condition to operate; and

(c) the [D]department shall conduct a review of the associated rule to determine whether it should be amended to reflect the conditions of the approved variance.

(10) If the [E]executive [D]director denies the variance request, the [D]department shall provide the requester and each local health officer having jurisdiction with a denial letter that includes the reason for the denial.

(11) If the conditions upon which a variance was granted change, the operator who obtained the variance shall notify the [D]department and:

(a) apply for a new variance; or

(b) discontinue operating under the previously approved variance and come into full compliance with the current requirements of this rule.

R392-304-24. Enforcement and Penalties.

An operator who violates this rule may be subject to criminal and civil penalties as provided in Section 26B-1-224.

KEY: artificial swimming lagoon, pool, swimming, water

Date of Last Change: 2024

Authorizing and Implemented or Interpreted Law: 26B-1-202; 26B-7-402; 26B-1-224

End of the Notices of Changes in 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		
Rule or Section Number:	R251-716	Filing ID: 56500
Effective Date:	05/09/2024	

Agency Information

1. Department:	Corrections	
Agency:	Administration	
Street address:	14727 Minuteman Drive	
City, state and zip:	Draper, UT 84020	
Contact persons:		
Name:	Phone:	Email:
Steve Gehrke	385-237-8040	sgehrke@utah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule or section catchline:
R251-716. Undercover Roles of Offenders

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

The Department of Corrections (Department) did not file a five-year review on Rule R251-103 before the rule expired.

The Department is filing this emergency rule until a permanent rule can be made effective.

4. Summary of the new rule or change:

This rule regulates the capacities in which a justice involved individual (offender) can be used in undercover roles. It outlines who receives and authorizes requests to use offenders in undercover roles.

The text is similar to the previous Rule R251-103.

5A) The agency finds that regular rulemaking would:

- 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 reasons and justifications for this finding:

Rule R251-301 expired after a five-year review was not completed.

The Department needs this rule to remain in effect to prevent an imminent peril to public health, safety, or welfare. If this rule does not define who reviews and approves the undercover roles of offenders, offenders could be extorted into aiding agencies without personal protection.

Fiscal Information

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

A) State budget:

There is no anticipated cost or savings change to the state budget, as this rule provides guidelines to the individual responsible for receiving and authorizing applications for offenders to be used in undercover roles. This rule will not have a fiscal impact.

B) Local governments:

There is no anticipated cost or savings change to the local governments, as this rule does not apply to this group.

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

There is no anticipated cost or savings change to small businesses, as this rule does not apply to this group.

D) Persons other than 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 change to other persons, as this rule does not apply to this group.

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

There are no compliance costs for affected persons, as this does not apply to this group and this rule has no fiscal impact regardless.

F) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):

The Executive Director of the Department of Corrections, Brian Redd, has stated there to be no fiscal impact to businesses as a result of this rule.

Citation Information

7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:

Section 63G-3-201	Subsection 64-13-6(1)(h)	Section 64-13-10
Section 64-13-14		

Agency Authorization Information

Agency head or designee and title:	Brian Redd, Executive Director	Date:	07/19/2023
---	--------------------------------------	--------------	------------

R251. Corrections, Administration.

R251-716. Undercover Roles of Offenders.

R251-716-1. Authority and Purpose.

(1) This rule is authorized by Sections 63G-3-201, 64-13-10, 64-13-14, and Subsection 64-13-6(1)(h).

(2) The purpose of this rule is to provide the Department's policy and requirements governing the use of offenders in undercover roles.

R251-716-2. Definitions.

(1) "Department" means Utah Department of Corrections.

(2) "Entity" means agency, department, the Board of Pardons and Parole, or other criminal justice organization.

(3) "LEB" means the Law Enforcement Bureau.

(4) "Offenders" means any person under the supervision of the Department including inmates, parolees, and probationers.

R251-716-3. General Requirements.

(1) Requests to use offenders in undercover roles originating within or outside the Department must be made in writing to the LEB Chief.

(2) Decisions relating to requests from criminal investigators from the Department, or other criminal justice agencies, to use offenders under the supervision of the Department in undercover roles shall be made on a case-by-case basis. Factors to be considered include:

- (a) risk or danger to the offender;
- (b) impact of these activities on implementation and realization of correctional goals for the offender;
- (c) the nature of the assignment;
- (d) the controls which shall exist; and
- (e) the importance of the assignment to maintaining public safety.

(3) The Department may not unlawfully coerce nor knowingly permit unlawful coercion of offenders to participate in undercover roles.

