UTAH STATE BULLETIN

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

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

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

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

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

Office of Administrative Rules, Salt Lake City 84114

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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
2024-3S

Calling a Special Session of the Utah Legislature

WHEREAS, since the adjournment of the 2024 General Session of the Sixty-fifth 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 Legislature into Special Session;

NOW, THEREFORE, I, Spencer J. Cox, governor of the state of Utah, by virtue of the authority vested in me by the Constitution and the laws of the State of Utah, do by this Proclamation call the Sixty-fifth Legislature of the State of Utah into a Third Special Session at the Utah State Capitol, in Salt Lake City, Utah, on the 19th day of June 2024, at 4 p.m., for the following purposes:

1. to consider amendments to Senate Bill 161, Energy Security Amendments, from the 2024 General Session, and amendments related to the Project Entity Oversight Committee;

2. to take action under Senate Bill 57, Utah Constitutional Sovereignty Act, from the 2024 General Session, with respect to the United States Department of Education’s new Title IX regulations slated to take effect on Aug. 1, 2024;

3. to consider amendments to provisions of the Utah Code related to statutory repeal dates, including completing the standardization that the Legislature adopted during the 2024 General Session for Title 63I, Chapter 1, Part 2, Repeal Dates Requiring Committee Review by Title, and Title 63I, Chapter 2, Part 2, Repeal Dates by Title;

4. to consider the following actions related to countering federal overreach on public lands in the State of Utah: reallocating existing appropriations, making statutory amendments, and facilitating public outreach efforts;

5. to consider amendments to provisions of the Utah Code related to participation by exchange students in the statewide online education program;

6. to consider amendments to provisions of the Utah Code related to Senate Bill 221, School District Amendments, from the 2024 General Session; and

7. the Senate consenting to appointments made by the Governor.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done this 14TH day of June 2024.

(State Seal)

Spencer J. Cox
Governor, State of Utah

ATTEST:

Deidre M. Henderson
Lieutenant Governor, State of Utah

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 June 01, 2024, 12:00 a.m., and June 14, 2024, 11:59 p.m. are included in this, the July 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 31, 2024. The agency may accept comment beyond this date and will indicate the last day the agency will accept comment in the **RULE ANALYSIS**. The agency may also hold public hearings. Additionally, citizens or organizations may request the agency hold a hearing on a specific **PROPOSED RULE**. Section 63G-3-302 requires that a hearing request be received by the agency proposing the rule "in writing not more than 15 days after the publication date of the proposed rule."

From the end of the public comment period through October 29, 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 SUBSTANTIVE CHANGE		
TYPE OF FILING: Repeal and Reenact		
Rule or Section Number:	**R25-7**	**Filing ID: 56550**

Agency Information

1. Title catchline:	Government Operations, Finance	
Building:	Taylorsville State Office Building	
Street address:	4315 S 2700 W, FL 3	
City, state:	Taylorsville, UT	
Mailing address:	PO Box 141031	
City, state and zip:	Salt Lake City, UT 84114-1031	
Contact persons:		
Name:	**Phone:**	**Email:**
Ally Branch	801-597-3523	abranch@utah.gov
Van Christensen	801-808-0698	vhchristensen@utah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule or section catchline:

R25-7. Travel-Related Reimbursements for State Travelers

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

The Division of Finance (Division) is changing this rule because ESS will be replaced by a new travel system that will be used for travel reimbursement.

In addition, the Division will now use federal travel reimbursement rates so that travel reimbursement will be more consistent and fair.

4. Summary of the new rule or change:

Sections specific to agencies who use the ESS system for reimbursement and a section about meals for statutory non-salaried state boards were removed.

References to the federal travel reimbursement rates were added.

The rule text was rewritten and reorganized to be more clear and concise.

Style and formatting changes were made to this rule text according to 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:

The fiscal impact of this proposed rule change on the state's budget is indeterminable since the amount of expected travel is unknown. However, there will be some increase in travel costs and reimbursements since the federal travel reimbursement rates for meals and lodging are higher than the rates previously used.

There also will be some decrease in the amounts for mileage reimbursements for those agencies that previously reimbursed travelers at 62 cents since the calculated rate will be 27% lower.

B) Local governments:

The fiscal impact of this proposed rule change on local governments is indeterminable since the amount of expected travel is unknown.

Also, local governments are allowed to prescribe rates that are more stringent than those established in this rule.

Additionally, they may reimburse mileage at the federal reimbursement rates rather than the proposed calculated rate that state agencies will use. It is impossible to know what the local governments will adopt for travel.

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

This proposed rule change is expected to have a minimal fiscal benefit for small businesses.

The only effect it may have on a small business is if a state agency or political subdivision were to reimburse a small business for state business travel. Under this circumstance, the small business would be reimbursed more than they would have under the previous rule because they would get per diem rates based on the travel location.

The previous standard rate was not based on a specific location of travel. The Division is unable to estimate the fiscal impact of this change because there is no way to determine the number or frequency of trips that small businesses may take or where they may travel for a state or political subdivision.

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

This proposed rule change is expected to have a minimal fiscal benefit for non-small businesses. The only effect it may have on a non-small business is if a state agency or political subdivision were to reimburse a non-small business for state business travel.

Under this circumstance, the non-small business would be reimbursed more than they would have been under the previous rule because they would get per diem rates based on the travel location.

The previous standard rate was not based on a specific location of travel. The Division is unable to estimate the fiscal impact of this change because there is no way to determine the number or frequency of trips that non-small businesses may take or where they may travel for a state or political subdivision.

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

This proposed rule change is expected to have a possible fiscal impact on other persons.

Board members' travel reimbursements may increase with the higher federal reimbursement rates for food and lodging; however, their amounts reimbursed for mileage will decrease by 27%. The Division is unable to estimate the fiscal impact of this change because there is no way to determine the number or frequency of trips that other persons may take or where they may travel.

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

Any state agency using ESS or FINET for travel reimbursement will start using Concur for travel reimbursement. With this move, travelers will now receive the federal travel reimbursement M&IE rate which may have a fiscal impact on the identified state agencies.

A compliance cost for any specific state agency cannot be estimated because there is no way to determine how many people from an agency may travel, where they may travel, or any other possible reimbursements. There are no anticipated compliance costs for political subdivisions, small businesses, non-small businesses, 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	**FY2025**	**FY2026**	**FY2027**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0

Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits	**FY2025**	**FY2026**	**FY2027**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
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:		
Section 63A-3-107		

Incorporations by Reference Information

7. Incorporations by Reference:	
A) This rule adds or updates the following title of materials incorporated by references:	
Official Title of Materials Incorporated (from title page)	41 CFR 301-11.6
Publisher	Office of the Federal Register
Issue Date	July 1, 2004

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:	07/31/2024

9. This rule change MAY become effective on:	09/03/2024
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:	Ally Branch, Assistant Director	**Date:**	06/05/2024

R25. Government Operations, Finance.
R25-7. Travel-Related Reimbursements for State Travelers.
[~~R25-7-1. Purpose.~~
~~The purpose of this rule is to establish procedures to pay travel-related Reimbursements to Travelers of an Agency or a Political Subdivision that is subject to this rule.~~

~~R25-7-2. Authority and Exemptions.~~
~~This rule is established pursuant to:~~
~~(1) Section 63A-3-107, which authorizes the Division of Finance to make rules governing in-state and out-of-state travel expenses; and~~
~~(2) Section 63A-3-106, which authorizes the Division of Finance to make rules governing meeting per diem and travel expenses for board members attending official meetings.~~
~~(3) ESS to Concur system migration:~~

(a) Sections R25-7-4 through R25-7-11 of this rule govern Agencies that are still using the ESS system to process travel reimbursements and have not yet fully transitioned to using the Concur system.

(b) Sections R25-7-11 through R25-7-18 of this rule govern Agencies that are using only the Concur system to process travel reimbursements.

R25-7-3. Definitions.

(1) "Agency" means any department, division, board, bureau, office, or other administrative subunit of state government. This definition includes the executive, legislative, and judicial branches.

(2) "Board" means a board, commission, council, committee, task force, or similar body established to perform a governmental function.

(3) "Department" means all executive departments of state government.

(4) "Executive Director" means a department executive director, department commissioner, chief of staff, or equivalent of a chief executive officer for political subdivision.

(5) "Federal Travel Reimbursement Rates" means the reimbursement rates established for travel by the following agencies:

(a) Rates for the contiguous United States are established by the U.S. General Services Administration as set forth in 41 C.F.R. 301-11.6, which is incorporated herein by reference.

(b) Rates for Alaska, Hawaii, U.S. Territories, and Possessions are established by the Department of Defense as set forth in 41 C.F.R. 301-11.6, which is incorporated herein by reference.

(c) Rates for foreign travel are established by the Department of State as set forth in 41 C.F.R. 301-11.6, which is incorporated herein by reference.

(6) "Fleet Vehicle" means a vehicle owned or leased by an agency or political subdivision. This also includes vehicles rented for use as motor pool vehicles by an agency or political subdivision.

(7) "Home Base" means the location from which the traveler leaves to begin travel and the location to which the traveler returns to end travel. In determining the home base of a traveler, an agency should consider at least the following non-exclusive factors:

(a) If the traveler is leaving on travel directly from home, or if there a valid business reason for the traveler to go to a designated work location before leaving for the travel destination, the home base should be the last location the traveler was in, home or designated work location, before leaving on travel.

(b) If the traveler is going directly home after the trip, or if there a valid business reason for them to first go to a designated work location before the traveler returns home, the ending home base for travel is the first location the employee goes to when returning from travel.

(8) "Hotel" means an establishment that provides lodging for travelers.

(9) "Per Diem" means an allowance paid daily.

(10) "Political Subdivision" means a county, city, town, school district, local district, special service district, or any entity, other than an agency, subject to this rule by statute.

(11) "Rate" means an amount of money.

(12) "Reimbursement" means money paid to compensate a travel for money spent.

(13) "Sufficient Documentation" means the documents required to identify the payee, the amount paid, proof of payment, the date incurred, and a description of the item purchased, or service received that shows the amount was for a business purpose. Sufficient documentation includes the following official evidence of transaction:

(a) Itemized receipts

(b) Invoices

(c) Canceled checks or other documents reflecting proof of payment/electronic funds transferred

(d) Cash register tape receipts

(e) Account statements

(f) Credit card receipts and statements

A combination of supporting documents may be needed to substantiate all elements of the expense.

(14) "Traveler" means any person who is traveling on business for an agency or political subdivision. This definition includes employees, board members, elected officials, vendors, volunteers, and grant recipients or award beneficiaries.

R25-7-4. Eligible Expenses.

(1) Reimbursements are intended to cover any travel-related normal areas of expenses that are ordinary and reasonable under the circumstances.

(2) Requests for reimbursement must be accompanied by original itemized receipts for any expenses except those for which flat allowance amounts are established.

(3) When an original itemized receipt is not available, agency or political subdivision management may use discretion in determining the appropriate amount of alternative documentation before reimbursement of expenses.

(4) Alcoholic Beverages are not reimbursable.

R25-7-5. Approvals.

(1) For insurance purposes, state business travel, whether reimbursed or not, must have prior approval by an appropriate authority. This also includes non-state employees where the agency or political subdivision is paying for the travel expenses.

(2) Out-of-state travel must be approved by the Executive Director or designee. The approval of in-state travel reimbursement forms may be considered as documentation of prior approval for in-state travel. Prior approval for out-of-state travel should be documented on form

~~FI5 - "Request for Out-of-State Travel Authorization", in the state's ESS travel system, or in another system with equivalent controls and calculations.~~

~~(3) Exceptions to the prior approval for out-of-state travel must be justified in the comments section of form FI5 "Request for Out-of-State Travel Authorization", in the state's ESS travel system or in another system with equivalent controls and calculations and must be approved by the Executive Director or the designee.~~

~~(4) The Executive Director or designee must approve any travel to out-of-state functions where more than two travelers from the same department are attending the same function at the same time.~~

~~R25-7-6. Reimbursement for Meals.~~

~~(1) Travelers who travel on business may be eligible for a meal reimbursement.~~

~~(2) The reimbursement will include tax, tips, and other expenses associated with the meal.~~

~~(a) The daily travel meal allowance for in-state travel is $54 and is computed according to the rates listed in Table 1.~~

~~TABLE 1 In-State Travel Meal Allowances~~	
~~Meals~~	~~Rate~~
~~Breakfast~~	~~$13.00~~
~~Lunch~~	~~$15.00~~
~~Dinner~~	~~$26.00~~
~~Total~~	~~$54.00~~

~~(b) The daily travel meal allowance for out-of-state travel is $54 and is computed according to the rates listed in the following table.~~

~~TABLE 2 Out-of-State Travel Meal Allowances~~	
~~Meals~~	~~Rates~~
~~Breakfast~~	~~$13.00~~
~~Lunch~~	~~$15.00~~
~~Dinner~~	~~$26.00~~
~~Total~~	~~$54.00~~

~~(3) Tier I premium locations in this subsection are Anchorage, Alaska; Chicago, Illinois; each location in Hawaii; New York City, New York; San Francisco, California; and Seattle, Washington. Tier II premium locations in this subsection are Atlanta, Georgia; Baltimore, Maryland; Boston, Massachusetts; Dallas, Texas; Los Angeles, California; San Diego, California; and Washington, DC.~~

~~(a) When traveling to a Tier I premium location, the traveler may choose to accept the per diem rate for out-of-state travel, as shown in Table 2, or to be reimbursed at the actual meal cost, with original receipts, up to $71 a day.~~

~~(b) When traveling to a Tier II premium location, the traveler may choose to accept the per diem rate for out-of-state travel, as shown in Table 2, or to be reimbursed at the actual meal cost, with original receipts, up to $61 per day.~~

~~(c) Subject to Subsections R25-7-6(3)(a) and 6(b), the traveler will qualify for premium rates on the day the travel begins and the day the travel ends only if the trip is of sufficient duration to qualify for meals on that day.~~

~~(d) Complimentary meals with lodging accommodations and meals included in event registration costs are deducted from the premium location allowance as follows:~~

~~(i) Tier I Location~~

~~(a) If breakfast is provided deduct $18, leaving a premium allowance for lunch and dinner of actual up to $53.~~

~~(b) If lunch is provided deduct $19, leaving a premium allowance for breakfast and dinner of actual up to $52.~~

~~(c) If dinner is provided deduct $34, leaving a premium allowance for breakfast and lunch of actual up to $37.~~

~~(ii) Tier II Location~~

~~(a) If breakfast is provided deduct $16, leaving a premium allowance for lunch and dinner of actual up to $45.~~

~~(b) If lunch is provided deduct $17, leaving a premium allowance for breakfast and dinner of actual up to $44.~~

~~(c) If dinner is provided deduct $28, leaving a premium allowance for breakfast and lunch of actual up to $33.~~

~~(d) The traveler must use the same method of reimbursement for an entire day.~~

~~(e) Actual meal cost includes tips.~~

~~(4) When traveling in foreign countries, the traveler may choose to accept the per diem rate for out-of-state travel, as shown in Table 2, or to be reimbursed the actual meal cost, with original receipts, not to exceed the federal reimbursement rate for the location as of the date of travel.~~

~~(a) The traveler may use both reimbursement methods during a trip; however, they must use the same method of reimbursement for an entire day.~~

~~(b) Actual meal cost includes tips.~~

~~(5) The meal reimbursement calculation consists of three parts:~~

~~(a) The day the travel begins. The traveler's entitlement is determined by the time of day the traveler leaves their home base, as illustrated in Table 3.~~

TABLE 3 The Day Travel Begins			
1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
12:01 AM -	6:01 AM -	12:01 PM -	6:01 PM -
6:00 AM	12:00 PM	6:00 PM	12:00 AM
*B,L,D	*L,D	*D	*no meals
In-State			
$54.00	$41.00	$26.00	$0
Out-of-State			
$54.00	$41.00	$26.00	$0
*B = Breakfast, L = Lunch, D = Dinner			

(b) The days at the location.

(i) Complimentary meals and meals included in a registration cost are deducted from the total daily meal allowance. However, a continental breakfast will not reduce the meal allowance. Please Note: For breakfast, if a hot food item is offered, it is considered a complimentary meal, no matter how it is categorized by the facility. The meal is considered a "continental breakfast" if no hot food items are offered.

(ii) Meals provided on airlines will not reduce the meal allowance.

(c) The day the travel ends. The meal reimbursement the traveler is entitled to is determined by the time of day the traveler returns to their home base, as illustrated in Table 4.

TABLE 4 The Day Travel Ends			
1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
12:01 AM -	6:01 AM -	12:01 PM -	6:01 PM -
6:00 AM	12:00 PM	6:00 PM	12:00 PM
*no meals	*B	*B, L	*B, L, D
In-State			
$0	$13.00	$28.00	$54.00
Out-of-State			
$0	$13.00	$28.00	$54.00
*B = Breakfast	L = Lunch	D = Dinner	

(6) A traveler may be authorized by the Executive Director or designee to receive a taxable meal allowance on an officially approved trip when the traveler's farthest destination is at least 100 miles one-way from their home base and the traveler does not stay overnight.

(a) Breakfast is paid when the traveler leaves their home base before 6 a.m.

(b) Lunch is paid when the traveler leaves their home base before 10 a.m. and returns after 2 p.m.

(c) Dinner is paid when the traveler leaves their home base and returns at or after 6 p.m.

(d) The allowance is not considered an absolute right of the traveler and is authorized at the discretion of the Executive Director or designee.

R25-7-7. Meals for Statutory Non-Salaried State Boards.

(1) When a board meets and conducts business activities during mealtime, the cost of meals may be charged as public expense.

(2) Where employees or other advisors or consultants must, of necessity, attend such a meeting to permit the board to carry on its business, the meals of such employees, advisors, or consultants may also be paid. In determining whether the presence of such employees, advisors, or consultants is necessary, the board is requested to restrict the attendance of such employees, advisors, or consultants to those absolutely necessary at such mealtime meetings.

R25-7-8. Reimbursement for Lodging.

A traveler who travels on business may be eligible for a lodging reimbursement.

(1) For stays at a conference hotel, the traveler will be reimbursed the actual cost plus tax and any mandatory fees charged by the hotel for both in-state and out-of-state travel. The traveler must include the conference registration brochure with the travel reimbursement request, form FI-51A, FI-51B, on ESS travel, or equivalent form or system.

(2) For in-state lodging at a non-conference hotel, they will be reimbursed the actual cost up to $75 per night for single occupancy plus tax and any mandatory fees charged by the hotel except as noted in Table 5.

TABLE 5 Cities with Differing Rates	
Note: The rates described below indicate the nightly single occupancy room rates. Any applicable taxes and mandatory fees are in addition to the rates below.	
City	Rate
Ballard	$100.00
Beaver	$95.00
Blanding	$90.00
Bluff	$100
Brigham City	$90.00
Bryce Canyon City	$90.00
Cedar City	$80.00
Duchesne	$100.00
Ephraim	$80.00
Escalante	$85.00
Fillmore	$85.00
Green River	$110.00
Heber	$85.00
Kanab	$95.00
Layton	$90.00
La Verkin	$85.00
Logan	$95.00
Mexican Hat	$90.00
Moab	$150.00
Monticello	$100.00
Nephi	$95.00
Ogden	$95.00
Park City/Midway	$110.00
Payson	$85.00
Price	$95.00
Provo/Orem/Lehi/American Fork/Springville	$85.00
Roosevelt	$90.00
Salt Lake City Metropolitan Area (Draper to Farmington), Tooele	$100.00
Springdale	$85.00
St. George	$90.00
Torrey	$95.00
Tremonton	$90.00
Vernal	$95.00
Washington/Hurricane	$95.00
Other Utah Cities	$75.00

(3) Travelers traveling less than 50 miles from their home base are not entitled to lodging reimbursement. Miles are calculated from the traveler's home base. An Executive Director may use discretion to authorize reimbursement for lodging if the agency or political subdivision determines lodging is reasonable and in the best interest of the state. For example, if the traveler is required to work at the travel destination after normal working hours or early the next day, or when weather or other safety issues exist, lodging may be appropriate.

(4) When an agency or political subdivision pays for a person from out-of-state to travel to Utah, the in-state lodging per diem rates will apply.

(5) For out-of-state travel stays at a non-conference hotel, the traveler will be reimbursed the actual cost per night plus tax and any mandatory fees charged by the hotel, not to exceed the federal lodging rate for the location. For agency travelers, these reservations must be made through the State Travel Office.

(6) For agency travelers, the state will reimburse the actual cost per night plus tax and any mandatory fees charged by the hotel for in-state or out-of-state travel stays when reservations are made through the State Travel Office.

(a) If lodging is not available at the allowable per diem rate in the area the traveler needs to stay, the State Travel Office will book a hotel with the best available rate. In this circumstance, the traveler will be reimbursed at the actual rate booked.

(b) If a traveler chooses to stay at a hotel that costs more than the allowable per diem rate, the traveler will only be reimbursed for the allowable per diem rate plus tax and any mandatory fees charged by the hotel.

(7) Lodging is reimbursed at the rates listed in Table 5 for single occupancy only. For double traveler occupancy, add $20, for triple traveler occupancy, add $40, for quadruple occupancy, add $60.

(8) Exceptions will be allowed for unusual circumstances when approved in writing by the travelers Executive Director or designee before to the trip.

(a) For out-of-state travel, the approval may be on the form FI 5, in the state's ESS travel system, or in another system with equivalent controls and calculations.

(b) Attach the written approval to the travel reimbursement request, form FI 51B, FI 51D, in ESS travel, or in another equivalent form or system.

(9) A proper receipt for lodging accommodations must accompany each request for reimbursement.

(a) A proper receipt is a copy of the registration form generally used by a motel or hotel which includes the following information: name of motel or hotel, street address, town and state, telephone number, receipt date, names of occupants, dates of occupancy, amount and date paid, number in the party, and single, double, triple, or quadruple occupancy.

(10) When lodging is required, a traveler should stay at the lodging facility nearest to the ultimate destination point of travel where state lodging per diem rates are accepted to minimize transportation costs.

(11) A traveler may also elect to stay with friends or relatives or use their personal campers or trailer homes instead of staying in a hotel. With proof of staying overnight away from home on approved business, they will be reimbursed the following:

(a) $25 per night with no receipts required; or

(b) Actual cost up to $40 per night with a signed receipt from a facility such as a campground or trailer park, not from a private residence.

(12) A traveler on assignment away from the home base for longer than 90 days will be reimbursed as follows:

(a) First 30 days - follow regular rules for lodging and meals. Lodging receipt is required.

(b) After 30 days - $46 a day for lodging and meals. No receipt is required.

R25-7-9. Reimbursement for Incidentals.

Travelers who travel on business may be eligible for a reimbursement for incidental expenses.

(1) A traveler will be reimbursed for actual out-of-pocket costs for incidental items such as baggage tips, maid service, and bellman. Gratuities or tips for various services such as assistance with baggage, maid service, and bellman, may be reimbursed up to a combined maximum of $5 a day. Include an original receipt for each individual incidental item above $19.99.

(2) A traveler will be reimbursed for incidental ground transportation and parking expenses.

(a) A traveler shall document all official business use of taxi, bus, parking, and other ground transportation including dates, destinations, parking locations, receipts, and amounts.

(b) Personal use of such transportation to a restaurant is not reimbursable.

(c) The maximum that airport parking will be reimbursed is the economy lot parking rate at the airport the traveler is flying out of. A receipt is required for amounts of $20 or more.

(d) Gratuities and tips for ground transportation will be reimbursed up to the greater of $5 or 18% for each ride. Gratuities and tips must be shown on an original receipt.

(3) For an agency, a conference registration should be paid in advance by check or with a purchasing card.

(a) A copy of the approved FI 5 form must be included with the payment voucher or purchase card log for out-of-state registrations.

(b) For an agency, if a traveler must pay the registration upon arrival, and does not have a purchase card or personal credit card, the agency is expected to process a payment document and have the traveler take the state warrant to the event.

(4) A demonstrable expense for a business call will be reimbursed at the actual cost.

(a) The traveler shall list the amount of these calls separately on the travel reimbursement request, form FI 51A, FI 51B, or in ESS travel or equivalent form or system.

(b) The traveler must provide an original lodging receipt or original personal phone bill showing the phone number called and the dollar amount for business telephone calls and personal telephone calls.

(5) An allowance for personal telephone calls made while out of town on business overnight may be based on the number of nights away from home. The traveler must provide an original lodging receipt or original personal phone bill showing the phone number called and the dollar amount for personal telephone calls. Reimbursement must be calculated as follows:

(a) four nights or less, actual amount up to $2.50 per night;

(b) five to eleven nights, actual amount up to $20;

(c) twelve nights to 30 nights, actual amount up to $30; and

(d) more than 30 days, start over.

(6) Laundry expenses up to $18 per week will be allowed for trips longer than six consecutive nights, beginning after the sixth night. For use of coin-operated laundry facilities, the traveler must provide a list of dates, locations, and amounts.

(7) An amount of $5 a day will be allowed for travelers away more than six consecutive nights beginning after the sixth night.

(a) This amount covers miscellaneous incidentals not covered in this rule.

(b) This allowance is not available for travelers going to conferences.

(8) An agency or political subdivision may provide for a traveler to return home over a weekend when the business portion of a trip extends longer than ten nights. Reimbursements may be given for costs allowed by these policies.

R25-7-10. Reimbursement for Transportation.

A traveler who travels on business may be eligible for a transportation reimbursement.

~~(1) Air transportation is limited to Air Coach or Excursion class. Priority seating charges will not be reimbursed unless preapproved by the Executive Director or designee.~~

~~(a) For agency travelers, all reservations should be made through the State Travel Office for the least expensive air fare available when the reservations are made.~~

~~(b) Only one change fee per trip will be reimbursed.~~

~~(c) The explanation for the change and any other exception to this rule must be given and approved by the Executive Director or designee.~~

~~(2) A traveler may be reimbursed for mileage to and from the airport and long-term parking or airport parking.~~

~~(a) The maximum reimbursement for parking, whether a traveler parks at the airport or away from the airport, is the long-term parking rate at the airport they are flying out of.~~

~~(b) The parking receipt must be included with the Travel Reimbursement Request, form FI 51A, FI 51B, in ESS Travel or equivalent form or system for amounts of $20 or more.~~

~~(c) A traveler may be reimbursed, up to the maximum reimbursement rate, for mileage to and from the airport to allow someone to drop them off and to pick them up.~~

~~(3) A traveler may use a private vehicle with approval from the Executive Director or designee.~~

~~(a) Only one person in a vehicle may receive the reimbursement, regardless of the number of people in the vehicle.~~

~~(b) Reimbursement for a private vehicle will be at the rate of 44 cents per mile or 62 cents per mile if a fleet vehicle is not available to the traveler.~~

~~(i) To determine which rate to use, the traveler must first determine if a fleet vehicle is available that meets the traveler's needs. This does not apply to special purpose vehicles. If reasonably available, the traveler should use a fleet vehicle. If a fleet vehicle is not reasonably available, the agency or political subdivision may approve the traveler to use a private vehicle. If a fleet vehicle is not reasonably available, the traveler may be reimbursed at 62 cents per mile.~~

~~(ii) If a trip is estimated to average 100 miles or more a day, the agency or political subdivision should approve the traveler to reserve a fleet vehicle if one is reasonably available. Doing so will cost less than if the traveler takes a private vehicle. If the agency or political subdivision approves the traveler to take a private vehicle, the traveler will be reimbursed at the lower rate of 44 cents per mile not to exceed the expense calculated in the link located in Subsection (e).~~

~~(c) A reimbursement rate that is more restrictive than the rate established in this section may be established by the agency or political subdivision.~~

~~(d) Any exceptions to this mileage rate guidance must be approved in writing by the traveler's Executive Director or designee.~~

~~(e) A cost comparison worksheet is available at: http://fleet.utah.gov/motor-pool-a/demand-motor-pool/personal-vehicle-vs-rental-vehicle/~~

~~(f) Mileage will be computed using Mapquest, GoogleMaps or other generally accepted route planning website, or from the latest official state road map and will be limited to the most economical, usually traveled routes.~~

~~(g) If the traveler uses a private vehicle on official business and is reimbursed for mileage, parking charges may be reimbursed as an incidental expense.~~

~~(h) For an agency traveler, an approved "Private Vehicle Usage Report", form FI 40, should be included with the documentation reporting miles driven on business during the payroll period.~~

~~(i) Mileage reimbursement may be allowed on an approved "Travel Reimbursement Request", form FI 51A, FI 51B, or in ESS Travel, or equivalent form or system, if other costs associated with the trip are to be reimbursed at the same time.~~

~~(4) A traveler may choose to drive instead of flying if preapproved by the executive or designee.~~

~~(a) If the traveler drives a fleet vehicle, the traveler may be reimbursed for meals and lodging for a reasonable amount of travel time; however, the total cost of the trip must not exceed the equivalent cost of the airline trip. The traveler may also be reimbursed for incidental expenses such as toll fees and parking fees.~~

~~(b) If the traveler drives a privately owned vehicle, reimbursement will be at the rate of 44 cents per mile or the airplane fare, whichever is less, unless otherwise approved by the Executive Director or designee.~~

~~(i) The lowest fare available within 30 days before the departure date will be used when calculating the cost of travel for comparison to private vehicle cost.~~

~~(ii) A comparison printout which is available through the State Travel Office is required when the traveler is taking a private vehicle.~~

~~(iii) The traveler may be reimbursed for meals and lodging for a reasonable amount of travel time; however, the total cost of the trip must not exceed the equivalent cost of an airline trip.~~

~~(iv) If the traveler uses a private vehicle on official business and is reimbursed for mileage, parking charges may be reimbursed as an incidental expense.~~

~~(c) When submitting the reimbursement form, attach a schedule comparing the cost of driving with the cost of flying. The schedule should show that the total cost of driving was less than or equal to the total cost of flying for the trip.~~

~~(5) Use of non-fleet rental vehicles must be approved in writing in advance by the Executive Director or designee.~~

~~(a) An exception to advance approval of the use of rental vehicles must be fully explained in writing with the request for reimbursement and approved by the Executive Director or designee.~~

~~(b) Detailed explanation is required if a rental vehicle is requested for a traveler staying at a conference hotel.~~

~~(c) When making rental car arrangements through the State Travel Office, the traveler should reserve the vehicle needed. Upgrades in size or model made when picking up the rental vehicle will not be reimbursed.~~

~~(i) A traveler should rent vehicles to be used for business in their own names, using a contract available to the traveler's agency or political subdivision to ensure the agency's or political subdivision's insurance coverage is extended in the rental.~~

(ii) For agency travelers, a rental vehicle reservation not made through the State Travel Office must be approved in advance by the Executive Director or designee.

(iii) The traveler will be reimbursed the actual rate charged by the rental agency.

(iv) The traveler must have approval for a rental car to be reimbursed for rental car parking.

(6) Travel by private airplane for official business must be approved in advance by the Executive Director or designee.

(a) The pilot must certify to the Executive Director or designee that the pilot is certified to fly the plane being used for business.

(b) If the plane is owned by the pilot, the pilot must certify the existence of at least $500,000 of liability insurance coverage.

(c) If the plane is a rental, the pilot must provide written certification from the rental agency that the insurance covers the traveler and the agency or political subdivision as insured. The insurance must be adequate to cover any physical damage to the plane and at least $500,000 for liability coverage.

(d) Reimbursement will be made at 62 cents per mile.

(e) Mileage calculation is based on air mileage and is limited to the most economical, usually traveled route.

(7) For agency travelers, a car allowance may be allowed in lieu of mileage reimbursement in certain cases. Prior written approval from the Executive Director, the Executive Director of the Department of Government Operations, and the Governor is required.

R25-7-11. Limitation on Travel-Related Reimbursements.

Nothing in this rule may be construed to apply to a person's relocation expenses. Reimbursement for relocation expenses may be covered by policy.

R25-7-12. Eligible Expenses.

(1) Reimbursements are intended to cover any travel-related normal areas of expenses that are ordinary and reasonable under the circumstances.

(2) Requests for reimbursement must be accompanied by sufficient documentation for any expenses except those for which flat allowance amounts are established.

(3) Alcoholic Beverages are not reimbursable.

R25-7-13. Approvals.

(1) State business travel, whether reimbursed or not, must have prior approval by the appropriate authority. This also includes non-employees where the agency or political subdivision is paying for the travel expenses.

(2) The approval of in-state travel reimbursements in the State's Concur travel system may be considered evidence of prior approval for in-state travel. If an agency cannot use the State's Concur travel system, the agency may use the applicable FI 5 or FI 51 series form. Political subdivisions may use another system or form with equivalent controls and calculations.

(3) Out-of-state travel requests must be preapproved within the State's Concur travel system by the applicable Executive Director or designee. If an agency cannot use the State's Concur travel system, the agency may use the applicable FI 5 series form. Political subdivisions may use another system or form with equivalent controls and calculations.

(4) Exceptions to the prior approval for out-of-state travel must be approved by the applicable Executive Director or designee and must be justified in the State's Concur travel system. If an agency cannot use the State's Concur travel system, the agency must justify exceptions in the comments section of form FI 5 "Request for Out-of-State Travel Authorization." Political subdivisions may use another system with equivalent controls and calculations.

R25-7-14. Reimbursement for Meals.

(1) Travelers who travel on business may be eligible for a meal reimbursement according to the Federal Travel Reimbursement Rates.

(2) Federal Travel Reimbursement Rates include tax, gratuity, and other expenses associated with the meal.

(3) Meal reimbursement calculations will be completed according to the Federal Travel Reimbursement Rates.

(a) The amount received on the first and last day of travel equals 75% of the Federal Travel Reimbursement Rate.

(b) Complimentary meals and meals included in a registration cost are deducted from the total daily meal allowance.

(i) A continental breakfast will not reduce the meal allowance. A meal is considered a "continental breakfast" if no hot food items are offered, no matter how it is categorized by the facility.

(c) Meals provided on airlines will not reduce the meal allowance.

(4) A traveler is eligible for a taxable meal allowance of 75% of the Federal Travel Reimbursement Rate when travel is longer than 12 hours on a non-overnight trip.

R25-7-15. Meals for Statutory Non-Salaried State Boards.

(1) When a board meets and conducts business activities during mealtime, the cost of meals may be charged as public expense.

(2) Where employees or other advisors or consultants must attend such a meeting to permit the board to carry on its business, the meals of such employees, advisors, or consultants may also be paid. The board shall restrict the attendance of such employees, advisors, or consultants to only those necessary at such mealtime meetings.

R25-7-16. Booking and Reimbursement of Lodging.

(1) A traveler who travels on business may be eligible for lodging reimbursement.

(2) Travelers traveling less than 75 miles from their home base are not entitled to a lodging reimbursement. Exceptions may be allowed for unusual circumstances when approved in writing by the traveler's Executive Director or designee before the trip. Unusual

circumstances may include instances where the traveler is required to work at the travel destination after normal working hours or early the next day, or when weather or other safety issues exist. Miles are calculated from the traveler's home base.

(3) Booking of Lodging.

(a) For stays at a conference hotel, the traveler shall book a room at the Federal Travel Reimbursement Rates. If the traveler cannot find a room within the Federal Travel Reimbursement Rates, but there is a negotiated conference rate, the traveler shall book directly with the hotel or conference link. Otherwise, the traveler may book the conference hotel up to 300% of the Federal Travel Reimbursement Rates using the State's Concur travel system or through the State Travel Office. If the conference hotel rate exceeds 300% of the Federal Travel Reimbursement Rates, the traveler shall select a non-conference hotel.

(b) For stays at a non-conference hotel, a traveler shall book lodging up to the Federal Travel Reimbursement Rates through the State's Concur travel system or through the State Travel Office. If the Federal Travel Reimbursement Rates cannot be obtained, the traveler shall book lodging at the best available rate up to 300% of the Federal Travel Reimbursement Rates through the State's Concur travel system or through the State Travel Office. If the available non-conference hotel rates exceed 300% of the Federal Travel Reimbursement Rate, lodging must be reserved through the State Travel Office.

(4) Reimbursement of Lodging.

(a) Reimbursement for conference hotels:

(i) Reimbursement for conference hotels must be processed through the State's Concur travel system. If an agency cannot use the State's Concur travel system, the agency may use the applicable FI-51 series form.

Political subdivisions may use another system or form with equivalent controls and calculations.

(ii) When a traveler booked a conference hotel through the State's Concur system or obtained the negotiated conference rate, the reimbursement will be the actual hotel rate up to 300% of the Federal Travel Reimbursement Rates plus sales tax and any mandatory fees.

(iii) The traveler shall include the conference registration materials as an attachment when submitting a request for reimbursement.

(b) Reimbursement for non-conference hotels

(i) Reimbursement for non-conference hotels must be processed through the State's Concur travel system. If an agency cannot use the State's Concur travel system, the agency may use the applicable FI-51 series form. Political subdivisions may use another system or form with equivalent controls and calculations.

(ii) When a traveler booked lodging at a rate up to the Federal Travel Reimbursement Rate, the reimbursement will be the actual hotel rate up to the Federal Travel Reimbursement Rate plus sales tax and any mandatory fees.

(iii) If a traveler was not able to obtain the Federal Travel Reimbursement Rate, the reimbursement will be the actual hotel rate up to 300% of the Federal Travel Reimbursement Rates plus sales tax and any mandatory fees.

(iv) When a hotel was available at the Federal Travel Reimbursement Rate, but the traveler booked a hotel with a higher rate, the reimbursement will be limited to the Federal Travel Reimbursement Rate.

(v) If a traveler booked a hotel at rate over 300% of the Federal Travel Reimbursement Rates with the State Travel Office, the reimbursement will be the actual hotel rate plus sales tax and any mandatory fees.

(c) Lodging Receipts. A proper receipt for lodging accommodations must accompany each request for reimbursement. A proper receipt is a copy of the registration form generally used by the motel or hotel which includes the following information: name of motel or hotel, street address, city and state, telephone number, receipt date, names of occupants, dates of occupancy, amount and date paid, and number in the party.

(5) Exceptions will be allowed for unusual circumstances when preapproved in writing by the traveler's Executive Director or designee.

(a) The written pre-approval must be attached to the reimbursement in the State's Concur travel system. If an agency cannot use the State's Concur travel system, the agency may use the applicable FI-5 or FI-51 series form. Political subdivisions may use another system or form with equivalent controls and calculations.

(6) Other Lodging.

(a) A traveler may elect to stay with friends or relatives. A traveler who stays with friends or relatives will be reimbursed $25 per night.

(b) A traveler may use their personal campers or trailer homes instead of staying in a hotel. The traveler will be reimbursed the actual cost up to the Federal Travel Reimbursement Rates per night if:

(i) The traveler submits proof of staying overnight away from home on approved business; and

(ii) Sufficient Documentation from a facility such as a campground or trailer park, not from a private residence.

R25-7-17. Reimbursement for Other Travel-Related Expenses.

Travelers who travel on business may be eligible for a reimbursement for other travel-related expenses.

(1) Fees and gratuities given to porters, baggage carriers, and hotel staff are considered an incidental expense and included as part of the Federal Travel Reimbursement Rate. These will not be reimbursed separately.

(2) An expense for a verifiable business call will be reimbursed at the actual cost.

(a) The traveler shall list the amount of these calls separately in the State's Concur travel system. If an agency cannot use the State's Concur travel system, the agency may use the applicable FI-51 series form. Political subdivisions may use another system or form with equivalent controls and calculations.

(b) The traveler shall provide a lodging receipt or non-business phone bill showing the phone number called and the dollar amount for business telephone calls and non-business telephone calls.

(3) Laundry expenses will be covered as an incidental expense and not separately reimbursed.

(4) An agency or political subdivision may provide for a traveler to return home over a weekend when the business portion of a trip extends longer than ten nights. Reimbursements may be given for costs allowed by these policies.

R25-7-18. Reimbursement for Transportation.

A traveler who travels on business may be eligible for a transportation reimbursement.

(1) A traveler will be reimbursed for ground transportation.

(a) A traveler shall document all official business use of taxi, ride sharing, bus, and other ground transportation, as well as dates, destinations, receipts, and amounts.

(i) Sufficient Documentation must be included with the travel reimbursement in the State's Concur travel system. If an agency cannot use the State's Concur travel system, the agency may use the applicable FI-51 series form. Political subdivisions may use another system or form with equivalent controls and calculations.

(b) Non-business use of ground transportation is not reimbursable, such as transportation to a restaurant.

(c) Gratuities for ground transportation that are paid in cash will be considered an incidental expense and not separately reimbursed.

(d) Gratuities for ground transportation will be reimbursed up to the greater of $5 or 20% for each ride if:

(i) The gratuity is paid with a credit card; and

(ii) The charges for ground transportation and the gratuity are on a single itemized receipt.

(iii) Sufficient Documentation must be submitted to receive reimbursement.

(2) A traveler will be reimbursed for parking.

(a) A traveler shall document all official business needs for parking which includes parking locations and duration.

(i) Sufficient Documentation must be submitted to receive reimbursement.

(b) Parking expenses for non-business use are not reimbursable, such as parking at a restaurant.

(c) Airport parking and long-term parking will be reimbursed at the maximum of the economy lot parking rate at the airport the traveler is flying out of.

(i) Sufficient Documentation must be submitted to receive reimbursement.

(d) Sufficient Documentation must be included with the travel reimbursement in the State's Concur travel system. If an agency cannot use the State's Concur travel system, the agency may use the applicable FI-48 or FI-51 series form. Political subdivisions may use another system or form with equivalent controls and calculations.

(3) Air transportation is limited to economy fares only. Priority seating charges will not be reimbursed unless preapproved by the Executive Director or designee.

(a) For agency travelers, all reservations must be made through the State's Concur travel system or the State Travel Office for the best available flight considering cost and convenience.

(b) Any change fees or charges for increased airfare must include:

(i) A written explanation for the change; and

(ii) Written approval by the Executive Director or designee.

(4) Travel to and from the airport.

(a) A traveler may be reimbursed for mileage to and from the airport and parking.

(b) A traveler may be reimbursed for round trip mileage to and from the airport to allow someone to drop them off and to pick them up.

(c) A traveler will be reimbursed for parking as outlined in Subsection R25-7-18(2) and mileage as outlined in Subsection R25-7-18(5).

(d) Sufficient Documentation must be included with the travel reimbursement in the State's Concur travel system. If an agency cannot use the State's Concur travel system, the agency may use the applicable FI-51 series form. Political subdivisions may use another system or form with equivalent controls and calculations.

(5) A traveler may use a private vehicle with approval from the Executive Director or designee. Mileage will be reimbursed as follows.

(a) Mileage reimbursement rates:

(i) Agencies will reimburse at a calculated mileage rate rounded to the nearest cent based on the average of:

(A) the Federal Travel Reimbursement Rate if use of a privately owned automobile is authorized or if no Government-furnished automobile is available; and

(B) the Federal Travel Reimbursement Rate if a Government-furnished automobile is available.

(ii) Political subdivisions may reimburse mileage at the Federal Travel Reimbursement Rates or establish a system that is more stringent.