(4) Neither the Department nor any other entity shall be bound by any promises, inducements, or other arrangements agreed to by the offender unless the Department or any other involved entities has agreed in writing to the promises.

(5) Final authority within the Department concerning requests shall reside with the LEB Chief.

(6) Nothing in this section shall prohibit members of this Department or other criminal justice agencies from requesting or receiving information from offenders.

(7) Functions of this program shall be carried out by policies internal to the Department.

KEY: corrections, probationers, parolees

Date of Last Change: May 9, 2024

Authorizing, and Implemented or Interpreted Law: 64-13-6(1)(f); 64-13-10

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 adminrules.utah.gov. The rule text may also be inspected at the agency or the Office of Administrative Rules. **REVIEWS** are effective upon filing.

REVIEWS are governed by Section 63G-3-305.

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R64-1	Filing ID: 55524
Effective Date:	05/14/2024	

Agency Information

1. Department:	Agriculture and Food	
Agency:	Conservation Commission	
Building:	TSOB South Bldg. Floor 2	
Street address:	4315 S 2700 W	
City, state, and zip:	Taylorsville, UT 84129-2128	
Mailing address:	PO Box 146500	
City, state, and zip:	Salt Lake City, UT 84114-6500	
Contact persons:		
Name:	Phone:	Email:
Amber Brown	385-245-5222	Ambermbrown@utah.gov
Kelly Pehrson	801-982-2200	Kwpehrson@utah.gov
Jim Bowcutt	435-232-4017	Jdbowcutt@utah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule catchline:	R64-1. Agricultural Resource Development Loans (ARDL)
---------------------------	---

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

Subsection 4-18-105(2)(e) grants the Department of Agriculture and Food (Department) the authority to adopt rules regarding the powers and duties of the Conservation Commission, as described in Subsection 4-18-105(1).

Section 4-18-106 establishes the Agriculture Resource Development Fund, which finances loans for various projects aimed at protecting, conserving, utilizing, and developing the state's soil, water, and air resources. It also promotes the protection, integrity, and restoration of land for agricultural and other beneficial purposes.

This rule outlines the administration of the ARDL program, requirements for emergency loans, and the process to follow in the event of a temporary water shortage, as specified in Title 73, Chapter 3d, Water Preferences During Emergencies.

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 Department has not received any supporting or opposing public comments regarding this rule over the last five years.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This program is as important today as it was 50 years ago. By adhering to this rule, the Department can continue to facilitate the necessary loans, enabling producers to undertake projects that comply with the criteria outlined in Sections 4-18-105 and 4-18-106. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	Craig W. Buttars, Commissioner	Date:	05/14/2024
---	--------------------------------	--------------	------------

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R277-115	Filing ID:	55245
Effective Date:	05/10/2024		

Agency Information

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

General Information

2. Rule catchline:
R277-115. LEA Supervision and Monitoring Requirements of Third Party Providers and Contracts
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 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.
Subsection 53E-3-401(10) allows the Board to direct a Local Education Agency (LEA) to require in a contract with a third party provider that the third party provider shall provide, upon request of the LEA, information necessary for the LEA to verify that the educational good or service complies with Titles 53E, 53F, 53G, and Board rule.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
There were no public comments received.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule is necessary because it provides standards for an LEA working with a third party provider to ensure the third party provider complies with applicable law. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	Angie Stallings, Deputy Superintendent of Policy	Date:	05/10/2024
---	--	--------------	------------

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R277-480	Filing ID:	50441
Effective Date:	05/10/2024		

Agency Information

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

General Information

2. Rule catchline:
R277-480. Charter School Revolving Account
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
This rule is authorized pursuant to the Utah Constitution, Article X, Section 3, which vests general control and supervision over public education in the Board.
Subsection 53E-3-401(4) allows the Board to execute rules to carry out its duties and responsibilities under the Utah Constitution and state law.

Subsection 53F-9-203(2)(b) requires the Board to administer the Charter School Revolving Account.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

There were no public comments received.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule is necessary because it establishes procedures for administering the Charter School Revolving Account, determines membership of the Charter School Revolving Account Committee, and determines loan amounts and loan repayment conditions. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	Angie Stallings, Deputy Superintendent of Policy	Date:	05/10/2024
---	--	--------------	------------

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R277-487	Filing ID:	53398
Effective Date:	05/10/2024		

Agency Information

1. Department:	Education		
Agency:	Administration		
Building:	Board of Education		
Street address:	250 E 500 S		
City, state and zip:	Salt Lake City, UT 84111		
Mailing address:	PO Box 144200		
City, state and zip:	Salt Lake City, UT 84114-4200		
Contact persons:			
Name:	Phone:	Email:	
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov	

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

General Information

2. Rule catchline:
R277-487. Public School Data Confidentiality and Disclosure.

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

This rule is authorized pursuant to the Utah Constitution, Article X, Section 3, which vests general control and supervision over public education in the Board.

Subsection 53E-3-401(4) allows the Board to execute rules to carry out its duties and responsibilities under the Utah Constitution and state law.

Subsection 53E-9-302(1) directs that the Board may make rules to establish student data protection standards for public education employees, student aides, and volunteers.

Subsection 53G-11-511(4) directs that the Board may make rules to ensure the privacy and protection of individual evaluation data.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

There were no public comments received.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule is necessary because it provides for appropriate review and disclosure of student performance data on state administered assessments to professional education staff and parents of students, ensuring the privacy of student performance data and personally identifiable student data, and providing for appropriate protection and maintenance of educator licensing data. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	Angie Stallings, Deputy Superintendent of Policy	Date:	05/10/2024
---	--	--------------	------------

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R434-40	Filing ID:	55910
Effective Date:	05/06/2024		

Agency Information

1. Department:	Health and Human Services
Agency:	Clinical Services, Primary Care and Rural Health
Building:	Multi-Agency State Office Building
Street address:	195 N 1950 W

City, state and zip:	Salt Lake City, UT 84119	
Contact persons:		
Name:	Phone:	Email:
Marc Watterson	801-647-1490	marcwatterson@utah.gov
Anna West	801-231-3044	awest@utah.gov
Rachel Devine	801-230-6570	rdevine@utah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule catchline:
R434-40. Utah Health Care Workforce Financial Assistance Program
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Section 26B-4-702 requires the Department of Agriculture and Food (Department) to make rules governing administration of the Health Care Workforce Financial Assistance Program that address application procedures, eligibility criteria, selection criteria, service conditions including service in an underserved area, penalties for failure to comply, criteria for modifying or waiving services conditions or penalties due to extreme hardship or other causes.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
There have been no written comments in support or opposition received since the last five-year review of this rule.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule is necessary because it meets the requirements of its authorizing statute, funding for the program allocated by the Legislature is ongoing, and this rule has facilitated a well-administered program that meets the statutory purposes of Section 26B-4-702, providing professional education scholarships and loan repayment assistance to healthcare professionals who locate or continue to practice in underserved areas. Therefore, this rule should be continued.
There have been no comments in opposition to this rule.

Agency Authorization Information

Agency head or designee and title:	Tracy S. Gruber, Executive Director	Date:	05/06/2024
---	-------------------------------------	--------------	------------

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R436-19	Filing ID:	55915
Effective Date:	05/06/2024		

Agency Information

1. Department:	Health and Human Services	
Agency:	Data, Systems and Evaluation, Vital Records and Statistics	
Room number:	140	
Building:	Cannon Health	
Street address:	288 N 1460 W	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 141012	
City, state and zip:	Salt Lake City, UT 84114-1012	
Contact persons:		
Name:	Phone: Email:	
Linda S. Winger	801-538-6262	lindaw@utah.gov
Mariah Noble	385-214-1150	mariahnoble@utah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule catchline:
R436-19. Abortion Reporting
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Section 76-7-313 requires the Department of Health and Human Services (Department) to collect information from physicians who perform abortions to maintain statistical information and ensure enforcement of the law regarding abortions.
Subsection 76-7-313(1)(b) gives the Department rulemaking authority pertaining to abortion reporting.
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:

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

There have been no comments in support or opposition received since the last five-year review of this rule.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule is necessary as statute remains in effect that requires abortion reporting.

This rule sets both the requirement for physicians to report, as well as a penalty if a report is not filed within 30 days of

when the abortion procedure was performed. Therefore, this rule should be continued.

There have been no comments in opposition to this rule.

Agency Authorization Information

Agency head or designee and title:	Tracy S. Gruber, Executive Director	Date:	05/06/2024
---	---	--------------	------------

End of the Five-Year Notices of Review and Statements of Continuation Section

NOTICES OF FIVE-YEAR EXPIRATIONS

Rulewriting agencies are required by law to review each of their administrative rules within five years of the date of the rule's original enactment or the date of last review (Section 63G-3-305). The Office of Administrative Rules (Office) is required to notify agencies of rules due for review at least 180 days prior to the anniversary date. If the agency finds that it will not meet the deadline for review of the rule (the five-year anniversary date), it may file a **NOTICE OF FIVE-YEAR EXTENSION (EXTENSION)** with the Office. However, if the agency fails to file either the **FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION** or the **EXTENSION** by the date provide by the Office, the rule expires.