(b) Number of reimbursable miles. Agencies shall use the State's Concur travel system to calculate mileage. If unable to use the State's Concur travel system, agencies may calculate mileage using a generally accepted route planning website and will be limited to the most economical usually traveled routes. Political subdivisions may use another system or form with equivalent controls and calculations.

(c) Mileage reimbursements must be requested through the State's Concur travel system. If an agency cannot use the State's Concur travel system, the agency may use the applicable FI-40 or FI-51 series form. Political subdivisions may use another system or form with equivalent controls and calculations.

(d) Only one person in a vehicle may receive the reimbursement regardless of the number of people in the vehicle.

(6) A traveler may choose to drive instead of fly if preapproved by the Executive Director or designee. In granting the approval, the Executive Director or designee shall consider whether the reimbursement cost for the traveler's mileage and time driving exceeds the reimbursement cost of flying and whether the benefit to driving justifies those costs.

(7) Fleet Shared Motor Pool or Rental Vehicles:

~~(a) For in-state travel, agencies shall make all reasonable efforts to book a fleet shared motor pool vehicle through the Division of Fleet Operations or a rental car through the State Travel Office.~~
~~(b) For out-of-state travel, agencies shall book rental vehicles through the State's Concur travel system or the State Travel Office.~~
~~(i) Use of rental vehicles for out-of-state travel must be approved in writing in advance by the Executive Director or designee.~~
~~(A) An exception to advance approval of the use of rental vehicles for out-of-state travel must be fully explained in writing with the request for reimbursement and approved by the Executive Director or designee.~~
~~(B) Justification is required if a rental vehicle is requested for a traveler staying at a conference hotel.~~
~~(C) When traveling out-of-state, the traveler must have approval for a rental car to be reimbursed for rental car parking.~~
~~(c) When booking rental car arrangements through the State Travel Office or the State's Concur travel system, the traveler shall reserve the type of vehicle based on business needs. Upgrades in size or model made when picking up the rental vehicle will not be reimbursed.~~
~~(d) A traveler shall rent a vehicle in their own name, using a contract available to the traveler's agency or political subdivision to ensure the agency's or political subdivision's insurance coverage is extended in the rental.~~
~~(e) Payment or Reimbursement for Fleet Shared Motor Pool and Rental Vehicles.~~
~~(i) The Division of Fleet Operations shall directly bill agencies for the use of fleet shared motor pool vehicles.~~
~~(ii) For agencies, in-state rentals are billed directly to the agencies.~~
~~(iii) For out-of-state travel, reimbursements for rental vehicles must be processed through the State's Concur travel system. If an agency cannot use the State's Concur travel system, the agency may use the applicable FI 51 series form. Political subdivisions may use another system or form with equivalent controls and calculations.~~
~~(8) Travel by private airplane for official business must be preapproved in writing by the Executive Director or designee.~~
~~(a) The pilot must certify to the Executive Director or designee that the pilot is certified to fly the plane being used for business.~~
~~(b) If the plane is owned by the pilot, the pilot must certify the existence of at least $1,000,000 per person and $3,000,000 aggregate of liability insurance.~~
~~(c) If the plane is a rental, the pilot must provide written certification from the rental agency that the insurance covers the traveler and the agency or political subdivision as insured. The insurance must be adequate to cover any physical damage to the plane and at least $1,000,000 per person and $3,000,000 aggregate of liability insurance.~~
~~(d) Reimbursement will be made at the same rates described in Subsection R25-7-18(5).~~
~~(e) Mileage calculation is based on air mileage and is limited to the most economical usually traveled route.~~

~~**R25-7-19. Political Subdivisions.**~~
~~Political subdivisions that are subject to this rule may establish a system that is more stringent.~~]

R25-7-1. Purpose.
The purpose of this rule is to establish procedures to pay travel-related reimbursements to travelers of an agency or board that is subject to this rule.

R25-7-2. Authority.
This rule is established under Section 63A-3-107, which authorizes the Division of Finance to make rules governing in-state and out-of-state travel expenses.

R25-7-3. Definitions.
(1) "Actual cost" means the total amount of money that was paid for an expense.
(2)(a) "Agency" means any department, division, bureau, office, or other administrative subunit of state government under the executive branch.
(b) "Agency" includes any board subject to this rule.
(3) "Board" means a board, commission, council, committee, task force, or similar body established to perform a governmental function.
(4) "Conference hotel" means the hotel designated by the conference host, as specified in the conference materials.
(5) "Department" means an executive department of state government.
(6)(a) "Designee" means the person who has written permission from the executive director to act on the executive director's behalf.
(b) The executive director is responsible for selecting a designee who has the knowledge, skills, and experience to make decisions in the best interest of the agency.
(7) "Executive director" means a department executive director, department commissioner, chief of staff, or equivalent of a chief executive officer.
(8) "Fleet vehicle" means a vehicle owned or leased by an agency. This also includes vehicles rented for use as motor pool vehicles by an agency.
(9)(a) "Ground transportation" means the use of taxi, rideshare, shuttle, or public transportation for state business.
(b) "Ground transportation" does not include the use of taxi, rideshare, shuttle, or public transportation for a commute to and from a traveler's home and regular place of work.
(10)(a) "Hotel" means an establishment that provides lodging for travelers.
(b) "Hotel" does not include a vacation rental.
(11)(a) "International travel" means travel outside the 48 contiguous states.
(b) "International travel" includes travel to Alaska, Hawaii, and US Territories and Possessions.
(12) "Out-of-state travel" means travel outside Utah but within the contiguous United States.

(13) "Per diem" means the reimbursement rates established for travel by the following agencies:
(a) the US General Services Administration for the contiguous United States as set forth in 41 CFR 301-11.6 (2004), which is incorporated by reference;
(b) the Department of Defense for Alaska, Hawaii, and US Territories and Possessions as set forth in 41 CFR 301-11.6 (2004); and
(c) the Department of State for foreign travel as set forth in 41 CFR 301-11.6 (2004).
(14) "Rate" means an amount of money.
(15) "Reimbursement" means money paid to compensate a traveler for money spent.
(16) "Sufficient documentation" means the documents that show the merchant, amount paid, method of payment, date incurred, and description of the item purchased or service received. A combination of supporting documents may be needed to verify each element of the expense. Sufficient documentation includes the following official evidence of transaction:
(a) itemized receipts;
(b) invoices;
(c) cash register tape receipts;
(d) canceled checks or other documents reflecting proof of payment or electronic funds transferred;
(e) account statements; and
(f) credit card statements.
(17)(a) "Traveler" means any person who is traveling for state business for an agency.
(b) This includes employees, board members, elected officials, vendors, volunteers, and grant recipients or award beneficiaries.

R25-7-4. Limitation on Travel-Related Reimbursements.
(1) Nothing in this rule may be construed to apply to a person's relocation expenses.
(2) Reimbursement for relocation expenses is covered by policy.

R25-7-5. Eligible Expenses.
(1) Reimbursements are intended to cover ordinary travel-related expenses that are reasonable under the circumstances.
(2) Alcoholic beverages may not be reimbursed.

R25-7-6. Requirements for Requesting to Travel.
(1)(a) State business travel, whether reimbursed or not, must be approved by the appropriate authority before a traveler departs.
(b) This includes non-employees when the agency pays for the travel expenses.
(c) In-state travel must be approved by the traveler's supervisor.
(d) Out-of-state travel must be approved by the traveler's executive director.
(e) International travel must be approved by the traveler's executive director and the governor's chief of staff.
(2)(a) A traveler shall use the state's travel system to request approval to travel if:
(i) traveling outside Utah; or
(ii) requesting a cash advance.
(b) If a traveler leaves for an unexpected, urgent out-of-state trip without using the state's travel system to get approval, the agency's executive director or designee may approve the trip after the traveler departs. The traveler shall explain in writing why the trip was urgent.
(c) If a traveler cannot use the state's travel system, the traveler shall use the FI 5 travel request form or an alternative process that includes the same information required by the form.
(d) A traveler shall include each expected travel expense when requesting approval to travel. Estimates for expenses shall be reasonable and reflect realistic costs.
(3) A traveler is not required to use the state's travel system to request approval for in-state travel, but in-state travel must still be approved by the traveler's supervisor.

R25-7-7. Requirements for Requesting Reimbursement.
(1) To be reimbursed according to the rates in this rule, a traveler must comply with this rule.
(a) If a traveler does not comply and does not have an approved exception, the executive director or designee shall be notified.
(b) The executive director or designee shall take appropriate corrective action and decide whether the traveler is reimbursed for the expense.
(c) If the executive director or designee approves reimbursement, the approval shall be included with the sufficient documentation needed for the expense as explained in Subsection R25-7-7(3)(c).
(2) Reimbursement for state travel shall be approved by the traveler's division director or the agency equivalent of a division director.
(3)(a) A traveler shall use the state's travel system to request reimbursement.
(b) If a traveler cannot use the state's travel system, the traveler shall use the FI 51 reimbursement request form or an alternative process that includes the same information required by the form. If the reimbursement request is for mileage only, the traveler shall use the FI 40 mileage reimbursement request form or an alternative process that includes the same information required by the form.
(c) A reimbursement request shall include sufficient documentation for each travel expense, except for expenses for which there is a flat allowance amount.

R25-7-8. Reimbursement for Meals.
(1) A traveler may be reimbursed for meals.

(2) A traveler is reimbursed per diem for meals as explained in 41 CFR 301-11.6, 301-11.17 301-11.18, 301-11.101 (2004).
(3) A provided meal, such as a meal included in a registration cost, is deducted from the per diem.

R25-7-9. Reimbursement for Incidental Expenses.
(1) A traveler may be reimbursed for incidental expenses.
(2) A traveler is reimbursed per diem for incidental expenses as explained in 41 CFR 301-11.6 and 301-11.101 (2004).
(3) The following are considered incidental expenses and are included in the incidental expenses per diem rate:
(a) laundry expenses; and
(b) fees and tips given to porters, baggage carriers, and hotel staff.

R25-7-10. Booking a Hotel.
(1)(a) If staying at a conference hotel, a traveler shall book a conference hotel room either directly through the hotel or through the contracted travel agency by using the state's travel system or the State Travel Office. The room rate must be the best available rate within 300% of the per diem.
(b) If the conference hotel rate is more than 300% of the per diem, the traveler shall book a non-conference hotel according to Subsection R25-7-10(2).
(2) If staying at a non-conference hotel, a traveler shall book a room through the contracted travel agency by using the state's travel system or the State Travel Office. The room rate must be within the per diem.
(a) If there are no hotels in the area that have rooms within the per diem, the traveler shall book the hotel that has the best available rate within 300% of the per diem.
(b) If there are no hotels in the area that have rooms within 300% of the per diem, the traveler shall contact the State Travel Office to book a hotel room.

R25-7-11. Booking Other Types of Lodging.
(1) A traveler may book a vacation rental site if:
(a) the vacation rental site is in the best interest of the state; and
(b) the cost per person is within per diem.
(2) A traveler may stay with a friend or relative.
(3) A traveler may stay in a personal camper or trailer home.

R25-7-12. Reimbursement for Lodging.
(1) A traveler may be reimbursed for lodging.
(2) The destination must be 75 miles or more from the traveler's personal residence.
(3)(a) The executive director or designee may approve lodging that is less than 75 miles from the traveler's personal residence if:
(i) there is an unusual circumstance, such as the traveler is required to work at the destination after work hours or there are safety issues; and
(ii) the traveler requests the exception before the trip.
(b) The request for the exception and the approval shall be included with the sufficient documentation needed for the expense as explained in Subsection R25-7-7(3)(c).
(4)(a) For a conference hotel, a traveler is reimbursed the actual cost up to 300% of the per diem.
(b) The traveler shall include the conference registration materials when requesting reimbursement.
(5) For a non-conference hotel, a traveler is reimbursed the actual cost of the hotel.
(6) For a vacation rental site, the traveler who paid for the vacation rental site is reimbursed the actual cost up to the per diem per person.
(7) For staying with a family member or friend, a traveler may receive a taxable allowance of $25 per night.
(8) For staying in a personal camper or trailer home, a traveler may be reimbursed:
(a) the actual cost up to the per diem if the traveler has sufficient documentation from the facility; or
(b) a taxable allowance of $25 per night if the traveler does not have sufficient documentation.

R25-7-13. Booking Air Travel.
(1) A traveler shall book airfare through the contracted travel agency by using the state's travel system or the State Travel Office.
(2) A traveler shall use a contracted airline unless:
(a) the airline cannot meet the business needs of the traveler; or
(b) a non-contracted airline offers a lower fare.
(3) A traveler shall book economy or main cabin fares.
(4) Airline tickets and service fees shall be charged directly to the state-operated account designated for airfare.
(5)(a) If a traveler needs to change a flight, the traveler shall request approval from the division director or the agency equivalent of the division director.
(b) In the request, the traveler shall explain in writing why changing the flight is necessary.
(c) The request for the flight change and the approval shall be included with the sufficient documentation needed for the expense as explained in Subsection R25-7-7(3)(c).
(d) A traveler shall contact the State Travel Office to change a flight.

(e) If a change fee is $75 or less, a traveler can change a flight the day of departure without getting approval or contacting the State Travel Office.

R25-7-14. Reimbursement for Expenses Related to Air Travel.

(1)(a) A traveler may be reimbursed mileage for driving to and from the airport. See Subsection R25-7-16(2) for the reimbursement rate.

(b) A traveler who is driven to the airport by a friend or family member is reimbursed for two round trips to and from the airport.

(2)(a) A traveler may be reimbursed for airport parking.

(b) A traveler is reimbursed the actual cost up to the airport's lowest daily parking rate for each day of parking.

(3) A traveler may be reimbursed for taking ground transportation to and from the airport. See Section R25-7-15.

(4) A traveler is not reimbursed for priority seating or seat upgrades, except for rare circumstances.

(a) A request for a seat upgrade must be approved in writing by the executive director or designee before the traveler departs.

(b) In the request, the traveler shall explain in writing why a seat upgrade is necessary.

(c) The request for the seat upgrade and the approval shall be included with the sufficient documentation needed for the expense as explained in Subsection R25-7-7(3)(c).

R25-7-15. Reimbursement for Ground Transportation.

(1) A traveler may be reimbursed for using ground transportation.

(2) If a traveler takes a rideshare for in-state travel, the traveler shall use a contracted rideshare company unless traveling to and from an airport for a flight.

(3) A traveler is reimbursed the actual cost of ground transportation that is related to state business travel, such as transportation to and from the airport.

(4) A traveler is not reimbursed for personal use of ground transportation, such as transportation to a restaurant or movie theater.

(5) A traveler is not reimbursed for an upgrade to a rideshare unless there is a documented business purpose.

(6) A traveler may be reimbursed for tips for ground transportation if a tip is shown on an original, itemized receipt.

(7)(a) A traveler is reimbursed the actual cost of tips up to 20% of the total fare, including taxes and fees.

(b) If a 20% tip results in an amount less than $5, a traveler may tip up to $5. The traveler is reimbursed the actual cost of the tip up to $5.

R25-7-16. Reimbursement for Mileage.

(1) A traveler may be reimbursed for mileage when using a private vehicle.

(2) A traveler is reimbursed a calculated mileage rate rounded to the nearest cent based on the average of the two federal mileage automobile rates as explained in 41 CFR 301-10.303 (2004).

(3) A traveler is not reimbursed for mileage that is for:

(a) personal use, such as driving to a restaurant or movie theater; or

(b) commuting to and from the traveler's home and regular place of work.

(4)(a) A traveler shall use the state's travel system to calculate mileage.

(b) If unable to use the state's travel system, the traveler may calculate mileage using a generally accepted route planning website. The traveler is reimbursed based on the most commonly traveled route.

(5) Only the owner of the vehicle may be reimbursed for mileage regardless of the number of people in the vehicle.

(6)(a) A traveler may choose to drive their personal vehicle instead of taking a flight if the request is approved in writing by the executive director or designee before the traveler departs.

(b) The executive director or designee shall consider whether the reimbursement cost for the traveler's mileage and time driving is more than the cost of flying and whether the benefit of driving justifies those costs.

R25-7-17. Booking Rental Vehicles.

(1) A traveler may rent a vehicle if approved in writing before the traveler departs. See Subsections R25-7-6(1)(c) through R25-7-6(1)(e) for who shall approve a rental vehicle.

(2) A vehicle shall be rented in the traveler's own name.

(3)(a) A traveler shall book a rental vehicle through a contracted rental company by using the state's travel system or the State Travel Office.

(b) A traveler shall use a vehicle rented through a state contract only for business travel days.

(4) When booking a vehicle, a traveler shall reserve the type of vehicle based on business needs.

(5) A traveler may not rent a vehicle if staying at a conference hotel, except for rare circumstances.

(a) A request for a rental vehicle at a conference hotel must be approved in writing by the executive director or designee before the traveler departs.

(b) In the request, the traveler shall explain in writing why renting a vehicle is necessary.

(c) The request for a rental and the approval shall be included with the sufficient documentation needed for the expense as explained in Subsection R25-7-7(3)(c).

R25-7-18. Billing and Reimbursement for Rental Vehicles.

(1) For in-state rentals, an agency is billed directly for the rental vehicle.

(2) For out-of-state rentals, a traveler is reimbursed the actual cost of the rental.
(3) A traveler is reimbursed the actual cost of fuel unless the traveler chooses the prepaid fuel option when picking up the rental vehicle. A traveler is not reimbursed for fuel purchased from the rental company.
(4) A traveler is not reimbursed for upgrades in size or model made when picking up the rental vehicle.

R25-7-19. Reimbursement for Parking.
(1) A traveler is reimbursed the actual cost of parking if:
(a) parking is necessary for official business; and
(b) the use of a private or rental vehicle is approved before the traveler departs.
(2) A traveler is not reimbursed for parking that is related to personal use, such as parking at a restaurant.

KEY: air travel, per diem allowances, state travelers, transportation
Date of Last Change: 2024[~~August 22, 2023~~]
Notice of Continuation: February 8, 2018
Authorizing, and Implemented or Interpreted Law: 63A-3-107[~~; 63A-3-106~~]

NOTICE OF SUBSTANTIVE CHANGE		
TYPE OF FILING: Repeal and Reenact		
Rule or Section Number:	**R58-28**	**Filing ID: 56551**

Agency Information

1. Title catchline:	Agriculture and Food, Animal Industry	
Building:	Taylorsville State Office Building, South Bldg., Floor 2	
Street address:	4315 S 2700 W	
City, state:	Taylorsville, UT	
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
Amanda Price	801-386-4189	Amandaprice@Utah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule or section catchline:

R58-28. Veterinarian Education Loan Repayment Program

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

The Legislature passed H.B. 522, Veterinarian Education Loan Repayment Program Amendments, during the 2024 General Session. The bill removes the five-year service period for qualified veterinarians and allows them to start to receive payments towards their educational loans after one year of practicing in a type defined in Subsection 4-9-209(9).

The bill also changed the qualifying practice types to remove USDA shortage areas and add practice at a clinic that practices at least 30% livestock medicine The revisions in this rule reflect those changes.

Due to the number of small changes throughout this rule, repealing and reenacting this rule is the most efficient course of action for the department.

4. Summary of the new rule or change:

Many changes have been made to clarify and align this rule with the Rulewriting Manual for Utah.

The definitions Section R58-28-2, and the payment process in Section R58-28-3 have also been updated to remove the five-year service period and allow a qualified veterinarian to receive payments towards their educational loan balances after practicing in a qualified area for one year.

References to the USDA shortage areas have been removed and livestock practice was added as a qualifying practice type.

Fiscal Information

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

A) State budget:

As anticipated when the Department of Agriculture and Food (Department) filed thia rule in 2023, the costs have been minimal to the Department.

The original fiscal estimate of $10,000 each year remains as the Department works through the process of distributing funds for the first year and may utilize the appropriated 2% for administration costs over the next five years.

B) Local governments:

This change will not impact local governments because they do not administer or participate in the program.

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

This change will not impact small businesses because they do not administer or participate in the program.

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

This change will not impact non-small businesses because they do not administer or participate in the program.

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

This program may have a positive fiscal impact on a qualified veterinarian of $20,000 per year.

With the appropriated funds, starting in FY25, the Department may begin to distribute funds toward 24.5 qualified veterinarians' educational loan balances and anticipates disbursing $490,000 each year for the next 5 years.

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 for the program are not changing and will not impact an entity adhering to this rule.

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

Regulatory Impact Table

Fiscal Cost	**FY2025**	**FY2026**	**FY2027**
State Government	$10,000	$10,000	$10,000
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	**FY2025**	**FY2026**	**FY2027**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0

Other Persons	$490,000	$490,000	$490,000
Total Fiscal Benefits	**$490,000**	**$490,000**	**$490,000**
Net Fiscal Benefits	**$480,000**	**$480,000**	**$480,000**

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

The Commissioner of the Utah Department of Agriculture and Food, Craig 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 4-2-902(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:	07/31/2024

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

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

Agency Authorization Information

Agency head or designee and title:	Craig Buttars, Commissioner	**Date:**	06/12/2024

R58. Agriculture and Food, Animal Industry.
R58-28. Veterinarian Education Loan Repayment Program.
[~~R58-28-1. Purpose and Authority.~~
~~(1) This rule is promulgated under the authority of Section 4-2-902.~~
~~(2) This rule establishes:~~
~~(a) procedures for the application to receive payments toward a veterinarian's education loan balances in exchange for working in an underserved area of the state;~~
~~(b) qualification requirements for applicants; and~~
~~(c) designation of veterinary shortage areas.~~

~~R58-28-2. Definitions.~~
~~In addition to the definitions found in Section 4-2-901, the following terms are defined for this rule:~~
~~(1) "Applicant" means a licensed veterinarian who submits a completed application and meets the application requirements established by the department for loan repayment.~~
~~(2) "Animal shelter" means:~~
~~(a) a facility or program providing services for stray, lost, or unwanted animals, including holding and placing the animals for adoption, but does not include an institution researching animals, as defined in Section 26-26-1; or~~
~~(b) a private humane society or private animal welfare organization.~~
~~(3) "Employer" means a government entity, for-profit employer, or non-profit organization for which a qualified veterinarian practices.~~
~~(4) "Loan repayment assistance" means the payment of funds directly to a lender to defray educational loans in exchange for service for a specified period in a shortage area.~~
~~(5) "Non-profit animal shelter" means an organization that is exempt from federal income taxation under Section 501(c)(3), Internal Revenue Code.~~
~~(6) "Practiced" or "practicing" means paid or volunteer employment averaging at least 32 hours per week where the applicant diagnoses, treats, corrects, changes, alleviates or prevents animal disease, illness, pain, deformity, defect, injury, or other physical, dental, or mental conditions in animals.~~
~~(7) "Qualified veterinarian" means a veterinarian who has practiced as a veterinarian for five or more consecutive years beginning on or after May 3, 2023:~~
~~(a) in an area of the state:~~
~~(i) designated by the United States Department of Agriculture as experiencing a veterinary shortage situation, pursuant to Section R58-28-4, during at least one of the five years; or~~

(ii) that is Indian country;
(b) in an animal shelter within the state operated by:
(i) a county;
(ii) a municipality; or
(iii) an organization that is exempt from federal income taxation under Section 501(c)(3), Internal Revenue Code;
(c) in any area of the state as an employee of the department; or
(d) in any combination of the places described in Subsections (7)(a) through (c).
(8) "Qualifying educational loan" means a loan received for education at a domestic or foreign institution of higher education for school tuition, fees, books, laboratory expenses, and materials, or reasonable living expenses.
(9) "Recipient" means an applicant selected to receive loan repayment assistance under this rule.
(10) "Rural" means any area other than a city or town with a population of 50,000 inhabitants and the urbanized area contiguous and adjacent to the city or town.
(11) "Service obligation" means the required professional veterinary services provided in a shortage area for at least five years.
(12) "Shortage area" means an area where a qualified veterinarian practiced or is practicing pursuant to Subsection 4-2-901(8).

R58-28-3. Payment Eligibility-Payment Process.
(1) An applicant shall register intent to the department on a department form and provide the information required by the department for the administration of the program, including:
(a) name, address, and other contact information;
(b) employer and employer contact information;
(c) veterinary license number; and
(d) shortage area type.
(2) An applicant shall have a current license to practice veterinary medicine in Utah at the time of application and shall maintain that license during the service obligation period.
(3) Annually, the department shall evaluate each applicant to determine continuing eligibility for the program.
(a) As part of the evaluation, the department shall require an applicant to provide information regarding:
(i) commitment to the shortage area; and
(ii) continuing financial need, service obligation fulfillment, and other information reasonably necessary for the administration of the program.
(b) The department may also require the employer of the applicant to provide information regarding:
(i) service obligation fulfillment; and
(ii) other information reasonably necessary for the administration of the program.
(4) An applicant shall practice in a shortage area for a minimum of five years after the date of application.
(a) An applicant who fails to complete the five years of service in a shortage area is not eligible for loan repayment.
(b) The department may extend the service period if the applicant takes a one-time leave of absence for no more than six months for medical reasons or for other good cause, as determined by the department.
(5) Starting on July 1, 2028, the department shall, on a first-come, first-served basis, make payments directly to one or more of the qualified veterinarian's lenders toward a qualified veterinarian's education loan balances.
(a) The applicant is responsible for providing any information required for loan repayment to the department, including loan account numbers and balances.
(b) The department shall determine the total loan repayment amount up to a maximum of $100,000.
(c) The education loan balance includes charges for paying off the loan balance.
(d) The applicant is responsible for reporting loan repayment to the United States Internal Revenue Service and any potential tax liabilities resulting from the loan repayment.
(6) Loan repayment grants may be given only to repay bona fide loans taken by qualified veterinarians for educational expenses incurred while pursuing an education at an institute of higher education.
(7) The department shall not pay for an educational loan of an applicant who is in default at the time of application or during the service period.
(8) An applicant shall notify the department before changing employment or changing the area where the applicant fulfills the service obligation.

R58-28-4. Shortage Situation Designations.
(1) The USDA-designated veterinary shortage situation is determined by nominations provided for the Veterinary Medicine Loan Repayment Program.
(a) The department shall nominate up to six shortage situations each year in accordance with USDA nomination guidelines.
(b) Each veterinary shortage situation is designated for one fiscal year. Nominations not filled in the previous federal fiscal year may be carried over to the following year.
(c) A shortage situation for a private practice veterinarian may consist of one county or two contiguous counties.
(2) The shortage situations are prioritized by the department by:
(a) soliciting nominations via email from licensed veterinarians practicing on food animals;
(b) consulting with food animal producer associations, licensing boards, veterinary medical associations, and other officials and stakeholders;

~~(c) an open job announcement for a department field veterinarian position; and~~
~~(d) based on:~~
~~(i) a rural area with a high number of cattle and sheep;~~
~~(ii) the number of food animal veterinarians serving a rural area; and~~
~~(iii) the time elapsed since the previous nomination for a shortage area.~~]

R58-28-1. Purpose and Authority.

(1) This rule is promulgated under the authority of Subsection 4-2-902(5).

(2) This rule establishes the process for a qualified veterinarian to register intent and receive payments toward their education loan balances.

R58-28-2. Definitions.

In addition to the definitions found in Section 4-2-901, the following terms are defined for this rule:

(1) "Applicant" means a licensed veterinarian who submits a completed application and meets the application requirements established by the department for loan repayment.

(2) "Animal shelter" means:

(a) a facility or program providing services for stray, lost, or unwanted animals, including holding and placing the animals for adoption, but does not include an institution researching animals, as defined in Section 26B-1-236; or

(b) a private humane society or private animal welfare organization.

(3) "Employer" means a government entity, for-profit employer, or non-profit organization for which a qualified veterinarian practices.

(4) "Livestock" means cattle, sheep, goats, swine, horses, mules, poultry, and domesticated elk as defined in Section 4-39-102, or any other domestic animal or domestic furbearer raised or kept for profit.

(5) "Loan repayment assistance" means the payment of funds directly to a lender to defray educational loans.

(6) "Non-profit animal shelter" means an organization that is exempt from federal income taxation under Section 501(c)(3), Internal Revenue Code.

(7) "Practice" or "practicing" means paid or volunteer employment averaging at least 32 hours per week where the applicant diagnoses, treats, corrects, changes, alleviates or prevents animal disease, illness, pain, deformity, defect, injury, or other physical, dental, or mental conditions in animals.

(8) "Qualified veterinarian" means a veterinarian who has practiced as a veterinarian:

(a) in an area of the state that is Indian country:

(b) in an animal shelter within the state operated by:

(i) a county;

(ii) a municipality; or

(iii) an organization that is exempt from federal income taxation under Section 501(c)(3), Internal Revenue Code;

(c) in any area of the state as an employee of the department;

(d) in any combination of the places described in Subsections (8)(a) through (c); or

(e) with a practice that includes at least 30% livestock medicine.

(9) "Qualifying practice type" means the type of practice listed in Subsection R58-28-2(8) where a qualified veterinarian practiced or is practicing pursuant to Subsection 4-2-901(9).

R58-28-3. Payment Eligibility-Payment Process.

(1) A veterinarian shall register intent to receive loan repayment assistance on a department form, and shall provide the following information:

(a) name, address, and other contact information;

(b) name of employer and employer contact information;

(c) Utah veterinary license number under Title 58, Chapter 28, Veterinary Practice Act; and

(d) qualifying practice type as defined in Subsection R58-28-2(9).

(2)(a) A veterinarian shall practice in a qualifying practice type for a minimum of one year after the date of registering intent with the department.

(b) A veterinarian who fails to practice in a qualifying practice type for one year is not eligible for loan repayment assistance from the department.

(c) The department may extend the service period if the applicant takes a one-time leave of absence for no more than six months for medical reasons or another good cause.

(3) After a qualified veterinarian has practiced for one year from the date of application, they shall provide the following information to the department:

(a) hours and location of qualifying work;

(b) employer certification of worked hours;

(c) loan details including loan servicer name, account information, and loan balance;

(d) whether they choose to reapply to receive additional payments toward educational loan balances in the future; and

(e) any other information the department deems necessary for loan repayment assistance.

(4) Starting on July 1, 2024, the department shall make payments of up to $20,000 to qualified veterinarians' lenders on a first-come, first-served basis based on applications received.

(5) The payments:
(a) shall be directed toward a qualified veterinarian's education loans; and
(b) may include charges associated with paying off the education loan balance.
(6) Qualified veterinarians may reapply for loan repayment for a maximum of five years or receive up to $100,000, whichever comes first.
(7) Each applicant is responsible for reporting loan repayment to the United States Internal Revenue Service and addressing any potential tax liabilities resulting from the loan repayment assistance.
(8) The department may grant loan repayment assistance to qualified veterinarians only to repay bona fide education loans.
(9) The department may not pay for an educational loan of an applicant who is in default at the time of application or during the service period.
(10) Eligible applicants shall notify the department before changing their qualifying practice type or relocating during the period of practice in exchange for education loan assistance.

KEY: veterinarian, education, loan, repayment, service
Date of Last Change: [~~June 22, 2023~~]2024
Authorizing, and Implemented or Interpreted Law: 4-2-902(5)

NOTICE OF SUBSTANTIVE CHANGE		
TYPE OF FILING: Amendment		
Rule or Section Number:	**R64-4**	**Filing ID: 56549**

Agency Information

1. Title catchline:	Agriculture and Food, Conservation Commission	
Building:	TSOB South Building, Floor 2	
Street address:	4315 S 2700 W	
City, state:	Taylorsville, UT	
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
Jim Bowcutt	435-232-4107	jdbowcutt@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:

R64-4. Agricultural Water Optimization Program

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

Changes to definitions are needed to ensure that this rule is consistent with S.B. 18, Water Modifications, passed during the 2024 General Session.

4. Summary of the new rule or change:

Consistent with language in S.B. 18 (2024), in Section R64-4-2, the definitions of "diversion reduction" and "depletion reduction" are removed, the definition of "saved water" is updated to reflect a new citation, and the definition of "agricultural water optimization" has been updated to include any projects that do not increase water depletion rather than only those that decrease depletion.

Additionally, Section R64-4-7 has been updated to reference saved water rather than "depletion reduction" and "diversion reduction," consistent with statutory changes.

Fiscal Information

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

A) State budget:

This change does not impact the state budget because it only clarifies definitions and does not impact how the program will be run.

B) Local governments:

Local governments do not participate in the program and will not be impacted by the change.

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

Small businesses will not be impacted because the administration of the program will not change.

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

Non-small businesses will not be impacted because the administration of the program will not change.

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***)**:**

Other persons will not be impacted because the administration of the program will not change.

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 cost to participate in the program.

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

Regulatory Impact Table

Fiscal Cost	**FY2025**	**FY2026**	**FY2027**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits	**FY2025**	**FY2026**	**FY2027**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
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 Utah 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:		
Section 73-10g-205		

Public Notice Information

8. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	07/31/2024

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

Agency Authorization Information

Agency head or designee and title:	Craig W Buttars, Commissioner	**Date:**	06/12/2024

R64. Agriculture and Food, Conservation Commission.
R64-4. Agricultural Water Optimization Program.
R64-4-1. Authority.

Subsection 73-10g-205(6) authorizes this rule, which requires the Agricultural Water Optimization Committee to establish eligibility requirements for grants issued under Section 73-10g-206, the process of applying for a grant issued under Section 73-10g-206, and preliminary screening criteria for be used by the department under Subsection 73-10g-206(2)(d).

R64-4-2. Definitions.

(1) "Agricultural Water" means water beneficially used pursuant to a water right established under Utah law to produce food, fiber, or fuel, or for other agricultural purposes.

(2) "Agricultural Water Optimization" means the implementation of agricultural and water management practices that maintain viable agriculture [~~while reducing~~]without increasing water depletion to enhance water availability and minimize impacts on water supply, water quality, and the environment.

(3) "Agricultural Water Optimization Committee" or "Committee" means the committee created in Section 73-10g-205.

(4) "Funding Application" means an application filed under Section 73-10g-206.

(5) "Change application" means an application filed under Section 73-3-3, as further authorized by Section 73-10g-208.

(6) "Commission" means the Utah Conservation Commission created by Section 4-18-104, chaired by the Commissioner of the Utah Department of Agriculture and Food.

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

[~~(8) "Depletion reduction" means a net decrease in water consumed accomplished by implementing water optimization practices during beneficial use of water under an approved water right.~~

~~(9) "Diversion reduction" means a decrease in net diversion amount from that allowed under a water right accomplished by implementation of water optimization practices.~~]

([~~10~~]8) "Grantee" means a person who has received funding through the Agricultural Water Optimization Program.

([~~11~~]9) "Program Manager" means a department employee assigned to oversee the day-to-day activities of the Agricultural Water Optimization Program, or their staff.

(1[~~2~~]0) "Project" means an undertaking proposed in an application to meet the objectives of Title 73, Chapter 10g, Part 2, "Agricultural Water Optimization" and then implemented consistent with Part 2.

(1[~~3~~]1) "Saved water" means the same as stated in [~~Subsection 73-10g-203.5(10)~~]Section 73-3-3 and as further defined in rules made by the state engineer.

(1[~~4~~]2) "Critical management area" means a groundwater basin meeting the definition stated in Subsection 73-5-15(1)(a).

R64-4-3. Purpose-Agricultural Water Optimization Program.

To increase agricultural water optimization, the Commission shall provide grants in accordance with Sections 73-10g-201 through 73-10g-208 that:

(1) maintain viable agriculture while reducing water depletion to enhance water availability and minimize impacts on water supply, water quality, and the environment;

(2) provide increased operational flexibility to agricultural water users;

(3) provide the opportunity for saved water to be considered a beneficial use if a change application is filed with the State Engineer;

(4) provide additional nonuse protection if a change application is filed; and

(5) improve water quantification through:

(a) showing accurate, real-time measurements of water use; and

(b) documenting actual water savings in cubic feet per second (CFS)- or acre feet.

R64-4-4. Application Requirements.

(1) Any person who uses agricultural water is eligible to apply for funding under the Agricultural Water Optimization Program.

(2) An applicant shall include the following in an application for a grant under the Agricultural Water Optimization Program:

(a) a description of how the project will meet the purposes listed in Section R64-4-3;

(b) the anticipated use of the saved water, if identified, under the project;

(c) a description of the diversion reduction or depletion decrease that will be made available after the implementation of the project;

(d) an estimate of the cost per acre foot of saved water;

(e) a description of the project and project design, including the:

(i) project cost;

(ii) funding amount requested; and

(iii) estimated completion date;

(f) a list of other funding sources and -amounts provided, including an estimate of force account labor and equipment;

(g) the project cost per acre for the places of use for water rights used in the project;

(h) the current method of water measurement used by the applicant;

(i) acknowledgment that the applicant will install and maintain water measurement equipment required for the project;

(j) a map of the project area, showing the county or counties in which, the proposed project will be located;

(k) acknowledgement that the proposed project complies with the applicants approved water rights associated with the project;

(l) a description of any environmental benefits to be gained by funding the project; and

(m) a description of any water quality benefit to be gained by implementing the project.

(3) Incomplete applications will not be considered or ranked.

R64-4-5. Preliminary Screening-Pre-filing Consultation.

(1) Department staff will receive and screen each funding application to determine if the application meets the following eligibility criteria:

(a) the project uses agricultural water;

(b) the project is located in Utah;

(c) the applicant has verified that they own or have the right to use the water rights that will be used for the project;

(d) the project is reasonably feasible;

(e) the project reasonably meets program goals;

(f) the applicant is willing to install and maintain water measurement that meets state policy and rules set by the Division of Water Rights (DWRi); and

(g) the project meets funding requirements.

(2) After preliminary approval, each applicant shall meet with the State Engineer or the State Engineer's designee for a pre-filing consultation to determine if their project may benefit from a change application.

(3) Following the consultation with the State Engineer or the State Engineer's designee, pre-approved applications will be filed with the Agricultural Water Optimization Committee for ranking.

R64-4-6. Agricultural Water Optimization Committee.

(1) The Agricultural Water Optimization Committee shall consist of the members stated in Section 73-10g-205:

(2) The Committee shall have the following responsibilities:

(a) to establish funding application periods for the Agricultural Water Optimization Program:

(i) the Committee shall establish at least one application period per year;- and

(ii) each funding period may have a unique application, eligibility criteria and description of what is required in the application, and ranking criteria used to evaluate the applications submitted;

(b) to review and rank pre-approved applications based on criteria set by the Committee under Section R64-4-7; and

(c) to make funding recommendations to the Commission.

(3) The Committee may designate different funding pools to ensure that similar projects are ranked against each other.

(4) The Commission may award grants based on the recommendations of the Committee.

(5) The Commission may delegate its duties under this rule to a Commission subcommittee.

R64-4-7. Criteria for Awarding Grants.

(1) The Committee shall adopt ranking criteria.

(2) The Committee may consider the following in adopting ranking criteria:

(a) how closely proposed projects meets the Agricultural Water Optimization Program goals listed in Section R64-4-3;

(b) who will benefit from the project;

(c) the type of project;

(d) funding sources of the project;

(e) matching funds available for the project;

(f) [~~depletion reduction~~]saved water that will result from the project;

[~~(g) diversion reduction that will result from the project;~~

~~(h) the quantity of water diversion and depletion reduction that will be accomplished with the project and the benefits derived from the reduction;~~]

([~~i~~]g) how the water savings will be quantified;

([~~j~~]h) whether the project area has baseline water use data available;

([~~k~~]i) the projected project cost per acre;

([~~l~~]j) whether the project is located in a water right groundwater Critical Management Area;

([~~m~~]k) when the applicant will be ready to begin construction on the project; and

([~~n~~]l) the water quality benefits of the project.

(3) Ranking criteria adopted by the Committee may prioritize projects that lead to greater depletion reduction.

(4) If federal funding has been appropriated for the Agricultural Water Optimization Program, ranking criteria adopted by the Committee shall require that federal funding be awarded prior to state funding.

R64-4-8. Contracting and Project Requirements.

(1) Following a grant award by the Commission, the department shall work with each grantee to determine whether there are other funding sources available to fund the project and assist grantees in identifying sources and securing additional funding.

(2) Before receiving funds, grantees shall:

(a) enter into a contract with the department that includes the following:

(i) the expectations for the grantee;

(ii) the life expectancy of the project;

(iii) the process to certify completion of the project;

(iv) any applicable project design; and

(v) metering and reporting requirements consistent with rules established by DWRi, including specifications for the type of meter to be installed;

(b) file any necessary change application with DWRi;

(c) if applicable, obtain a final order from the State Engineer approving the change application; and

(d) if applicable, demonstrate how they will comply with the requirements of the final order.

(3) Before project implementation, grantees shall submit a Utah State Historical Preservation Office Cultural Resource Review report to the program manager pursuant to Section 9-8a-404. No payment reimbursement will be processed until the program manager has received the report.

(4) The department may issue a notice to proceed to a grantee before project construction.

(5) During the life of the project, the department shall:

(a) monitor grant related activities; and

(b) certify project completion.

(6) The program manager may conduct on-site or virtual project "spot checks" at any time during the life of the project.

(7) Projects may be evaluated through the U.S. Environmental Protection Agency's Spreadsheet Tool for Implementing Pollutant Loads module (STEPL) or Pollutant Load Estimation Tool (PLET), photo monitoring, or other monitoring depending on the type of project.

R64-4-9. Reporting Requirements.

(1) For three years after construction of a project is completed, grantees shall submit reports to the program manager at least annually, or more often if requested in writing by the program manager.

(2) Failure to submit the required reporting may result in a requirement to return Agricultural Water Optimization Program funds, or ineligibility to receive funds in the future.

KEY: agriculture, water optimization, grants
Date of Last Change: 2024[~~November 21, 2023~~]
Authorizing, and Implemented or Interpreted Law: 73-10g-205; 73-10g-206

NOTICE OF SUBSTANTIVE CHANGE		
TYPE OF FILING: New		
Rule or Section Number:	**R66-37**	**Filing ID: 56583**

Agency Information

1. Title catchline:	Agriculture and Food, Medical Cannabis and Industrial Hemp
Building:	Taylorsville State Office Building
Street address:	4315 S 2700 W
City, state:	Taylorsville, UT
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:

R66-37. Industrial Hemp Research

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

This rule has been repealed and is being simultaneously reenacted under a new title specific to medical cannabis and industrial hemp, Title R66.

This is part of a Department of Agriculture and Food (Department) effort to move all cannabis rules away from the plant industry title to their own title created under R66.

The Department feels that medical cannabis rules should be under their own title given that medical cannabis is a separate division and has not been housed under the plant industry division for several years.

4. Summary of the new rule or change:

This rule has been repealed and is being simultaneously reenacted under a new title specific to medical cannabis and industrial hemp, Rule R66-37.

Nonsubstantive changes to this rule have been made at the suggestion of the Office of Administrative Rules.

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 Rule R66-37.

B) Local governments:

Local governments will not be impacted because they do not participate in the industrial hemp 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 Rule R66-37.

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 Rule R66-37.

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

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 Rule R66-37.