Upon expiration of the rule, the Office files a **NOTICE OF FIVE-YEAR EXPIRATION (EXPIRATION)** to document the action. The Office is required to remove the rule from the *Utah Administrative Code*. The agency may no longer enforce the rule and it must follow regular rulemaking procedures to replace the rule if it is still needed.

The Office has filed **EXPIRATIONS** for each of the rules listed below which were not reviewed in accordance with Section 63G-3-305. These rules have expired and have been removed from the *Utah Administrative Code*.

The expiration of administrative rules for failure to comply with the five-year review requirement is governed by Subsection 63G-3-305(8).

NOTICE OF EXPIRED RULE		
Rule Number:	R357-7	Filing ID: 53985
Effective Date:	05/23/2024	

Agency Information

1. Department:	Governor	
Agency:	Economic Opportunity	
Street address:	60 E S Temple St, Suite 300	
City, state, and zip:	Salt Lake City. UT 84111	
Contact person(s):		
Name:	Phone:	Email:
Nancy L. Lancaster	801-957-7102	rulesonline@utah.gov

General Information

2. Title of rule (catchline):
R357-7. Utah Capital Investment Board
3. Summary:
The five-year review and notice of continuation was not filed for this rule by the deadline.
This rule has expired and will be removed from the Utah Administrative Code.

End of the Notices of Notices of Five-Year Expirations Section

NOTICES OF RULE EFFECTIVE DATES

State law provides for agencies to make their administrative rules effective and enforceable after publication in the *Utah State Bulletin*. In the case of **PROPOSED RULES** or **CHANGES IN PROPOSED RULES** with a designated comment period, the law permits an agency to make a rule effective no fewer than seven calendar days after the close of the public comment period, nor more than 120 days after the publication date. In the case of **CHANGES IN PROPOSED RULES** with no designated comment period, the law permits an agency to make a rule effective on any date including or after the thirtieth day after the rule's publication date, but not more than 120 days after the publication date. If an agency fails to file a **NOTICE OF EFFECTIVE DATE** within 120 days from the publication of a **PROPOSED RULE** or a related **CHANGE IN PROPOSED RULE** the rule lapses.

Agencies have notified the Office of Administrative Rules that the rules listed below have been made effective.

NOTICES OF EFFECTIVE DATE are governed by Subsection 63G-3-301(12), Section 63G-3-303, and Sections R15-4-5a and R15-4-5b.

Agriculture and Food

Medical Cannabis and Industrial Hemp

No. 56340 (New Rule) R66-1: Cannabis Cultivation
Published: 04/01/2024
Effective: 05/13/2024

No. 56365 (New Rule) R66-2: Cannabis Processing
Published: 04/01/2024
Effective: 05/13/2024

No. 56367 (New Rule) R66-3: Quality Assurance Testing on Cannabis
Published: 04/15/2024
Effective: 05/28/2024

No. 56342 (New Rule) R66-5: Medical Cannabis Pharmacy
Published: 04/01/2024
Effective: 05/13/2024

No. 56344 (New Rule) R66-6: Home Delivery and Courier
Published: 04/01/2024
Effective: 05/13/2024

No. 56346 (New Rule) R66-7: Educational Event and Educational Material Rules
Published: 04/01/2024
Effective: 05/13/2024

No. 56348 (New Rule) R66-8: Academic Medical Cannabis Research
Published: 04/01/2024
Effective: 05/13/2024

No. 56350 (New Rule) R66-9: Cannabis Licensing Process
Published: 04/01/2024
Effective: 05/13/2024

No. 56352 (New Rule) R66-30: Industrial Hemp Program - Cannabinoid Product Processors
Published: 04/01/2024
Effective: 05/13/2024

No. 56354 (New Rule) R66-31: Industrial Hemp Cannabinoid Product Testing
Published: 04/01/2024
Effective: 05/13/2024

No. 56356 (New Rule) R66-32: Industrial Hemp Testing Laboratory
Published: 04/01/2024
Effective: 05/13/2024

No. 56358 (New Rule) R66-33: Industrial Hemp Producer Registration
Published: 04/01/2024
Effective: 05/13/2024

No. 56360 (New Rule) R66-34: Industrial Hemp Retailer Permit
Published: 04/01/2024
Effective: 05/13/2024