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	**FY2025**	**FY2026**	**FY2027**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits	**FY2025**	**FY2026**	**FY2027**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
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 Utah 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:		
Section 4-41-103.1		

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:	07/31/2024

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

Agency Authorization Information

Agency head or designee and title:	Craig W. Buttars, Commissioner	**Date:**	06/24/2024

R66. Agriculture and Food, Medical Cannabis and Industrial Hemp.
R66-37. Industrial Hemp Research.
R66-37-1. Authority and Purpose.

Pursuant to Section 4-41-103.1, this rule establishes the standards, practices, and procedures of the Industrial Hemp Research License allowing a higher education institution to perform academic research.

R66-37-2. Definitions.

As used in this rule:

(1) "Academic Research" means processing of industrial hemp to discover and enable development of useful processes, information, and products.

(2) "Applicant" means a person, or group of persons from a higher education institution who applies for an Industrial Hemp Research License from the Utah Department of Agriculture and Food.

(3) "Bill of lading" means a detailed list of the items included in a shipment of industrial hemp or products derived from industrial hemp, in the form of a receipt given by the carrier to the person consigning the industrial hemp.

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

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

(6) "Final product" means a reasonably homogenous industrial hemp product in its final packaged form created using the same standard operating procedures and the same formulation.

(7) "Industrial Hemp" means the plant Cannabis sativa L. and any part of such plant, whether growing or not, with a THC concentration of not more than 0.3% on a dry weight basis.

(8) "Industrial Hemp Research License" means a license issued by the department to a higher education institution granting authorization to process or manufacture industrial hemp for academic research purposes.

(9)(a) "Key Participant" means any person who has a financial interest in the business entity, including members of a limited liability company, a sole proprietor, partners in a partnership, and incorporators or directors of a corporation; and

(b) "key participant" includes an:

(i) individual at an executive level, including a chief executive officer, chief operating officer, or chief financial officers; and

(ii) operation manager, site manager, or any employee who may present a risk of diversion.

(10) "Processing area" means the area where industrial hemp is harvested, extracted, refined, and manufactured.

(11) "Processing research" means research that involves harvesting, extracting, refining, and manufacturing of industrial hemp.

(12) "Raw plant material" or "Raw concentrate" means industrial hemp plant material or concentrate that is not in final product form.

(13) "Research Plan" means a plan stating the objective and purpose of the academic research being proposed, including the methods and procedures for carrying out the research, procedures governing the proposed disposition of industrial hemp material, the name and telephone number for the faculty advisor, the institution's name and address, and the names of each individual involved in the project.

(14) "Security Plan" means a plan to control and limit unauthorized access to industrial hemp and methods used to prevent the inadvertent dissemination of industrial hemp.

(15) "Tetrahydrocannabinol" or "THC" means a delta-9-tetrahydrocannabinol, the cannabinoid identified as CAS# 1972-08-3.

R66-37-3. Application for Industrial Hemp Research License.

(1) Each applicant seeking an Industrial Hemp Research License shall submit the following to the department:

(a) a completed application form provided by the department;

(b) a research plan;

(c) a description of the industrial hemp products to be processed;

(d) the blueprint of the processing building;

(e) the physical address where the industrial hemp will be processed;

(f) maps of the processing area showing the boundaries and dimensions in relation to campus; and

(g) a security plan.

(2) Each applicant shall acknowledge and agree to the following:

(a) they will comply with the terms and conditions of license, state, and federal laws; and

(b) they will allow department officials in the processing area during normal business hours.

R66-37-4. Terms of the License.

(1) The term of the Industrial Hemp Research License is one calendar year beginning in January and ending in December. A person seeking to perform academic research for more than one year shall reapply for a license each year.

(2) Two weeks before product disposal, each applicant shall provide the department with a statement of the intended disposition of the product.

(3) Each applicant shall take any necessary measures to avoid the inadvertent dissemination of industrial hemp.

(4) Each applicant shall notify the department of any change in their research plan.

R66-37-5. Transportation of Industrial Hemp Material.

Each movement of industrial hemp material shall include a transport manifest that includes the following information:

(1) a copy of the COA for each batch included in the shipment;

(2) the location of the sending and receiving parties;

(3) proof of registration or licensure for the sending and receiving parties; and

(4) a bill of lading for the transported material.

R66-37-6. Reporting Requirements.

(1) By December 31st or at the conclusion of their research, each Industrial Hemp Research License holder shall submit:

(a) a completed production report, on a form provided by the department;

(b) a report of the results of their research as set forth in their research plan; and

(c) a report of the disposition of any industrial hemp material involved in their research.
(2) The failure to submit each report required by this rule may result in the denial of a renewal license.

R66-37-7. Inspection and Revocation of License.
(1) The department shall have complete and unrestricted access to industrial hemp plants whether growing or harvested, any raw material and product, and any land, buildings and other structures used for the processing, and storage of industrial hemp, during normal business hours.
(2) Any material in the processing area is subject to random sampling and testing by the department to ensure the THC concentration is within the limits required by this rule.
(3) Upon receipt of a failed test result the department may revoke the Industrial Hemp Research License, except as provided in this rule.
(4) Upon receipt of notice of a failed test, the department shall:
(a) notify the faculty advisor of each test result; and
(b) allow for additional testing to be done at the request of the faculty advisor.
(5) The faculty advisor shall notify the department, in writing, within ten days if they are seeking additional testing.
(6) In response to receiving notification of a failed test result and notification from the faculty advisor that they will not seek additional testing, the department shall:
(a) supervise the destruction of the industrial hemp raw plant material, raw concentrate, or product; and
(b) send notification of revocation to the faculty advisor within 30 days if a determination is reached to suspend the license.
(7) Any laboratory test with a total THC and any THC analog concentration of 1.0% or greater will be turned over to the appropriate law enforcement agency and revocation of the license will be immediate, unless:
(a) the applicant declared in the research plan the possibility of exceeding 1% total THC and any THC analog level;
(b) the research plan includes an explanation for why the total THC and any THC analog level may exceed 0.3%; and
(c) the research plan includes additional measures that may need to be taken to control access to the industrial hemp.

R66-37-8. Renewal.
(1) Each Industrial Hemp Research License shall be renewed on a year-to-year basis.
(2) An applicant seeking renewal of the Industrial Hemp Research License shall resubmit each document required for licensing, with any updated information, 30 days before the expiration of the current year license.

R66-37-9. Violations.
(1) A batch of hemp raw material or hemp product is in violation of the terms of the Industrial Hemp Research License if a sample of the product or material is found to contain greater than 0.3% total THC by mass, except as specified in this rule.
(2) The holder of an Industrial Hemp Research License shall be in violation of the certificate if any raw plant material, raw concentrate, or product is not destroyed following the completion of academic research.

KEY: hemp, academic research
Date of Enactment: 2024
Authorizing, and Implemented or Interpreted Law: 4-41-103.1

NOTICE OF SUBSTANTIVE CHANGE		
TYPE OF FILING: Repeal		
Rule or Section Number:	**R68-22**	**Filing ID: 56582**

Agency Information

1. Title catchline:	Agriculture and Food, Plant Industry	
Building:	Taylorsville State Office Building	
Street address:	4315 S 2700 W	
City, state:	Taylorsville, UT	
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:

R68-22. Industrial Hemp Research

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

The 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:

The rule is repealed 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 R66-36.

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 industrial hemp 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	FY2025	FY2026	FY2027
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0

Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits	**FY2025**	**FY2026**	**FY2027**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
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 Utah 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:

Section 4-41-103

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:	07/31/2024

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

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

Agency Authorization Information

Agency head or designee and title:	Craig W. Buttars, Commissioner	**Date:**	06/14/2024

R68. Agriculture and Food, Plant Industry.

[~~R68-22. Industrial Hemp Research.~~

~~R68-22-1. Authority and Purpose.~~

~~Pursuant to Section 4-41-103, this rule establishes the standards, practices, and procedures of the Industrial Hemp Research License allowing a higher education institution to perform academic research.~~

~~R68-22-2. Definitions.~~

~~As used in this rule:~~

~~(1) "Academic Research" means processing of industrial hemp to discover and enable development of useful processes, information, and products.~~

~~(2) "Applicant" means a person, or group of persons from a higher education institution who applies for an Industrial Hemp Research License from the Utah Department of Agriculture and Food.~~

~~(3) "Bill of lading" means a detailed list of the items included in a shipment of industrial hemp or products derived from industrial hemp, in the form of a receipt given by the carrier to the person consigning the industrial hemp.~~

~~(4) "Certificate of Analysis" or "COA" means a document produced by a testing laboratory listing the quantities of the various analytes for which testing was performed.~~

~~(5) "Department" means the Utah Department of Agriculture and Food.~~

~~(6) "Final product" means a reasonably homogenous industrial hemp product in its final packaged form created using the same standard operating procedures and the same formulation.~~

~~(7) "Industrial Hemp" means the plant Cannabis sativa L. and any part of such plant, whether growing or not, with a THC concentration of not more than 0.3% on a dry weight basis.~~

~~(8) "Industrial Hemp Research License" means a license issued by the department to a higher education institution granting authorization to process or manufacture industrial hemp for academic research purposes.~~

~~(9)(a) "Key Participant" means any person who has a financial interest in the business entity, including members of a limited liability company, a sole proprietor, partners in a partnership, and incorporators or directors of a corporation; and~~

~~(b) "key participant" includes an:~~

~~(i) individual at an executive level, including a chief executive officer, chief operating officer, or chief financial officers; and~~

~~(ii) operation manager, site manager, or any employee who may present a risk of diversion.~~

~~(10) "Processing area" means the area where industrial hemp is harvested, extracted, refined, and manufactured.~~

~~(11) "Processing research" means research that involves harvesting, extracting, refining, and manufacturing of industrial hemp.~~

~~(12) "Raw plant material" or "Raw concentrate" means industrial hemp plant material or concentrate that is not in final product form.~~

~~(13) "Research Plan" means a plan stating the objective and purpose of the academic research being proposed, including the methods and procedures for carrying out the research, procedures governing the proposed disposition of industrial hemp material, the name and telephone number for the faculty advisor, the institution's name and address, and the names of each individual involved in the project.~~

~~(1) "Security Plan" means a plan to control and limit unauthorized access to industrial hemp and methods used to prevent the inadvertent dissemination of industrial hemp.~~

~~(15) "Tetrahydrocannabinol" or "THC" means a delta-9-tetrahydrocannabinol, the cannabinoid identified as CAS# 1972-08-3.~~

~~R68-22-3. Application for Industrial Hemp Research License.~~

~~(1) Each applicant seeking an Industrial Hemp Research License shall submit the following to the department:~~

~~(a) a completed application form provided by the department;~~

~~(b) a research plan;~~

~~(c) a description of the industrial hemp products to be processed;~~

~~(d) the blueprint of the processing building;~~

~~(e) the physical address where the industrial hemp will be processed;~~

~~(f) maps of the processing area showing the boundaries and dimensions in relation to campus; and~~

~~(g) a security plan.~~

~~(2) Each applicant shall acknowledge and agree to the following:~~

~~(a) they will comply with the terms and conditions of license, state, and federal laws; and~~

~~(b) they will allow department officials in the processing area during normal business hours.~~

~~R68-22-4. Terms of the License.~~

~~(1) The term of the Industrial Hemp Research License is one calendar year beginning in January and ending in December. A person seeking to perform academic research for more than one year shall reapply for a license each year.~~

~~(3) Two weeks before product disposal, each applicant shall provide the department with a statement of the intended disposition of the product.~~

~~(4) Each applicant shall take any necessary measures to avoid the inadvertent dissemination of industrial hemp.~~

~~(5) Each applicant shall notify the department of any change in their research plan.~~

~~R68-22-5. Transportation of Industrial Hemp Material.~~

~~1) Each movement of industrial hemp material shall include a transport manifest that includes the following information:~~

~~a) a copy of the COA for each batch included in the shipment;~~

~~b) the location of the sending and receiving parties;~~

~~c) proof of registration or licensure for the sending and receiving parties; and~~

~~d) a bill of lading for the transported material.~~

~~R68-22-6. Reporting Requirements.~~

~~(4) By December 31st or at the conclusion of their research, each Industrial Hemp Research License holder shall submit:~~

~~(a) a completed production report, on a form provided by the department;~~

~~(b) a report of the results of their research as set forth in their research plan; and~~

~~(c) a report of the disposition of any industrial hemp material involved in their research.~~

~~(5) The failure to submit each report required by this rule may result in the denial of a renewal license.~~

~~R68-22-7. Inspection and Revocation of License.~~

~~(1) The department shall have complete and unrestricted access to industrial hemp plants whether growing or harvested, any raw material and product, and any land, buildings and other structures used for the processing, and storage of industrial hemp, during normal business hours.~~

~~(2) Any material in the processing area is subject to random sampling and testing by the department to ensure the THC concentration is within the limits required by this rule.~~

~~(5) Upon receipt of a failed test result the department may revoke the Industrial Hemp Research License, except as provided in this rule.~~

~~(6) Upon receipt of notice of a failed test, the department shall:~~

~~(a) notify the faculty advisor of each test result; and~~

~~(b) allow for additional testing to be done at the request of the faculty advisor.~~
~~(7) The faculty advisor shall notify the department, in writing, within ten days if they are seeking additional testing.~~
~~(8) In response to receiving notification of a failed test result and notification from the faculty advisor that they will not seek additional testing, the department shall:~~
~~(a) supervise the destruction of the industrial hemp raw plant material, raw concentrate, or product; and~~
~~(b) send notification of revocation to the faculty advisor within 30 days if a determination is reached to suspend the license.~~
~~(9) Any laboratory test with a total THC and any THC analog concentration of 1.0% or greater will be turned over to the appropriate law enforcement agency and revocation of the license will be immediate, unless:~~
~~(a) the applicant declared in the research plan the possibility of exceeding 1% total THC and any THC analog level;~~
~~(b) the research plan includes an explanation for why the total THC and any THC analog level may exceed 0.3%; and~~
~~(c) the research plan includes additional measures that may need to be taken to control access to the industrial hemp.~~

~~**R68-22-8. Renewal.**~~
~~(1) Each Industrial Hemp Research License shall be renewed on a year to year basis.~~
~~(2) An applicant seeking renewal of the Industrial Hemp Research License shall resubmit each document required for licensing, with any updated information, 30 days before the expiration of the current year license.~~

~~**R68-22-9. Violations.**~~
~~(1) A batch of hemp raw material or hemp product is in violation of the terms of the Industrial Hemp Research License if a sample of the product or material is found to contain greater than 0.3% total THC by mass, except as specified in this rule.~~
~~(2) The holder of an Industrial Hemp Research License shall be in violation of the certificate if any raw plant material, raw concentrate, or product is not destroyed following the completion of academic research.~~

~~**KEY: hemp, academic research**~~
~~**Date of Last Change: October 24, 2022**~~
~~**Notice of Continuation: March 5, 2020**~~
~~**Authorizing, and Implemented or Interpreted Law: 4-41**~~**]**

NOTICE OF SUBSTANTIVE CHANGE		
TYPE OF FILING: Repeal and Reenact		
Rule or Section Number:	**R70-910**	**Filing ID: 56560**

Agency Information

1. Title catchline:	Agriculture and Food, Regulatory Services	
Building:	Taylorsville State Office South Building, 2nd Floor	
Street address:	4315 S 2700 W	
City, state:	Taylorsville, UT	
Mailing address:	PO Box 16500	
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
Travis Waller	801-982-2200	twaller@utah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule or section catchline:
R70-910. Registration of Servicepersons for Commercial Weighing and Measuring Devices
3. Purpose of the new rule or reason for the change:
Last year the Department of Agriculture and Food (Department) needed to clarify some revisions in the Weights and Measures rules.

After a thorough review by the Regulatory Director and Program Manager, it was determined that the Department primarily references the NIST handbooks for provisions related to Weights and Measures in Utah.

Title 4, Chapter 9, Weights and Measures, adopts various parts of these handbooks. To provide clarity, the Department decided to update the appropriate rules to explicitly reflect these adoptions and specify any exceptions that may conflict with other state laws or rules.

4. Summary of the new rule or change:

This repeal and reenact filing removes the confusing language about registering a Serviceperson or Service Agency for commercial weights and measures devices and provides clarity in the registration process in Section R70-910-6.

The reenacted rule also combines Rules R70-950, R70-930, and R70-920 which are now Sections R70-910-7, R70-910-4, and Section R70-910-3, respectfully.

This rule reenacts those rules to ensure the information is in a format consistent with Title 4, Chapter 9, Weights and Measures, and by combining these rules into one rule, individuals will be able to find the applicable sections that the Department incorporates by reference of the NIST Handbook 130 that users need for the commercial devices regulated by the Weights and Measures program.

(EDITOR'S NOTE: The proposed repeal of Rule R70-920 is under ID 56559; the proposed repeal of Rule R70-930 is under ID 56558; and the proposed repeal of Rule R70-950 is under ID 56557 in this issue, July 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:

The changes should not impact the state budget because the requirements are not changing for the program.

B) Local governments:

The changes in this rule will not impact local governments because the program's requirements are not changing.

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

The changes in this rule will not impact small businesses because the program's requirements are not changing.

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

The changes in this rule will not impact non-small businesses because the program's requirements are not changing.

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 changes in this rule will not impact other persons because the program's requirements are not changing.

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

The changes in this rule will not impact compliance costs because the program's requirements are not changing.

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

Regulatory Impact Table

Fiscal Cost	FY2025	FY2026	FY2027
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0

Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits	**FY2025**	**FY2026**	**FY2027**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
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 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:		
Section 4-9-103		

Incorporations by Reference Information

7. Incorporations by Reference:	
A) This rule adds or updates the following title of materials incorporated by references:	
Official Title of Materials Incorporated (from title page)	NIST Handbook 130, Uniform Laws and Regulations in the Areas of Legal Metrology and Fuel Quality as adopted by the 108th National Conference on Weights and Measures
Publisher	National Institute of Standards and Technology, Office of Weights and Measures
Issue Date	December 2023
Issue or Version	NIST HB 130-2024 upd 1
B) This rule adds or updates the following title of materials incorporated by references:	
Official Title of Materials Incorporated (from title page)	NIST Handbook 44, Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices
Publisher	National Institute of Standards and Technology, Office of Weights and Measures
Issue Date	November 2023
Issue or Version	NIST HB 44-2024

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:	07/31/2024

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

Agency Authorization Information

Agency head or	Craig Buttars, Commissioner	**Date:**	06/14/2024

designee and title:			

R70. Agriculture and Food, Regulatory Services.

[~~R70-910. Registration of Servicepersons for Commercial Weighing and Measuring Devices.~~

~~R70-910-1. Authority.~~

~~Promulgated under Section 4-9-103.~~

~~R70-910-2. Policy.~~

~~(1) It shall be the policy of the department's Weights and Measures Program to accept registration of an individual who:~~

~~(a) provides acceptable evidence of each business license required by any applicable city, county, or state to conduct business, if the individual is self-employed, or if the individual is not self-employed, provide acceptable evidence with respect to their employer;~~

~~(b) provides acceptable evidence, as demonstrated by attending department provided training and successfully passing an exam administered by the department, that they are fully qualified to install, service, repair, or recondition a commercial weighing or measuring device and have a thorough working knowledge of appropriate weights and measures laws, orders, rules, and regulations; and~~

~~(c) has possession of, or has accessible for their use, weights and measures standards and testing equipment certified by the department to be appropriate in design and capacity.~~

~~(2) It shall be unlawful for any individual to place into public or commercial service any weighing or measuring device that has not been tested and sealed by a registered serviceperson.~~

~~R70-910-3. Definitions.~~

~~(1) "Commercial Weighing and Measuring Device" means any weight or measure or weighing or measuring device commercially used or employed in establishing the size, quantity, extent, area, or measurement of quantities, things, product, or articles for distribution or consumption, purchased, offered or submitted for sale, hire, or award or in computing any basic charge or payment for services rendered on the basis of weight or measure, and shall also include any accessory attached to or used in connection with a commercial weighing or measuring device when the accessory is so designed or installed that its operation affects, or may affect, the accuracy of the device.~~

~~(2) "Department" means the Utah Department of Agriculture and Food.~~

~~(3) "Placed in service report" means a report, completed on a department form for declaring that a commercial weighing or measuring device has been put into service.~~

~~(4) "Registered Serviceperson" means any individual who for hire, award, commission, or any other payment of any kind, installs, services, repairs, reconditions, calibrates or places into service a commercial weighing or measuring device, and who is registered by the department to perform these services.~~

~~(5) "Security Seal" means a uniquely identifiable physical seal, such as a lead and wire seal or other type of locking seal, or similar apparatus attached to a weighing or measuring device for protection against or indication of access to adjustment.~~

~~(6) "Service Agency" means any agency, firm, company, or corporation that, for hire, award, commission, or any other payment of any kind, installs, services, repairs, reconditions, calibrates or places into service a commercial weighing or measuring device.~~

~~R70-910-4. Reciprocity.~~

~~The department may enter into a reciprocal agreement with any other state or states that have similar registration policies. Under the agreement, the registered servicepersons of the states party to the reciprocal agreement are granted full reciprocal authority, including reciprocal recognition of certification of standards and testing equipment, in any states party to the agreement.~~

~~R70-910-5. Registration Fee.~~

~~Upon application for and renewal of registration, the applicant shall pay to the department a registration fee determined by the department pursuant to Subsection 4-2-103(2) for a registered serviceperson. Registration shall expire December 31 of each year, and shall be renewed annually.~~

~~R70-910-6. Registration.~~

~~(1) An individual may apply for registration to place into service commercial weighing or measuring devices on the department's application form. An applicant shall submit appropriate evidence of having passed a department approved exam that measures the applicant's knowledge of device installation, service, repair and maintenance and applicable laws, orders, rules and regulations.~~

~~(2) The department shall provide a device service training class and administer a proficiency examination. The proficiency examination shall test the basic knowledge required for competency as a serviceperson. The passing score on the examination shall be above 80%.~~

~~(3) An examinee who fails the device service proficiency examination shall retake the training class in order to retake the examination.~~

~~(4) The department may revise the examination to address knowledge of changes in the law or technology.~~

~~(5) Training class attendance and successful completion of the examination may be used to apply for a Certificate of Registration for three successive registration cycles.~~

~~(6) Servicepersons who are employed by a service agency that provides training shall notify the department and shall have up to 30 days to become registered.~~

~~The department shall provide a class and examination opportunity for new servicepersons within two weeks of notification.~~

~~R70-910-7. Certificate of Registration.~~

~~(1) Upon receipt and acceptance of a properly executed application form, the department shall issue to the applicant a Certificate of Registration, including an assigned registration number.~~

~~(2) The Certificate of Registration shall remain effective until it is returned by the applicant, withdrawn by the department, or expires.~~

~~R70-910-8. Privileges of a Registrant.~~

~~The bearer of a Certificate of Registration shall have the authority to:~~

~~(1) remove an official rejection tag or mark placed on a weighing or measuring device by the authority of the department; and~~

~~(2) place in service, until such time as an official examination can be made, a commercial weighing or measuring device that has been newly installed, routinely calibrated, or officially rejected.~~

~~R70-910-9. Place in Service Report.~~

~~(1) The department shall make available to each registered serviceperson the Placed in Service Report form.~~

~~(2) A Placed in Service Report shall be submitted to the department by the serviceperson within 24 hours of when a rejected device is restored to service or of when a newly installed device is placed in service.~~

~~(3) Each official rejection tag or mark removed from the device shall be mailed to the Department of Agriculture and Food, the Division of Regulatory Services, Weights and Measures Program, 350 North Redwood Rd, PO Box 146500, Salt Lake City, UT 84114-6500.~~

~~(4) A duplicate copy of the report shall be retained by:~~

~~(a) the owner or operator of the device; and~~

~~(b) the registered serviceperson or their employer.~~

~~R70-910-10. Standards and Testing Equipment.~~

~~(1) A registered serviceperson shall submit, at least biennially, to the department, for examination and certification, any testing equipment and standards that are used, or are to be used, in calibrating or placing into service a commercial weighing and measuring device.~~

~~(2) A registered serviceperson may not use, in officially servicing commercial weighing or measuring devices, any standards or testing equipment that has not been certified by the department.~~

~~R70-910-11. Security Seals Required to be Submitted.~~

~~(1) A registered serviceperson shall submit to the department the seal that they will use.~~

~~If the seal belongs to the registered serviceperson's employer, the serviceperson shall identify the employer.~~

~~(2) When a registered serviceperson changes their seal, they shall submit the seal and their employer's identification to the department prior to it being used.~~

~~(3) A registered serviceperson who uses their own seal shall submit that seal to the department.~~

~~(4) When a registered serviceperson changes their own seal, they shall submit the seal to the department prior to it being used.~~

~~R70-910-12. Qualification to Service Heavy Capacity Scales.~~

~~(1) No registered serviceperson shall be qualified to place in service or remove a rejection tag from a heavy capacity scale unless they have adequate testing weights certified by the department.~~

~~(2) Adequate testing weights shall be deemed to be 10,000 pounds of test weights or one-fourth the capacity of the scale, whichever is less.~~

~~R70-910-13. Unlawful Acts Specified.~~

~~(1) It shall be unlawful for any non-registered individual to:~~

~~(a) place into public or commercial service a weighing or measuring device; or~~

~~(b) represent themselves as being registered as a serviceperson by the department.~~

~~R70-910-14. Suspension or Revocation of Certificate of Registration.~~

~~The department may, for good cause, after careful investigation, consideration, and due notice and process, including an opportunity for a hearing, suspend or revoke a Certificate of Registration under Section 4-1-106 and Title 63G, Chapter 4, Utah Administrative Procedures Act.~~

~~R70-910-15. Publication of Lists of Service Agencies and Registered Servicepersons.~~

~~(1) The department shall publish, and may supply upon request, lists of registered servicepersons and service agencies that commit to using registered servicepersons to calibrate commercial weighing and measuring devices or place them in service.~~

~~(2) The department may remove from the lists a service agency found to have used a non-registered service person to calibrate or place into service a commercial weighing or measuring device.~~

~~R70-910-16. Notification of Service Agency.~~

~~If the voluntary registration of a service person is suspended or revoked, the department shall notify the known employing service agency within three working days.~~

~~**R70-910-17. Notification of Changed Equipment.**~~

~~If a voluntarily registered serviceperson changes any testing equipment and standards that are used, or are to be used, in calibrating or placing into service a commercial weighing and measuring device, the serviceperson shall notify and provide proof to the department that the testing equipment or standard has been approved by an official state metrologist.~~]

R70-910. Weights and Measures Requirements.

R70-910-1. Purpose and Authority.

Promulgated under the authority of Section 4-9-103.

R70-910-2. Definitions.

(1) Terms defined in Title 4, Chapter 9, Weights and Measures, and the definitions listed in the NIST Handbook 130 and 44, shall apply to this rule.

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

(3) "NCWM" means the National Conference on Weights and Measures.

(4) "NIST Handbook 44" means the 2024 edition of the National Institute of Standards and Technology Handbook 44, entitled "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices."

(5) "NIST Handbook 130" means the 2024 edition of the National Institute of Standards and Technology Handbook 130, entitled "Uniform Laws and Regulations in the Areas of Legal Metrology and Engine Fuel Quality".

R70-910-3. Requirements for Packing and Labeling.

(1) Per Section 4-9-107, the department incorporates by reference the 2024 version of the Uniform Packaging and Labeling Regulation adopted by the NCWM and published in the 2024 version of the National Institute of Standards and Technology Handbook 130, "Uniform Laws and Regulations," with the exception of Section 10.11, Cannabis and Cannabis Containing Products.

(2) Cannabis and cannabis containing products shall meet requirements in Rule R66-35, Cannabinoid Product Registration, and Labeling.

(3) This rule shall apply to packages but may not apply to:

(a) inner wrappings not intended to be individually sold to the customer;

(b) shipping containers or wrapping used solely for the transportation of any commodities in bulk or in quantity to manufacturers, packers, or processors, or to wholesale or retail distributors, but in no event shall this exclusion apply to packages of consumer or non-consumer commodities;

(c) auxiliary containers or outer wrappings used to deliver packages of commodities to retail customers if containers or wrappings bear no printed matter pertaining to a particular commodity;

(d) containers used for retail tray pack displays when the container itself is not intended to be sold, such as a tray that is used to display individual envelopes of seasonings, gravies;

(e) open carriers and transparent wrappers or carriers for containers when the wrappers or carriers do not bear any written, printed, or graphic matter obscuring the label information required by this regulation; or

(f) packages intended for export to foreign countries.

R70-910-4. Requirements for Method of Sale of Commodities.

(1) Per Section 4-9-108, the department incorporates by reference the 2024 version of the Uniform Regulation for the Method of Sale of Commodities as adopted by the NCWM and published in National Institute of Standards and Technology Handbook 130, "Uniform Laws and Regulations," with the following exemptions:

(a) commodities in liquid form shall be sold by liquid measure or by weight; and

(b) commodities not in liquid form shall be sold by weight, by measure, or by count.

(2) Unless otherwise specified or specifically permitted, the sale of any food product, whether sold in bulk or packaged form, shall be only according to a unit of measure or weight that meets the following criteria:

(a) is recognized and defined by NIST as legal for use in commerce;

(b) has been published in the "Federal Register;" and

(c) the measurement values have metrological traceability to a national standard.

(3) The department allows the sale of a product or commodity according to count, where appropriate to be fully informative to facilitate value comparison.

(4) Bulk sales shall meet the requirements listed in Section 4-9-113.

(5) A person may not:

(a) sell, offer, or expose for sale a quantity less than the quantity represented;

(b) take more than the represented quantity when, as a buyer, they furnish the weight or measure by which the quantity is determined; or

(c) represent the quantity in any manner calculated or tending to mislead or in any way deceive another person.

R70-910-5. Requirements for Unit Pricing.

(1) The department incorporates by reference the 2024 version of the Uniform Unit Pricing Regulation as adopted by the NCWM and published in the National Institute of Standards and Technology Handbook 130, "Uniform Laws and Regulations."

(2) A person may not misrepresent the price of any commodity or service sold, offered, exposed, or advertised for sale by weight, measure, or count, nor represent the price in any manner calculated or tending to mislead or in any way deceive a person.

R70-910-6. Requirements for the Registration of Servicepersons and Service Agencies for Commercial Weighing and Measuring Devices.

(1) Per Section 4-9-109, the department incorporates by reference the 2024 version of the Uniform Regulation for the Voluntary Registration of Servicepersons and Service Agencies for Commercial Weighing and Measuring Devices as adopted by the National NCWM and published in the National Institute of Standards and Technology Handbook 130, "Uniform Laws and Regulations," with the following modifications.

(2) The department shall require annual registration to service weighing devices or measuring devices from:

(a) individuals or Servicepersons; or

(b) Service Agencies, defined as an agency, firm, company, or corporation that for hire, award, commission, or any other payment of any kind installs, services, repairs, reconditions, calibrates, or places into service a commercial weighing or measuring device.

(3) Individuals or Service Agencies shall provide evidence or demonstrate through a department approved exam or equivalent that they:

(a) are qualified to install, service, repair, or recondition a commercial weighing or measuring device;

(b) have a thorough working knowledge of applicable weights and measures laws, orders, rules, and regulations; and

(c) possess, or have access to, suitable and calibrated weights and measures field standards and testing equipment, adequate in amount and appropriate in design.

(4) A Service Agency that provides training for Servicepersons shall notify the department and shall register Servicepersons within 30 days of completing the training.

(5) The department shall notify denied applicants in writing if the applicant fails to complete the entire application;

(6) The department may issue a notice of conditional denial on incomplete applications and allow the applicant a specified amount of time to correct any deficiencies.

(7) Applicants shall submit the annual registration fee at the time of registration.

(8) Department employees may not be eligible for registration as a Serviceperson under this rule.

(9)(a) A registered Serviceperson shall be qualified to place in service or remove a rejection tag from a heavy capacity scale after the department certifies adequate testing weights.

(b) The department shall consider adequate testing weights as 10,000 pounds of test weights or one-fourth the capacity of the scale, whichever is less.

(10) Servicepersons or Service Agencies not registered with the department may not:

(a) place into public or commercial service a weighing or measuring device; or

(b) represent themselves as a registered Serviceperson by the department.

(11) The department may, for good cause, after careful investigation, consideration, and due notice and process, including an opportunity for a hearing, suspend or revoke a Certificate of Registration under this rule and Section 4-1-106.

(12) If the department suspends or revokes the registration of a Serviceperson, they shall notify the known employing Service Agency within three business days.

(13) It shall be unlawful for an individual to place into public or commercial service a weighing or measuring device that a registered Serviceperson has not tested or sealed.

R70-910-7. Requirements for National Type Evaluation.

(1) The department incorporates by reference the Uniform Regulation for National Type Evaluation as adopted by the NCWM and published in the National Institute of Standards and Technology Handbook 130, "Uniform Laws and Regulations."

(2) Section R70-910-7, shall apply to any type of device and equipment listed in the National Institute of Standards and Technology (NIST) Handbook 44 which the department incorporates by reference and the evaluation procedures that have been published in the 2024 version of the National Conference on Weights and Measures (NCWM), Publication 14, "National Type Evaluation Program, Technical Policy, Checklists, and Test Procedures".

(3)(a) The department shall require a device to be traceable to an active Certificate of Conformance (CC) before its installation or use for commercial or law enforcement purposes.

(b) If the device consists of separate and compatible main elements, each main element shall be traceable to a CC.

(c)(i) A device is traceable to a CC if:

(ii) it is of the same type identified on the Certificate; and

(iii) it was manufactured during the period that the Certificate was maintained in active status.

(4) The department may:

(a) operate a Participating Laboratory as part of the NTEP, and shall charge and collect fees for type evaluation services; and

(b) cooperate with and enter into agreements with any person to carry out the purposes of this rule.

R70-910-8. Information Required on Packages.

(1) A package, whether a random package or a standard package, kept for sale, or offered or exposed for sale, shall have on the outside of the package a definite, plain, and conspicuous declaration of:

(a) the identity of the commodity in the package;

(b) the quantity of contents in terms of weight, measure, or count; and

(c) the name and place of business of the manufacturer, packer, or distributor, in the case of any package kept, offered, or exposed for sale, or sold in any place other than on the premises where packed.

(2) A package is exempt from Subsection R70-910-8(1), if the commodity inside the package is food, other than meat or poultry, which was repackaged in a retail establishment and the food is displayed to the purchaser under either of the following circumstances:
(a) its interstate labeling is clearly in view or with a counter card, sign, or other appropriate device bearing prominently and conspicuously the common or usual name of the food; or
(b) the common or usual name of the food is clearly revealed by its appearance;

R70-910-9. Declarations of Unit Price on Random Weight Packages.
In addition to the declarations required by Section R70-910-7, any package being one of a lot containing random weights of the same commodity, at the time it is offered or exposed for sale at retail, shall bear on the outside of the package a plain and conspicuous declaration of the price per kilogram or pound and the total selling price of the package.

R70-910-10. Advertising Packages for Sale.
When a packaged commodity is advertised in any manner with the retail price stated, there shall be closely and conspicuously associated with the retail price a declaration of quantity as is required by law or regulation to appear on the package.

R70-910-11. Prohibited Acts.
A person may not:
(1) use or have in possession for use in commerce any incorrect weight or measure;
(2) sell or offer for sale for use in commerce any incorrect weight or measure;
(3) remove any tag, seal, or mark from any weight or measure without specific written authorization from the department;
(4) hinder or obstruct any weights and measures official in the performance of their duties; or
(5) violate any Title 4, Chapter 9 Weights and Measures, or this rule.

KEY: inspections, weights and measures, serviceperson, service agency
Date of Last Change: [~~June 28, 2021~~]2024
Notice of Continuation: August 30, 2019
Authorizing, and Implemented or Interpreted Law: 4-9-103

NOTICE OF SUBSTANTIVE CHANGE		
TYPE OF FILING: Repeal		
Rule or Section Number:	**R70-920**	**Filing ID: 56559**

Agency Information

1. Title catchline:	Agriculture and Food, Regulatory Services	
Building:	Taylorsville State Office Building, South Building, Floor 2	
Street address:	4315 S 2700 W	
City, state:	Taylorsville, UT	
Mailing address:	PO Box 16500	
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
Travis Waller	801-982-2200	twaller@utah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule or section catchline:
R70-920. Packaging and Labeling of Commodities
3. Purpose of the new rule or reason for the change:
The Department of Agriculture and Food (Department) adopts and incorporates NIST Handbook 130 to delineate the necessary provisions for the Weights and Measures program, which includes the Packaging and Labeling of Commodities. The NIST

Handbook contains essential information and requirements that are imperative for comprehending the Packaging and Labeling of Commodities standards.

To enhance clarity and streamline regulatory references, the Department has consolidated the various rules stating the adoption of this handbook into a single, cohesive rule, R70-910.

4. Summary of the new rule or change:

The Department intends to repeal this rule because reenacted Rule R70-910 will provide for the incorporation and adoption of this section of the handbook.

Combining these rules will help users identify the incorporation and provide more context for understanding the programs requirements, as all relevant information will be found in the single rule instead of three.

(EDITOR'S NOTE: The proposed repeal and reenact of Rule R70-910 is under ID 56560; the proposed repeal of Rule R70-930 is under ID 56558; and the proposed repeal of Rule R70-950 is under ID 56557 in this issue, July 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:

The changes should not impact the state budget because the program requirements are not changing.

B) Local governments:

The changes should not impact local governments because the program requirements are not changing.

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

The changes should not impact small businesses because the program requirements are not changing

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

The changes should not impact non-small businesses because the program requirements are not changing.

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 changes should not impact other persons because the program requirements are not changing.

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

The changes should not impact the compliance costs because the program requirements are not changing.

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

Regulatory Impact Table

Fiscal Cost	**FY2025**	**FY2026**	**FY2027**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits	**FY2025**	**FY2026**	**FY2027**
State Government	$0	$0	$0

Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
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 Agriculture and Food, Craig 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:

Section 4-9-103

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:	07/31/2024
9. This rule change MAY become effective on:	08/07/2024

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

Agency Authorization Information

Agency head or designee and title:	Craig Buttars, Commissioner	**Date:**	06/13/2024

R70. Agriculture and Food, Regulatory Services.
[~~R70-920. Packaging and Labeling of Commodities.~~
~~R70-920-1. Purpose and Authority.~~
~~Promulgated under the authority of Section 4-9-103.~~

~~R70-920-2. Incorporations by Reference.~~
~~The Uniform Packaging and Labeling Regulation, published in the National Institute of Standards and Technology (NIST) Handbook 130, 2022 edition, is incorporated by reference within this rule.~~

~~KEY: inspections~~
~~Date of Last Change: January 12, 2023~~
~~Notice of Continuation: July 6, 2021~~
~~Authorizing, and Implemented or Interpreted Law: 4-9-103~~]

NOTICE OF SUBSTANTIVE CHANGE

TYPE OF FILING: Repeal		
Rule or Section Number:	**R70-930**	**Filing ID: 56558**

Agency Information

1. Title catchline:	Agriculture and Food, Regulatory Services
Building:	Taylorsville State Office Building, South Bldg, Floor 2
Street address:	4315 S 2700 W
City, state:	Taylorsville, UT
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
Travis Waller	801-982-2200	Twaller@Utah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule or section catchline:

R70-930. Method of Sale of Commodities

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

The Department of Agriculture and Food (Department) adopts and incorporates NIST Handbook 130 to delineate the necessary provisions for the Weights and Measures program, which includes the Method of Sale of Commodities. The NIST Handbook contains essential information and requirements that are imperative for comprehending the Method of Sale of Commodities standards.

To enhance clarity and streamline regulatory references, the Department has consolidated the various rules stating the adoption of this handbook into a single, cohesive rule.

4. Summary of the new rule or change:

The Department intends to repeal this rule because reenacted Rule R70-910 will provide the incorporation and adoption of this section of the handbook. Combining these rules will help users identify the incorporation and provide more context for understanding the programs requirements, as all relevant information will be found in the single rule instead of three.

(EDITOR'S NOTE: The proposed repeal and reenact of Rule R70-910 is under ID 56560; the proposed repeal of Rule R70-920 is under ID 56559; and the proposed repeal of Rule R70-950 is under ID 56557 in this issue, July 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:

The changes should not impact the state budget because the program requirements and administration are not changing.

B) Local governments:

The changes should not impact local governments because the program requirements and administration are not changing.

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

The changes should not impact small businesses because the program requirements and administration are not changing.

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

The changes should not impact non-small businesses because the program requirements and administration are not changing.

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 changes should not impact other persons because the program requirements and administration are not changing.

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

The changes should not impact the compliance costs because the program requirements and administration are not changing.

G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)			
Regulatory Impact Table			
Fiscal Cost	**FY2025**	**FY2026**	**FY2027**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits	**FY2025**	**FY2026**	**FY2027**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
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 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:		
Section 4-9-103		

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:	07/31/2024

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

Agency Authorization Information

Agency head or designee and title:	Craig Buttars, Commissioner	**Date:**	06/13/2024

R70. Agriculture and Food, Regulatory Services.
[~~R70-930. Method of Sale of Commodities.~~
~~R70-930-1. Purpose and Authority.~~
~~Promulgated under the authority of Section 4-9-103.~~

~~R70-930-2. Incorporated by Reference.~~
~~Except as modified by Section R70-930-3, the Uniform Regulation for the Method of Sale of Commodities as published in the National Institute of Standards and Technology (NIST) Handbook 130, 2022 edition, is incorporated by reference within this rule.~~

~~R70-930-3. Modifications.~~
~~(1) Berries and small fruits - if sold by volume, shall have the following capacities:~~
~~(a) Metric Capacities.~~

~~(i) 250 milliliters;~~
~~(ii) 500 milliliters; or~~
~~(iii) 1 liter.~~
~~(b) Inch-Pound Capacities.~~
~~(i) 1/2 dry pint, having a capacity of 16.8 cubic inches and containing at least six ounces;~~
~~(ii) 1 dry pint, having a capacity of 33.6 cubic inches and containing at least 12 ounces; or~~
~~(iii) 1 dry quart having a capacity of 67.2 cubic inches and containing at least 24 ounces; except that weights used in the sale of red currants shall be 21 ounces for quarts, 10.5 ounces for pints and 5.3 ounces for half pints.~~

~~**KEY: inspections**~~
~~**Date of Last Change: February 27, 2023**~~
~~**Notice of Continuation: July 6, 2021**~~
~~**Authorizing, and Implemented or Interpreted Law: 4-9-103**~~**]**

NOTICE OF SUBSTANTIVE CHANGE		
TYPE OF FILING: Repeal		
Rule or Section Number:	**R70-950**	**Filing ID: 56557**

Agency Information

1. Title catchline:	Agriculture and Food, Regulatory Services	
Building:	Taylorsville State Office Building, South Building, Floor 2	
Street address:	4315 S 2700 W	
City, state:	Taylorsville, UT	
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
Travis Waller	801-982-2200	Twaller@Utah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule or section catchline:

R70-950. Uniform National Type Evaluation

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

The Department of Agriculture and Food (Department) adopts and incorporates the NIST Handbook 130 and 44 to delineate the necessary provisions for the Weights and Measures program, which includes the National Type Evaluation. The NIST Handbooks contain essential information and requirements that are imperative for comprehending the National Type Evaluation standards.

To enhance clarity and streamline regulatory references, the Department has consolidated the various rules stating the adoption of these handbooks into a single, cohesive rule.

4. Summary of the new rule or change:

The Department wants to repeal this rule because another rule will provide the information. The incorporation of Handbook 130 and 44 will be found in the reenacted Rule R70-910.

The combination of these rules will help the user identify the incorporations and will provide more context to understanding the requirements of the program because the information will be found in one rule instead of three.

(EDITOR'S NOTE: The proposed repeal and reenact of Rule R70-910 is under ID 56560; the proposed repeal of Rule R70-920 is under ID 56559; and the proposed repeal of Rule R70-930 is under ID 56558 in this issue, July 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:

The changes should not impact the state budget because the program requirements are not changing.

B) Local governments:

The changes should not impact local governments because the program requirements are not changing.

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

The changes should not impact small businesses because the program requirements are not changing.

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

The changes should not impact non-small businesses because the program requirements are not changing.

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 changes should not impact other persons because the program requirements are not changing.

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

The changes should not impact compliance costs because the program requirements and administration are not changing.

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

Regulatory Impact Table

Fiscal Cost	**FY2025**	**FY2026**	**FY2027**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits	**FY2025**	**FY2026**	**FY2027**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
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:		
Section 4-9-2		

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:	07/31/2024

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

Agency Authorization Information

Agency head or designee and title:	Craig Buttars, Commissioner	Date:	06/14/2024

R70. Agriculture and Food, Regulatory Services.

[~~R70-950. Uniform National Type Evaluation.~~

~~R70-950-1. Authority.~~

~~A. Promulgated under authority of Section 4-9-2.~~

~~B. Application. This rule shall apply to all classes of devices and/or equipment as covered in National Institute of Standards and Technology (N.I.S.T) Handbooks 44, 105-1, 105-2, and 105-3. (The department has a complete set of the publications mentioned, additional copies may be obtained from the U.S. Government Printing Office.)~~

~~R70-950-2. Definitions.~~

~~A. National Type Evaluation Program.~~

~~The term "National Type Evaluation Program" means a program of cooperation between the National Institute of Standards and Technology (N.I.S.T), the National Conference on Weights and Measures, the States, and the private sector for determining, on a uniform basis, conformance of a type with the relevant provisions of National Institute of Standards and Technology (N.I.S.T) Handbook 44, "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices," National Institute of Standards and Technology (N.I.S.T) Handbook 105-1, "Specifications and Tolerances for Reference Standards and Field Standard Weights and Measures, Specifications and Tolerances for Field Standard Weights (N.I.S.T Class F)," National Institute of Standards and Technology (N.I.S.T) Handbook 105-2, "Specifications and Tolerances for Reference Standards and Field Standard Weights and Measures, Specifications and Tolerances for Field Standard Measuring Flask," or National Institute of Standards and Technology (N.I.S.T) Handbook 105-3, "Specifications and Tolerances for Reference Standards and Field Standard Weights and Measures, Specifications and Tolerances for Graduated Neck Type Volumetric Field Standards."~~

~~B. Type Evaluation.~~

~~The term "type evaluation" means the testing, examination, and/or evaluation of a type by a Participating Laboratory under the National Type Evaluation Program.~~

~~C. Type.~~

~~The term "type" means a model or models of a particular measurement system, instrument, element, or a field standard that positively identifies the design. A specific type may vary in its measurement ranges, size, performance, and operating characteristics as specified in the Certificate of Conformance.~~

~~D. Participating Laboratory.~~

~~The term "Participating Laboratory" means any State Measurement Laboratory that has been certified by the National Institute of Standards and Technology (N.I.S.T), in accordance with its program for the Certification of Capability of State Measurement Laboratories, to conduct a type evaluation under the National Type Evaluation Program.~~

~~E. Certificate of Conformance.~~

~~The term "Certificate of Conformance" means a document issued by the National Institute of Standards and Technology (N.I.S.T) or National Conference on Weights and Measures (NCWM) based on testing in participating laboratories, said document constituting evidence of conformance of a type with the requirements of National Institute of Standards and Technology (N.I.S.T) Handbooks 44, 105-1, 105-2, and 105-3.~~

~~F. Director.~~

~~The term "Director" means the Director of Regulatory Services, Utah Department of Agriculture and Food.~~

~~R70-950-3. Certificate of Conformance.~~

~~The Director may require any weight or measure, or any weighing or measuring instrument or device to be issued a Certificate of Conformance prior to use for commercial or law enforcement purposes.~~

~~**R70-950-4. Participating Laboratory.**~~

~~The Director is authorized to operate a Participating Laboratory as part of the National Type Evaluation Program. In this regard, the Director is authorized to charge and collect fees for type evaluation services.~~

~~**KEY: inspections**~~
~~**Date of Last Change: 1987**~~
~~**Notice of Continuation: April 29, 2020**~~
~~**Authorizing, and Implemented or Interpreted Law: 4-9-2**~~**]**

NOTICE OF SUBSTANTIVE CHANGE		
TYPE OF FILING: Amendment		
Rule or Section Number:	**R151-1-2**	**Filing ID: 56584**

Agency Information

1. Title catchline:	Commerce, Administration	
Building:	Heber M. Wells Building	
Street address:	160 E 300 S	
City, state:	Salt Lake City, UT	
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:
R151-1-2. Electronic Meetings
3. Purpose of the new rule or reason for the change:
H.B. 36 passed in the 2024 General Session, Open and Public Meetings Acts Amendments, amended Section 52-4-207 regarding electronic meetings of a public body. This rule filing updates Section R151-1-2 to comport with the H.B. 36 (2024) amendments.
4. Summary of the new rule or change:
This rule filing clarifies that electronic meetings can be by video, audio, or both video and audio, that a quorum of the public body may be based on the members who participate in person and remotely, that votes of the public body shall be recorded in meeting minutes including roll call votes, and that an anchor location is not required as provided in Subsection 52-4-207(5).

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, H.B. 36 passed including an amendment to Section 52-4-207 regarding electronic meetings of a public body. H.B. 36 (2024) included an analysis of costs and revenue to the state budget and none were noted. This rule filing updates Section R151-1-2 to comport with the H.B. 36 (2024) amendments without any anticipated additional costs or savings.

Therefore, there is no need to complete the table in Section G below.

B) Local governments:

This rule will likely not result in any direct measurable impact to local governments as they are not generally involved in meetings of public bodies at the Department of Commerce.

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

This rule is not expected to affect small businesses.

No fees or taxes are associated with the amendments, which generally clarify how public body meetings may be conducted.

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

This rule is not expected to affect non-small businesses.

No fees or taxes are associated with the amendments, which generally clarify how public body meetings may be conducted.

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

This rule is not expected to affect persons other than small businesses, non-small businesses, state or local governments.

No fees or taxes are associated with the amendments, which generally clarify how public body meetings may be conducted.

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

This rule is not expected to result in direct measurable costs for affected persons.

No fees or taxes are associated with the amendments, which generally clarify how public body meetings may be conducted.

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

Regulatory Impact Table			
Fiscal Cost	**FY2025**	**FY2026**	**FY2027**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits	**FY2025**	**FY2026**	**FY2027**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
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 52-4-207	Subsection 13-1-6(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:	07/31/2024

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

Agency Authorization Information

Agency head or designee and title:	Margaret W. Busse, Executive Director	**Date:**	06/14/2024

R151. Commerce, Administration.
R151-1. Department of Commerce General Provisions.
R151-1-2. Electronic Meetings.

In compliance with Section 52-4-207, the following shall apply to electronic meetings held by any "public body" as defined in Section 52-4-103:

(1) electronic meetings conducted by video, audio, or both video and audio, are not prohibited but may be limited by an agency director or designee based on budget, public policy, or logistic considerations;

(2)(a) an agency director or designee may establish an electronic meeting on the agency director or designee's initiative or after considering a request from any member of the public body;

(b)(i) a member's request for an electronic meeting shall be made as far in advance as possible, but not less than three business days before a meeting to allow for arrangements to be made for the electronic meeting;

(ii) the agency director or designee may shorten this time frame upon a determination of reasonable need;

(3)(a) whether a quorum of the public body is present shall be based on members participating in person and remotely[~~not required to be present at the anchor location~~];

(b) the presence of a quorum shall be established by roll call at the beginning of an electronic meeting and at any time during the meeting on the demand of any member;

(4)(a) the votes of the public body, including any roll call votes, shall be recorded in the minutes of the meeting; and

(b) [~~except for a unanimous vote,~~]the public body [~~shall~~]may take a vote[~~s~~] by roll call[~~:~~] if requested by any member at any time during a meeting.

(5) any number of separate connections for members of a public body is allowed for an electronic meeting, unless an agency director or designee limits the number of separate connections based on available equipment capability or other relevant and reasonable considerations;

(6) a meeting of a public body may be held electronically without an anchor location as provided in Subsection 52-4-207(5)[~~, for public health or safety reasons~~].

KEY: oath, board members, investigators, electronic meetings
Date of Last Change: 2024[~~September 21, 2022~~]
Notice of Continuation: October 3, 2019
Authorizing, and Implemented or Interpreted Law: Art. IV, Sec. 10; 53-13-101(12); 13-1-6(1); 13-1-2(1)(b); 52-4-207

NOTICE OF SUBSTANTIVE CHANGE		
TYPE OF FILING: Amendment		
Rule or Section Number:	**R277-113**	**Filing ID: 56562**

Agency Information

1. Title catchline:	Education, Administration
Building:	Board of Education
Street address:	250 E 500 S
City, state:	Salt Lake City, UT 84111

Mailing address:	PO Box 144200	
City, state 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:

R277-113. LEA Fiscal and Auditing Policies

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

This rule is being amended due to the passage of H.B. 415 and H.B. 82 during the 2024 General Session.

4. Summary of the new rule or change:

The amendments specifically assign an oversight category, add a definition for "Cash" or "cash receipts", remove the section on 'LEA Recordkeeping for Flexible Use of Restricted Funds', and align language to changes made to recently updated Rules R277-407, School Fees, and R277-408, School Fundraising.

(EDITOR'S NOTE: The proposed amendment to Rule R277-407 is under ID 56569 and the proposed new Rule R277-408 is under ID 56570 in this issue, July1, 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.

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).

The USBE believes the fiscal impacts were captured in the fiscal note to H.B. 415 and H.B. 82 for the USBE and LEAs.

There are no measurable costs from the rule changes outside the changes captured by the fiscal notes to H.B. 415 and H.B. 82.

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 for the USBE or LEAs. The USBE believes the fiscal impacts were captured in the fiscal note to H.B. 415 and H.B. 82 for the USBE and LEAs.

There are no measurable costs from the rule changes outside the changes captured by the fiscal notes to H.B. 415 and H.B. 82.

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. This only impacts 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 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.

The USBE believes the fiscal impacts were captured in the fiscal note to H.B. 415 and H.B. 82 for the USBE and LEAs. There are no measurable costs from the rule changes outside the changes captured by the fiscal notes to H.B. 415 and H.B. 82.

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

Regulatory Impact Table

Fiscal Cost	**FY2025**	**FY2026**	**FY2027**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits	**FY2025**	**FY2026**	**FY2027**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
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 regulatory impact analysis.

Citation Information

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

Article X, Section 3	Subsection 53E-3-401(4)	Subsection 53E-3-501(1)(e)

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:	07/31/2024

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

Agency Authorization Information

Agency head or designee and title:	Angie Stallings, Deputy Superintendent of Policy	**Date:**	06/14/2024

R277. Education, Administration.
R277-113. LEA Fiscal and Auditing Policies.
R277-113-1. Authority and Purpose.

(1) This rule is authorized by:

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

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

(c) Subsection 53E-3-501(1)(e)(i), which directs the Board to establish rules and minimum standards for school productivity and cost effectiveness measures;

(d) Subsection 53E-3-501(1)(e)(iv), which allows the Board to adopt rules regarding financial, statistical, and student accounting requirements;

(e) Section 53E-3-602, which allows the Board to approve auditing standards for LEA governing boards;

(f) Section 53E-3-603, which requires the Board to verify accounting procedures of LEA governing boards for determining the allocation of Uniform School Funds;

(g) Section 53E-5-202, which directs the Board to adopt rules to implement a statewide accountability system;

(h) Subsection 53G-5-404(4), which requires charter schools to make the same annual reports required of other public schools, including an annual financial audit report;

(i) Subsection 53F-2-209(2), which requires the Board to make rules for flexible use of restricted funds; and

(j) ESSA, which requires states to revise and redesign school accountability systems.

(2) The purpose of this rule is to:

(a) require LEAs to formally adopt and implement policies regarding the management and use of public funds;

(b) provide minimum standards, procedures, and definitions for LEA policies;

(c) direct that LEAs make policies, procedures, and training materials available to the public and readily accessible on LEA or public school websites, to the extent of resources available;

(d) require LEAs to train employees in:

(i) appropriate financial practices;

(ii) necessary accounting procedures; and

(iii) ethical financial practices;

(e) specify uniform budgeting, accounting, and auditing procedures for LEAs consistent with GAAP, GAAS, and GAGAS; and

(f) establish reporting and accounting requirements for LEAs to enable the Board to comply with ESSA.

(3) This Rule R277-113 is categorized as Category 3 as described in Rule R277-111.

R277-113-2. Definitions.

(1) "Accrual basis of accounting" means a basis of accounting that records:

(a) revenue when earned and expenses when incurred; and

(b) transactions irrespective of the dates on which any associated cash flows occur.

(2) "Administration" means:

(a) an LEA superintendent or director;

(b) a deputy or associate superintendent or director;

(c) a business administrator or manager; or

(d) another LEA educational administrator, designated staff, or a designated educational service provider.

(3) "Arm's length transaction" means a transaction between two unrelated, independent, and unaffiliated parties or a transaction between two parties acting in their own self interest that is conducted as if the parties were strangers so that no conflict of interest exists.

(4) "Cash" or "cash receipts" means cash, checks, credit cards, electronic payments via a website or a mobile payment application, or other items used for payment.

[~~(4)~~](5) "Exclusive contract or arrangement" means an agreement requiring a buyer to purchase or exchange [~~all~~]needed goods or services from one seller.

[~~(5)~~](6) "GAAP" means Generally Accepted Accounting Principles or a common framework of accounting rules and standards for financial reporting promulgated by GASB.

[~~(6)~~](7) "GAAS" means Generally Accepted Auditing Standards or a set of auditing standards and guidelines promulgated by the Auditing Standards Board of the American Institute of Certified Public Accountants.

[~~(7)~~](8) "GAGAS" means Generally Accepted Government Auditing Standards or a set of auditing standards and guidelines promulgated by the Government Accountability Office.

[~~(8)~~](9) "GASB" means the Governmental Accounting Standards Board whose purpose is to establish GAAP for state and local governments within the United States.

[~~(9)~~](10) "Internal controls" means a process, implemented by an entity's governing body, administration, or other personnel, designed to:

(a) provide reasonable assurance regarding the achievement of objectives in the following categories:

(i) effectiveness and efficiency of operations;

(ii) reliability of reporting for internal and external use; and

(iii) compliance with applicable laws and regulations;

(b) provide reasonable assurance regarding the achievement of the following objectives over state and federal awards:

(i) proper recording and accounting for transactions, [~~in order~~]to:

(A) permit the preparation of reliable financial statements and state and federal reports;

(B) maintain accountability over assets; and

(C) demonstrate compliance with state and federal statutes, regulations, and the terms and conditions of state and federal awards; and

(ii) execution of transactions in compliance with:

(A) [~~all~~]state and federal statutes and regulations; and

(B) the terms and conditions of state or federal awards; and

(c) safeguard funds, property, and other against loss from unauthorized use or disposition.

[~~(10)~~](11) "Modified accrual basis of accounting" means a basis of accounting, commonly used by government agencies, that recognizes revenues when they become available and measurable and recognizes expenditures when liabilities are incurred.

[~~(11)~~](12) "Non-operating LEA" means an LEA that has not received minimum school program funds or federal funds and is not providing educational services during a fiscal year, such as an LEA in a start-up period.

[~~(12)~~](13) "N-size" means the minimum size necessary to disclose or display data to ensure maximum student group visibility while protecting student privacy.

[~~(13)~~](14) "Operating LEA" means an LEA that has received state minimum school program funds or federal funds and is providing educational services during a fiscal year.

[~~(14)~~](15)(a) "Provided, sponsored, or supported by a school" has the same meaning as defined in Section R277-407-2.

(b) "Provided, sponsored, or supported by a school" does not apply to non-curricular clubs specifically authorized and meeting [~~all criteria~~]the requirements of Sections 53G-7-704 through 53G-7-707.

[~~(15)~~](16) "Public funds" has the same meaning as that terms is defined in Subsection 51-7-3(26).

[~~(16)~~](17) "Title IX" refers to that portion of the United States Education Amendments of 1972 codified as 20 U.S.C. 1681 through 20 U.S.C. 1688.

[~~(17)~~](18) "Utah Public Officers' and Employees' Ethics Act," means Title 67, Chapter 16, which provides standards of conduct for officers and employees of the state of Utah and its political subdivisions in areas where there are actual or potential conflicts of interest between public duties and private interests.

R277-113-3. Superintendent Responsibilities.

(1) The Superintendent shall provide training, informational materials, and model policies for use by LEAs in developing LEA and public school-specific financial policies.

(2) The Superintendent shall provide online training and resources for LEAs regarding the use and management of public funds and ethical practices for licensed Utah educators who manage, control, participate in fundraising, or expend public funds.

(3) The Superintendent shall provide training and informational materials for use by LEA governing boards in establishing their audit committees and internal audit programs in compliance with Section 53G-7-402.

(4) The Superintendent shall provide and establish a cycle for state review of LEA fiscal policies and standards.

(5) The Superintendent shall work with and provide information upon request to the Utah State Auditor's Office, the Legislative Fiscal Auditors, and other state agencies with the right to information from the Board.

R277-113-4. LEA Audit Responsibilities.

(1) The presiding officer of an LEA governing board shall ensure that the members of the governing board and audit committee are provided with training on the requirements of Title 53G, Chapter 7, Part 4, Internal Audits, and this Section R277-113-4 as part of the member on-boarding process.

(2) The training described in Subsection (1) shall:

(a) comply with Title 63G, Chapter 22, State Training and Certification Requirements; and

(b) use the online training and informational materials provided by the Superintendent in accordance with Subsection R277-113-3(3).

(3) An LEA governing board shall:

(a) designate board members to serve on an audit committee, consistent with Subsection 53G-7-401(1); and

(b) maintain the following information on the LEA's website:

(i) names of the governing board members who serve on the audit committee; and

(ii) if required by Subsection 53G-7-402(2);

(A) the name and contact information of the internal audit director; and

(B) a copy of the LEA's annual audit plan.

(4) An LEA audit committee shall:

(a) ensure the LEA obtains all audits, agreed-upon procedures, engagements, and financial reports required by Section 51-2a-201 and Subsection 53G-5-404(4);

(b) provide an independent forum for internal auditors, internal audit contractors, and other regulatory bodies to report findings of fraud, waste, abuse, non-compliance, or control weaknesses, particularly if LEA administration is involved;

(c) ensure that corrective action on findings, concerns, issues and exceptions reported by independent external auditors, internal auditors, or other regulatory bodies are resolved in a timely manner by LEA administration;

(d) present, as appropriate, information and reports from the audit committee's meetings to the LEA board; and

(e) receive, as appropriate, reports of reviews, monitoring, or investigations conducted by LEA administration and ensure appropriate corrective action is taken in a timely manner.

(5) With regards to engagements completed by an independent external auditor, an LEA audit committee shall:

(a) manage the audit procurement and quality process in compliance with Title 63G, Chapter 6a, State Procurement Code and Rule R123-5;

(b) ensure that the independent external auditor has access to directly communicate with the audit committee;

(c) review disagreements between independent external auditors and LEA administration;

(d) consider LEA responses to audits or agreed-upon procedures; and

(e) determine the scope and objectives of other non-audit services, as necessary.

(6) An LEA audit committee shall if required by Section 53G-7-402:

(a) establish an internal audit program that provides internal audit services for the programs administered by the LEA;

(b) advise the LEA board in the appointment of an audit director or in contracting for internal audit services in accordance with Subsection 53G-7-402(3);

(c) conduct or advise the LEA board in an annual evaluation of the internal audit director or contractors providing internal audit services;

(d) prioritize the internal audit plan based on risk;

(e) receive regular updates on the internal audit plan and internal audit project progress; and

(f) receive final internal audit reports from internal auditors or contractors providing internal audit services.

R277-113-5. LEA Fiscal Responsibilities and Required Fiscal Policies.

(1) An LEA shall review the LEA's fiscal policies and procedures regularly.

(2) An LEA shall develop a plan for annual training of LEA and public school employees on policies and procedures enacted by the LEA specific to job function.

(3) LEA fiscal policies and procedures shall be available at each LEA main office, at individual public schools, and be publicly available on the LEA's website.

(4) LEA fiscal policies, procedures, and training may have different components, specificity, and levels of complexity for public elementary and secondary schools.

(5) An LEA may have one or more policies to satisfy the minimum requirements of this Rule R277-113.

(6) An LEA fiscal policy may reference specific training manuals or other resources that provide detailed descriptions of business practices which are too lengthy or detailed to include in the LEA policy.

(7) A public education foundation established by an LEA shall follow the requirements set forth in Section 53E-3-403.

(8)(a) An LEA shall ensure that the LEA's written fiscal policies and procedures address [~~all~~]applicable state and federal statutes and regulations.

(b) The requirements set forth in this Section R277-113-5 are minimum requirements.

(c) An LEA may include other related items, provide LEA specific policy and guidance, and set polices that are more restrictive and inclusive than the minimum provisions established by Board rule.

(9) LEA fiscal policies shall include the following:

(a) a program accounting policy that establishes internal controls and procedures to record program revenues and expenditures in accordance with:

(i) GAAP; and

(ii) the school fee provisions in Section R277-407-[~~13~~]12;

(b) a program accounting policy that:

(i) accurately reflects the use of funds for allowable costs and activities;

(ii) requires that transactions be recorded when they occur;

(iii) allows adjusting journal entries during the year and at the end of the year, in accordance with GAAP; and

(iv) requires that initial transactions, and adjusting entries if applicable, be recorded in the proper program, utilizing the following codes as established by the Board approved chart of accounts:

(A) fund;

(B) function;
(C) program;
(D) location; and
(E) object or revenue code, as applicable;
(c) a cash handling policy, which shall address cash receipts, including cash, checks, credit cards, electronic payments via a website or a mobile payment application, and other items used for payment, collected at the LEA and individual public schools and shall include:
(i) establishment of internal controls and procedures over the collection, deposit, and reconciliation of cash receipts received; and
(ii) compliance with Subsection 51-4-2(2) regarding deposits.
(d) an expenditure policy, which shall address [~~all~~]expenditures made by the LEA and individual public schools and shall include:
(i) establishment of internal controls and procedures over the initiation, approval and monitoring of expenditures, including:
(A) credit, debit, or purchase card transactions;
(B) employee reimbursements;
(C) travel; and
(D) payroll;
(ii) directives regarding the appropriate use of the LEA's tax exempt status number;
(iii) compliance with Section 63G-6a-1204 regarding length of multi-year contracts;
(iv) compliance with:
(A) Title 63G, Chapter 6a, Utah Procurement Code[~~,~~];
(B) Board rule regarding construction and improvements; and
(C) federal Title IX requirements, found in 20 U.S.C. 1681, et seq.;
(v) requirements for LEA contracts, including:
(A) inclusion of specific scope of work language;
(B) inclusion of federal requirements;
(C) inclusion of language regarding data privacy and use, where appropriate; and
(D) legal review [~~prior to~~]before LEA approval; and
(vi) procedures and documentation maintained by the LEA if the LEA chooses to enter into exclusive contracts or arrangements consistent with state procurement law and the LEA procurement policy; and
(vii) procedures for determining allowability of costs in accordance with relevant regulations and terms and conditions of awards;
(e) a fundraising policy that:
(i) establishes procedures for LEA and public school fundraising in general;
(ii) establishes an approval process for fundraising activities for school sponsored activities;
(iii) provides for compliance with [~~school fee and fee waiver provisions outlined in Rule R277-407~~]the requirements of Rule R277-408; and
(iv) includes:
(A) specific designation of employees by title or job description who are authorized to approve fundraising[~~,~~] and school sponsored fundraising activities[~~, and grant fee waivers with appropriate attention to student and family confidentiality~~];
(B) establishment of internal controls and procedures over the approval of fundraising and school sponsored activities and compliance with associated cash handling and expenditure policies;
(C) directives regarding the appropriate use of the LEA's tax exempt status number and issuance of charitable donation written disclosure in accordance with IRS regulations;
(D) procedures governing LEA or public school employee interaction with parents, donors, and organizations doing fundraisers not provided, supported, or sponsored, by a school or LEA;
(E) disclosure requirements for LEA and public school employees approving, managing, or overseeing fundraising activities, who also have a financial or controlling interest or access to bank accounts in the fundraising organization or company;
(F) provisions establishing compliance with:
(I) Utah Constitution, Article X, Section 2, establishing a free public education system;
(II) Rule R277-408[~~R277-407~~]; and
(III) federal Title IX requirements, found in 20 U.S.C. 1681, et seq.
(v) may include procedures governing:
(A) student participation and incentives offered to students;
(B) allowable types of individual or group fundraising activities; and
(C) participation in school sponsored activities by volunteer or outside organizations;
(f) an LEA donation and gift policy that includes:
(i) an acceptance and approval process for:
(A) monetary donations;
(B) donations and gifts with donor restrictions;
(C) donations of gifts, goods, materials, or equipment; and
(D) donation of funds or items designated for construction or improvements of facilities;
(ii) establishment of internal controls and procedures over the acceptance and approval of donations and gifts and compliance with associated cash handling and expenditure policies;
(iii) directives regarding the appropriate use of the LEA's tax exempt status number, and issuance of charitable donation written disclosure in accordance with IRS regulations;

(iv) procedures regarding the objective valuation of donations or gifts if advertising or other services are offered to the donor in exchange for a donation or gift;

(v) procedures governing LEA or public school employee conduct with parents, donors, and nonschool sponsored organizations;

(vi) procedures establishing provisions for direct donations or gifts to the LEA or LEA programs, individual public school or public school programs;

(vii) provisions restricting donations from being directed at specific LEA employees, individual students, vendors, or brand name goods or services;

(viii) compliance with:

(A) Title 63G, Chapter 6a, Utah Procurement Code[~~.~~];

(B) state law and Board rule regarding construction and improvements;

(C) IRS regulations and tax deductible directives; and

(D) Title IX;

(ix) procedures for:

(A) accepting donations and gifts through an LEA's legally organized foundation, if applicable;

(B) recognition of donors; or

(C) granting naming rights; and

(g) an LEA Financial Reporting policy, which shall include the following:

(i) a requirement that the LEA shall ensure external audits of LEA financial reporting, compliance, and performance, in accordance with GAAS and GAGAS;

(ii)(A) a requirement that the LEA shall provide financial reporting in a manner consistent with the basis of accounting as required by GAAP, as applicable to the entity; and

(B) a requirement that the basis of accounting will be GASB; and

(iii) a requirement that the LEA shall provide data and information consistent with budgeting, accounting, including the uniform chart of accounts for LEAs, and auditing standards for Utah LEAs provided online annually by the Superintendent.

(10) The Superintendent shall maintain a School Finance website with applicable Utah statutes, Board rules, and uniform rules for:

(a) budgeting;

(b) financial accounting, including a chart of accounts required for an LEA;

(c) student membership and attendance accounting;

(d) indirect costs and proration;

(e) financial audits;

(f) statistical audits; and

(g) compliance and performance audits.

R277-113-6. LEA Governing Board Fiscal Responsibilities.

(1) An LEA governing board shall have the following responsibilities:

(a) approve written fiscal policies and procedures required by Section R277-113-5;

(b) ensure, considering guidance in "Standards for Internal Control in the Federal Government," issued by the Comptroller General of the United States or the "Internal Control Integrated Framework," issued by the Committee of Sponsoring Organizations of the Treadway Commission, that LEA administration establish, document, and maintain an effective internal control system for the LEA;

(c) develop a process to regularly discuss and review LEA:

(i) budget and financial reporting practices;

(ii) financial statements and annual financial and program reports;

(iii) financial position;

(iv) expenditure of restricted funds to ensure administration is complying with applicable laws, regulations, and award terms and conditions; and

(v) systems and software applications for compliance with financial and student privacy laws;

(d) receive the results of required annual audits from the external auditor in accordance with Section R123-5-5;

(e) oversee procurement processes in compliance with Title 63G, Chapter 6a, Utah Procurement Code, and Rule R277-115, including:

(i) reviewing the scope and objectives of LEA contracts or subawards with entities that provide business or educational services; and

(ii) receiving reports regarding the compliance and performance of entities with contracts or subawards;

(f) ensure the procurement process for an external auditor is in compliance with Section R123-5-4;

(g) ensure LEA administration implements sufficient internal controls over the functions of entities with contracts or subawards to perform services on behalf of the LEA;

(2) An LEA governing board shall:

(a)(i) provide a hotline independent from administration for stakeholders to report concerns of fraud, waste, abuse, or non-compliance; and

(ii) post on the school's website in a readily accessible location:

(A) a hotline phone number;

(B) a hotline email; or

(C) an online complaint form; or

(b) post a link on the school's website in a readily accessible location with contact information for the Board's hotline.

R277-113-7. Reporting of School Level Expenditures.

(1) In accordance with ESSA, the Superintendent shall make public the per pupil expenditures of federal, state, and local funds, for each LEA and each school in the state.

(a) The Superintendent shall exclude expenditures that:

(i) are non-current;

(ii) do not reflect the day-to-day operations of an LEA or school;

(iii) do not contribute to k-12 education; or

(iv) are significant, unique expenditures that may skew data in certain years and thwart year-to-year comparison.

(b) The Superintendent shall publish and make available a comprehensive list of expenditures that are excluded from per pupil expenditure information.

(2) The Superintendent's school level report for each school shall include:

(a) average daily membership for the fiscal year covered by the report;

(b) an indicator if the school is:

(i) a Title I School; or

(ii) a Necessarily Existent Small School;

(c) grade levels served by each school;

(d) student demographics;

(e) expenditures recorded at the school level and central expenditures allocated to each school by:

(i) federal program expenditures; and

(ii) state and local combined expenditures;

(f) calculated per pupil expenditures; and

(g) average teacher salary.

(3) The Superintendent may not report expenditure data for a school with an n-size of less than 10.

R277-113-8. LEA Accounting Requirements.

(1) Each LEA shall:

(a) record revenues and expenditures in compliance with the Board approved chart of accounts;

(b) record expenditures using school location codes that can be mapped to official school location codes used in the Board system of record;

(c) record expenditures using approved district and school codes in the Board system of record;

(d) submit expenditures using location codes in the Utah Public Education Financial System;

(e) perform program accounting in accordance with GAAP and this rule; and

(f) beginning with the fiscal year that begins on July 1, 2021, accrue school fees, and fee waivers and use contra-revenue accounts to record fee waivers in the LEA's accounting system.

(2) Each LEA shall record and report the following expenditures for each school annually:

(a) salaries;

(b) benefits;

(c) supplies;

(d) contracted services; and

(e) equipment.

(3) If an LEA pays for contracted services that occur at the school level, the LEA shall record the payments to the contractors in the appropriate function and object codes established under Subsection (2) at the school level.

(4)(a) An LEA shall record centralized administrative costs to the administrative location code.

(b) The Superintendent shall allocate such costs to each school based on school enrollment.

(5) The Superintendent shall present one expenditure report for a school receiving more than one report card under Subsection R277-497-4(8).

(6) If an LEA reports expenditures in programs, the LEA shall report the expenditures to one or more schools.

~~**[R277-113-9. LEA Recordkeeping for Flexible Use of Restricted Funds.**~~

~~(1) An LEA may reallocate funds for flexible uses as described in Section 53F-2-209.~~

~~(2) An LEA that makes flexible adjustments as described in Subsection (1) shall:~~

~~(a) report accounting transactions and adjust entries utilizing the Board approved chart of accounts, including:~~

~~(i) a dedicated program code;~~

~~(ii) a dedicated other financing uses code for fund or program transfers from state restricted funds; and~~

~~(iii) expenditure details accurately describing transactions in response to changing circumstances and student needs; and~~

~~(b) refund to the state restricted program from which the original transfer originated any remaining funds transferred under Subsection (1) not completely and or materially expended at the end of each fiscal year.~~

~~(3) An LEA that makes flexible adjustments under this section shall ensure that the LEA continues to meet:~~

~~(a) federal maintenance of effort requirements; and~~

~~(b) other state or federal requirements on restricted funding, including requirements for program-specific effort, matching, and equity.~~

~~(4) The Superintendent shall publish online a list of eligible state restricted programs meeting requirements of Section 53F-2-209 no later than May 30 of each year.~~

]

R277-113-[~~10~~]9. Activities Provided, Sponsored, or Supported by a School.

(1) An LEA or school shall comply with this Section R277-113-9 for all activities provided, sponsored, or supported by a school.

(2) An LEA shall ensure that revenues raised from or during activities provided, sponsored, or supported by a school are classified, recorded, and deposited as public funds in compliance with LEA cash handling, program accounting, and expenditure of funds policies as required by Section R277-113-5.

(3) An LEA shall:

(a) maintain records in sufficient detail to:

(i) track individual contributions and expenditures;

(ii) track overall financial outcomes; and

(iii) verify compliance with relevant regulations; and

(b) make records of activities available to parents, students, and donors, except as restricted by state or federal law;

(4) An LEA may establish LEA[~~-~~] specific rules or policies:

(a) designating categories of activities or groups as provided, sponsored, or supported by the school; and

(b) regarding use of facilities or LEA resources.

(5) An LEA shall document their annual review of fundraising activities that support or subsidize LEA or public school-authorized clubs, activities, sports, classes, or programs to determine if the activities are provided, sponsored, or supported by a school.

(6)(a) An LEA may enter into contractual agreements to allow for fundraising and use of LEA facilities.

(b) An agreement under Subsection (6)(a) shall take into consideration the LEA's fiduciary responsibility for the management and use of public funds, resources, and assets.

(c) An LEA shall review an agreement under Subsection (6)(a) with the LEA's insurer or legal counsel to consider risk to the LEA.

(7) An LEA shall comply with this Subsection (7) for any activity not provided, sponsored, or supported by a school:

(a) [~~An~~]an LEA shall conduct [~~all~~]transactions at arm's length;

(b) [~~An~~]an LEA may not co-mingle revenue and expenditures with public funds; and

(c) [~~A~~]a public school employee may only [~~manage or hold funds~~]provide educational services outside of the employee's regular employment consistent with Rule R277-107.

R277-113-[~~11~~]10. LEA Policies and Compliance with State and Federal Law.

(1) An LEA is responsible to ensure that its policies comply with the following:

(a) Utah Constitution Article X, Section 3;

(b) Title 63G, Chapter 6a, Utah Procurement Code;

(c) Title 51, Chapter 4, Deposit of Funds Due State;

(d) Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act;

(e) Family Educational Rights and Privacy Act, 20 U.S.C. 1232g;

(f) Title 63G, Chapter 2, Government Records Access and Management Act;

(g) Title 53G, Chapter 7, Part 5, Student Fees;

(h) Title 53G, Chapter 7, Part 6, Textbook Fees;

(i) Section 53E-3-403, Establishment of Public Education Foundations;

(j) Title 53G, Chapter 7, Part 7, Student Clubs Act;

(k) Title 51, Chapter 2a, Accounting Reports from Political Subdivisions, Interlocal Organizations, and Other Local Entities Act;

(l) Additional state legal compliance guides for operating LEAs and non-operating LEAs as published by the office of the state Auditor;

(m) Subsection 51-7-3(26), Definition of Public Funds;

(n) Title 53G, Chapter 7, Part 4, Internal Audits;

(o) Rule R277-407, School Fees;

(p) Rule R277-107, Educational Services Outside of Educator's Regular Employment;

(q) Rule R277-217, Utah Educator Standards;

(r) Rule R277-605, Coaching Standards and Athletic Clinics;

(s) Rule R123-5, Audit Requirements for Audits of Political Subdivisions and Governmental Nonprofit Corporations; and

(t) 2 C[~~-~~]F[~~-~~]R. 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2020).

(2) An LEA shall include the following requirements of Title IX in LEA policies:

(a) Fundraising shall equitably benefit males and females;

(b) Males and females shall have reasonably equal access to facilities, fields, and equipment;

(c) School sponsored activities shall be reasonably equal for males and females.

R277-113-[~~12~~]11. Applicability to the Utah Schools for the Deaf and the Blind.

The Utah Schools for the Deaf and the Blind shall comply with:

(1) Subsection R277-113-5(9)(f);

(2) Section R277-113-[~~10~~]9; and

(3) Section R277-113-[~~11~~]10.

KEY: school sponsored activities, public funds, fiscal policies and procedures, audit committee
Date of Last Change: [~~December 11, 2023~~]2024
Notice of Continuation: September 9, 2021
Authorizing, and Implemented or Interpreted Law: Art X, Sec 3; 53E-3-401(4); 53E-3-501(1)(e)

NOTICE OF SUBSTANTIVE CHANGE		
TYPE OF FILING: Repeal		
Rule or Section Number:	**R277-126**	**Filing ID: 56563**

Agency Information

1. Title catchline:	Education, Administration	
Building:	Board of Education	
Street address:	250 E 500 S	
City, state:	Salt Lake City, UT 84111	
Mailing address:	PO Box 144200	
City, state 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:

R277-126. Utah Fits All Scholarship

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

This rule is being repealed as a result of the passage of H.B. 529 in the 2024 General Session.

4. Summary of the new rule or change:

This rule is no longer necessary because H.B. 529 (2024) repealed statutory language that required the Utah State Board of Education (USBE) to make rules on an appeal process for the Utah Fits All Scholarship.

Accordingly, this rule is no longer necessary and is repealed in its entirety.

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. H.B. 529 (2024) captured the fiscal impacts of removing the need for the USBE to make an appeals process in the fiscal note and there are no additional impacts for the USBE or Local Education Agencies (LEA).

B) Local governments:

This rule change is not expected to have fiscal impacts on local governments' revenues or expenditures. H.B. 529 (2024) captured the fiscal impacts of removing the need for the USBE to make an appeals process in the fiscal note and there are no additional impacts for the USBE or 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 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. H.B. 529 (2024) captured the fiscal impacts of removing the need for the USBE to make an appeals process in the fiscal note and there are no additional impacts for the USBE or 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. H.B. 529 (2024) captured the fiscal impacts of removing the need for the USBE to make an appeals process in the fiscal note and there are no additional impacts for the USBE or 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	**FY2025**	**FY2026**	**FY2027**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits	**FY2025**	**FY2026**	**FY2027**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
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 regulatory impact analysis.

Citation Information

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

Article X, Section 3	Subsection 53E-3-401(4)	Subsection 53F-6-404(7)

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:	07/31/2024

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

Agency Authorization Information

Agency head or designee and title:	Angie Stallings, Deputy Superintendent of Policy	**Date:**	06/14/2024

R277. Education, Administration.

[~~**R277-126. Utah Fits All Scholarship.**~~

~~**R277-126-1. Authority and Purpose.**~~

~~(1) This rule is authorized by:~~

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

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

~~(c) Subsection 53F-6-404(7), which directs the Board to establish an appeals process for parents under the Utah Fits All Scholarship program.~~

~~(2) The purpose of this rule is to establish an appeals process as required by Subsection 53F-6-404(7).~~

~~**R277-126-2. Definitions.**~~

~~(1) "Program manager" means the contract organization chosen by the Board in accordance with Subsection 53F-6-404(1).~~

~~(2) "Utah Fits All Scholarship" means the program established by the Legislature in Title 53F, Chapter 6, Part 4, Utah Fits All Scholarship Program.~~

~~**R277-126-3. Appeals Process.**~~

~~(1) A parent may appeal an administrative decision of the program manager consistent with Subsection 53F-6-404(7) by filing a request as provided in this section.~~

~~(2) The program manager shall:~~

~~(a) notify a parent of the right to file a request under this section; and~~

~~(b) provide a form for a parent to file a request under this section.~~

~~(3) A parent shall file a written request with the program manager within ten days of the administrative decision at issue.~~

~~(4) The program manager shall forward the request to the Superintendent along with any information or evidence that may be required to consider the review within five business days of receiving a request under Subsection (3).~~

~~(5) The Superintendent shall review the request to determine if the program manager followed the law and the program manager's policies and procedures in making its administrative decision.~~

~~(6) The Superintendent shall either:~~

~~(a) uphold the program manager's decision; or~~

~~(b) grant the parent's request and provide direction to the program manager for any action to be taken.~~

~~(7) The Superintendent shall provide notice in writing to the parent and the program manager of the decision under Subsection (6) within 30 days of the date the parent submits a request to the program manager under Subsection (3).~~

~~(8) The Superintendent shall provide a quarterly report to the Board via email with information regarding appeals.~~

~~**KEY: utah fits all, appeal**~~

~~**Date of Last Change: February 7, 2024**~~

~~**Authorizing, and Implemented, or Interpreted Law: Article X, Section 3; 53E-3-401(4); 53F-6-404(7)**~~**]**

NOTICE OF SUBSTANTIVE CHANGE		
TYPE OF FILING: Amendment		
Rule or Section Number:	**R277-304**	**Filing ID: 56564**

Agency Information

1. Title catchline:	Education, Administration
Building:	Board of Education
Street address:	250 E 500 S
City, state:	Salt Lake City, UT

Mailing address:	PO Box 144200	
City, state and zip:	Salt Lake City, UT 84114-4200	
Contact persons:		
Name:	**Phone:**	**Email:**
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule or section catchline:

R277-304. Teacher Preparation Programs

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

This rule is being amended due to one of the three documents incorporated by reference, "General Teacher Preparation Competencies", that is being updated.

4. Summary of the new rule or change:

The amendments to the "General Teacher Preparation Competencies" document specifically add an oversight category, and make updates to the incorporated by reference document, "General Teacher Preparation Competencies". The competencies document has been updated with technical changes on teacher preparation.

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 updates to educator preparation competencies and the incorporated document, and the requirement to provide the Utah State Board of Education (USBE) with evidence that a teacher preparation program complies with requirements do not add specific or measurable costs for the USBE or any other state entity.

B) Local governments:

This rule change is not expected to have fiscal impact on local governments' revenues or expenditures. Local Education Agencies (LEA) with educator preparation programs may need to submit evidence to the USBE to be approved as a program; it does not estimate a measurable fiscal impact as they programs can simply submit a syllabus or program outline to the USBE for consideration.