No. 56362 (New Rule) R66-35: Cannabinoid Product Registration and Labeling
Published: 04/01/2024
Effective: 05/13/2024

Plant Industry

No. 56351 (Repeal) R68-25: Industrial Hemp Program - Cannabinoid Product Processors
Published: 04/01/2024
Effective: 05/13/2024

No. 56361 (Repeal) R68-26: Cannabinoid Product Registration and Labeling
Published: 04/01/2024
Effective: 05/13/2024

No. 56339 (Repeal) R68-27: Cannabis Cultivation
 Published: 04/01/2024
 Effective: 05/13/2024

No. 56364 (Repeal) R68-28: Cannabis Processing
 Published: 04/01/2024
 Effective: 05/13/2024

No. 56366 (Repeal) R68-29: Quality Assurance Testing on Cannabis
 Published: 04/15/2024
 Effective: 05/28/2024

No. 56334 (Amendment) R68-30: Independent Cannabis Testing Laboratory
 Published: 03/15/2024
 Effective: 05/06/2024

No. 56359 (Repeal) R68-33: Industrial Hemp Retailer Permit
 Published: 04/01/2024
 Effective: 05/13/2024

No. 56345 (Repeal) R68-34: Educational Event and Educational Material Rules
 Published: 04/01/2024
 Effective: 05/13/2024

No. 56347 (Repeal) R68-35: Academic Medical Cannabis Research
 Published: 04/01/2024
 Effective: 05/13/2024

No. 56368 (Repeal) R68-36: Industrial Hemp Testing Laboratory
 Published: 04/01/2024
 Effective: 05/13/2024

No. 56353 (Repeal) R68-37: Industrial Hemp Cannabinoid Product Testing
 Published: 04/01/2024
 Effective: 05/13/2024

No. 56349 (Repeal) R68-38: Cannabis Licensing Process
 Published: 04/01/2024
 Effective: 05/13/2024

No. 56357 (Repeal) R68-39: Industrial Hemp Producer Registration
 Published: 04/01/2024
 Effective: 05/13/2024

No. 56341 (Repeal) R68-40: Medical Cannabis Pharmacy
 Published: 04/01/2024
 Effective: 05/13/2024

No. 56343 (Repeal) R68-41: Home Delivery and Courier
 Published: 04/01/2024
 Effective: 05/13/2024

Auditor

Administration

No. 56331 (Amendment) R123-6: Allocation of Money in the Property Tax Valuation Agency Fund
 Published: 03/15/2024
 Effective: 05/03/2024

Education

Administration

No. 56385 (Amendment) R277-302: Educator Licensing Renewal
 Published: 04/01/2024
 Effective: 05/08/2024

No. 56386 (Amendment) R277-305: School Leadership License Areas of Concentration and Programs
 Published: 04/01/2024
 Effective: 05/08/2024

No. 56387 (Amendment) R277-310: International Guest Teachers
 Published: 04/01/2024
 Effective: 05/08/2024

No. 56388 (Amendment) R277-472: Charter School Student Enrollment and Transfers and School District Capacity Information
 Published: 04/01/2024
 Effective: 05/08/2024

Health and Human Services

Administration

No. 56036 (Amendment) R380-70: Standards for Electronic Exchange of Clinical Health Information
 Published: 11/15/2023
 Effective: 05/08/2024

No. 56036 (Change in Proposed Rule) R380-70: Standards for Electronic Exchange of Clinical Health Information
 Published: 04/01/2024
 Effective: 05/08/2024

Population Health, Environmental Epidemiology
 No. 56384 (Amendment) R386-702: Communicable Disease Rule
 Published: 04/01/2024
 Effective: 05/29/2024

Population Health, Environmental Health
 No. 56391 (Repeal and Reenact) R392-100: Food Service Sanitation
 Published: 04/01/2024
 Effective: 05/08/2024

Judicial Performance Evaluation Commission

Administration

No. 56378 (New Rule) R597-6: Judicial Performance Evaluations
 Published: 04/01/2024
 Effective: 05/14/2024

NOTICES OF RULE EFFECTIVE DATES

Labor Commission

Boiler, Elevator and Coal Mine Safety
No. 56396 (Amendment) R616-2: Safety Codes and Rules
for Boilers and Pressure Vessels
Published: 04/15/2024
Effective: 05/22/2024

Natural Resources

Water Resources
No. 56338 (New Rule) R653-14: Capital Asset
Management Plans
Published: 04/01/2024
Effective: 05/09/2024

End of the Notices of Rule Effective Dates Section