There are no measurable fiscal impacts for 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?)**:**

There are no compliance costs for affected persons. There are no measurable compliance costs for the USBE or LEAs to update the reference to educator competencies and provide evidence a preparation program can prepare educators prior to approval by the USBE.

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

Regulatory Impact Table

Fiscal Cost	**FY2025**	**FY2026**	**FY2027**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits	**FY2025**	**FY2026**	**FY2027**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
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 regulatory impact analysis.

Citation Information

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

Article X, Section 3	Section 53E-3-401	Section 53E-6-201

Incorporations by Reference Information

7. Incorporations by Reference:

A) This rule adds or updates the following title of materials incorporated by references:

Official Title of Materials Incorporated (from title page)	General Teacher Preparation Competencies
Publisher	Utah State Board of Education
Issue Date	June 2024
Issue or Version	June 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:	07/31/2024

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

Agency Authorization Information

Agency head or designee and title:	Angie Stallings, Deputy Superintendent of Policy	**Date:**	06/14/2024

R277. Education, Administration.
R277-304. Teacher Preparation Programs.
R277-304-1. 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) Subsection 53E-6-201(3)(a), which directs the Board to make rules to establish the criteria for obtaining an educator license.

(2)(a) The purpose of this rule is to specify the standards which the Board expects of a teacher preparation institution before program approval in specified areas.

(b) The standards in this rule apply to the specific educational area and grade level for which the preparation program is designed.

(3) This Rule R277-304 is categorized as Category 4 as described in Rule R277-111.

R277-304-2. Definitions.

(1)(a) "Career and technical education" or "CTE" means organized educational programs or competencies which directly or indirectly prepare students for employment, or for additional preparation leading to employment, in occupations where entry requirements do not generally require a baccalaureate or advanced degree.

(b) CTE programs provide all students a continuous education system, driven by a student's college and career readiness plan, through competency-based instruction, culminating in essential life skills, certified occupational skills, and meaningful employment.

(2) "Clinical experience" means a structured opportunity in which a program candidate is mentored by a licensed educator and evaluated by a teacher leader, school administrator, or university preparation program faculty member, in order to develop and demonstrate competency in the skills and knowledge necessary to be an effective teacher, in a physical classroom, which may include experiences in a virtual classroom.

(3) "Competency" means evidence through demonstration in a higher education or prek-12 classroom setting of successful application of knowledge and skills.

[~~(4)(a) "Council for Exceptional Children" or "CEC" means an international professional organization dedicated to improving the educational success of both individuals with disabilities and individuals with gifts and talents.~~

~~(b) CEC advocates for appropriate governmental policies, sets professional standards, provides professional development, advocates for individuals with exceptionalities, and helps professionals obtain conditions and resources necessary for effective professional practice.~~

] [~~(5)~~](4) "Essential Elements" means the alternate academic achievement standards for students with significant cognitive disabilities, established by the Board in the Special Education Rules Manual, dated October 2016, incorporated by reference in Section R277-750-2.

[~~(6)~~](5) "Diverse student populations" means unique student groups as identified by:

[~~(a) gender;~~

~~(b) race;~~

~~(c) ethnicity;~~]

[~~(d)~~](a) disability;

[~~(e) sexual orientation;~~

~~(f)~~](b) academic learning needs; or

[~~(g)~~](c) linguistic needs.

[~~(7)~~](6)(a) "Multi-tiered system of supports" or "MTSS" means a framework for integrating assessment and intervention to maximize student achievement, reduce behavior problems, and increase long-term success.

(b) The combination of systematic implementation of increasingly intensive intervention, sometime referred to as tiers, and carefully monitoring students' progress, distinguishes MTSS from typical prevention measures.

(c) Emphasis, in MTSS, is placed on ensuring interventions are implemented effectively.

[~~(8)~~](7) "Personalize" means to engage all students with high expectations for their learning goals and to empower each learner to take ownership of their individual strengths, needs, and interests, while tailoring flexible supports to maximize student growth and competence.

[~~(9)~~](8) "Utah Core Standards" means the core standards established by the Board in Rule R277-700 for grades K-12 and the Utah Early Childhood Core Standards, February 2013 edition.

R277-304-3. Incorporation by Reference of Educator Preparation Program Competencies.

(1) This rule incorporates by reference:

(a) the General Teacher Preparation Competencies dated [~~January~~]June 2024;

(b) the Educator Preparation Program Competencies for Elementary Literacy dated May 2022; and

(c) the Elementary Content Competencies dated January 2024.

(2) A copy of these documents is located at:

(a) https://schools.utah.gov/administrativerules/documentsincorporated; and

(b) the offices of the Utah State Board of Education.

R277-304-4. General Teacher Preparation.

Before approval by the Board, a teacher preparation program shall provide evidence that the program:

(1) prepares candidates to meet the Utah Effective Teaching Standards in Rule R277-330;

(2) prepares candidates to teach:

(a) the Utah Core Standards; and

(b) the Essential Elements, as appropriate to a candidate's prospective area of licensure as established by the Board;

(3) includes school-based clinical experiences for a candidate to observe, practice skills, and reflect on teaching that:

(a) are significant in number, depth, breadth, and duration;

(b) are progressively more complex; and

(c) include working with all types of students;

(4) for candidates who enroll in a preparation program before September 1, 2025, requires competency in:

(a) content and content specific pedagogy appropriate for the area of licensure;

(b) knowledge of the Educator Standards contained in Rule R277-217;

(c) designing, administering, and reviewing formative and summative assessments in a meaningful and ethical manner;

(d) improving student outcomes by:

(i) using student assessment data, both formative and summative;

(ii) analyzing instructional practices; and

(iii) making necessary adjustments to personalize learning;

(e) using strategies to promote active student engagement;

(f) systematically designing instruction toward a specific learning goal by:

(i) providing tier one and tier two instruction and intervention on the Utah core standards including the use of competency-based learning;

(ii) using a variety of evidence-based instructional strategies, including explicit instruction and scaffolded supports;

(iii) integrating technology to support and meaningfully supplement the learning of students;

(iv) designing developmentally appropriate and authentic learning experiences;

(v) developing higher order thinking and metacognitive skills; and

(vi) integrating cross-disciplinary skills, such as literacy and numeracy, into instruction;

(g) providing positive and constructive feedback to guide students' learning and behavior;

(h) establishing a consistent, organized, and respectful learning environment, including:

(i) positive behavior interventions and supports within a multi-tiered system of support;

(ii) classroom procedures and routines;

(iii) trauma-informed practices; and

(iv) restorative practices;

(i) knowledge and skills to assist in the identification of and instruction for students with disabilities in the general classroom, including:

(i) knowledge of the IDEA and Section 504 of the Rehabilitation Act;

(ii) knowledge of the role of non-special-education teachers in the education of students with disabilities;

(iii) knowledge and skills in implementing least restrictive behavior interventions;

(iv) skills in implementing and assessing the results of interventions; and

(v) skills in the implementation of an educational program with accommodations, modifications, services, and supports established by an IEP or a 504 plan for students with disabilities in the general education classroom;

(j) knowledge and skills designed to meet the needs of diverse student populations in the general education classroom, including:

(i) allowing students alternative ways to demonstrate learning that are sensitive to student diversity;

(ii) creating an environment that is sensitive to multiple experiences and diversity;

(iii) designing, adapting, and delivering instruction to address each student's diverse learning strengths and needs; and

(iv) incorporating language development into planning, instruction, and intervention for students learning English, using their first language as an asset while supporting development of English proficiency; and

(k) effectively communicating and collaborating with parents, colleagues, and administration;

(5) for candidates who enroll in a preparation program on or after September 1, 2025, requires competence in the General Teacher Preparation Competencies;

(6) for a program candidate accepted on or after January 1, 2020, provides multiple opportunities for a program candidate to successfully demonstrate application of knowledge and skills gained through the program in one or more clinical experiences in collaboration with a licensed teacher over an extended period in each of the following competencies:

(a) implementing the planning and design, delivery, facilitation, assessment, evaluation, and reflection of a unit of instruction;

(b) revising instructional plans for future implementation or reteaching concepts as appropriate;

(c) implementing the accommodations, modifications, services, and supports as outlined in a student's IEP or 504 plan;

(d) evaluating student artifacts and assessments;

(e) establishing and maintaining classroom procedures and routines that include positive behavior interventions and supports;

(f) establishing and maintaining a positive learning climate;

(g) reflecting on the teaching process and justifying instructional decisions;

(h) participating in at least one IEP meeting or parental consultation regarding a student that the program candidate has instructed; and

(i) consulting and collaborating with qualified personnel, such as a school counselor or school social worker, regarding the emotional well-being of students;

(7) include consideration of a candidate's dispositions and suitability for teaching; and

(8) include plans for candidate remediation and exit counseling, if appropriate.

R277-304-5. Early Childhood and Elementary Preparation Programs.

(1) Before approval by the Board, a preparation program for early childhood education or elementary education shall demonstrate how the program requires candidate competency in:

(a) the areas outlined in Section R277-304-3;

(b) early childhood development and learning;

(c) for candidates who enroll in a preparation program before September 1, 2025, the appropriate content knowledge needed to teach:

(i) the science of literacy instruction including:

(A) phonemic awareness;

(B) phonics;

(C) fluency;

(D) vocabulary;

(E) comprehension; and

(ii) the Educator Preparation Program Competencies for Elementary Literacy;

(iii) the science of mathematics instruction, including:

(A) quantitative reasoning;

(B) problem solving;

(C) representation;

(D) numeracy; and

(E) a balance of procedural and conceptual understanding;

(iv) physical and life science;

(v) health and physical education;

(vi) social studies; and

(vii) fine arts; or

(2) for candidates who enroll in a preparation program on or after September 1, 2025, the Elementary Content Competencies and the Educator Preparation Program Competencies for Early Literacy.

(3) For a program candidate accepted after January 1, 2020, a preparation program for early childhood or elementary education shall provide multiple opportunities for a program candidate to successfully demonstrate application of knowledge and skills gained through the program in a school-based setting in each of the following:

(a) all requirements outlined in Subsections R277-304-4(4) through (7);

(b) demonstrating content-[-]specific pedagogy in each of the areas outlined in Subsection R277-304-5(1);

(c) diagnosing students struggling with reading and planning and implementing remediation for those students; and

(d) diagnosing students struggling with mathematics and planning and implementing remediation for those students.

(4) An educator preparation program shall apply the standards in this Section R277-304-4 to the specific age group or grade level for which the preparation program is designed.

(a) An early childhood education program shall focus primarily on early childhood development and learning in kindergarten through grade 3.

(b) An elementary program shall include both early childhood development and learning and elementary content and pedagogy in kindergarten through grade 6.

R277-304-6. Secondary Preparation Programs.

(1) Before approval by the Board, a secondary preparation program shall demonstrate that it requires competency in:

(a) all content competencies established by the Superintendent for a professional educator license in at least one endorsement;

(b) all areas outlined in Subsections R277-304-[~~3~~]4(4) through (7);

(c) including literacy and quantitative learning objectives in content-[-]specific classes in alignment with the Utah Core Standards; and

(d) planning instruction and assessment in content-specific teams and in cross-curricular teams.

(2) For a program candidate accepted after January 1, 2020, a secondary preparation program shall provide multiple opportunities for a program candidate to successfully demonstrate application of knowledge and skills gained through the program in a school-based setting in each of the following:

(a) all requirements outlined in Subsections R277-304-[~~3~~]4(4) through (7); and

(b) ensuring student safety and learning in educational labs or shops and extra-curricular settings.

R277-304-7. Special Education and Preschool Special Education Programs.

(1) Before approval by the Board, a special education or preschool special education preparation program shall demonstrate that:

(a) the program is operated by or partnered with a Utah institution of higher education or the Utah State Board of Education;

(b) [~~aligned with the 2012 Council for Exceptional Children Initial Preparation Standards as informed by the Council for Exceptional Children Specialty Sets for Initial Preparation Programs~~]it requires competency in Board approved special education teacher preparation competencies in one or more of the following special education areas:

(i) Mild/Moderate Disabilities;

(ii) Severe Disabilities;

(iii) Deaf and Hard of Hearing;

(iv) Blind and Visually Impaired;

(v) Deafblind; or

(vi) Preschool Special Education (Birth-Age 5);

(c) the program requires the passage of a special education content knowledge assessment approved by the Superintendent;

(d) the program requires the passage of a Braille assessment approved by the Superintendent for a program in the Blind and Visually Impaired area;

(e) the program requires competency in:

(i) all areas detailed in Subsections R277-304-4(4) through (7);

(ii) legal and ethical issues surrounding special education, including:

(A) the IDEA;

(B) the Special Education Rules Manual incorporated by reference in Section R277-750-2; and

(C) all other applicable statutes and Board rules;

(iii) working with other school personnel to implement and evaluate academic, behavioral, and developmental supports and interventions for students with disabilities within a multi-tiered system of supports as appropriate for the area of licensure;

(iv) training in and supervising the services and supports provided to students with disabilities by general education teachers, related service providers, and paraprofessionals; and

(v) providing specially designed instruction, including content-[~~-~~]specific pedagogy, as per IEPs, to students with disabilities, including:

(A) the Utah Core Standards; and

(B) the Essential Elements as appropriate to a candidate's prospective area of licensure as established by the Board;

(C) skills in assessing and addressing the educational, developmental, and functional needs and progress of students with disabilities;

(D) skills in implementing and assessing the results of research and evidence-based interventions for students with disabilities; and

(E) skills in implementing an educational program with accommodations, modifications, services, and supports established by an IEP for students with disabilities.

(2) For a program candidate accepted after January 1, 2020, a special education or preschool special education preparation program shall require multiple opportunities for a program candidate to successfully demonstrate application of knowledge and skills gained through the program in a school-based setting in each of the following:

(a) all requirements outlined in Subsections R277-304-[~~3~~]4(4) through (7);

(b) creating learning goals and objectives for a student with disabilities that are specific, measurable, time-bound, and aligned to identified student needs and the Utah Core Standards;

(c) designing or adapting learning environments for diverse student populations that encourage active participation in individual and group activities;

(d) monitoring school compliance with [~~the provisions of~~]multiple student's IEP and Section 504 plans;

(e) conducting a student IEP meeting under the supervision of a licensed special education teacher;

(f) using knowledge of measurement principles and practices to interpret assessment information in making instructional, eligibility, program, and placement decisions for students with disabilities, including those from culturally or linguistically diverse backgrounds;

(g) communicating with parents of students with disabilities to ensure they are informed regarding the progress of their student and their right to due process; and

(h) if the program is designed to prepare an individual for a special education license area, developing and implementing a secondary transition plan as it related to post-secondary education and training, competitive employment, and independent living.

R277-304-8. Deaf Education Preparation Programs.

(1) Before approval by the Board, a deaf education preparation program shall:

(a) be operated by or partnered with a Utah institution of higher education or the Utah State Board of Education;

(b) be aligned with the National Association of State Directors of Special Education, Inc., Optimizing Outcomes for Students who are Deaf or Hard of Hearing, Educational Service Guidelines, Third Edition;

(c) be focused on one or more of the following areas:

(i) teaching students who are deaf or hard of hearing from birth to age five using both listening and spoken language strategies and American Sign Language;

(ii) teaching students who are deaf or hard of hearing with listening and spoken language strategies; or

(iii) teaching students who are deaf or hard of hearing with strategies that promote the development of American Sign Language and English literacy across the curriculum;

(d) require the passage of a deaf education content knowledge assessment approved by the Superintendent;

(e) require competency in:

(i) the areas detailed in Subsections R277-304-[~~3~~]4(4) through (7).

(ii) legal and ethical issues surrounding special education, including:

(A) the IDEA;

(B) the Special Education Rules Manual incorporated by reference in Section R277-750-2; and

(C) all other applicable statutes and Board rules;

(iii) addressing specific linguistic and cultural needs of deaf and hard of hearing students throughout the curriculum;

(iv) skills for incorporating language into all aspects of the curriculum;

(v) pedagogical skills unique to teaching reading, writing, mathematics, and other content areas to deaf and hard of hearing students;

(vi) basic fluency in the use of American Sign Language;

(vii) knowledge of the audiological and physiological components of audition;

(viii) skills for teaching speech to deaf and hard of hearing students;

(ix) the socio-cultural and psychological implications of hearing loss; and

(x) assessing and addressing the educational needs and educational progress of deaf and hard of hearing students.

(2) For a program candidate accepted after January 1, 2020, a deaf or hard of hearing education preparation program shall require multiple opportunities for a program candidate to successfully demonstrate application of knowledge and skills gained through the program in a school-based setting in each of the following:

(a) all requirements outlined in Subsections R277-304-[~~3~~]4(4) through (7);

(b) for a program focused on Subsection R277-304-[~~7~~]8(1)(c)(i):

(i) assessing early childhood language development and assessment in American Sign Language and spoken English;

(ii) working with families with students who are deaf or hard of hearing while respecting a variety of communication modalities;

(iii) integrating language, speech, and listening everyday activities;

(iv) sharing knowledge with families with students who are deaf or hard of hearing about the complexities of deaf culture, including norms and behaviors of the deaf community;

(v) developing auditory perception in children and educating parents about developmental milestones for listening skills; and

(vi) proficiency in American Sign Language as demonstrate by passing an assessment approved by the Superintendent;

(c) for a program focused on Subsection R277-304-[~~7~~]8(1)(c)(ii):

(i) developing auditory perception in children and strategies for developing listening and spoken language in deaf and hard of hearing students;

(ii) demonstrating understanding and expertise regarding early childhood spoken language development;

(iii) involving family members with students who are deaf or hard of hearing in learning and therapeutic activities;

(iv) integrating speech, listening, and spoken language in preschool and early elementary content areas; and

(v) integrating current listening technology, including troubleshooting such technology; and

(d) for a program focused on Subsection R277-304-[~~7~~]8(1)(c)(iii):

(i) integrating American Sign Language into instruction of core academic content for all school-age students;

(ii) enhancing bilingual literacy of students who are deaf or hard of hearing in both American Sign Language and English;

(iii) integrating respect and understanding of deaf culture into instruction;

(iv) demonstrating understanding and expertise regarding American Sign Language, language development; and

(v) proficiency in American Sign Language as demonstrated by passing an assessment approved by the Superintendent.

R277-304-9. Career and Technical Education Preparation Programs.

(1) Before approval by the Board, a CTE teacher preparation program designed for individuals that do not hold a bachelor's degree or higher shall:

(a) focus on one or more of the following areas:

(i) family and consumer sciences;

(ii) health sciences;

(iii) information technology;

(iv) skilled and technical sciences; or

(v) work-based learning;

(b) require that candidates have six years of documented, related occupational experiences within the 10 years before the program application in an approved CTE license area;

(c) require competency in all areas detailed in Section R277-304-[~~5~~]4;

(d) for a program candidate accepted after January 1, 2020, a CTE preparation program shall require multiple opportunities for a program candidate to successfully demonstrate application of knowledge and skills gained through the program in a school-based setting in all requirements outlined in Section R277-304-[~~5~~]4; and

(e) require candidates to hold the applicable license or certificate issued by the Utah State Department of Commerce, Division of Professional Licensing in any area where such licensure or certification exists.

(2) A program may count an associate's degree in a related area for up to two years of occupational experience to satisfy the requirement in Subsection R277-304-[~~8~~]9(1)(b).

(3)(a) An approved program may request a waiver from the Superintendent of the occupational experience required for a candidate if the candidate has passed an approved competency examination in the respective field at or above the passing score established by the Superintendent.

(b) The Superintendent may grant a waiver under Subsection (2)(a) for up to five years from the date the candidate passed the examination.

KEY: teacher preparation, programs, educators
Date of Last Change: 2024[~~March 20, 2024~~]
Notice of Continuation: March 15, 2024
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-401; 53E-6-201

NOTICE OF SUBSTANTIVE CHANGE		
TYPE OF FILING: Amendment		
Rule or Section Number:	**R277-322**	**Filing ID: 56565**

Agency Information

1. Title catchline:	Education, Administration	
Building:	Board of Education	
Street address:	250 E 500 S	
City, state:	Salt Lake City, UT 84111	
Mailing address:	PO Box 144200	
City, state 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:
R277-322. LEA Codes of Conduct
3. Purpose of the new rule or reason for the change:
This rule is being amended to align with statutory language found in Section 53B-1-118.
4. Summary of the new rule or change:
The amendments specifically assign an oversight category, add a definition for "Personal identity characteristics", and make other minor technical amendments.

Fiscal Inforation

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).

The changes to amend a definition on personal identity characteristics are to match statutory language and do not change practices or add costs or savings for the USBE or LEAs.

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 for the USBE or LEAs.

The changes to amend a definition on personal identity characteristics are to match statutory language and do not change practices or add costs or savings for the USBE or 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?)**:**

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. The changes to amend a definition on personal identity characteristics are to match statutory language and do not change practices or add costs or savings for the USBE or 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	**FY2025**	**FY2026**	**FY2027**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0

Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits	**FY2025**	**FY2026**	**FY2027**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
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 regulatory impact analysis.

Citation Information

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

Article X, Section 3	Subsection 53E-3-401(4)	Section 63G-7-301

Public Notice Information

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

A) Comments will be accepted until:	07/31/2024

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

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

Agency Authorization Information

Agency head or designee and title:	Angie Stallings, Deputy Superintendent of Policy	**Date:**	06/14/2024

R277. Education, Administration.
R277-322. LEA Codes of Conduct.
R277-322-1. 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) [~~Section~~]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 63G-7-301, which requires the Board to create a model policy that regulates behavior of a school employee toward a student.

(2) The purpose of this rule is to require LEAs to create a code of conduct[~~,~~] or appropriate behavior policy applicable to the LEA's staff.

(3) This Rule R277-326 is categorized as Category 2 as described in Rule R277-111.

R277-322-2. Definitions.

(1) "Boundary violation" means the same as that term is defined in Rule R277-210.

(2) "Personal identity characteristics" has the same meaning as defined in Section 53B-1-118.

([~~2~~]3) "Staff" or "staff member" means an employee, contractor, or volunteer with unsupervised access to students.

([~~3~~]4) "Sexual conduct" means any sexual contact or communication between a staff member and a student, including:

(a) "sexual abuse" as defined in Section 76-5-404.1;

(b) "sexual battery" as defined in Section 76-9-702.1; or

(c) a staff member and student sharing any sexually explicit or lewd communication, image, or photograph.

R277-322-3. Required Code of Conduct Policy.

(1) The Superintendent shall create a model code of conduct[~~,~~] or appropriate behavior policy.

(2) Each LEA shall adopt a code of conduct[~~/~~] or appropriate behavior policy applicable to the LEA's staff.

(3) An LEA's code of conduct[~~/~~] or appropriate behavior policy, adopted pursuant to Subsection (2), may not be less stringent than the model code of conduct[~~/~~] or appropriate behavior policy described in Subsection (1) and shall include, at a minimum:

(a) a statement that a staff member [~~should~~]shall avoid boundary violations, as defined in Rule R277-210, with students;

(b) a statement that a staff member may not subject a student to:

(i) physical abuse;

(ii) verbal abuse;

(iii) sexual abuse; or

(iv) mental abuse;

(c) a statement that a staff member shall report any suspected incidents of:

(i) physical abuse;

(ii) verbal abuse;

(iii) sexual abuse;

(iv) mental abuse; or

(v) neglect;

(d) a statement that a staff member may not touch a student in a way that makes a reasonably objective student feel uncomfortable;

(e) a statement that a staff member may not participate in sexual conduct with a student;

(f) a statement regarding appropriate verbal or electronic communication between a staff member and a student;

(g) a statement regarding providing gifts, special favors, or preferential treatment to a student or group of students;

(h) a statement that a staff member [~~shall~~]may not discriminate against a student on the basis of [~~sex, race, religion, or any other prohibited class~~]the student's personal identity characteristics;

(i) a statement regarding appropriate use of electronic devices and social media for communication between a staff member and a student;

(j) a statement regarding use of alcohol, tobacco, and illegal substances during work hours and on school property;

(k) a statement that a staff member [~~is required to~~]shall:

(i) report any suspicion of child abuse or bullying to the proper authorities;

(ii) annually read and sign all policies related to identifying, documenting, and reporting child abuse; and

(iii) for an employee or contractor, annually attend abuse prevention training required in Section 53G-9-207; and

[~~(3)~~](4) An LEA shall post the LEA's code of conduct[~~/~~] or appropriate behavior policy adopted pursuant to Subsection (2) on the LEA's website.

[~~(4)~~](5) An LEA shall annually provide training to staff regarding the policy, including the staff member's responsibility to report and how to report:

(a) known violations of the LEA's code of conduct[~~/~~] or appropriate behavior policy; and

(b) known violations of the Utah Educator Standards contained in Rule R277-[~~210~~]217.

[~~(5)~~](6) A staff member shall annually sign a statement acknowledging that the staff member has read and understands the code of conduct[~~/~~] or appropriate behavior policy.

KEY: codes of conduct, appropriate behavior, employee conduct
Date of Last Change: [~~April 11, 2022~~]2024
Notice of Continuation: June 7, 2024
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-401(4); 63G-7-301

NOTICE OF SUBSTANTIVE CHANGE		
TYPE OF FILING: Amendment		
Rule or Section Number:	**R277-326**	**Filing ID: 56566**

Agency Information

1. Title catchline:	Education, Administration	
Building:	Board of Education	
Street address:	250 E 500 S	
City, state:	Salt Lake City, UT	
Mailing address:	PO Box 144200	
City, state and zip:	Salt Lake City, UT 84114-4200	
Contact persons:		
Name:	**Phone:**	**Email:**
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov

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

General Information

2. Rule or section catchline:

R277-326. Early Learning

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

This rule is being amended to make updates to the requirements related to the distribution and use of grant funds.

4. Summary of the new rule or change:

The amendments specifically assign an oversight category and also remove the restriction that requires Local Education Agencies (LEA) to use all grant funds in the year the funds are distributed.

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). The changes to remove the restriction on LEAs using all the funds in the year funds are distributed allow for LEAs to carryover funds but do not add any measurable costs or savings for the USBE or LEAs.

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 for the USBE or LEAs. The changes to remove the restriction on LEAs using all the funds in the year funds are distributed allow for LEAs to carryover funds but do not add any measurable costs or savings for the USBE or 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?)**:**

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. The changes to remove the restriction on LEAs using all the funds in the year funds are distributed allow for LEAs to carryover funds but do not add any measurable costs or savings for the USBE or 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	**FY2025**	**FY2026**	**FY2027**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits	**FY2025**	**FY2026**	**FY2027**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
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 regulatory impact analysis.

Citation Information

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

Article X, Section 3	Subsection 53E-3-401(4)	Section 53F-5-214

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:	07/31/2024

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

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

Agency Authorization Information

Agency head or designee and title:	Angie Stallings, Deputy Superintendent of Policy	**Date:**	06/14/2024

R277. Education, Administration.
R277-326. Early Learning.
R277-326-1. Authority,[~~and~~] Purpose, and Oversight Category.

(1) This rule is authorized by:

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

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

(c) Section 53F-5-214, which directs the Board to make rules regarding the required elements of the Early Learning Professional Learning Grant and a formula to determine an LEA's grant amount; and

(d) Subsection 53E-3-1002(2), which directs the Board to make rules to allocate funding for early literacy coaches.

(2) The purpose of this rule is to:

(a)(i) provide the required elements for the Early Learning Professional Learning Grant program including eligibility criteria; and

(ii) establish a formula for the grant distribution; and

(b) establish criteria for assignment of early literacy coaches in accordance with Section 53E-3-1002.

(3) This Rule R277-326 is categorized as Category 3 as described in Rule R277-111.

R277-326-2. Definitions.

(1) "Early literacy coach" means a coach provided by the Board to assist LEAs with early literacy in accordance with Section 53E-3-1002.

(2) "Evidence-based" means the same as the term is defined in Subsection R277-406-2(3).

(3) "Focused" means professional learning that is targeted to strategies that align with an LEA's plan and goals that would best support improving outcomes.

(4) "Job-embedded" means learning that is during the workday and designed to enhance instructional practices with the intent of improving student learning outcomes.

(5) "Professional learning" means the same as the term is defined in Section 53G-11-303.

(6) "Sustained" means multiple professional learning sessions with ongoing support for implementation of professional learning for long-term change.

R277-326-3. Eligibility and Application.

(1) All LEAs are eligible to apply for the Early Learning Professional Learning Grant.

(2) To receive grants funds, an LEA shall submit an application to the Superintendent, including the LEA's plan:

(a) for the types of professional learning opportunities the LEA plans to utilize including:

(i) comprehensive professional learning opportunities as described in Subsection 53G-11-303(2); and

(ii) job-embedded coaching;

(b) for how the LEA intends to connect professional learning to the LEA's Early Learning Plan goals; and

(c) for how the LEA intends to increase benchmark assessment scores and related outcomes through professional learning opportunities.

(3) An LEA shall only use sustained professional learning opportunities that are evidence-based and focused.

R277-326-4. Distribution and Use of Funds.

(1) The Superintendent may allocate funds annually to one or more Regional Education Service Agencies to provide job-embedded-coaching.

(2) Subject to legislative appropriations, the Superintendent shall distribute the balance of Early Learning Professional Learning Grant funds as follows:

(a) a per teacher allotment shall be calculated by dividing the total amount of grant funds by the total number of preschool through grade 3 teachers of all applicants;

(b) an LEA shall receive a grant amount equal to the product of the per teacher allotment described in Subsection (a) and the total number of preschool through grade 3 teachers in the LEA; and

(c) if an LEA's Early Learning Plan is denied or an LEA chooses to forgo any grant funds, the grant funds may be reallocated to all other eligible LEAs receiving grant funds as described in Subsections (1)(a) and (b).

(3) For purposes of calculating a grant amount in Subsection (1), an LEA shall determine the LEA's total number of preschool through grade 3 teachers by using employee data from the previous school year of the application school year.

(4) An LEA may use the grant funds for the following purposes:

(a) teacher stipends to attend trainings;

(b) presenter fees;

(c) coaching supports;

(d) substitute teachers;

(e) to hire a coach or specialist; and

(f) supplies and materials for teacher professional learning.

(5) An LEA may not use grant funds for:

(a) the purchase of:

(i) property;

(ii) equipment;
(iii) other services; or
(iv) student materials and supplies; or
(b) travel related expenses.
[~~(6) An LEA shall use the grant funds by the end of the fiscal year in which the funds are received.~~
~~(7) The Superintendent may reduce grant funds to an LEA in an amount equal to the LEA's unused prior year program funds.~~
]

R277-326-5. Early Literacy Professional Learning Opportunity.

(1) An LEA receiving funding from the Early Literacy Professional Learning Grant shall provide training as required in Subsection 53F-5-214(6).

(2) Pursuant to Subsection 53F-5-214(6)(b)(ii)(E), an educator whose primary assignment is teaching students who are deaf is exempt from the requirement of an early literacy professional learning opportunity.

R277-326-6. Early Literacy Coaches.

(1)(a) The Superintendent shall provide, train, and assign early literacy coaches in accordance with Section 53E-3-1002.

(b) An early literacy coach shall meet minimum qualifications established by the Superintendent.

(c) An early literacy coach may perform responsibilities as directed by the Superintendent including those identified in Subsections 53E-3-1002(2)(c)(i) through (viii).

(d) An early literacy coach may not undertake duties unrelated to literacy coaches, as outlined in Subsection 53E-3-1002(2)(d).

(2) An LEA receiving funds for early literacy coaches may not charge indirect costs.

(3)(a) The Superintendent will determine which schools qualify for assistance from early literacy coaches taking into account the previous year's end-of year assessment data from:

(i) KEEP Exit: Literacy;

(ii) Acadience Reading, [~~(~~]benchmark, and growth[~~)~~]; and

(iii) RISE, [~~(~~]English Language Arts proficiency[~~)~~].

(b) The Superintendent shall exclude data:

(i) for students who were not enrolled a full academic year; and

(ii) for schools scheduled to close the following year.

(4)(a) The Superintendent shall prioritize services under this program for schools identified in Subsections 53E-3-1002(a)(i) and (ii).

(b) The Superintendent may prioritize services under this program to schools who do not receive support from the Center for Strategic Improvement.

KEY: professional learning, prek-3, early learning, teacher development
Date of Last Change: 2024[~~December 11, 2023~~]
Authorizing, and Implemented, or Interpreted Law: Art X Sec 3; 53E-3-401(4); 53F-5-214

NOTICE OF SUBSTANTIVE CHANGE		
TYPE OF FILING: New		
Rule or Section Number:	**R277-331**	**Filing ID: 56567**

Agency Information

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

General Information

2. Rule or section catchline:

R277-331. Stipends for Future Educators

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

This rule is being created due to the passage of H.B. 221 in the 2024 General Session.

4. Summary of the new rule or change:

This new rule establishes the requirements and other program rules consistent with H.B. 221 (2024).

Specifically, this new rule sets a stipend amount for student teachers.

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 funds were appropriated in H.B. 221 (2024) and the fiscal note captured the fiscal impacts for the Utah State Board of Education (USBE) and Local Education Agencies (LEA).

The rule sets the stipend amount based on the available legislative appropriation and follows the intent of H.B. 221 (2024) but does not add other costs for the USBE or LEAs.

B) Local governments:

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

The funds were appropriated in H.B. 221 (2024) and the fiscal note captured the fiscal impacts for the USBE and LEAs. The rule sets the stipend amount based on the available legislative appropriation and follows the intent of H.B. 221 (2024) but does not add other costs for the USBE or 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.

Eligible student teachers will receive payments due to H.B. 221 (2024). The amount of $6,000 follows legislative appropriation and intent and the USBE believes the impacts for student teachers were captured in the fiscal note to H.B. 221 (2024).

Other persons and entities are not affected.

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 funds were appropriated in HB221 and the fiscal note captured the fiscal impacts for the USBE and LEAs. The rule sets the stipend amount based on the available legislative appropriation and follows the intent of H.B. 221 (2024) but does not add other costs for the USBE, LEAs, or student teachers.

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

Regulatory Impact Table			
Fiscal Cost	**FY2025**	**FY2026**	**FY2027**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits	**FY2025**	**FY2026**	**FY2027**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
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 regulatory impact analysis.

Citation Information

6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:		
Article X, Section 3	Subsection 53E-3-401(4)	Section 53F-5-223

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:	07/31/2024

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

Agency Authorization Information

Agency head or designee and title:	Angie Stallings, Deputy Superintendent of Policy	**Date:**	06/14/2024

R277. Education, Administration.
R277-331. Stipends for Future Educators.
R277-331-1. Authority, Purpose, and Oversight Category.

(1) This rule is authorized by:

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

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

(c) Section 53F-5-223, which creates a stipend for eligible student teachers and directs the Board to determine how the grant is distributed.
(2) The purpose of this rule is to create guidelines for distribution of stipends to eligible student teachers.
(3) This Rule R277-331 is categorized as Category 4 as described in Rule R277-111.

R277-331-2. Definitions.
(1) "Eligible student teacher" means the same as defined in Section 53F-5-223.
(2) "Program" means the Stipends for Future Educators program established in Section 53F-5-223.

R277-331-3. Student Teachers Stipends.
(1) An eligible student teacher may apply for a stipend under the program by filling out an application on a form provided by the Superintendent.
(2)(a) An eligible student teacher shall be a student in a Utah institution of higher education.
(b) An eligible student teacher's institution of higher education shall confirm the student's enrollment with the Superintendent in order for the teacher to qualify for a program stipend.
(3) An eligible student teacher may only receive a program stipend for student teaching done in a Utah k-12 public school.
(4)(a) The Superintendent shall distribute funds to LEAs under the program of $6,000 per semester for each eligible student.
(b) The Superintendent may pro rate the stipend for a teacher working in an LEA with a class schedule that varies from a standard two semester school year.
(c) The Superintendent shall determine a schedule for disbursing funds to LEAs with eligible student teachers no less than four times a year.
(5)(a) An eligible student shall receive payment as a 1099 contract employee of the student teacher's cooperating LEA.
(b) An LEA may not claim indirect costs in relation to this program.
(c) An LEA shall disburse the stipend half at the beginning of the semester and half at the end of the semester.
(d) An LEA shall record an eligible student teacher's placement in CACTUS or USIMS, as appropriate.
(6) An eligible student teacher may do substitute teaching on a part-time basis during the student teaching period.

KEY: Stipends, Student Teachers
Date of Last Change: 2024
Authorizing, and Implemented, or Interpreted Law: Art. X, Sec. 3, 53E-3-401(4), 53F-5-223

NOTICE OF SUBSTANTIVE CHANGE		
TYPE OF FILING: New		
Rule or Section Number:	**R277-332**	**Filing ID: 56568**

Agency Information

1. Title catchline:	Education, Administration	
Building:	Board of Education	
Street address:	250 E 500 S	
City, state:	Salt Lake City, UT 84111	
Mailing address:	PO Box 144200	
City, state 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:
R277-332. Teacher Retention Pilot Program

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

This rule is being created due to the passage of H.B. 431 during the 2024 General Session.

4. Summary of the new rule or change:

This new rule specifies requirements to implement the pilot program for mentoring and assisting educators, including incorporation of the scoring rubric that is consistent with H.B. 431 (2024).

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 was created due to the passage of H.B. 431 (2024), Teacher Retention, and the Utah State Board of Education (USBE) believes the fiscal impacts were captured in the fiscal note to H.B. 431 (2024) for the USBE, Local Education Agencies (LEA), and educators.

B) Local governments:

This rule change is not expected to have fiscal impacts on local government revenues or expenditures. This rule was created due to the passage of H.B. 431 (2024), and the USBE believes the fiscal impacts were captured in the fiscal note to H.B. 431 (2024) for the USBE, LEAs, and educators.

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 impacts on revenues or expenditures for persons other than small businesses, businesses, or local government entities.

This rule was created due to the passage of H.B. 431 (2024), and the USBE believes the fiscal impacts were captured in the fiscal note to H.B. 431 (2024) for the USBE, LEAs, and educators.

No other person or entities are affected by the 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 was created due to the passage of H.B. 431 (2024), and the USBE believes the fiscal impacts were captured in the fiscal note to H.B. 431 (2024) for the USBE, LEAs, and educators.

There are no additional compliance costs for the USBE, LEAs, or educators.

G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)			
Regulatory Impact Table			
Fiscal Cost	**FY2025**	**FY2026**	**FY2027**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits	**FY2025**	**FY2026**	**FY2027**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
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 regulatory impact analysis.			

Citation Information

6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:		
Article X, Section 3	Subsection 53E-3-401(4)	Section 53F-5-222

Incorporations by Reference Information

7. Incorporations by Reference:	
A) This rule adds or updates the following title of materials incorporated by references:	
Official Title of Materials Incorporated (from title page)	Master Pilot Program Grant Application Scoring Rubric
Publisher	Utah State Board of Education
Issue Date	June 2024
Issue or Version	June 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:	07/31/2024

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

Agency Authorization Information

Agency head or designee and title:	Angie Stallings, Deputy Superintendent of Policy	**Date:**	06/14/2024

R277. Education, Administration.
R277-332. MASTER Pilot Program.
R277-332-1. Authority, Purpose, and Oversight Category.
(1) This rule is authorized by:
(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;
(b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and
(c) Subsection 53F-5-222(5), which directs the Board to make rules to implement the MASTER pilot program.
(2) The purpose of this rule is to establish rules for implementation of the MASTER pilot program consistent with state law.
(3) This Rule R277-332 is categorized as Category 3 as described in Rule R277-111.

R277-332-2. Definitions.
"MASTER Pilot Program" means the Mentoring and Supporting Teacher Excellence and Refinement Pilot Program created in Section 53F-5-222.

R277-332-3. Incorporation by Reference of Application Scoring Rubric.
(1) This rule incorporates by reference the MASTER Pilot Program Scoring Rubric, dated June 2024.
(2) A copy of the rubric is located at:
(a) https://schools.utah.gov/administrativerules/documentsincorporated; and
(b) the Utah State Board of Education.

R277-332-4. MASTER Pilot Program.
(1) The Superintendent shall award grants to LEAs and RESAs under the MASTER pilot program in accordance with Section 53F-5-222.
(2)(a) An LEA or RESA shall apply for a grant under the MASTER pilot program using an application provided by the Superintendent by June 30, 2024.
(b) The Superintendent may accept applications again for the 2025-26 school year if additional funds remain undistributed.
(3) As part of the application, each LEA or RESA shall identify:
(a) the program tier for which the LEA or RESA is applying;
(b) a plan for use of the program funds; and
(c) reporting and performance measures for evaluation of the LEA's or RESA's use of program funds.
(4) The Superintendent shall award grants under the MASTER pilot program, as follows:
(a) up to $25,000 for a tier one grant applicant, with a 10% match;
(b) up to $75,000 for a tier two grant applicant, with a 15% match; and
(c) up to $150,000 for a tier three grant applicant, with a 20% match.
(5) An LEA or RESA shall use program funds as described in Subsection 53F-5-222(6).

KEY: MASTER pilot program, mentoring, support
Date of Last Change: 2024
Authorizing, and Implemented, or Interpreted Law: Art. X, Sec. 3, 53E-3-401(4); 53F-5-222

NOTICE OF SUBSTANTIVE CHANGE		
TYPE OF FILING: Amendment		
Rule or Section Number:	**R277-407**	**Filing ID: 56569**

Agency Information

1. Title catchline:	Education, Administration	
Building:	Board of Education	
Street address:	250 E 500 S	
City, state:	Salt Lake City, UT 84111	
Mailing address:	PO Box 144200	
City, state 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:

R277-407. School Fees

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

This rule is being amended due to the passage of H.B. 82 and H.B. 415 during the 2024 General Session.

4. Summary of the new rule or change:

The amendments specifically add an oversight category, update several definitions, clarify the requirements for charging of fees for classes and activities, update language regarding waivable fees, and remove language related to fundraising

Some language repealed in Rule R277-407 has been moved to new Rule R277-408.

(EDITOR'S NOTE: The proposed new Rule R277-408 is under ID 56570 in this issue, July1, 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.

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).

The USBE believes the fiscal impacts were captured in the fiscal note to H.B. 82 and H.B. 415 (2024) for the USBE and LEAs. There are no measurable costs from the rule changes outside the changes captured by the fiscal notes to H.B. 82 and H.B. 415 (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 the USBE resulting from the rule. This categorization does not add any requirements or resources in and of itself for the USBE or LEAs. The USBE believes the fiscal impacts were captured in the fiscal note to H.B. 82 and H.B. 415 (2024) for the USBE and LEAs.

There are no measurable costs from the rule changes outside the changes captured by the fiscal notes to H.B. 82 and H.B. 415 (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.

This only impacts 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 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 for the USBE or LEAs.

The USBE believes the fiscal impacts were captured in the fiscal note to H.B. 82 and H.B. 415 (2024) for the USBE and LEAs. There are no measurable costs from the rule changes outside the changes captured by the fiscal notes to H.B. 82 and H.B. 415 (2024).

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

Regulatory Impact Table

Fiscal Cost	**FY2025**	**FY2026**	**FY2027**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits	**FY2025**	**FY2026**	**FY2027**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
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 regulatory impact analysis.

Citation Information

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

Article X, Section 2	Article X, Section 3	Subsections 53E-3-401(4)
Section 53G-7-503		

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:	07/31/2024

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

Agency Authorization Information

Agency head or designee and title:	Angie Stallings, Deputy Superintendent of Policy	Date:	06/14/2024

R277. Education, Administration.
R277-407. School Fees.
R277-407-1. Authority and Purpose.

(1) This rule is authorized under:

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

(b) Utah Constitution Article X, Section 2[~~of the Utah Constitution~~], which provides that:

(i) public elementary schools shall be free; and

(ii) secondary schools shall be free, unless the Legislature authorizes the imposition of fees;

(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;

(d) Subsection 53G-7-503[~~(2)~~](4), which requires the Board to adopt rules regarding student fees; and

(e) Section 53G-7-504 which authorizes waiver of fees for eligible students with appropriate documentation.

(2) The purpose of this rule is to:

(a) permit the orderly establishment of a system of reasonable fees;

(b) provide adequate notice to students and families of fees and fee waiver requirements; and

(c) prohibit practices that would:

(i) exclude those unable to pay from participation in school-sponsored activities; or

(ii) create a burden on a student or family as to have a detrimental impact on participation.

(3) This R277-407 is categorized as Category 3 as described in Rule R277-111.

R277-407-2. Definitions.

(1) "Co-curricular activity" means the same as that term is defined in Section 53G-7-501.

(2) "Curricular activity" means the same as that term is defined in Section 53G-7-501.

(3) "Extracurricular activity" means the same as that term is defined in Section 53G-7-501.

(4)[~~(a)~~] "Fee" means the same as that term is defined in Section 53G-7-501.[~~something of monetary value requested or required by an LEA as a condition to a student's participation in an activity, class, or program provided, sponsored, or supported by a school.~~

~~(b) "Fee" includes money or something of monetary value raised by a student or the student's family through fundraising.~~]

(5)[~~(a)~~] "Fundraiser," "fundraising," or "fundraising activity" means the same as that term is defined in Rule R277-408.[~~an activity or event provided, sponsored, or supported by a school that uses students to generate funds to raise money to:~~

~~(i) provide financial support to a school or any of the school's classes, groups, teams, or programs; or~~

~~(ii) benefit a particular charity or for other charitable purposes.~~

~~(b) "Fundraiser," "fundraising," or "fundraising activity" may include:~~

~~(i) the sale of goods or services;~~

~~(ii) the solicitation of monetary contributions from individuals or businesses; or~~

~~(iii) other lawful means or methods that use students to generate funds.~~

~~(c) "Fundraiser," "fundraising," or "fundraising activity" does not include an alternative method of raising revenue without students.~~]

[~~(6) "Group fundraiser" or "group fundraising" means a fundraising activity where the money raised is used for the benefit of the group, team, or organization.~~

] ([~~7~~]6) "Individual fundraiser" or "individual fundraising" means the same as that term is defined in Rule R277-408.[~~a fundraising activity where money is raised by each individual student to pay the individual student's fees.~~

~~(8)(a) "Instructional equipment" means an activity, course, or program-related tool or instrument that:~~

~~(i) is required for a student to use as part of an activity, course, or program in a secondary school;~~

~~(ii) typically becomes the property of the student upon exiting the activity, course, or program; and~~

~~(iii) is subject to fee waiver.~~

~~(b) "Instructional equipment" includes:~~

~~(i) shears or styling tools;~~

~~(ii) a band instrument;~~

~~(iii) a camera;~~

~~(iv) a stethoscope; and~~

~~(v) sports equipment, including a bat, mitt, or tennis racket.~~

~~(c) "Instructional equipment" does not include school equipment.~~

~~(9)(a) "Instructional supply" means a consumable or non-reusable supply that is necessary for a student to use as part of an activity, course, or program in a secondary school.~~

~~(b) "Instructional supply" includes:~~

~~(i) prescriptive footwear;~~

~~(ii) brushes or other art supplies, including clay, paint, or art canvas;~~

~~(iii) wood for wood shop;~~

~~(iv) Legos for Lego robotics;~~

~~(v) film; and~~

~~(vi) filament used for 3D printing.~~]

(7) "Instructional equipment or supplies" means the same as that term is defined in Section 53G-7-501.

[~~(10)~~](8) "LEA" includes, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

[~~(11)(a) "Maintenance of school equipment" means a cost, payment, or expenditure related to storing, repairing or keeping school equipment in good working condition.~~

~~(b) "Maintenance of school equipment" does not include the cost related to end-of-life replacement.~~

] [~~(12)~~](9) "Noncurricular club" has the same meaning as that term is defined in Section 53G-7-701.

[~~(13)~~](10) "Non-waivable charge" means a cost, payment, or expenditure that:

(a) is a personal discretionary charge or purchase, including:

(i) a charge for insurance, unless the insurance is required for a student to participate in an activity, class, or program;

(ii) a charge for college credit related to the successful completion of:

(A) a concurrent enrollment class; or

(B) an advanced placement examination; or

(iii) except when requested or required by an LEA, a charge for a personal consumable item such as a yearbook, class ring, letterman jacket or sweater, or other similar item;

(b) is subject to sales tax as described in Utah State Tax Commission Publication 35, Sales Tax Information for Public and Private Elementary and Secondary Schools; or

(c) by Utah Code, federal law, or Board rule is designated not to be a fee, including:

(i) a school uniform as provided in Section 53G-7-801;

(ii) a school lunch; or

(iii) a charge for a replacement for damaged or lost school equipment or supplies.

[~~(14)~~](11)(a) "Provided, sponsored, or supported by a school" means an activity, class, program, [~~fundraiser,~~]club, camp, clinic, or other event that:

(i) is authorized by an LEA or school, according to local education board policy; or

(ii) satisfies at least one of the following conditions:

(A) the activity, class, program, [~~fundraiser,~~]club, camp, clinic, or other event is managed or supervised by an LEA or school, or an LEA or school employee in the employee's school employment capacity;

(B) the activity, class, program, [~~fundraiser,~~]club, camp, clinic, or other event uses, more than inconsequentially, the LEA or school's facilities, equipment, or other school resources; or

(C) the activity, class, program, [~~fundraising event,~~]club, camp, clinic, or other event is supported or subsidized, more than inconsequentially, by public funds, including the school's activity funds or minimum school program dollars.

(b) "Provided, sponsored, or supported by a school" does not include an activity, class, or program that meets the criteria of a noncurricular club as described in Title 53G, Chapter 7, Part 7, Student Clubs.

[~~(15)~~](12)(a) "Provision in lieu of fee[~~waiver~~]" means an alternative to fee payment[~~or waiver of fee payment~~].

(b) "Provision in lieu of fee"[~~waiver" does not~~] may include a plan under which fees are paid in installments or under some other delayed payment arrangement or a service in lieu of fee payment agreement.

[~~(16)~~](13) "Regular school day" has the same meaning as the term "school day" described in Section R277-419-2.

[~~(17)~~](14) "Requested or required by an LEA as a condition to a student's participation" means something of monetary value that is impliedly or explicitly mandated or necessary for a student, parent, or family to provide so that a student may:

(a) fully participate in school or in a school activity, class, or program;

(b) successfully complete a school class for the highest grade; or

(c) avoid a direct or indirect limitation on full participation in a school activity, class, or program, including limitations created by:

(i) peer pressure, shaming, stigmatizing, bullying, or the like; or

(ii) withholding or curtailing any privilege that is otherwise provided to any other student.

(15) "School activity clothing" means the same as that term is defined in Section 53G-7-501.

[~~(18) "School day" has the same meaning as defined in Section R277-419-2.~~

] [~~(19)~~](16)(a) "School equipment" means the same as that term is defined in Section 53G-7-501.[~~a durable school-owned machine, equipment, or tool used by a student as part of an activity, course, or program in a secondary school.~~]

(b) "School equipment" includes a saw or 3D printer.

[~~(20)~~](17)(a) "Something of monetary value" means a charge, expense, deposit, rental, fine, or payment, regardless of how the payment is termed, described, requested or required directly or indirectly, in the form of money, goods or services.

(b) "Something of monetary value" includes:

(i) charges or expenditures for a school field trip or activity trip, including related transportation, food, lodging, and admission charges;

(ii) payments made to a third party that provide a part of a school activity, class, or program;

(iii) classroom supplies or materials; and

(iv) a fine, except for a student fine specifically approved by an LEA for:

(A) failing to return school property;

(B) losing, wasting, or damaging private or school property through intentional, careless, or irresponsible behavior; or

(C) improper use of school property, including a parking violation.

(c) "Something of monetary value" does not include a payment or charge for damages, which may reasonably be attributed to normal wear and tear.

[~~(21)~~](18)(a) "Student supplies" means items which are the personal property of a student which, although used in the instructional process, are also commonly purchased and used by persons not enrolled in the class or activity in question and have a high probability of regular use in other than school-sponsored activities.

(b) "Student supplies" include:

(i) pencils;

(ii) paper;

(iii) notebooks;

(iv) crayons;

(v) scissors;

(vi) basic clothing for healthy lifestyle classes; and

(vii) similar personal or consumable items over which a student retains ownership.

(c) "Student supplies" does not include items listed in Subsection [~~(20)~~](18)(b) if the requirement from the school for the student supply includes specific requirements such as brand, color, or a special imprint to create a uniform appearance not related to basic function.

[~~(22)~~](19) "Supplemental Nutrition Assistance Program" or "SNAP" means a program, formerly known as food stamps, which provides nutrition benefits to supplement the food budget of low income families through the Utah Department of Workforce Services.

[~~(23)~~](20) "Supplemental Security Income for children with disabilities" or "SSI" means a benefit administered through the Social Security Administration that provides payments for qualified children with disabilities in low income families.

[~~(24)~~](21) "Temporary Assistance for Needy Families" or "TANF," means a program, formerly known as AFDC, which provides monthly cash assistance and food stamps to low income families with children under age 18 through the Utah Department of Workforce Services.

[~~(25)~~](22)[~~(a)~~] "Textbook" means the same as that term is defined in Section 53G-7-501[~~instructional material necessary for participation in an activity, course or program, regardless of the format of the material.~~

~~(b) "Textbook" includes:~~

~~(i) hard copy book or printed pages of instructional material, including a consumable workbook;~~

~~(ii) computer hardware, software, or digital content; and~~

~~(iii) the maintenance costs of school equipment.~~

~~(c) "Textbook" does not include:~~

~~(i)~~] ~~instructional equipment; or~~

~~(ii) instructional supplies~~].

[~~(26)~~](23) "Waiver" means the same as that term is defined in Section 53G-7-501.[~~a full release from the requirement of payment of a fee and from any provision in lieu of fee payment.~~]

R277-407-3. Classes and Activities During the Regular School Day.

(1) An LEA may not charge a fee [~~No fee may be charged~~]in kindergarten through grade six for:

(a) materials;

(b) textbooks;

(c) supplies, except for student supplies described in Subsection (6); or

(d) any class or regular school day activity, including assemblies and field trips.

(2)(a) An LEA may charge a fee [~~in connection with~~]related to an activity, class, or program provided, sponsored, or supported by a school for a student in a secondary school that takes place during the regular school day if:

(i) the fee is allowed to be charged under Title 53G, Chapter 7, Student Fees; and

(ii) the fee is noticed and approved as provided in this rule.

(b) All fees are subject to the fee waiver requirements of Section R277-407-8.

(3)(a) Notwithstanding, Subsection (1) and except as provided in Subsection (3)(b), a school may charge a fee to a student in grade six if the student attends a school that includes any of grades seven through twelve.

(b) A school that provides instruction to students in grades other than grades six through twelve may not charge fees for grade six unless the school follows a secondary model of delivering instruction to the school's grade six students.

(c) If a school charges fees in accordance with Subsection (3)(a), the school shall annually provide notice to parents that the school will collect fees from grade six students and that the fees are subject to waiver.

(4) If a class is established or approved, which requires payment of fees or purchase of items in order for students to participate fully and to have the opportunity to acquire [~~all~~]skills and knowledge required for full credit and highest grades, the fees or costs for the class shall be subject to the fee waiver requirements of Section R277-407-8.

(5)(a) In project related courses, projects required for course completion shall be included in the course fee.

(b) A school may require a student at any grade level to provide materials or pay for an additional discretionary project if the student chooses a project in lieu of, or in addition to a required classroom project.

(c) A school shall avoid allowing high cost additional projects, particularly if authorization of an additional discretionary project results in pressure on a student by teachers or peers to also complete a similar high cost project.

(d) A school may not require a student to select an additional project as a condition to enrolling, completing, or receiving the highest possible grade for a course.

(6) An elementary school or elementary school teacher may provide to a student's parent or guardian, a suggested list of student supplies for use during the regular school day so that a parent or guardian may furnish, on a voluntary basis, student supplies for student use, provided that, in accordance with Section 53G-7-503, the following notice is provided with the list:

"NOTICE: THE ITEMS ON THIS LIST WILL BE USED DURING THE REGULAR SCHOOL DAY. THEY MAY BE BROUGHT FROM HOME ON A VOLUNTARY BASIS, OTHERWISE, THEY WILL BE FURNISHED BY THE SCHOOL."

(7) A school may require a secondary student to provide student supplies, subject to the requirements of Section 53G-7-503 and Section R277-407-8.

(8)(a) A school may require a secondary student to provide school activity clothing.[~~Except as provided in Subsection (9), if a school requires special shoes or items of clothing that meet specific requirements, including requesting a specific brand, fabric, or imprints, the cost of the special shoes or items of clothing are:~~]

[~~(a)~~](b) School activity clothing is [-]considered a fee[~~:~~] and

~~(b)~~] is [-]subject to fee waiver.

(9) As provided in Subsection 53G-7-802(4), an LEA's school uniform policy, including a requirement for a student to wear a school uniform, is not considered a fee for either an elementary or a secondary school if the LEA's school uniform policy is consistent with the requirements of Title 53G, Chapter 7, Part 8, School Uniforms.

R277-407-4. School Activities Outside of the Regular School Day.

(1) A school may charge a fee, subject to the requirements of Section R277-407-8, [~~in connection with~~]related to any school-sponsored activity, that does not take place during the regular school day, regardless of the age or grade level of the student, if participation in the activity is voluntary and does not affect a student's grade or ability to participate fully in any course taught during the regular school day.

(2) A fee related to a co-curricular or extracurricular activity may not exceed the maximum fee amounts for the co-curricular or extracurricular activity adopted by the LEA governing board as described in Subsection R277-407-6(2).

(3) A school may only collect a fee for an activity, class, or program provided, sponsored, or supported by a school consistent with LEA policies and state law.

(4) An LEA that provides, sponsors, or supports an activity, class, or program outside of the regular school day or school calendar is subject to the requirements of this rule regardless of the time or season of the activity, class, or program.

R277-407-5. Fee[-]Waivable Activities, Classes, or Programs Provided, Sponsored, or Supported by a School.

Fees for the following are waivable:

(1) an activity, class, or program that is:

(a) primarily intended to serve school-age children, including a student participating in an activity, class, or program through dual enrollment as described in Rule R277-438 or as described in Rule R277-494; and

(b) taught or administered, more than inconsequentially, by a school employee as part of the employee's assignment;

(2) an activity, class, or program that is explicitly or implicitly required:

(a) as a condition to receive a higher grade, or for successful completion of a school class or to receive credit, including a requirement for a student to attend a concert or museum as part of a music or art class for extra credit; or

(b) as a condition to participate in a school activity, class, program, or team, including, a requirement for a student to participate in a summer camp or clinic for students who seek to participate on a school team, such as cheerleading, football, soccer, dance, or another team;

(3) an activity or program that is promoted by a school employee, such as a coach, advisor, teacher, school-recognized volunteer, or similar person, during school hours where it could be reasonably understood that the school employee is acting in the employee's official capacity;

(4) an activity or program where full participation in the activity or program includes:

(a) travel for state or national educational experiences or competitions;

(b) debate camps or competitions; or

(c) music camps or competitions;

(5) a concurrent enrollment, CTE, IB, or AP course; and

(6) the cost to access software, digital content, or other instructional materials required as part of an activity, course, or program.

R277-407-6. LEA Requirements to Establish a Fee Schedule -- Maximum Fee Amounts -- Notice to Parents.

(1) An LEA, school, school official, or employee may not charge or assess a fee or request or require something of monetary value [~~in connection with~~]related to an activity, class, or program provided, sponsored, or supported by, and including for a co-curricular or extracurricular activity, unless the fee:

(a) has been set and approved by the LEA's governing board;

(b) is equal to or less than the maximum fee amount established by the LEA governing board as described in Subsection (4); and

(c) is included in an approved fee schedule.

(2)(a) If an LEA charges a fee, on or before April 1 and in consultation with stakeholders, the LEA governing board shall annually adopt a fee schedule and fee policies for the LEA in a regularly scheduled public meeting.

(b) Before approving the LEA's fee schedule described in this section, an LEA shall provide an opportunity for the public to comment on the proposed fee schedule during a minimum of two public LEA governing board meetings.

(c) An LEA shall:

(i) provide public notice of the meetings described in Subsections (2)(a) and (b) in accordance with Title 52, Chapter 4, Open and Public Meetings Act; and

(ii) encourage public participation in the development of fee schedules and waiver policies.

(d) In addition to the notice requirements of Subsection (2)(c), an LEA shall provide notice to parents and students of the meetings described in Subsections (2)(a) and (b) using the same form of communication regularly used by the LEA to communicate with parents, including notice by email, text, flyer, or phone call.

(e) An LEA shall keep minutes of meetings during which fee and waiver policies are developed or adopted, together with copies of approved policies, in accordance with Section 52-4-203.

(3) After the fee schedule described in Subsection (2)(a) is adopted, an LEA may amend the LEA's fee schedule if the LEA follows the process described in Subsection (2) before approving the amended fee schedule.

(4)(a) As part of an LEA's fee setting process, an LEA shall establish:

(i) a maximum fee amount per student for each activity; and

(ii) a maximum total aggregate fee amount per student per school year.

[~~(b) The amount of revenue raised by a student through an individual fundraiser shall be included as part of the maximum fee amount per student for the activity and maximum total aggregate fee amount per student.~~

~~(c) An LEA shall include the total per student amount expected to be received through required group fundraising as part of the maximum fee amount for an activity described in Subsection (4)(b)(i).~~]

[~~(d)~~](b) An LEA may establish a reasonable number of activities, courses, or programs that will be covered by the annual maximum fee amount described in Subsection (4)(a).

(5) As part of an LEA's fee setting process described in this section, the LEA may review and consider the following per school:

(a) the school's cost to provide the activity, class, or program;

(b) the school's student enrollment;

(c) the median income of families:

(i) within the school's boundary; or

(ii) enrolled in the school;

(d) the number and monetary amount of fee waivers, designated by individual fee, annually granted within the prior three years;

(e) the historical participation and school interest in certain activities;

(f) the prior year fee schedule;

(g) the amount of revenue collected from each fee in the prior year;

(h) fundraising capacity;

(i) prior year community donors; and

(j) other resources available, including through donations and fundraising.

(6)(a) If an LEA charges a fee, the LEA shall:

(i) annually publish the following on each of the LEA's schools' publicly available websites:

(A) the LEA's fee waiver policies and fee schedule, including the fee maximums described in Subsection (4);

(B) the LEA's fee waiver application;

(C) the LEA's fee waiver decision and appeals form; and

(D) the LEA's school fee notice for families;

(ii) annually include a copy of the LEA's fee schedule and fee waiver policies with the LEA's registration materials; and

(iii) provide a copy of the LEA's fee schedule and fee waiver policies to a student's parent who enrolls a student after the initial enrollment period.

(b) If an LEA's student or parent population in a single written language other than English exceeds 20%, the LEA shall also publish the LEA's fee schedule and fee waiver policies in the language of those families.

(c) An LEA representative shall meet personally with each student's parent or family and make available an interpreter for the parent to understand the LEA's fee waiver schedules and policies if:

(i) the student or parent's first language is a language other than English; and

(ii) the LEA has not published the LEA's fee schedule and fee waiver policies in the parent's first language.

(7)(a) An LEA policy shall include easily understandable procedures for obtaining a fee waiver and for appealing an LEA's denial of a fee waiver, as soon as possible before the fee becomes due.

(b) If an LEA denies a student or parent request for a fee waiver, the LEA shall provide the student or parent:

(i) the LEA's decision to deny a waiver; and

(ii) the procedure for the appeal in the form approved by the Board.

(8)(a) A school may not deny a present or former student receipt of transcripts or a diploma, nor may a school refuse to issue a grade for a course for failure to pay school fees.

(b) A school may impose a reasonable charge to cover the cost of duplicating, mailing, or transmitting transcripts and other school records.

(c) A school may not charge for duplicating, mailing, or transmitting copies of school records to an elementary or secondary school in which a former student is enrolled or intends to enroll.

(9) To preserve equal opportunity for all students and to limit diversion of money and school and staff resources from the basic school program, each LEA's fee policies shall be designed to limit student expenditures for school-sponsored activities, including expenditures for activities, uniforms, clubs, clinics, travel, and subject area and vocational leadership organizations, whether local, state, or national.

R277-407-7. Donations in Lieu of Fees.

(1)(a) A school may not request or accept a donation in lieu of a fee from a student or parent unless the activity, class, or program for which the donation is solicited will otherwise be fully funded by the LEA and receipt of the donation will not affect participation by an individual student.

(b) A donation is a fee if a student or parent is required to make the donation as a condition to the student's participation in an activity, class, or program.

(c) An LEA may solicit and accept a donation or contribution in accordance with the LEA's policies, but [~~all~~]such requests must clearly state that donations and contributions by a student or parent are voluntary.

(2) If an LEA solicits donations, the LEA:

(a) shall solicit and handle donations in accordance with policies established by the LEA; and

(b) may not place any undue burden on a student or family in relation to a donation.

(3) An LEA may raise money to offset the cost to the LEA attributed to fee waivers granted to students through the LEA's foundation.

(4) An LEA shall direct donations provided to the LEA through the LEA's foundation in accordance with the LEA's policies governing the foundation.

(5) If an LEA accepts a donation, the LEA shall prevent potential inequities in schools within the LEA when distributing the donation.

R277-407-8. Fee Waivers.

(1)(a) All fees are subject to waiver.

(b) Fees charged for an activity, class, or program held outside of the regular school day, during the summer, or outside of an LEA's regular school year are subject to waiver.

(c) Non-waivable charges are not subject to waiver.

(2)(a) Except as provided in Subsection (2)(b), an LEA may not use revenue collected through fees to offset the cost of fee waivers by requiring students and families who do not qualify for fee waivers to pay an increased fee amount to cover the costs of students and families who qualify for fee waivers.

(b) An LEA may notify students and families that the students and families may voluntarily pay an increased fee amount or provide a donation to cover the costs of other students and families.

(3) An LEA shall provide, as part of any fee policy or schedule, for adequate waivers or other provisions in lieu of a fee[~~waivers~~] to ensure that no student is denied the opportunity to participate in a class or school-sponsored or supported activity because of an inability to pay a fee.

(4) An LEA shall designate at least one person at an appropriate administrative level in each school to review and grant fee waiver requests.

(5) An LEA shall administer the process for obtaining a fee waiver or pursuing an alternative fairly, objectively, without delay, and in a manner that avoids stigma, embarrassment, undue attention, and unreasonable burdens on students and parents.

(6) An LEA may not treat a student receiving a fee waiver or provision in lieu of a fee waiver differently from other students.

(7) A school may not identify a student on fee waiver to students, staff members, or other persons who do not need to know.

(8)(a) An LEA shall ensure that a fee waiver or other provision in lieu of a fee [~~waiver~~]payment is available to any student whose parent cannot pay a fee.

(b) A school or LEA administrator shall verify fee waivers consistent with this rule.

(9) An LEA shall adopt a fee waiver policy for review and appeal of fee waiver requests which:

(a) provides parents the opportunity to review proposed alternatives to fee waivers;

(b) establishes a timely appeal process, which shall include the opportunity to appeal to the LEA or its designee; and

(c) suspends any requirement that a given student pay a fee during any period for which the student's eligibility for waiver is under consideration or during which an appeal of denial of a fee waiver is in process.

(10) An LEA may pursue reasonable methods for collecting student fees, but may not, as a result of unpaid fees:

(a) exclude a student from a school, an activity, class, or program that is provided, sponsored, or supported by a school during the regular school day;

(b) refuse to issue a course grade; or

(c) withhold official student records, including written or electronic grade reports, class schedules, diplomas or transcripts.

(11)(a) A school may withhold student records in accordance with Subsection 53G-8-212(2)(a).

(b) Notwithstanding Subsection (12)(a), a school may not withhold any records required for student enrollment or placement in a subsequent school.

(12) A school is not required to waive a non-waivable charge.

R277-407-9. Service In Lieu of Fees -- Provisions In Lieu of Fees -- Voluntary Requests for Installment Plans.

(1) Subject to the requirements of Subsection (2), an LEA may allow a student to perform service in lieu of a fee, but service in lieu of a fee may not be required.

(2) An LEA may allow a student to perform service in lieu of a fee if the LEA establishes a policy as described in Subsection R277-407-14(2).[~~:~~

~~(a) the LEA establishes a service policy that ensures that a service assignment is appropriate to the:~~

~~(i) age of the student;~~

~~(ii) physical condition of the student; and~~

~~(iii) maturity of the student;~~

~~(b) the LEA's service policy is consistent with state and federal laws, including:~~

~~(i) Section 53G-7-504; and~~

~~(ii) the Federal Fair Labor Standards Act, 29 U.S.C. 201;~~

~~(c) the service can be performed within a reasonable period; and~~

~~(d) the service is at least equal to the minimum wage for each hour of service.~~]

(3)(a) A student who performs service may not be treated differently than other students who pay a fee.

(b) The service may not create an unreasonable burden for a student or parent and may not be of such a nature as to demean or stigmatize the student.

(4) An LEA shall transfer a student's service credit to:

(a) another school within the LEA; or

(b) another LEA upon request of the student.

(5)(a) An LEA may make an installment payment plan available to a parent or student to pay for a fee.

(b) An installment payment plan described in Subsection (5)(a) may not be required in lieu of a fee waiver.

(6) An LEA may provide optional individual fundraising opportunities for students to raise money to offset the cost of the student's fees as provided in Rule R277-408.

[~~(6) An LEA that charges fees shall adopt policies that include at least the following:~~

~~(a) a process for obtaining waivers or pursuing alternatives that is administered fairly, objectively, and without delay, and avoids stigma and unreasonable burdens on students and families;~~

~~(b) a process with no visible indicators that could lead to identification of fee waiver applicants;~~

~~(c) a process that complies with the privacy requirements of The Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g (FERPA);~~

~~(d) a student may not collect fees or assist in the fee waiver approval process;~~

~~(e) a standard written decision and appeal form is provided to every applicant; and~~

~~(f) during an appeal the requirement that the fee be paid is suspended.~~

~~**R277-407-10. Individual and Group Fundraising Requirements.**~~

~~(1) An LEA governing board shall establish a fundraising policy that includes a fundraising activity approval process.~~

~~(2) An LEA's fundraising policy described in Subsection (1):~~

~~(a) may not authorize, establish, or allow for required individual fundraising;~~

~~(b) may provide optional individual fundraising opportunities for students to raise money to offset the cost of the student's fees;~~

~~(c) may allow for required group fundraisers;~~

~~(d) may not deny a student membership on a team or group, based on the student's non-participation in a fundraiser;~~

~~(e) shall require compliance with the requirements of Rule R277-113 when using alternative methods of raising revenue that do not include students; and~~

~~(f) shall include a requirement that a school notify parents of required group fundraising, letting parents and students know how and when specific details, as described in Subsection (3), will be provided.~~

~~(3) The specific details described in Subsection (2)(f) shall include a description of the nature of the required group fundraiser and the estimated participation time required of the student or parent for the required group fundraiser.~~]

R277-407-[~~11~~]10. Fee Waiver Eligibility.

(1) A student is eligible for fee waiver if an LEA receives verification that:

(a) in accordance with Subsection 53G-7-504(4), based on the family income levels established by the Superintendent as described in Subsection (2);

(b) the student to whom the fee applies receives SSI;

(c) the family receives TANF or SNAP funding;

(d) the student is in foster care through the Division of Child and Family Services;[~~ or~~]

(e) the student is in state [~~custody~~]care[~~.~~]; or

(f) the student qualifies for McKinney-Vento Homeless Assistance Act assistance.

(2) The Superintendent shall annually establish income levels for fee waiver eligibility and publish the income levels on the Board's website.

(3) In lieu of income verification, an LEA may require alternative verification under the following circumstances:

(a) If a student's family receives TANF or SNAP, an LEA may require the student's family to provide to the LEA an electronic copy or screenshot of the student's family's eligibility determination or eligibility status covering the period for which a fee waiver is sought from the Utah Department of Workforce Services;

(b) If a student receives SSI, an LEA may require a benefit verification letter from the Social Security Administration;

(c) If a student is in state [~~custody~~]care or foster care, an LEA may rely on the youth in care required intake form and school enrollment letter or both provided by a case worker from the Utah Division of Child and Family Services or the Utah Juvenile Justice Department[~~.~~]; or

(d) If a student qualifies for McKenny-Vento, verification is obtained through the LEAs McKinney-Vento liaison.

[~~(d)~~](4)(a) An LEA may not subject a family to unreasonable demands for re-qualification.

[~~(4)~~](b) A school may grant a fee waiver to a student, on a case by case basis, who does not qualify for a fee waiver under Subsection (1), but who, because of extenuating circumstances is not reasonably capable of paying the fee.

(5) An LEA may charge a proportional share of a fee or reduced fee if circumstances change for a student or family so that fee waiver eligibility no longer exists.

(6) An LEA may retroactively waive fees if eligibility can be determined to exist before the date of the fee waiver application.

R277-407-[~~12~~]11. Fees for Textbooks.

(1) An LEA may not charge a fee for a textbook as provided in Section [~~53G-7-603~~]53G-7-506, except for a textbook used for a concurrent enrollment, International Baccalaureate, or [~~a~~]Advanced [~~p~~]Placement course as described in Subsection (2).

(2)(a) An LEA may charge a fee for a textbook used for a concurrent enrollment, International Baccalaureate, or [~~a~~]Advanced [~~p~~]Placement course.

(b) A fee for a textbook used for a concurrent enrollment, International Baccalaureate, or [~~a~~]Advanced [~~p~~]Placement course is fee waivable as described in Section R277-407-8.

R277-407-[~~13~~]12. Budgeting and Spending Revenue Collected Through Fees -- Fee Revenue Sharing Requirements.

(1) An LEA shall follow the general accounting standards described in Rule R277-113 for treatment of fee revenue.

(2) An LEA shall establish a spend plan for the revenue collected from each fee charged.

(3)(a) A spend plan described in Subsection (2)(a) provides students, parents, and employees transparency by identifying a fee's funding uses.

(b) An LEA or school's spend plan shall identify the needs of the activity, course, or program for the fee being charged and shall include a list or description of anticipated types of expenditures, for the current fiscal year or as carryover for use in a future fiscal year, funded by the fee charged.

(4)(a) An LEA that has multiple schools shall establish a procedure to identify and address potential inequities due to the impact of the number of students who receive fee waivers within each of the LEA's schools.

(b) For an LEA with multiple schools, the LEA shall distribute the impact of fee waivers across the LEA so that no school carries a disproportionate share of the LEA's total fee waiver burden.

R277-407-[~~14~~]13. Fee Waiver Reporting Requirements.

(1) An LEA shall collect the following information, which may be requested by the Superintendent as part of the Superintendent's monitoring of the LEA's school fees practices:

[~~(1)~~](a) a summary of:

[~~(a)~~](i) the number of students in the LEA given fee waivers;

[~~(b)~~](ii) the number of students who worked in lieu of a waiver;

[~~(c)~~](iii) the number of students denied fee waivers; and

[~~(d)~~](iv) the total dollar value of student fees waived by the LEA; and

[~~(2)~~](b) the total dollar amount of all fees charged to students within all schools within the LEA.

(2) An LEA shall submit school fee revenue information in the Utah Public Education Financial System as provided in Rule R277-113.

R277-407-[~~15~~]14. LEA Required Policies -- Superintendent and LEA Policy and Training Requirements.

(1) An LEA that charges fees shall adopt policies that include at least the following:

(a) a process for obtaining waivers or pursuing alternatives that is administered fairly, objectively, and without delay, and avoids stigma and unreasonable burdens on students and families;

(b) a process with no visible indicators that could lead to identification of fee waiver applicants;

(c) a process that complies with the privacy requirements of The Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g (FERPA);

(d) a student may not collect fees or assist in the fee waiver approval process;

(e) a standard written decision and appeal form is provided to every applicant; and

(f) during an appeal the requirement that the fee be paid is suspended.

(2) An LEA may allow a student to perform service in lieu of a fee as described in Section R277-407-9 if:

(a) the LEA establishes a service policy that ensures that a service assignment is appropriate to the:

(i) age of the student;

(ii) physical condition of the student; and

(iii) maturity of the student;

(b) the LEA's service policy is consistent with state and federal laws, including:

(i) Section 53G-7-504; and

(ii) the Federal Fair Labor Standards Act, 29 U.S.C. 201;

(c) the service can be performed within a reasonable period; and

(d) the service is at least equal to the minimum wage for each hour of service.

[~~(1)~~](3) The Superintendent shall provide ongoing training, informational materials, and model policies, as available, for use by LEAs.

[~~(2)~~](4) The Superintendent shall provide online training and resources for LEAs regarding:

(a) an LEA's fee approval process;

(b) LEA notification requirements;

(c) LEA requirements to establish maximum fees; and

[~~(d) fundraising practices;~~]

[~~(c)~~](d) fee waiver eligibility requirements, including requirements to maintain student and family confidentiality[~~; and~~].

[~~(f) community service or fundraising alternatives for students and families who qualify for fee waivers.~~]

[~~(3)~~](5) An LEA governing board shall annually review the LEA's policies on school fees[~~,~~]and fee waivers[~~, fundraising, and donations~~].

[~~(4)~~](6) An LEA shall develop a plan for, at a minimum, annual training of LEA and school employees on fee related policies enacted by the LEA specific to each employee's job function.

R277-407-[~~16~~]15. Enforcement.

(1) The Superintendent shall monitor LEA compliance with this rule.

(2) If an LEA fails to comply with the terms of this rule or request of the Superintendent, the Superintendent shall send the LEA a first written notice of non-compliance, which shall include a proposed corrective action plan.

(3) Within 45 days of the LEA's receipt of a notice of non-compliance, the LEA shall:

(a) respond to the allegations of non-compliance described in Subsection (2); and

(b) work with the Superintendent on the Superintendent's proposed corrective action plan to remedy the LEA's non-compliance.

(4)(a) Within 15 days after receipt of a proposed corrective action plan described in Subsection (3)(b), an LEA may request an informal hearing with the Superintendent to respond to allegations of non-compliance or to address the appropriateness of the proposed corrective action plan.

(b) The form of an informal hearing described in Subsection (4)(a) shall be as directed by the Superintendent.

(5) The Superintendent shall send an LEA a second written notice of non-compliance and request for the LEA to appear before a Board standing committee if:

(a) the LEA fails to respond to the first notice of non-compliance within 60 days; or

(b) the LEA fails to comply with a corrective action plan described in Subsection (3)(b) within the time period established in the LEA's corrective action plan.

(6) If an LEA receives a second written notice of non-compliance, the LEA may:

(a)(i) respond to the notice of non-compliance described in Subsection (5); and

(ii) work with the Superintendent on a corrective action plan within 30 days of receiving the second written notice of non-compliance; or

(b) within 15 days after receipt of the second notice seek an appeal before a Board standing committee.

(7) If an LEA that fails to respond to a first notice of non-compliance, and fails to respond to a second notice of non-compliance, nor seeks an appeal as described in Subsection (6)(b), the Superintendent shall impose one of the financial consequences described in Subsection (10).

(8)(a) Before imposing a financial consequence described in Subsection (10), the Superintendent shall provide an LEA 30 days' notice of any proposed action.

(b) The LEA may, within 15 days after receipt of a notice described in Subsection (8)(a), request an appeal before a Board standing committee.

(9) If the LEA does not request an appeal described in Subsection (8)(b), or if after the appeal the Board finds that the allegations of non-compliance are substantially true, the Superintendent may continue with the suggested corrective action, formulate a new form of corrective action or additional terms and conditions which must be met and may proceed with the appropriate remedy which may include an order to return funds improperly collected.

(10) A financial consequence may include:

(a) requiring an LEA to repay an improperly charged fee, commensurate with the level of non-compliance;

(b) withholding all or part of an LEA's monthly Minimum School Program funds until the LEA comes into full compliance with the corrective action plan; and

(c) suspending the LEA's authority to charge fees for an amount of time specified by the Superintendent or Board in the determination.

(11) The Board's decision described in Subsection (9) is final and no further appeals are provided.

R277-407-16. Distribution of Legislative Funds for School Fees.

(1) When funds are appropriated by the Legislature for school fees, the Superintendent shall determine LEA allocations by the April 30 prior to distributing the funds as described in Subsection (2) and using prior year average daily membership.

(2) The Superintendent shall distribute available funds to LEAs with students enrolled in grades 7-12, proportionately based on an LEA's number of students in the applicable grades, weighting each student in grade 7 or 8 at .99 and each student in grade 9, 10, 11, or 12 at 1.2.

(3) For funds appropriated by the Legislature during the 2024 Legislative General Session, the Superintendent shall distribute the following to LEAs in operation with enrolled students before July 1, 2025:

(a) 50% of the funds to LEAs for the fiscal year beginning on July 1, 2025;

(b) 30% of the funds to LEAs for the fiscal year beginning on July 1, 2026; and

(c) 20% of the funds to LEAs for the fiscal year beginning on July 1, 2027.

KEY: education, school fees, policies, training
Date of Last Change: 2024[~~July 11, 2023~~]
Notice of Continuation: August 19, 2021
Authorizing, and Implemented or Interpreted Law: Art X Sec 2; Art X Sec 3; 53E-3-401(4); 53G-7-503

NOTICE OF SUBSTANTIVE CHANGE		
TYPE OF FILING: New		
Rule or Section Number:	**R277-408**	**Filing ID: 56570**

Agency Information

1. Title catchline:	Education, Administration	
Building:	Board of Education	
Street address:	250 E 500 S	
City, state:	Salt Lake City, UT 84111	
Mailing address:	PO Box 144200	
City, state 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:
R277-408. School Fundraising
3. Purpose of the new rule or reason for the change:
This rule is being created due to the passage of H.B. 82 during the 2024 General Session.
4. Summary of the new rule or change:
H.B. 82 (2024) separated revenue raised through fundraising from the definition of school fees. s a result, portions of Rule R277-407, School Fees, will be removed and incorporated into this new Rule R277-408. This rule also provides requirements for LEAs related to their fundraising activities. (EDITOR'S NOTE: The proposed amendment to Rule R277-407 is under ID 56569 in this issue, July1, 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. Due to H.B. 82 (2024), fundraising revenue was separated from revenue collected from school fees, and the elements of Rule R277-407 regarding fundraising were incorporated into this new rule.

The Utah State Board of Education (USBE) believes the fiscal impacts of the separation of fundraising were captured in the fiscal note to H.B. 82 (2024) for the USBE and Local Education Agencies (LEA).

B) Local governments:

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

Due to H.B. 82 (2024), fundraising revenue was separated from revenue collected from school fees, and the elements of Rule R277-407 regarding fundraising were incorporated into this new rule. The USBE believes the fiscal impacts of the separation of fundraising were captured in the fiscal note to H.B. 82 (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 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.

This only impacts 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.

Due to H.B. 82 (2024), fundraising revenue was separated from revenue collected from school fees, and the elements of Rule R277-407 regarding fundraising were incorporated into this new rule.

The USBE believes the fiscal impacts of the separation of fundraising were captured in the fiscal note to H.B. 82 (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	**FY2025**	**FY2026**	**FY2027**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits	**FY2025**	**FY2026**	**FY2027**
State Government	$0	$0	$0

Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
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 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 53E-3-401	Subsection 53E-3-501(1)(e)	

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:	07/31/2024

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

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

Agency Authorization Information

Agency head or designee and title:	Angie Stallings, Deputy Superintendent of Policy	**Date:**	06/14/2024

R277. Education, Administration.
R277-408. School Fundraising.
R277-408-1. 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; and

(c) Subsection 53E-3-501(1)(e), which allows the Board to adopt rules regarding financial, statistical, and student accounting requirements.

(2) The purpose of this rule is to establish fundraising requirements for LEAs.

(3) Rule R277-408 is categorized as Category 2 as described in Rule R277-111.

R277-408-2. Definitions.

(1) "Cash" or "cash receipts" means the same as that term is defined in Rule R277-113.

(2)(a) "Fundraiser," "fundraising," or "fundraising activity" means an activity or event provided, sponsored, or supported by a school to generate funds or raise money to:

(i) provide financial support to a school or any of the school's classes, groups, teams, or programs; or

(ii) benefit a particular charity or for other charitable purposes.

(b) "Fundraiser," "fundraising," or "fundraising activity" may include:

(i) the sale of goods or services;

(ii) the solicitation of monetary contributions from individuals or businesses; or

(iii) other lawful means or methods to generate funds.

(3) "Group fundraiser" or "group fundraising" means a fundraising activity where the money raised is used for the benefit of a group, team, or organization.

(4) "Individual fundraiser" or "individual fundraising" means a fundraising activity where money is raised by an individual student to pay the individual student's fees.

R277-408-3. LEA Fundraising Requirements.

(1) An LEA may use funds raised through fundraising or donations to offset the cost of waivers and to offset the cost of program expenses for the program for which the funds were raised.

(2) An individual or private organization, including a booster club, that engages in fundraising or collects a donation on behalf of a school shall comply with the requirements of this Rule R277-408 and Rule R277-113.

(3) If an LEA allows a booster club, a parent organization, employee, coach, or volunteer, to fundraise or collect a donation related to the school, the LEA shall have a policy that:

(a) establishes requirements and guidance for the booster club, parent organization, employee, coach, or volunteer;

(b) requires a booster club, parent organization, employee, coach, or volunteer to comply with requirements of this Rule R277-408 and Rule R277-113, including following the LEA's cash handling policy required in Section R277-113-5; and

(c) complies with federal Title IX requirements, found in 20 U.S.C. 1681, et seq.

(4)(a) An LEA shall ensure that a booster club, parent organization, employee, coach, or volunteer deposits money received by the employee, booster club, or parent organization within 3 days of receiving the money.

(b) An LEA shall establish a policy regarding the requirements in Subsection (4)(a).

R277-408-4. LEA Fundraising Policies.

(1) An LEA governing board shall establish a fundraising policy that includes a process for approving a fundraising activity.

(2) An LEA's fundraising policy described in Subsection (1):

(a) may not authorize, establish, or allow for required individual student fundraising;

(b) may provide optional individual fundraising opportunities for students to raise money to offset the cost of the student's fees;

(c) may allow for required group fundraisers;

(d) may not deny a student membership on a team or group nor impact a student's grade for a course, based on the student's effort or non-participation in a fundraiser;

(e) shall require compliance with Rule R277-113;

(f) shall comply with federal Title IX requirements, found in 20 U.S.C. 1681, et seq.; and

(g) shall include a requirement that a school notify parents of required group fundraising, letting parents and students know how and when specific details, as described in Subsection (4), will be provided.

(3) Notwithstanding Subsection (2)(d) and except as provided in Section 53G-10-205, an LEA may reduce a student's participation in a program or activity if the student does not participate in the related activity or program's required group fundraiser.

(4) The specific details described in Subsection (2)(g) shall include a description of the nature of the required group fundraiser and the estimated participation time required of the student or parent for the required group fundraiser.

(5) An LEA governing board shall annually review the LEA's policies on fundraising and donations.

KEY: fundraising; policies; donation; booster
Date of Last Change: 2024
Authorizing, and Implemented, or Interpreted Law: 53E-3-401; 53E-3-501(1)(e)

NOTICE OF SUBSTANTIVE CHANGE		
TYPE OF FILING: Amendment		
Rule or Section Number:	**R277-436**	**Filing ID: 56571**

Agency Information

1. Title catchline:	Education, Administration	
Building:	Board of Education	
Street address:	250 E 500 S	
City, state:	Salt Lake City, UT 84111	
Mailing address:	PO Box 144200	
City, state 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:
R277-436. Gang Prevention and Intervention Programs in the Schools

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

This rule is being amended due to the passage of H.B. 362 during the 2024 General Session.

4. Summary of the new rule or change:

The amendments specifically align with H.B. 362 (2024) requirements that the Utah State Board of Education distribute funds to grant recipients. The amendments reflect updated legal requirements to ensure that schools are cooperating with local law enforcement and community prevention providers, as well as using the data collected by multiple state agencies to make data informed decisions about programming for juvenile gang prevention and intervention.

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 Utah State Board of Education (USBE) believes that the fiscal note to H.B. 362 (2024) captured the fiscal impacts for the USBE and Local Education Agencies (LEA) and the rule does not add any costs or savings outside the fiscal note.

B) Local governments:

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

The USBE believes that the fiscal note to H.B. 362 (2024) captured the fiscal impacts for the USBE and LEAs and the rule does not add any costs or savings outside the fiscal note.

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.

This only impacts 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 USBE believes that the fiscal note to H.B. 362 (2024) captured the fiscal impact for the USBE and LEAs and the rule does not add any costs or savings outside the fiscal note.

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

Regulatory Impact Table			
Fiscal Cost	**FY2025**	**FY2026**	**FY2027**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits	**FY2025**	**FY2026**	**FY2027**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
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 regulatory impact analysis.			

Citation Information

6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:		
Article X, Section 3	Section 53F-2-410	Subsection 53E-3-401(3)

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:	07/31/2024

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

Agency Authorization Information

Agency head or designee and title:	Angie Stallings, Deputy Superintendent of Policy	**Date:**	06/14/2024

R277. Education, Administration.
R277-436. Juvenile Gang and Other Violent Crime Prevention and Intervention [~~Programs in the Schools~~]Grant.
R277-436-1. Authority and Purpose.

(1) This rule is authorized by:

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

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

(c) Subsection 53F-2-410[~~(1)(b)~~](2), which appropriates funds to be used for Juvenile Gang and Other Violent Crime Prevention and Intervention Programs[~~ in the schools~~].

(2) The purpose of this rule is to establish standards and procedures for distributing funding for Juvenile [~~g~~]Gang and Other Violent Crime prevention and intervention programs in public schools.

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

R277-436-2. Definitions.

[~~(1) "At-risk student" means any student who because of the student's individual needs requires some kind of uniquely designed intervention to achieve literacy, graduate, and be prepared for transition from school to post-school options.~~

] [~~(2)~~](1)[~~(a)~~] "Gang" means a group of three or more people who form an allegiance and engage in criminal activity, which uses violence or intimidation to further its criminal objectives[~~.~~] that may[

~~(b) A gang may~~] have a name, turf, colors, symbols, distinct dress, or any combination of the preceding characteristics.

[~~(3)(a)~~](2) [~~"Gang prevention"~~]"Juvenile Gang and Other Violent Crime Prevention and Intervention" means:

(a) instructional and support strategies, activities, programs, or curricula designed and implemented to help students achieve academic success and provide successful experiences with education for youth and families[~~.~~];

(b) [~~G~~]gang prevention activities that the LEA utilizes evidence-informed strategies that promote and increase protective factors in students within or outside of the school, which may impact the individual's susceptibility to participate in violent crimes, gang membership, or gang-like activities[~~shall promote cultural and social competence, self-management skills, citizenship, preparation for life skills, academic achievement, literacy, and interpersonal relationship skills required for school completion and full participation in society.~~]; and

(c) protective factors may include family support and monitoring, social competence, self-management skills, citizenship, preparation for life skills, academic achievement, literacy, and interpersonal relationship skills.

[~~(4) "Gang intervention" means specially designed services required by an individual student experiencing difficulty in cultural and social competence, self-management skills, citizenship, preparation for life skills, academic achievement, literacy, and interpersonal relationships, within or outside of the school, which may impact the individual's susceptibility to gang membership or gang-like activities.~~

~~(5) "Gang Prevention and Intervention Program" means specifically designed projects and activities to help at-risk students stay in school and enhance their cultural and social competence, self-management skills, citizenship, preparation for life skills, academic achievement, literacy, and interpersonal relationship skills required for school completion and full participation in society.~~]

(3) "State agency" means the same as defined in Section 53F-2-410.

R277-436-3. Application, Distribution of Funds, and Administrative Support.

(1) An LEA may apply for Juvenile [~~g~~]Gang and Other Violent Crime Prevention and [~~i~~]Intervention funds by submitting a proposal on a form approved by the Superintendent.

[~~(a) An school district may submit:~~

~~(i) a proposal for a single school; or~~

~~(ii) a single district-wide proposal.~~

~~(b) A charter school may apply individually or jointly with other charter schools.~~]

(2) A proposal submitted in accordance with Subsection (1) shall:

(a) [~~provide for distribution of funds to individuals schools~~]identify the targeted student population and demonstrate how the prevention and intervention strategies will benefit the student population;

(b) explain prevention and intervention activities and strategies planned to address identified issues [~~for individual schools~~];

(c) [~~identify the school's at-risk student population and demonstrate how the prevention and intervention strategies will benefit at-risk~~] ~~students~~]demonstrate collaboration between the LEA and local law enforcement agencies and community prevention providers; and

(d) [~~demonstrate interagency collaboration between the LEA and other service providers~~]explain how an LEA plans to use the funds.

(3) The Superintendent shall award gang intervention funds based on proposals submitted in accordance with Subsection (1), and subject to the annual legislative appropriation.

(4) The Superintendent shall give priority in awarding funds to an LEA that:

(a) demonstrates collaborative efforts with local law enforcement agencies and community prevention providers;[~~schools that demonstrate multiple risk factors for gang involvement; and~~]

(b) [~~schools with outcome data~~]uses state agency data as defined in Subsections 53F-2-410(4)(a)(i) and 53F-2-410(3)(a)(i) that [~~show successful reduction of~~]demonstrate multiple risk factors for gang involvement[~~.~~];

(c) defines how the LEA will implement activities funded by the grant to increase protective factors for students at risk of gang involvement; and

(d) uses data to evaluate that the activities implemented are successful and that there is a reduction of gang involvement from previous years.

(5) The Superintendent shall determine the percentage of funds awarded based on:

(a) the number of LEAs that apply; and

(b) the application components as described in Subsection (4).

[~~(5)~~](6) The Superintendent shall notify successful applicants of their awards [~~by July 1~~]annually.

[~~(6) An LEA or charter consortia may use up to 10% of its funding awarded in accordance with this rule for:~~

~~(a) administrative oversight; and~~

~~(b) professional development for licensed and non-licensed employees who directly engage in gang prevention or intervention activities.~~

]

R277-436-4. Evaluation and Reports.

(1) An LEA or charter school [~~consortia~~]shall provide the Superintendent a year-end evaluation report by [~~June 30~~]October 1 for the previous fiscal year.

(2) A year-end report shall include:

(a) an expenditure report;

(b) a narrative description of all activities funded;
(c) copies of products developed;
(d) an effectiveness report detailing evidence of individual and overall [~~program~~]activities and strategies impact on gang and gang-related activities and involvement; and
(e) any other information or data required by the Superintendent.
(3) The Superintendent may require additional evaluation or audit procedures from the grant recipient to demonstrate use of funds consistent with the law[~~, and Board rules~~].

R277-436-5. Waivers.

Notwithstanding Rule R277-121, the Superintendent may grant a written request for a waiver of a requirement or deadline contained in this rule, which a district or school finds unduly restrictive.

KEY: public schools, disciplinary problems, students at risk, gangs
Date of Last Change: 2024[~~November 7, 2022~~]
Notice of Continuation: January 18, 2023
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53F-2-410; 53E-3-401(3)

NOTICE OF SUBSTANTIVE CHANGE		
TYPE OF FILING: Amendment		
Rule or Section Number:	**R277-459**	**Filing ID: 56572**

Agency Information

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

General Information

2. Rule or section catchline:
R277-459. Teacher Supplies and Materials Appropriation
3. Purpose of the new rule or reason for the change:
This rule is being amended due to the passage of H.B. 105 during the 2024 General Session.
4. Summary of the new rule or change:
The amendments specifically add clarification that only classroom teachers should be included, as well as to reference new statutory 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 Utah State Board of Education (USBE) believes the fiscal note to H.B. 105 (2024) captured the fiscal impacts for the USBE, Local Education Agencies (LEA), and educators and the rule does not add any costs or savings outside the fiscal note.

B) Local governments:

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

The USBE believes the fiscal note to H.B. 105 (2024) captured the fiscal impact for the USBE, LEAs, and educators and the rule does not add any costs or savings outside the fiscal note.

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

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

This only 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 USBE believes the fiscal note to H.B. 105 (2024) captured the fiscal impact for the USBE, LEAs, and educators and the rule does not add any costs or savings outside the fiscal note.

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 USBE believes the fiscal note to H.B. 105 (2024) captured the fiscal impact for the USBE, LEAs, and educators and the rule does not add any costs or savings outside the fiscal note.

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

Regulatory Impact Table

Fiscal Cost	**FY2025**	**FY2026**	**FY2027**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits	**FY2025**	**FY2026**	**FY2027**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
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 regulatory impact analysis.			

Citation Information

6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:		
Article X, Section 3	Subsection 53E-3-501(1)(b)	Section 53F-2-527

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:	07/31/2024

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

Agency Authorization Information

Agency head or designee and title:	Angie Stallings, Deputy Superintendent of Policy	**Date:**	06/14/2024

R277. Education, Administration.
R277-459. Teacher Supplies and Materials Appropriation.
R277-459-1. Authority,[~~and~~] Purpose, and Oversight Category.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which gives general control and supervision of the public school system to the Board;

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

(c) Section 53F-2-527, which appropriates funds to distribute money to classroom teacher for teaching supplies and materials;

([~~b~~]d) Subsection 53E-3-501(1)(b), which directs the Board to establish rules and minimum standards for school programs; and [~~by~~]

([~~c~~]e) intent language included in 2017 H.B. 2, Public Education Budget Amendments, which required the Board to establish a rule governing allowable expenditures of teacher classroom supplies and materials money appropriation.

(2) The purpose of this rule is to establish guidelines regarding the materials, supplies, and money.

(3) This Rule R277-459 is categorized as Category 2 as described in Rule R277-111.

R277-459-2. Definitions.

(1) "Classroom teacher" means [~~a teacher who:~~

~~(a) is assigned by an LEA in a permanent teacher position filled by one teacher or two or more job-sharing teachers employed by an LEA;~~

~~(b) is licensed, and paid on an LEA's salary schedule;~~

~~(c) is employed for an entire contract period; and~~

~~(d) is primarily responsible to provide instruction or a combination of instructional and counseling services to students in public schools.~~]the same as the term is defined in Section 53F-2-527.

(2)(a) "Comprehensive Administration of Credentials for Teachers in Utah Schools file" or "CACTUS file" means the electronic file maintained by the Superintendent on all licensed Utah educators.

(b) A CACTUS file includes:

(i) personal directory information;

(ii) educational background;

(iii) endorsements;

(iv) employment history;

(v) professional development information; and

(vi) a record of disciplinary action taken against the educator.

(c) [~~All i~~]Information contained in an individual's CACTUS file is available to the individual, but is classified private or protected under Section 63G-2-302 or 305 and is accessible only to specific designated individuals.

(3) "Field trip" means a district, or school authorized excursion for educational purposes.

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

(5) "Teaching supplies and materials" means [~~both consumable and nonconsumable items that are used for educational purposes by teachers in classroom activities as approved by the LEA.~~]the same as the term is defined in Section 53F-2-527.

(6)(a) "Utah Schools Information Management System" or "USIMS" means a comprehensive tool maintained by the Superintendent for collecting, processing, providing oversight, and report on education data for the state.

(b) "USIMS" is the successor to the CACTUS database, which maintains data on educator licenses as described in Subsection (2).

R277-459-3. Distribution of Funds.

(1)(a) The Superintendent shall distribute funds consistent with Subsection 53F-2-527(2) to LEAs based on data submitted to the CACTUS or USIMS database, as appropriate.

(b) Only k-12 and pre-kindergarten classroom teachers are eligible for teaching supplies and materials funds.

(c) The following positions are not eligible for teaching supplies and materials funds:

(i) school counselors; and

(ii) school specialists.

(2) Individual teachers shall designate the uses for their allocations consistent with the criteria of this rule. LEAs and other eligible schools may develop policies, procedures, and timelines to facilitate the intent of the appropriation.

(3)(a) An LEA shall ensure that each returning classroom teacher receives the teacher's proportionate share of the appropriation by August 15 annually.

(b) An LEA shall ensure that each newly hired classroom teacher receives the teacher's proportionate share of the appropriation by the later of:

(i) August 15 annually; or

(ii) within two weeks of hire.

(4) If a teacher has not spent or committed to spend the individual allocation by April 1, the school or LEA may make the excess funds available to other teachers or may reserve the money for use by eligible teachers the following year.

(5) These funds shall supplement, not supplant, existing funds for identified purposes.

(6) These funds shall be accounted for by the LEA or eligible school using state and school district procurement and accounting policies.

(7)(a) The [~~funds and~~]teaching supplies and materials purchased with the funds are the property of the LEA.

(b) Employees do not personally own materials purchased with designated public funds.

(c) An LEA may by policy allow individual teachers to use supply funds to protect teacher health with consumable materials that may not be able to be reused by the school.

(8) An LEA may distribute funds to eligible teachers through a Board-approved competitively-bid software solution procured using Board funds.

R277-459-4. Other Provisions.

(1) A classroom teacher may combine the classroom teacher's allocation with another classroom teacher to buy supplies or materials.

(2) An LEA may carry over [~~these~~]teacher supplies and materials funds, if necessary.

KEY: teachers, supplies
Date of Last Change: 2024[~~July 22, 2022~~]
Notice of Continuation: May 1, 2015
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-501(1)(b); 53F-2-527

NOTICE OF SUBSTANTIVE CHANGE		
TYPE OF FILING: Amendment		
Rule or Section Number:	**R277-475**	**Filing ID: 56573**

Agency Information

1. Title catchline:	Education, Administration	
Building:	Board of Education	
Street address:	250 E 500 S	
City, state:	Salt Lake City, UT	
Mailing address:	PO Box 144200	
City, state and zip:	Salt Lake City, UT 84114-4200	
Contact persons:		
Name:	**Phone:**	**Email:**
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov

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

General Information

2. Rule or section catchline:

R277-475. Patriotic, Civic and Character Education

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

This rule is being amended to update the requirements related to patriotic, civic and character education programs in a Local Education Agency (LEA) and to include the new statutory support of teaching historical religious documents.

4. Summary of the new rule or change:

The amendments specifically add an oversight category, and also require the Superintendent to review LEA curricula and activities to ensure the effective instruction of American history and government on a rolling six-year basis.

In addition, the amendments provide clarity regarding instructional materials of a religious or cultural nature.

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 USBE or Local Education Agencies (LEA). The USBE believes that the rolling six-year analysis of LEA curricula can be accomplished with existing USBE social studies staff and will not require additional Full Time Equivalency (FTE) or resources for the USBE or LEAs.

The other amendments provide clarity regarding instructional materials but do not add costs for the USBE or LEAs.

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.

The USBE believes that the rolling six-year analysis of LEA curricula can be accomplished with existing USBE social studies staff and will not require additional FTE or resources for the USBE or LEAs.

The other amendments provide clarity regarding instructional materials but do not add costs for the USBE or 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 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 o,f 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 impacts 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 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.

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

Regulatory Impact Table

Fiscal Cost	**FY2025**	**FY2026**	**FY2027**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits	**FY2025**	**FY2026**	**FY2027**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
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 regulatory impact analysis.

Citation Information

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

Article X, Section 3	Section 53G-10-304	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:	07/31/2024

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

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

Agency Authorization Information

Agency head or designee and title:	Angie Stallings, Deputy Superintendent of Policy	**Date:**	06/14/2024

R277. Education, Administration.
R277-475. Patriotic, Civic, and Character Education.
R277-475-1. Authority, [~~and~~]Purpose, and Oversight Category.

(1) This rule is authorized by:

(a) the 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 adopt rules in accordance with its responsibilities; and

(c) Section 53G-10-304 which directs the Board to provide a rule for a program of instruction within the public schools relating to the flag of the United States.

(2) The purpose of this rule is to provide direction for patriotic, civic, and character education programs in an LEA.

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

R277-475-2. Definitions.

(1) "Character education" means the same as that term is defined in Subsection 53G-10-204(1)(a).

(2) "Civic education" means the same as that term is defined in Subsection 53G-10-204(1)(b).

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

(4) "Patriotic" means having love of and dedication to one's country.

(5) "Patriotic education" means the educational and systematic process to help students identify, acquire, and act upon a dedication to one's country.

R277-475-3. Patriotic, Civic, and Character Education.

(1) An LEA shall provide instruction for patriotic, civic, and character education in the social studies curricula of kindergarten through grade [~~twelve~~]12.

(2) An LEA shall ensure an educator has responsibility for patriotic, civic, and character education taught in an integrated school curriculum and in the regular course of school work.

(3) The Superintendent shall review LEA curricula and activities to ensure the effective instruction of American history and government on a rolling six-year basis.

(4) Instructional materials of a religious nature may be undertaken within public schools as outlined in Section 53G-10-202.

(a) Content-based censorship of American history and heritage documents may not occur due to their religious or cultural nature; and

(b) may include documents referenced in Section 53G-10-302.

R277-475-4. School Responsibilities and Required Instruction.

(1) An LEA shall:

(a) ensure that [~~all~~]any patriotic, civic, and character education programs are consistent with the requirements of Sections 53G-10-302, 53G-10-304, and 53G-10-204;

(b) provide the setting and opportunities to teach patriotic values associated with the flag of the United States by example; and

(c) make information about the flag, respect for the flag, and civility toward [~~all~~]any during patriotic activities available on the LEA's website.

(2) An LEA shall provide instruction in United States history and government that includes the following:

(a) a study of forms of government including:

(i) a republic;

(ii) a pure democracy;

(iii) a monarchy; and

(iv) an oligarchy.

(b) political philosophies and economic systems including:

(i) socialism;

(ii) individualism; and

(iii) free market capitalism.

(c) the United States' form of government: a compound constitutional republic; and

(d) the flag of the United States and the Pledge of Allegiance to the Flag consistent with:

(i) Subsection 53G-10-304(2);

(ii) Section 76-9-601;

(iii) the plan of the social studies Core curriculum in grades kindergarten through six; and

(iv) Subsection 53G-10-304(3).

R277-475-5. Parental Notice of Pledge of Allegiance.

(1) An LEA shall adequately notify students and parents of lawful exemptions to the requirement to participate in reciting the Pledge of Allegiance.

(2) An LEA may require an annual written request from a student's parent if a student or the student's parent requests that the student be excused from reciting the Pledge of Allegiance.

KEY: curricula, patriotic education, civic education, character education
Date of Last Change: 2024[~~November 8, 2019~~]
Notice of Continuation: June 7, 2024
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53G-10-304; 53E-3-401(4)

NOTICE OF SUBSTANTIVE CHANGE		
TYPE OF FILING: Amendment		
Rule or Section Number:	**R277-484**	**Filing ID: 56574**

Agency Information

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

General Information

2. Rule or section catchline:
R277-484. Data Standards
3. Purpose of the new rule or reason for the change:
This rule is being amended due to the passage of H.B. 3 during the 2024 General Session, which requires changes to the Data Reporting Deadline Table, which is incorporated by reference in the rule.
4. Summary of the new rule or change:
The amendments specifically add an oversight categorization of "Category 3" to the rule and make updates to the incorporated by reference document. Updates to the "Board Reporting Deadline Table" document include the report deadline for the "UTREx (Utah eTranscript and Records Exchange) – Current Year Complete October 1 Update" deadline and the "CACTUS/USIMS – Midyear Update – Current Year" deadline.

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. The changes to the board reporting deadline table incorporated by reference move up a deadline for Local Education Agency (LEA) data submissions to meet requirements from intent language in H.B. 3 (2024).

The USBE believes that the fiscal impacts have been captured in the fiscal note to H.B. 3 (2024) and there are no additional costs for the USBE or LEAs.

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.

The changes to the board reporting deadline table incorporated by reference move up a deadline for LEA data submissions to meet requirements from intent language in H.B. 3 (2024).

The USBE believes that the fiscal impacts have been captured in the fiscal note to H.B. 3 (2024) and there are no additional costs for the USBE or 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 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.

This only impacts 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 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 changes to the board reporting deadline table incorporated by reference move up a deadline for LEA data submissions to meet requirements from intent language in H.B. 3 (2024). USBE believes that the fiscal impacts have been captured in the fiscal note to H.B. 3 (2024) and there are no additional costs for the USBE or 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	**FY2025**	**FY2026**	**FY2027**
State Government	$0	$0	$0
Local Governments	$0	$0	$0

Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits	**FY2025**	**FY2026**	**FY2027**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
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 regulatory impact analysis.

Citation Information

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

Article X, Section 3	Section 53E-3-401	Subsection 53E-3-301(d)
Subsection 53E-3-401(8)(a)	Subsection 53E-3-511(8)	Subsection 53E-3-301(e)

Incorporations by Reference Information

7. Incorporations by Reference:

A) This rule adds or updates the following title of materials incorporated by references:

Official Title of Materials Incorporated (from title page)	Board Reporting Deadline Table
Publisher	Utah State Board of Education
Issue Date	June 2024
Issue or Version	June 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:	07/31/2024

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

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

Agency Authorization Information

Agency head or designee and title:	Angie Stallings, Deputy Superintendent of Policy	**Date:**	06/14/2024

R277. Education, Administration.
R277-484. Data Standards.
R277-484-1. 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-3-401(8)(a), which allows the Board to take corrective action against an education entity that fails to comply with Board rules; and

(d) Subsection 53E-3-511(8), which requires the Board to ensure LEA inclusion of data in an LEA's Student Information System.

(2) The Superintendent [~~is required to~~]shall perform certain data collection related duties essential to the operation of statewide educational accountability and financial systems as mandated in state and federal law.

(3) The purpose of this rule is to:

(a) support the operation of required educational accountability and financial systems by ensuring timely submission of data by LEAs;

(b) support the provision of equal opportunity for students;

(c) support accuracy, efficiency, and consistency of data; and

(d) ensure maintenance of basic contact and demographic information for each LEA and school.

(4)(a) This Rule R277-484 is categorized as Category 3 as described in Rule R277-111.

(b) Notwithstanding Subsection (4)(a), individual requirements contained in the rule or incorporated by reference into the rule may be categorized separately in accordance with program resources and responsibilities.

R277-484-2. Definitions.

As used in this rule and the Board Reporting Deadline Table incorporated by reference in this rule:

(1) "Annual Financial Report" means an account of LEA revenue and expenditures by source and fund sufficient to meet the reporting requirements specified in Subsections 53E-3-301(3)(d) and (e).

(2) "Annual Program Report" means an account of LEA revenue and expenditures by source and program sufficient to meet the reporting requirements specified in Subsections 53E-3-301(3)(d) and (e).

(3) "Comprehensive Administration of Credentials for Teachers in Utah Schools" or "CACTUS" means the online licensing database maintained by the Superintendent, which will be phased out and replaced by USIMS.

(4) "Contact information" means the name, title, email address, and phone number for a designated individual.

(5) "Data Warehouse" means the database of demographic information, course taking, and test results maintained by the Superintendent on all students enrolled in Utah schools.

(6) "Designated individual" means:

(a) an LEA governing board chair;

(b) a local administrator;

(c) a business administrator; or

(d) a school principal.

(7) "Governing board chair" means the chair or president of an LEA governing board.

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

(9) "LEA demographic information" means:

(a) the LEA name;

(b) the LEA number;

(c) the physical address;

(d) the website;

(e) a phone number; and

(f) the LEA's grade range.

(10) "Local administrator" means a district superintendent or charter school director.

(11) "MSP" means Minimum School Program, the set of state supported K-12 public school funding programs.

(12) "School demographic information" means:

(a) the school name;

(b) the school number;

(c) the physical and mailing address;

(d) the website;

(e) a phone number;

(f) the school type; and

(g) the school grade range.

(13) "Schools interoperability framework" or "SIF" means an open global standard for seamless, real time data transfer and usage for Utah public schools.

(14) "Student achievement backpack" has the same meaning as that term is defined in Subsection 53E-3-511(1)(d).

(15) "Student information system" or "SIS" means a student data collection system used for Utah public schools.

(16) "Utah eTranscript and Record Exchange" or "UTREx" means a system that allows individual detailed student records to be exchanged electronically between public education LEAs and the Board, and allows electronic transcripts to be sent to any post-secondary institution, private or public, in-state or out-of-state, that participates in the e[-]transcript service.

(17) "Utah Student Record Store" has the same meaning as that term is defined in Subsection 53E-3-511(1)(d).

(18) "Year" means both the school year and the fiscal year for a Utah LEA, which runs from July 1 through June 30.

R277-484-3. Incorporation by Reference of Board Reporting Deadline Table.

(1) This rule incorporates by reference the Board Reporting Deadline Table dated [~~September 7~~]June 6, 202[~~3~~]4.

(2) A copy of the Board Reporting Deadline Table is located at:

(a) http://schools.utah.gov/administrativerules/documentsincorporated; and

(b) the Utah State Board of Education - 250 East 500 South, Salt Lake City, Utah - 84111.

R277-484-4. Deadlines for Data Submission.

(1) An LEA shall submit student level data to the Board through UTREx.

(2) An LEA shall submit teacher assignment and salary data to the Board through CACTUS or USIMS.

(3) An LEA shall, by 5 p.m. Mountain Standard Time on the date specified in the Board Reporting Deadline Table, submit reports in the format specified by the Superintendent.

(4) If a deadline in the Board Reporting Deadline Table falls on a weekend or state holiday in a given year, an LEA shall submit the report on the next business day following the date specified in the Board Reporting Deadline Table.

(5) An LEA shall assign an individual to oversee compliance with this rule.

R277-484-5. Adjustments to Deadlines.

(1) An LEA may seek an extension of a deadline to ensure continuation of funding and provide more accurate information to allocation formulas by submitting a written request to the Superintendent no later than 24 hours before the specified deadline in [~~Table 1~~]Board Reporting Deadline Table.

(2) An extension request shall include:

(a) The reasons for the extension request;

(b) The signatures of the LEA business administrator and local administrator; and

(c) The date by which the LEA proposes to submit the report.

(3) If an LEA requests an extension under Subsection (1), the Superintendent may do any of the following after taking into consideration the pattern of LEA compliance with reporting deadlines and the urgency of the need for the data to be submitted:

(a) Approve the request and allow the MSP fund transfer process to continue; or

(b) Deny the request and stop the MSP fund transfer process; or

(c) Recommend corrective action to the Board in accordance with Rule R277-114.

(4) If, after receiving an extension, an LEA fails to submit the report by the designated date, the MSP fund transfer process shall be stopped and the procedures described in Section R277-484-7 shall apply.

(5) An extension shall apply only to the specific reports and dates for which an extension was requested.

(6) The Superintendent may not extend deadlines for the following reports:

(a) AFR;

(b) APR;

(c) Mid-year or Final CACTUS updates;

(d) a Financial Audit Report; or

(e) any UTREx updates.

(7) Notwithstanding Subsection (6)(e), if an LEA identifies significant errors in a UTREx update, the Superintendent may grant the LEA an extension of no more than eight calendar days to file a new update.

R277-484-6. Official Data Source and Required LEA Compatibility.

(1) The Superintendent shall load operational data collections into the Data Warehouse as of the submission deadlines specified.

(2) The Data Warehouse shall be the sole official source of data for annual:

(a) school performance reports required under Section 53E-5-204;

(b) determination of state and federal accountability reports; and

(c) submission of data files to the U.S. Department of Education.

(3) The Superintendent shall maintain a database of LEA and school:

(a) demographic information;

(b) openings;

(c) closures; and

(d) contact information for designated individuals.

(4)(a) An LEA shall use an SIS approved by the Superintendent to ensure compatibility with Board data collection systems.

(b) The Superintendent shall maintain a list of approved student information systems.

(5) Before the Superintendent granting approval for an LEA to initiate or replace a student information system that was not previously approved, the LEA shall:

(a) send written request for approval to the Superintendent no later than November 15 of the year before the year the LEA proposes to use the SIS for production software;

(b) submit documentation to the Superintendent that the new or modified student information system is SIF certified;

(c) submit documentation to the Superintendent that an SIF agent can meet the UTREx specifications profile for Vertical Reporting Framework (VRF) and eTranscripts;

(d) ensure that a new student information system can generate valid data collection by submitting an actual file to the Superintendent for review;

(e) ensure that the new student information system can generate the Statewide Student Identifier (SSID) request file by submitting an actual file to the Superintendent for review.

(6)(a) The Superintendent shall review documentation and grant or deny an LEA submission under Subsection (4) within 30 calendar days.

(b) An approved replacement system shall run in parallel to a state-approved system for a period of at least three months and be able to generate duplicate reports to previously generated information.

(7) An LEA shall submit daily updates to the Board Clearinghouse using School Interoperability Framework (SIF) objects defined in the UTREx Clearinghouse specification.

(8) An LEA shall electronically submit all public high school transcripts requested by a public education post-secondary school if the post-secondary school is capable of receiving transcripts through the electronic transcript service designated by the Superintendent.

(9) No later than June 30, 2017, an LEA shall ensure that data collected in the Utah Student Record Store for a Student Achievement Backpack is integrated into the LEA's SIS and is made available to a student's parent or guardian and an authorized LEA user in an easily accessible viewing format.

(10) Failure to comply with any of the requirements of this Section R277-484-5 may result in a recommendation for corrective action in accordance with Rule R277-114.

R277-484-7. Adjustments to Summary Statistics Based on Compliance Audits.

(1) To allocate MSP funds and projecting enrollment, the Superintendent may modify LEA level aggregate membership and fall enrollment counts on the basis of the values in the Membership and Enrollment audit reports, respectively, when an audit report review team agrees that an adjustment is warranted by the evidence of an audit.

(2) An audit report review team shall make a determination under Subsection (1) within 60 working days of the authorized audit report deadline.

(3) The Superintendent may only adjust values downward if an audit report is received after an authorized deadline.

R277-484-8. Financial Consequences of Failure to Submit Reports on Time.

(1) If an LEA fails to submit a report by its deadline as specified in [~~Table 1~~]Board Reporting Deadline Table, consistent with procedures outlined in Rule R277-114, the Superintendent may recommend corrective action, including stopping the LEA's MSP funds transfer process, unless the LEA has obtained an extension of the deadline in accordance with the procedure described in Section R277-484-4.

(2) The Superintendent may recommend loss of up to 1.0 WPU from Kindergarten or Grades 1-12 programs, depending on the grade level and aggregate membership of the student, in the current year Mid-[-]Year Update for each student whose prior year immunization status was not accounted for in accordance with Section 53G-9-302 as of June 15.

KEY: data standards, reports, deadlines
Date of Last Change: 2024[~~November 7, 2023~~]
Notice of Continuation: November 5, 2021
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-301(d) and (e); 53E-3-401; 53E-3-401(8)(a); 53E-3-511(8)[~~2~~]

NOTICE OF SUBSTANTIVE CHANGE		
TYPE OF FILING: Amendment		
Rule or Section Number:	**R277-628**	**Filing ID: 56575**

Agency Information

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

General Information

2. Rule or section catchline:

R277-628. School Libraries

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

This rule is being amended due to the passage of H.B. 29 during the 2024 General Session.

4. Summary of the new rule or change:

The amendments specifically assign an oversight category, update Local Education Agency (LEA) policy requirements, and add a reporting and compliance section to the rule.

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 reporting and compliance changes are due to the passage of H.B. 29 (2024) and the fiscal impacts were captured in the fiscal note to H.B. 29 (2024).

The USBE believes there are no additional costs or savings outside the fiscal note to H.B. 29 (2024) associated with this rule change for the USBE, Local Education Agencies (LEA), 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 reporting and compliance changes are due to the passage of H.B. 29 (2024) and the fiscal impacts were captured in the fiscal note to H.B. 29 (2024).

The USBE believes there are no additional costs or savings outside the fiscal note to H.B. 29 (2024) associated with this 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 reporting and compliance changes are due to the passage of H.B. 29 (2024) and the fiscal impacts were captured in the fiscal note to H.B. 29 (2024).

The USBE believes there are no additional costs or savings outside the fiscal note to H.B. 29 (2024) associated with this 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 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 reporting and compliance changes are due to the passage of H.B. 29 (2024) and the fiscal impacts were captured in the fiscal note to H.B. 29 (2024).

The USBE believes there are no additional costs or savings outside the fiscal note to H.B. 29 (2024) associated with this 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	**FY2025**	**FY2026**	**FY2027**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits	**FY2025**	**FY2026**	**FY2027**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
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 regulatory impact analysis.

Citation Information

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

Article X, Section 3	Subsection 53E-3-501(1)(c)(v)	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:	07/31/2024

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

Agency Authorization Information

Agency head or designee and title:	Angie Stallings, Deputy Superintendent of Policy	**Date:**	06/14/2024

R277. Education, Administration.
R277-628. [~~School Libraries~~]Sensitive Materials.
R277-628-1. 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-3-501(1)(c)(v), which requires the Board to establish rules and minimum standards for public schools including [~~school libraries~~]instructional materials; and

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

(2) The purpose of this rule is to:

(a) provide the minimum standards for an LEA's [~~library~~]instructional materials policies and accompanying procedures for [~~library~~]instructional material selection and reconsideration[~~.~~];

(b) provide a process for statewide removal of objective sensitive materials; and

(c) provide a process for compliance and reporting.

(3) This rule is categorized as Category 4 as described in Rule R277-111.

R277-628-2. Definitions.

(1) "[~~Library~~]Instructional material" means [~~any digital, including audio or visual media, or physical text contained within a school library's collection~~]the same as defined in Subsection 53G-10-103(1).

(2) "Objective sensitive materials" means the same as the term is defined in Subsection 53G-10-103(1).

(3) "School community parent" is a parent who has a student currently attending the school, or will have a student enrolled in the school within one year, where the challenged instructional material is being reviewed in accordance with Subsection 53G-10-103(4).

(4) "School setting" means the same as the term is defined in Subsection 53G-10-103(1).

(5) "Sensitive materials" means an instructional material that constitutes objective sensitive material or subjective sensitive material.

(6) "Subjective sensitive materials" means the same as the term is defined in Subsection 53G-10-103(1).

[~~(2) "School library" means the location, both physical and virtual, where library materials are housed and administered by professional staff hired to oversee the selection, maintenance, and access to school library materials.~~]

R277-628-3. Policy and Accompanying Procedures for School [~~Library~~]Instructional Material Selection and Reconsideration.

(1) On or before September 1, [~~2022~~]2024 each LEA shall:

(a) establish a policy and accompanying procedures for the selection and reconsideration of [~~library~~]instructional materials selected for a school['~~s library~~] that[~~is~~]:

(i) is consistent with current state[~~and federal~~] law[~~; and~~], including Sections 53G-10-103, 53G-4-402 and 53G-5-404;

(ii) does not prevent an LEA from:

(A) revisiting a previous decision;

(B) reviewing a recommendation of LEA personnel or an LEA committee made up of school community parents regarding a challenged instructional material; or

(C) reconsidering a challenged instructional material if the LEA governing board receives additional information regarding the material;

(iii) prioritizes protecting children from the harmful effects of illicit pornography over other considerations in evaluating instructional materials;

(iv) designates two or more LEA employees responsible for making the initial objective sensitive material determination as described in Subsection 53G-10-103(4);

(v) provides a process for designating three or more members including at least one parent and may include the designees from the initial review, for the Objective Sensitive materials review using the objective sensitive material standards;

(vi) clarifies that those responsible for procurement of the materials or the individual who brought the challenge may not serve on the review committee; and

(vii) outlines a process for disposing of removed materials that requires:
(A) the physical removal of the material;
(B) communicating with vendors and publishers regarding the decision; and
(C) that sensitive materials removed from student access shall be legally disposed of and may not be sold or distributed;
(b) ensure each school within the LEA complies with the LEA's policy and accompanying procedures for the selection and reconsideration of [~~library~~]instructional materials selected for a school[~~'s library~~] as described in Subsection (1)(a)[~~-~~];
(c) ensure the review of subjective instructional materials includes school community parents;
(d) shall provide an online platform for library materials consistent with Section 53G-4-402, and
(e) If an LEA requires an employee of the LEA to participate on a sensitive materials review committee requiring engagement outside of contract hours, the LEA shall compensate the employee for the employee's time participating on the committee.
(2) The Superintendent [~~shall provide a model policy~~]may provide a guidance document for use by an LEA in developing an LEA's policy and accompanying procedures described in Subsection (1).

R277-628-4. LEA Reporting and Compliance.
(1) For challenges before July 1, 2024 an LEA shall report to the Board a removal of the material based on the final objective sensitive material determination, of which the LEA has sufficient information to support the determination of whether the material previously removed meets the objective sensitive material criteria.
(2) An LEA shall do an initial review as described in Subsection 53G-10-103(4) and Subsection R277-628-3(1)(a)(iv) for any materials removed prior to July 1, 2024.
(3) After July 1, 2024, the LEA, through an appointed designee using the form provided by the Superintendent, shall report all challenges, final determinations, and rationale to the Superintendent:
(a) within 30 school days; or
(b) if an appeal is in process, at the conclusion of the appeal.

R277-628-5. State Board Compliance and Reporting Requirements.
(1) The Superintendent shall:
(a) compile LEA determinations for objective sensitive materials submitted before July 1, 2024;
(b) communicate to LEAs by August 5, 2024 objective sensitive materials meeting the statewide removal threshold of:
(i) at least three school districts; or
(ii) at least two school districts and five charter schools;
(c) after August 5, 2024, notify LEA's appointed designee and the Board within 10 school days after the statewide removal threshold has been met.
(d) compile an annual report as described in Subsection 53G-10-103(8)(c) of any sensitive materials challenges at the LEA and state level.
(2) Following the notification of an objective sensitive material statewide removal, a state board member may, within 30 days of notification, request that the material be placed on an agenda in full board meeting for a vote of the Board to overturn the application of the requirement according to the agenda process as outlined in Board by-laws.
(3) An individual described in Subsection 53G-10-103(3)(a) may report a violation of Section 53G-10-103 or this Rule R277-628 to the Board in accordance with the process described in Rule R277-123.
KEY: [~~school library~~]instructional materials, material selection, policy and procedures
Date of Last Change: 2024[~~June 2, 2022~~]
Authorizing, and Implemented, or Interpreted Law: Art X Sec 3; 53E-3-501(1)(c)(v); 53E-3-401(4)

NOTICE OF SUBSTANTIVE CHANGE		
TYPE OF FILING: Amendment		
Rule or Section Number:	**R277-629**	**Filing ID: 56576**

Agency Information

1. Title catchline:	Education, Administration
Building:	Board of Education
Street address:	250 E 500 S
City, state:	Salt Lake City, UT
Mailing address:	PO Box 144200
City, state and zip:	Salt Lake City, UT 84114-4200

Contact persons:		
Name:	**Phone:**	**Email:**
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule or section catchline:
R277-629. Paid Professional Hours for Educators
3. Purpose of the new rule or reason for the change:
This rule is being amended due to the passage of S.B. 137 and H.B. 499 during the 2024 General Session.
4. Summary of the new rule or change:
The amendments specifically assign an oversight category, add a policy requirement for Local Education Agency's (LEA), and clarify what program funds may be used for, consistent with S.B. 137 and H.B. 499 (2024).

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 USBE or Local Education Agencies (LEA). The USBE believes the fiscal impacts for the USBE, LEAs, and educators were captured in the fiscal notes for S.B. 137 and H.B. 499 (2024). The requirement for an LEA policy adds clarity for eligible educators on LEA practices and does not add measurable costs for LEAs or educators.
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 for the USBE or LEAs. The USBE believes the fiscal impact for the USBE, LEAs, and educators were captured in the fiscal notes for S.B. 137 and H.B. 499 (2024). The requirement for an LEA policy adds clarity for eligible educators on LEA practices and does not add measurable costs for LEAs or educators.
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 for the USBE or LEAs.

The USBE believes the fiscal impact for the USBE, LEAs, and educators were captured in the fiscal notes for S.B. 137 and H.B. 499 (2024).

The requirement for an LEA policy adds clarity for eligible educators on LEA practices and does not add measurable costs for LEAs or educators.

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.

The USBE believes the fiscal impact for the USBE, LEAs, and educators were captured in the fiscal notes for S.B. 137 and H.B. 499 (2024).

The requirement for an LEA policy adds clarity for eligible educators on LEA practices and does not add measurable costs for LEAs or educators.

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

Regulatory Impact Table

Fiscal Cost	**FY2025**	**FY2026**	**FY2027**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits	**FY2025**	**FY2026**	**FY2027**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0

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 regulatory impact analysis.			

Citation Information

6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:		
Article X, Section 3	Subsection 53E-3-401(4)	Section 53F-7-203

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:	07/31/2024

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

Agency Authorization Information

Agency head or designee and title:	Angie Stallings, Deputy Superintendent of Policy	**Date:**	06/31/2024

R277. Education, Administration.
R277-629. Paid Professional Hours for Educators.
R277-629-1. Authority, [~~and~~]Purpose, and Oversight Category.

(1) This rule is authorized by:

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

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

(c) Section 53F-7-203, which directs the Board to distribute program funds to LEAs to provide to educators consistent with the statute.

(2) The purpose of this rule is to establish rules for distribution of program funds.

(3) This Rule R277-629 is categorized as Category 2 as described in Rule R277-111.

R277-629-2. Definitions.

(1) "Program funds" means funds allocated to LEAs in accordance with Section 53F-7-203.

(2) For purposes of Subsection 53F-7-203([~~1~~]2), "student support educator" may include a librarian, instructional coach, or another certified position that works 50% or more in a school building.

R277-629-3. Distribution of Funds.

(1) The Superintendent shall distribute program funds to LEAs annually based on November 15 licensing information.

(2) An LEA shall distribute program funds in compliance with [~~Subsections~~]Section 53F-7-203[~~(3) and (4)~~].

(3) An LEA shall establish a policy outlining how the LEA will distribute program funds.

([~~3~~]4)(a) An LEA may only use program funds for [~~educator salary and benefits~~]costs outlined in Section 53F-7-203.

(b) An LEA may not use program funds to cover indirect costs.

(c) An LEA may pro-rate funds if an educator ends employment [~~prior to~~]before the end of the school year consistent with the LEA's policy adopted in accordance with Subsection (3).

([4]5)(a) An LEA shall disburse program funds to educators by June 30 annually.

(b) The Superintendent may:

(i) offset unused program funds against future allocations to the LEA; or

(ii) require the LEA to return unused program funds by September 30 of the next school year.

KEY: paid professional hours
Date of Last Change: 2024[~~November 7, 2023~~]
Authorizing, and Implemented, or Interpreted Law: Art X Sec 3; 53E-3-401(4); 53F-7-203

NOTICE OF SUBSTANTIVE CHANGE		
TYPE OF FILING: Repeal		
Rule or Section Number:	**R277-710**	**Filing ID: 56577**

Agency Information

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

General Information

2. Rule or section catchline:

R277-710. Intergenerational Poverty Interventions in Public Schools

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

This rule is being repealed due to the passage of S.B. 2 during the 2024 General Session.

4. Summary of the new rule or change:

This rule is no longer necessary because S.B. 2 (2024) removed the requirement for an annual report by the Utah State Board of Education (USBE) on the Intergenerational Poverty Interventions Grant Program.

Therefore, this rule is repealed in its entirety.

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 USBE believes the fiscal impacts of the repeal were captured in the fiscal note to S.B. 2 (2024) for the USBE and Local Education Agencies (LEA).

B) Local governments:

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

The USBE believes the fiscal impact of the repeal were captured in the fiscal note to S.B. 2 (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 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.

This only impacts 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 USBE believes the fiscal impact of the repeal were captured in the fiscal note to S.B. 2 (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	**FY2025**	**FY2026**	**FY2027**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits	**FY2025**	**FY2026**	**FY2027**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
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 regulatory impact analysis.

Citation Information

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

Article X, Section 3	Subsection 53E-3-401(4)	Section 53F-5-207

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:	07/31/2024

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

Agency Authorization Information

Agency head or designee and title:	Angie Stallings, Deputy Superintendent of Policy	**Date:**	06/14/2024

R277. Education, Administration.

[~~R277-710. Intergenerational Poverty Interventions in Public Schools.~~

~~R277-710-1. Authority and Purpose.~~

~~(1) This rule is authorized by:~~

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

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

~~(c) Subsection 53F-5-207(4), which directs the Board to accept proposals and award grants under the program.~~

~~(2) The purpose of this rule is:~~

~~(a) to provide for distribution of funds to LEAs; and~~

~~(b) to provide for out-of-school educational services that assist students affected by intergenerational poverty in achieving academic success.~~

~~(3) This rule provides eligibility criteria, provides minimum application criteria, provides timelines, and provides for Superintendent oversight and reporting.~~

~~R277-710-2. Definitions.~~

~~(1) "Eligible student" means a student in grades k-12 of the public school system who is classified as a child affected by intergenerational poverty.~~

~~(2)(a) "Intergenerational poverty (IGP)" means poverty in which two or more successive generations of a family continue in the cycle of poverty and government dependence.~~

~~(b) "Intergenerational poverty" does not include situational poverty as defined in Subsection 35A-9-102(2).~~

~~(3) "Program" means the Intergenerational Poverty Interventions Grant Program that provides educational services outside of the regular school day, including before school, after school, or summer programs.~~

~~R277-710-3. Grant Eligibility.~~

~~(1) Only LEAs are eligible to apply for funds under the program.~~

~~(2) An LEA, in designing the LEAs program services, may collaborate with a community-based organization that provides quality after school programs.~~

~~(3) The Board shall give priority to applicants that have a significant number or percentage of students affected by intergenerational poverty.~~

~~(4) Program funds are intended to provide supplemental services beyond what is already available through state and local funding.~~

~~(a)(i) For an LEA with a school that has an existing after school program, the program funds may be used to augment the amount or intensity of services to benefit students affected by IGP.~~

~~(ii) A program applicant that has an existing after school program may apply for a grant in the range of $30,000 to $50,000 per school year.~~

~~(b)(i) For an LEA with a school that does not have an existing after school program, the program funds may be used to establish a quality after school program.~~

~~(ii) A program applicant without an existing after school program may apply for grants in the range of $100,000-$200,000 per school year.~~

~~(5) An LEA that participates in the program and serves students in grades k-6 may be eligible to apply for additional federal after school funding through the Department of Workforce Services.~~

~~R277-710-4. Program Requirements.~~

~~An applicant for a program grant shall design a program that includes the following minimum components:~~

~~(1) a description of the level of administrative support and leadership at the LEA to effectively implement, monitor, and evaluate the program;~~

~~(2) an explanation of how the LEA will provide adequate supervision and support to successfully implement or increase programs at the school level;~~

~~(3) a summary of a needs assessment conducted by the LEA to determine the academic needs and interests of participating students and their families;~~
~~(4) the identification of intended outcomes of the program and how these outcomes will be measured;~~
~~(5) an explanation of how the LEA or school will provide services to improve the academic achievement of children affected by intergenerational poverty;~~
~~(6) a commitment to assess program quality and effectiveness and make changes as needed;~~
~~(7) an outline of the scope of services, including days of the week, number of hours, and number of weeks;~~
~~(8) an explanation of the LEA's strategy for coordinating with and engaging the Department of Workforce Services to provide services for the LEA's eligible students;~~
~~(9) an explanation of how the LEA will work with the Department of Workforce Services, the Department of Health, the Department of Human Services, and the juvenile courts to provide services to the LEA's eligible students;~~
~~(10) the identification of IGP eligible students categorized by age, and schools in which the LEA plans to develop programs with the grant money;~~
~~(11) an annual program budget and identification of the estimated cost per student; and~~
~~(12) establishment and maintenance of data systems that inform program decisions and annual reporting requirements.~~

~~**R277-710-5. Program Fees.**~~
~~(1) Program fees charged by an LEA or school are subject to the provisions of R277-407.~~
~~(2) An LEA or school may impose a fee, including fees on a sliding scale, related to the LEA's program if the LEA or school complies with the provisions of R277-407, including:~~
~~(a) ensuring the program fee is approved by the LEA governing board before the LEA or school charges the fee;~~
~~(b) advertising or notifying parents and students of fee waiver eligibility and the process for a parent or student to obtain a fee waiver; and~~
~~(c) providing a student or parent an opportunity to appeal the LEA's denial of the student or parent's request for a fee waiver.~~

~~**R277-710-6. Application Process.**~~
~~(1) The Superintendent shall:~~
~~(a) create a scoring rubric to evaluate grant applications;~~
~~(b) solicit competitive grant applications from LEAs;~~
~~(c) review an LEA grant application according to the scoring rubric described in Subsection (1)(a); and~~
~~(d) award grant funds to LEAs based on the recommendations of a program grant application review panel.~~
~~(2) An LEA may apply for a grant through the Utah Consolidated Application (UCA).~~
~~(3)(a) The Superintendent shall convene a panel of application reviewers who demonstrate no conflicts of interest.~~
~~(b) The panel reviewers shall score applications and the panel shall make recommendations for funding to the Board.~~
~~(4) Except as provided for in Subsection (5), in a year when there is a grant competition:~~
~~(a) the application deadline is May 15; and~~
~~(b) the Superintendent shall notify grant recipients no later than July 1.~~
~~(5) The Superintendent, in future years, subject to continuing appropriations, may adjust the time periods and create applicable timelines to allow LEAs more time to propose programs and complete applications.~~

~~**R277-710-7. Superintendent Oversight and Reporting Requirements.**~~
~~(1) The Superintendent shall provide adequate oversight in the administration of the IGP program to include:~~
~~(a) conducting the annual application process and awarding of funds;~~
~~(b) monitoring program implementation; and~~
~~(c) gathering and reporting required data.~~
~~(2) An LEA that receives program grant money shall annually provide to the Superintendent the information that is necessary for the Board's report to the Utah Intergenerational Welfare Reform Commission as required by Subsection 53F-5-207(7).~~
~~(3) The annual report required under Subsection 53F-5-207(7) shall include:~~
~~(a) the progress of LEA programs in expending grant money;~~
~~(b) the progress of LEA programs in improving the academic achievement of children affected by intergenerational poverty; and~~
~~(c) the LEA's coordination efforts with the Department of Workforce Services, the Department of Health, the Department of Human Services, and the juvenile courts.~~

~~**KEY: public schools, poverty, intervention**~~
~~**Date of Last Change August 19, 2019**~~
~~**Notice of Continuation: June 21, 2019**~~
~~**Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-401(4); 53F-5-207]**~~

NOTICE OF SUBSTANTIVE CHANGE		
TYPE OF FILING: Amendment		
Rule or Section Number:	**R277-726**	**Filing ID: 56578**

Agency Information

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

General Information

2. Rule or section catchline:

R277-726. Statewide Online Education Program (SOEP)

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

This rule is being amended due to the passage of H.B. 247 during the 2024 General Session.

4. Summary of the new rule or change:

The amendments specifically:
1) add an oversight category,
2) update definitions,
3) update requirements for the course credit acknowledgement process,
4) clarify staff responsibilities for approving new providers,
5) update provider responsibilities relative to state testing and fees,
6) prohibit a provider from awarding pass/fail grades in Statewide Online Education Program (SOEP) courses,
7) clarify requirements when a student withdraws from an SOEP course,
8) update requirements when a provider is non-compliant with this rule,
9) update requirements for special education and 504 students, and
10) make other 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 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).

The fiscal impacts for the USBE and LEAs were captured in the fiscal note for H.B. 247 (2024) and the USBE believes the rule does not add any fiscal impacts outside those already captured in the fiscal note.

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 for the USBE or LEAs.

The fiscal impacts for the USBE and LEAs were captured in the fiscal note for H.B. 247 (2024) and the USBE believes the rule does not add any fiscal impacts outside those already captured in the fiscal note.

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.

This only impacts 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 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 for the USBE or LEAs.

The fiscal impacts for the USBE and LEAs were captured in the fiscal note for H.B. 247 (2024) and USBE believes the rule does not add any fiscal impacts outside those already captured in the fiscal note.

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

Regulatory Impact Table			
Fiscal Cost	**FY2025**	**FY2026**	**FY2027**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits	**FY2025**	**FY2026**	**FY2027**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0

Other Persons	$0	$0	$0
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 regulatory impact analysis.

Citation Information

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

Article X, Section 3	Section 53F-4-510	Section 53F-4-514
Section 53E-3-401		

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:	07/31/2024

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

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

Agency Authorization Information

Agency head or designee and title:	Angie Stallings, Deputy Superintendent of Policy	**Date:**	06/14/2024

R277. Education, Administration.
R277-726. Statewide Online Education Program.
R277-726-1. Authority, [~~and~~]Purpose, and Oversight Category.

(1) This rule is authorized by:

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

(b) Section 53F-4-502, which created the program to enable eligible students, through publicly funded online courses, to:

(i) earn college credit by July 1, 2025;

(ii) earn high school graduation credit; and

(iii) earn middle school credit;

([~~b~~]c) Section 53F-4-514, which requires the Board to make rules:

(i) providing for the administration of the applicable statewide assessments to students enrolled in online courses;

(ii) that establish a course credit acknowledgment form and procedures for completing and submitting the form to the Board; and

(iii) that establish protocols for an online course provider to obtain approval to become an authorized or certified online course provider; and

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

(2) The purpose of this rule is to:

(a) define necessary terms;

(b) provide and describe a program registration agreement; and

(c) provide other requirements for an LEA, the Superintendent, a parent and a student, and an authorized online course provider for program implementation and accountability.

(3) This Rule R277-726 is categorized as Category 4 as described in Rule R277-111.

R277-726-2. Definitions.

(1) "Actively participates" means, for purposes of an initial funding distribution described in Section 53F-4-505, the student actively participates as defined by the provider in a written standard of active participation on record with the Superintendent.

(2) "Applicable statewide assessments" means:

(a) the high school assessment described in Section 53E-4-304 and Subsection R277-404-2(7);

(b) a standards assessment as defined in Section 53E-4-303; and

(c) a Utah alternative assessment as defined in Rule R277-404.

(3) "Approved absence" means an absence permitted in accordance with Subsection 53G-6-803(5).

(4) "Authorized online course provider" or "provider" means the same as the term is defined in Section 53F-4-501.

(5) "Certified online course provider" means the same as the term is defined in Section 53F-4-501.

(6) "Course completion" means that a student has completed a course with a passing grade and the provider has transmitted the course title, course code, grade, and credit to the primary LEA of enrollment and the Superintendent.

(7) "Course Credit Acknowledgment" or "CCA" means an agreement and registration record that:

(a) uses the Statewide Online Education Program application provided by the Superintendent; and

(b) except as provided in Section 53F-4-508, is signed by the designee of the primary school of enrollment, and the qualified provider.

(8) "Effective Date" means that, notwithstanding Title 63G, Chapter 3, Utah Administrative Rulemaking Act, a delayed effective date that the Board is required to provide after the school year has ended for changes in administrative rule related to the Statewide Online Education Program, as described in Subsection 53F-4-514(1).

(9)(a) "Eligible student" means the same as the term is defined in Section 53F-4-501.

[~~(b) "Eligible student" does not include a student enrolled in an adult education program.~~]

(b) A student up to the age of 19 in an adult education program may be an "eligible student" if the student re-enrolls in a public or private secondary school before the student's cohort's date of graduation.

(c) "Eligible student" does not include a student receiving a scholarship under Title 53F, Chapter 6, Part 4, Utah Fits All Scholarship Program.

(10) "Enrollment confirmation" means a provider's certification that a student [~~who~~]initially registered and actively participated, as defined under Subsections (1) and (23)(b).

(11) "Executed CCA" means a CCA that has been executed pursuant to Subsection 53F-4-508(3) and received by the Superintendent.

(12) "Fee" means the same as the term is defined in Rule R277-407.

(13) "High school" means the same as the term is defined in Section 53F-4-501.

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

(15) "Middle school" means the same as the term is defined in Section 53F-4-501.

(16) "Online course" means the same as the term is defined in Section 53F-4-501 regardless of whether the student participates in the online course at home, at a school, at another location, or in any combination of these settings.

(17) "Online course payment" means the amount of funds withheld from a student's primary LEA and disbursed, or otherwise paid to the designated provider following satisfaction of the requirements of the law, and as directed in Subsection 53F-4-507(2) and Section 53F-4-518.

(18) "Primary LEA of enrollment" means:

(a) the LEA reporting the student to be in regular membership, and special education membership, if applicable[~~,~~]; and

(b) the LEA in which an eligible student is enrolled for courses other than online courses offered through the Statewide Online Education Program.

(19) "Primary school of enrollment" means:

(a) a student's school of record within a primary LEA of enrollment;

(b) the school that maintains the student's cumulative file, enrollment information, individualized education program, and transcript for purposes of high school graduation; and

(c) the school responsible for oversight and implementation of the student's educational requirements under the Individuals with Disabilities Education Act.

(20) "Resident school" means the district school within whose attendance boundaries the student's custodial parent or legal guardian resides.

(21) "School" means the same as the term is defined in Rule R277-100.

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

(23) "Standard of active participation" means:

(a) the measure of student engagement used by an authorized online course provider to count a student [~~as~~] in attendance and participation at least once every ten school days for a course consistent with Section R277-419-5[~~,~~];

(b) a document articulating evidence validating student participation contained in a learning management system and used by an authorized online course provider to qualify to receive payment as provided in Subsection 53F-4-505(4), including determining when a student is actively participating in a course defined in Section 53F-4-501; and

(c) the measure of student engagement used to monitor program outcomes and program financial compliance in accordance with Rule R277-114.

(24) "Statewide Online Education Program" or "program" means the Statewide Online Education Program created in Section 53F-4-502.

(25) "Teacher of record" means the teacher who is assigned by a provider and to whom students are assigned for purposes of reporting and data submissions to the Superintendent in accordance with Section R277-484-3 and this rule.

(26) "Underenrolled student" means a student with less than a full course load, as defined by the LEA, during the regular school day at the student's primary school of enrollment.

(27) "USBE course code" means a code for a designated subject matter course assigned by the Superintendent.

(28) "Withdrawal from online course" means that a student withdraws from or ceases participation in an online course as follows:

(a) within 20 calendar days of the start date of the course, if the student enrolls on or before the start date;

(b) within 20 calendar days of enrolling in a course, if the student enrolls after the start date;

(c) within 20 calendar days after the start date of the second 0.5 credit of a 1.0 credit course;

(d) as the result of a student suspension from an online course following adequately documented due process by the provider; or

(e) as a result of the student losing program eligibility, including when the student moves out of state.

R277-726-3. Course Credit Acknowledgment (CCA) Process.

(1) A student, a student's parent, a counselor, or a provider may initiate a CCA.

(2)(a) A counselor designated by a student's primary school of enrollment shall review the student's CCA to ensure consistency with:

(i) graduation requirements; and

(ii) the student's plan for college and career readiness[~~;~~

~~(iii) the student's IEP;~~

~~(iv) the student's Section 504 plan; or~~

~~(v) the student's international baccalaureate program~~].

(b) The primary school and LEA of enrollment and an online course provider shall [~~return~~]respond to the CCA [~~to~~]using forms and processes provided by the Superintendent within [~~72~~]24 business hours.

(3)(a) The primary school of enrollment is not required to meet with the student or parent for approval of a course request.

(b) The Superintendent shall notify a primary school of enrollment of a student's enrollment in the program.

[~~(4) If a student enrolling in the program has an IEP, Section 504 plan, or qualifies for multilingual supports, the primary LEA or school of enrollment shall:~~

~~(a) invite a representative of the authorized online course provider to meet as a member of the student's IEP team to determine and coordinate services and accommodations applicable to online course delivery of content and instruction;~~

~~(b) following an IEP revision or amendment after the meeting described in Subsection (4)(a), ensure that a counselor and special education staff from the LEA forward an existing or amended IEP or description of 504 accommodations, relevant supports, and related aids, accommodations, and services, to the provider:~~

~~(i) consistent with IDEA timelines; or~~

~~(ii) within [72]24 business hours of receiving notice from the Superintendent that the provider has accepted the enrollment request where IDEA timelines do not apply.~~

~~(5) The Superintendent shall develop and administer procedures for facilitation of a CCA that informs the appropriate parties.~~]

(4) If an eligible student has an IEP or Section 504 plan, the eligible student's primary LEA shall provide or facilitate enrollment by:

(a) forwarding a copy of the relevant portions of the eligible student's existing IEP or Section 504 accommodation plan to the authorized online course provider in accordance with federal law and regulations;

(b) ensure the eligible student's IEP team and the authorized online course provider review a course enrollment for compliance with Subsection (1);

(c) coordinate additional IEP team reviews, as necessary, with the authorized online course provider to ensure appropriate services, supports and accommodations are in place for the eligible student; and

(d) ensure the authorized online course provider is included in an eligible student's IEP revision.

([~~6~~]5) Once a student's enrollment and active participation is confirmed, the Superintendent shall direct funds to the provider, consistent with Sections 53F-4-505 through 53F-4-507, and Section 53F-4-518.

R277-726-4. Eligible Student and Parent Rights and Responsibilities.

(1) An eligible student may register for program credits consistent with Section 53F-4-503 and this rule.

(2) An eligible student may exceed a full course load during a regular school year if:

(a) the student's plan for college and career readiness indicates that the student intends to complete high school graduation requirements and exit high school before the rest of the student's high school cohort; or

(b) the student's local school board or charter school governing board has a policy that allows students to enroll in additional courses.

(3)(a) Only original credit may be funded through the program.

(b) Competency-based award of credit without engagement in a course of digital, teacher-led instruction may not be funded under Statewide Online Education Program and Minimum School Program provisions.

(4)(a) An eligible student is expected to complete courses in which the student enrolls in a timely manner consistent with Section 53F-4-505 and requirements for attendance and participation in accordance with Subsection R277-726-7(15) and Subsection R277-726-2(17).

(b) If a student changes the student's enrollment in the student's primary LEA or withdraws from an online course for any reason, it is the student's or student's parent's responsibility to notify the provider immediately.

(5) A student shall enroll in online courses, or declare an intention to enroll, during the school course registration period designated by the primary LEA of enrollment for regular course registration, provided the student's LEA notifies students of the opportunity to enroll in the program as described in Section 53F-4-513.

(6)(a) A student may alter a course schedule by dropping a traditional course and adding an online course in accordance with the primary school of enrollment's same established deadline for dropping and adding traditional courses.

(b) A student may enroll in a course outside of the primary school of enrollment's established deadline for dropping and adding traditional courses if the student is not seeking to alter a course schedule by dropping a traditional course and adding an online course but is instead seeking to add courses above full-time-enrollment consistent with an approved plan for early graduation.

(7)(a) Notwithstanding Subsection (5), an underenrolled student may enroll in an online course at any time during a calendar year.

(b) If an underenrolled student enrolls in an online course as described in Subsection (7)(a), the primary school of enrollment may immediately claim the student for the adjusted portion of enrollment by entering the course into the primary LEA's student information system and increasing membership, if necessary.

(8)(a) An authorized online course provider shall reasonably accommodate a request of a student's parent to visit and observe any class the student attends, including allowing appropriate access to digital systems of course delivery, as required in Section 53G-6-803.

(b) An authorized online course provider shall reasonably accommodate and record an excused absence at the request of a student's parent as an "approved absence" as described in Subsection 53G-6-803(5) if:

(i) the parent submits a written statement at least one school day before the scheduled absence; and

(ii) the student agrees to make up coursework for school days missed for the scheduled absence in accordance with LEA policy.

R277-726-5. LEA Requirements and Responsibilities.

(1) A primary school of enrollment shall facilitate student enrollment with any eligible providers selected by an eligible student consistent with course credit limits.

(2) A primary school of enrollment and a provider LEA shall use the CCA application, records, and processes provided by the Superintendent for the program.

(3) In accordance with Subsection 53F-4-509(5), if a student enrolled in a program course intends to graduate early and exceeds a full course load during a regular school year, a primary LEA of enrollment may mark the student as an early graduate and increase membership in accordance with Section R277-419-6, Section R277-700-6 and Rule R277-484 to account for credits in excess of full-time enrollment in a local student information system.

(4) A primary school or LEA of enrollment shall provide information about available online courses and programs:

(a) in registration materials;

(b) on the LEA's website; and

(c) on the school's website.

(5) To facilitate enrollment as required by Section 53F-4-513, a primary school or LEA of enrollment shall provide the notice required under Subsection (4) concurrent with the high school course registration period designated by the LEA for the upcoming school year.

(6) A primary school of enrollment shall include a student's online courses in the student's enrollment records and, upon course completion, include online course grades and credits on the student's transcripts, including [~~appropriate student~~]high school coursework completed before grade 9[~~, including appropriate student coursework~~] using course title and core codes.

(7) A primary school of enrollment shall recognize credit earned toward high school graduation by a participating student through courses completed before grade 9 for purposes of high school graduation.

(8) A primary school of enrollment shall determine fee waiver eligibility for participating public school students pursuant to Rule R277-407.

(9)(a) If a participating student qualifies for a fee waiver, the student's primary LEA or school of enrollment shall provide the participating student access to an online course by:

(i) allowing a student access to necessary technology in a computer lab or other space within the school building during a school period or during the regular school day for the student to participate in an online course; or

(ii) providing a participating student technology and [~~w~~]Wi-[~~f~~]Fi needed for the student to participate outside of the school building.

(b) If a participating student who qualifies for a fee waiver is a home or private school student, the online course provider shall provide the participating home or private school student access to the online course.

(10) Where students access program courses using LEA-owned and managed devices, an LEA shall configure devices to participating students to form a separate user account or otherwise allow access to program provider materials using credentials supplied by a program provider.

([~~10~~]11) A primary school of enrollment shall provide participating students access to facilities for the student to participate in an online course during the regular school day, student leadership opportunities, sports, extracurricular and co-curricular activities, counseling, [~~and~~]graduation, and other services offered to students generally[~~consistent with local policies governing participation irrespective~~] without consideration of relative levels of participation in traditional courses versus [~~Statewide Online Education~~]program courses.

([~~11~~]12)(a) Course completions conferring high school credit shall be recorded in a student's record of credit and course completion for grade 9 to allow recognition toward grades 9-12, and high school graduation requirements.

(b) A primary LEA of enrollment accepting credit toward high school requirements is not required to independently verify:

(i) early graduation status; or

(ii) that high school courses taken through the program did not replace middle school courses for a student.

([~~12~~]13) When a student satisfactorily completes an online semester or quarter course:

(a) for high school credit, in accordance with the LEA's procedures, a designated counselor or registrar at the primary school of enrollment shall forward records of grades and high school graduation credit, listing core codes for each completed course; or

(b) for a student participating in the program before grade 9, the student's grade 9 primary school of enrollment shall record grades and credit per Subsection (11) once the student completes grade 8.

R277-726-6. Superintendent Requirements and Responsibilities.

(1) The Superintendent shall provide a website for the program, including information required under Section 53F-4-512 and other information as determined by the Board.

(2) The Superintendent shall direct a provider to administer the Utah standards and high school assessments, as applicable, consistent with Section 53F-4-514 and Rule R277-404.

(3)(a) The Superintendent shall prepare and make available applications and program agreements for authorized online course providers.

(b) The Superintendent shall review each application within a reasonable amount of time and may invite prospective providers for interviews or further discussions of qualifications to clarify outstanding issues.

(4)(a) With the exception of the requirements of Subsection 53F-5-514(2), the Superintendent may determine space availability standards and appropriate course load standards for online courses consistent with Subsection 53F-4-512(3)(g).

(b) Course load standards may differ based on subject matter.

(5)[~~(a)~~] Before approving a provider, consistent with Section 53F-4-504, the Superintendent shall:

(a) review Annual Financial Reports and state-administered test data to establish capacity of a program to serve an increased range of students while still meeting program requirements[~~.~~]; and

(b) verify that a prospective provider:

(i) has a student information system that is compatible with USIMS;

(ii) is a 501(c)(3) non-profit entity;

(iii) demonstrates data security and privacy compliance capacity, consistent with FERPA, through submission of a report selected by the Superintendent or developed by the American International Society of Certified Public Accountants to evaluate data security controls and assess organization safeguards in place to protect sensitive data;

(iv) provides a description of the applicant's academic service experience offering general insight into the entity's:

(A) familiarity with education broadly;

(B) competency in instruction;

(C) academic philosophy; and

(v) meets other requirements identified by the Superintendent to establish the capacity of the provider to act as an LEA for purposes of program participation.

([~~b~~]6) The Superintendent may restrict a provider from offering coursework if the Superintendent determines that the provider demonstrates repeated low performance on statewide assessments in English Language Arts, math, or science.

([~~6~~]7) The Superintendent shall withhold funds from a primary LEA of enrollment and pay a provider consistent with Sections 53F-4-505 through 53F-4-507, and Section 53F-4-518.

([~~7~~]8) The Superintendent may refuse to provide funds under a CCA if the Superintendent finds that information has been submitted fraudulently or in violation of the law or Board rule by any of the parties to a CCA.

([~~8~~]9) The Superintendent shall receive and investigate complaints, and impose sanctions, if appropriate, regarding course integrity, financial mismanagement, enrollment fraud or inaccuracy, or violations of the law or this rule specific to the requirements and provisions of the program.

([~~9~~]10) If a Superintendent or federal entity's investigation finds that a provider has violated the IDEA or Section 504 provisions for a student taking online courses, the provider shall compensate the student's primary LEA of enrollment for costs related to compliance.

([~~10~~]11) The Superintendent may monitor an LEA's or program provider's compliance with any requirement of state or federal law or Board rule under the program.

([~~11~~]12) The Superintendent may withhold funds from a program provider for the participant's failure to comply with a reasonable request for records or information.

([~~12~~]13) Program records are available to the public subject to Title 63G, Chapter 2, Government Records Access and Management Act.

([~~13~~]14) The Superintendent shall withhold online course payment from a primary LEA of enrollment and payments to an eligible provider at the nearest monthly transfer of funds, subject to verification of information, in an amount consistent with, and when a provider qualifies to receive payment, under Subsections 53F-4-505(4), 53F-4-507(3)(b) and 53F-4-508(2)(b).

([~~14~~]15) The Superintendent shall pay a provider consistent with Minimum School Program funding transfer schedules.

(16) Upon request from a primary LEA, the Superintendent shall provide an itemized report showing deductions described in Subsection 53F-4-508(2), by student and course enrolled.

([~~15~~]17)(a) The Superintendent may make decisions on questions or issues unresolved by Title 53F, Chapter 4, Part 5, Statewide Online Program Act or this rule on a case-by-case basis.

(b) The Superintendent shall report decisions described in Subsection (15)(a) to the Board consistent with the purposes of the law and this rule.

([~~16~~]18) In accordance with Title 53E, Chapter 4, Academic Standards, Assessments, and Materials, the Superintendent shall establish criteria for an authorized online course provider to submit for approval an online course that does not have an existing Board course code.

(19) The Superintendent may advise an eligible student regarding how an online course meets state graduation requirements.

(20) The Superintendent shall direct an eligible student to a counselor at the student's school for advice regarding:

(a) whether an online course meets LEA or school-specific graduation requirements; and

(b) all other counseling services.

(21) The Superintendent shall create a model cooperative agreement between a primary LEA and an authorized online course provider to be used when the primary LEA determines IEP services with costs are best provided by an authorized online course provider.

(22) The Superintendent shall organize and conduct annual mandatory training for relevant staff at a primary LEA that address program requirements for a primary LEA, including:

(a) reporting requirements and methods;

(b) uses of resources and tools to ensure adequate monitoring of an eligible student's progress;

(c) federal and state requirements for accommodating enrollments that involve special education;

(d) appropriate circumstances and methodologies for reducing an eligible student's schedule; and

(e) other necessary components as determined by the Superintendent.

(23) The Superintendent shall create a communication dashboard for the program that includes:

(a) a counselor contact list for an eligible student that is accessible to an authorized online course provider; and

(b) progress monitoring fields containing:

(i) grade progress reporting of an eligible student by an authorized online course provider;

(ii) flags for a student that is at risk of failing an online course; and

(iii) other information as determined by the Superintendent.

(24) The dashboard described in Subsection (23) shall be accessible to an eligible student's:

(a) primary LEA;

(b) school counselor;

(c) authorized online course provider; and

(d) parent.

R277-726-7. Provider Requirements and Responsibilities.

(1)(a) A provider shall administer the applicable statewide assessments to a participating private or home school student as directed by the Superintendent, including proctoring the applicable statewide assessments, consistent with Section 53F-4-510 and Rule R277-404.

(b) A provider [~~shall pay~~]is responsible for administrative and proctoring costs and planning for the applicable statewide assessments described in Subsection (1)(a).

([~~e~~]2) A provider shall:

(a) establish a procedure that a student or parent may complete online to excuse the student from statewide assessments as described in Subsection 53G-6-803(9)[~~.~~]; and

(b) record and maintain a choice to opt a student out of a statewide assessment in a manner prescribed by the Superintendent.

([~~2~~]3) A provider shall provide a parent or a student with email and telephone contacts for the provider during regular business hours to facilitate parent contact.

([~~3~~]4) A provider and any third party working with a provider shall, for all eligible students, satisfy Board requirements for:

(a) consistency with course standards as described in Sections 53F-4-514 and 53E-6-201;

(b) criminal background checks for provider employees consistent with Title 53G, Chapter 11, Part 4, Background Checks;

(c) documentation of student enrollment and participation consistent with a standard of active participation on record with the Superintendent; and

(d) compliance with:

(i) the IDEA;

(ii) Section 504; and

(iii) requirements for multilingual students.

([~~4~~]5) A provider shall receive payments for a student properly enrolled in the program from the Superintendent consistent with:

(a) Board procedures;

(b) Board timelines; and

(c) Sections 53F-4-505 through 53F-4-508, [~~and~~]Section 53F-4-518, and Board rule.

([~~5~~]6)(a) A provider may charge a fee consistent with other secondary schools and in accordance with Title 53G, Chapter 7, Part 5, Student Fees, and Rule R277-407.

(b) If a provider intends to charge a fee of any kind, the provider:

(i) shall notify the primary school of enrollment with whom the provider has the CCA of the purpose for fees and amounts of fees;

(ii) shall provide timely notice to a parent of required fees and fee waiver opportunities;

(iii) shall post fees on the provider website and disclose fees in course notes provided to the Superintendent as part of the provider's annual submission of course lists;

(iv) shall be responsible for fee waivers for an eligible student, including materials for a student designated fee waiver eligible by a student's primary school of enrollment;

(v) shall satisfy the requirements of Rule R277-407, as applicable; and

(vi) shall provide fee waivers to home school or private school students who meet fee waiver eligibility at the provider's expense.

([~~6~~]7) A provider shall maintain a student's records and comply with the federal Family Educational Rights and Privacy Act, Title 53E, Chapter 9, Part 3, Student Data Protection, and Rule R277-487, including:

(a) protecting the confidentiality of a student's records and providing a parent and an eligible student access to records; and

(b) providing a parent or student timely documentation of and access to evidence and records of educational performance, including:

(i) test scores;

(ii) grades;

(iii) progress and performance measures; and

(iv) completion of credit.

([~~7~~]8) Except as otherwise provided in this rule, a provider shall, using processes and applications provided by the Superintendent within five business days following the 20 school day statutory period allowed for student withdrawal:

(a) confirm a student to be in active participation in a course; or

(b) record a student's lack of confirmation.

(9) Following confirmation of a student's active participation, a provider shall:

(a) routinely update course records to reflect student participation as determined by student credit accruals;

(b) [~~a provider shall~~]submit a student's credit and grade to the Superintendent, [~~using processes and applications provided by the Superintendent for this purpose, and listing core codes~~]providing for each included course[~~,~~]:

(i) the core code and short course description provided by the Superintendent associated with the course in program enrollment applications;

(ii) as necessary, the unique title a provider utilizes to identify a course to a designated counselor or registrar at the primary school of enrollment, and the student's parent[~~, no later than the earlier of:~~]; and

(c) complete the submissions required under Subsection (9)(b):

([~~a~~]i) 30 days after a student satisfactorily completes an online semester or quarter course; or

([~~b~~]ii) by June 30 [~~of the school year~~]annually.

([~~8~~]10) A provider may not withhold a student's credits, grades, or transcripts from the student, parent, or the student's school of enrollment for any reason.

([~~9~~]11)(a) If a provider suspends or expels a student from an online course for disciplinary reasons, the provider shall notify the student's primary LEA of enrollment by placing the student on disciplinary withdrawal.

(b) A provider is responsible for due process procedures for student disciplinary actions in the provider's online program.

(c)(i) A provider shall notify the Superintendent of a student's administrative withdrawal, if the student is inactive in a course for more than ten days, using forms and processes developed by the Superintendent for this purpose.

(ii) If a student, parent, or counselor fails to request reinstatement following notification under Subsection (c)(i), the provider shall formally withdraw the student within 72 hours and notify the student, parent, and primary LEA of the action.

([~~10~~]12) If a student entitled to services under the IDEA is removed from an online program, the primary LEA shall work with the student and the student's parents to identify alternatives to provide a free and appropriate public education.

([~~11~~]13)(a) A provider shall provide to the Superintendent a list of course options using USBE-provided course codes.

(b) Beginning with the 2024-25 school year, a provider may only code program courses as semester or quarter courses.

(c) A provider shall update the provider's course offerings annually.

([~~12~~]14) A provider shall serve a student on a first-come-first-served basis who desires to take courses and who is designated eligible by a primary school of enrollment if desired courses have space available.

([~~13~~]15) A provider shall maintain and provide records and systems as part of a public online school or program, including:

(a) financial and enrollment records;

(b) information for accountability, program monitoring, and audit purposes; and

(c) providing timely documentation of student participation, enrollment, educator credentials, and additional data for other purposes including giving a student's primary school of enrollment access to the student's records to appropriately support the student.

([~~14~~]16) A provider shall maintain the following for at least five calendar years after the student graduates:

(a) test scores;

(b) student grades;

(c) completion of credit; and

(d) other progress and performance measures.

([~~15~~]17)(a) A provider is responsible for complete and timely submissions of record changes to executed CCAs and submission of other reports and records as required by the Superintendent.

(b) A provider shall update CCAs to the nearest credit value earned by June 30 annually.

(c) A provider may only maintain an CCA open after June 30 if a student remains actively engaged in coursework, meeting the provider's standard of active participation.

([~~16~~]18)(a) Before the inception of coursework, as a component of the provider's initial communication of provisions of the provider's standard of active participation, a provider shall inform a student and the student's parent of travel expectations to fulfill course requirements.

(b) Travel expectations to fulfill course requirements as described in Subsection ([~~16~~]18)(a) include a requirement to participate in a proctored assessment or other proctored or assessment requirement outside a student's home, including travel to participate in statewide assessments at a secure testing site.

([~~17~~]19)(a) An LEA may participate in the program as a provider by offering a school or program consistent with Rule R277-115 to a Utah student in grades 6-12 who is not a resident student of the LEA and a regularly-enrolled student of the LEA consistent with Sections 53F-4-501 and 53F-4-503.

(b) An LEA program created in accordance with Subsection ([~~18~~]20)(a) for serving students in grades 9-12 online must partner with an accredited school and shall:

(i) report grades and credit earned by a student to the Superintendent; and

(ii) record educator assignments consistent with Rule R277-484.

([~~18~~]20) A program school or program shall:

(a) be accredited consistent with Rule R277-410;

(b) have a designated administrator who meets the requirements of Rule R277-309;

(c) ensure that a student who qualifies for a fee waiver receives services offered by and through the public schools consistent with Section 53G-7-504 and Rule R277-407;

(d) maintain student records consistent with:

(i) the federal Family Educational Rights and Privacy Act, 20 U.S.C. 1232g and 34 CFR Part 99;

(ii) Rule R277-487;

(iii) this rule; and

(e) shall offer course work:

(i) aligned with Utah Core standards as described in Sections 53E-4-202, 53F-4-505, and 53F-4-514;

(ii) in accordance with program requirements; and

(iii) in accordance with Rules R277-700 and R277-404;

(f) [~~shall~~]may not issue transcripts under the name of a third party provider; and

(g) shall record teaching assignments by November 15 annually consistent with Rule R277-484 and Section R277-312-3, either directly or through a partner school in accordance with Subsection ([~~18~~]20)(b).

([~~19~~]21) An LEA that offers an online program or school as a provider under the program:

(a) shall employ only educators licensed in Utah as teachers;

(b) may not employ an individual whose educator license has been suspended or revoked;

(c) shall require employees to meet requirements of Title 53G, Chapter 11, Part 4, Background Checks, before the provider offering services to a student;

(d) may only employ teachers who meet the requirements of Section 53E-6-201, Section 53F-4-504, and Rule R277-309;

(e) for a provider that provides an online course, including to a private or home school student, shall agree to administer and, before approval as an authorized online course provider, have the capacity to proctor and carry out the applicable statewide assessments, consistent with Sections 53E-4-302, 53F-2-103, and Rule R277-404;

(f) in accordance with Section R277-726-8, shall provide services to a student consistent with requirements of the IDEA, Section 504, and Title VI of the Civil Rights Act of 1964 for multilingual students;

(g) shall submit CCAs to the Superintendent before the provider initiating instruction of a student;

(h) may not begin offering instruction to a student until the Superintendent issues a notice of enrollment, and the provider follows other enrollment procedures as prescribed by the Superintendent for the student, and for each course the student participates in; and

(i) shall agree that funds may be withheld by the Superintendent consistent with Sections 53F-4-505, 53F-4-506, 53F-4-508, and 53F-4-518.

([~~21~~]22) A provider shall post required information online on the provider's individual website including required assessment and accountability information.

([~~22~~]23)[~~(a)~~] A provider contracting with a third party to provide educational services to students participating with the provider through the Statewide Online Education Program shall[~~:~~

~~(b)~~] develop a written monitoring plan to supervise the activities and services provided by the third party provider to ensure:

([~~i~~]a) a third party provider is complying with:

([~~A~~]i) federal law;

([~~B~~]ii) state law; and

([~~C~~]iii) Board rules;

([~~ii~~]b) curriculum provided by a third party provider is aligned with the Board's core standards and rules;

([~~iii~~]c) a third party provider has access to curriculum for alignment and adjustment to ensure the curriculum is consistent with the Utah core standards in Rule R277-700 and a Board approved core code;

([~~iv~~]d) supervision of third party facilitation by an educator licensed in Utah:

([~~A~~]i) assigned by the provider; and

([~~B~~]ii) reported as teacher of record per Section R277-484-3 and Subsection R277-726-2(3); and

[~~(iv)~~](e) consistent with the LEA's administrative records retention schedule, maintenance of documentation of the LEA's supervisory activities.

([~~23~~]24) A provider shall offer courses consistent with standards outlined in an applicable Statewide Services Agreement, which may be updated or amended to reflect changes in law, rule, or recommended practice.

([~~24~~]25) All authorized online course providers are subject to the same approval and annual performance review as described for a certified online course provider in [~~Subsections R277-726-(11)(1) through (10)~~]Section R277-726-11 while utilizing the applicable applications for an authorized online course provider described in Subsections R277-726-3(1)(a) and (b).

([~~25~~]26) A provider utilizing a third party shall establish contractual and procedural safeguards:

(a) retaining legal and procedural authority to open coursework to a participating student only upon issuance of a notice of enrollment regarding a particular course and credit;

(b) signifying the provider's authority to interact instructionally with a student not regularly-enrolled in an LEA, but participating in SOEP courses with approval of the student's primary LEA of enrollment; and

(c) including acceptance of financial responsibility by a primary LEA of enrollment.

([~~26~~]27) A provider is not required to independently verify:

(a) early graduation status; or

(b) that high school courses taken through the Statewide Online Education Program did not replace Middle School courses.

(28)(a) A provider shall adhere to requirements to remain certified and in good standing within the program, including:

(b) before providing services to students, ensuring that 100% of all educators assigned as teacher of record for all course sections shall be appropriately licensed, endorsed and aligned with core code describing course assignment; and

(c) complying with requirements applicable to an authorized online course provider described in this Rule R277-726, including the requirement to maintain a course completion rate of at least 80%.

(29) If the Superintendent finds that an authorized online course provider is out of compliance with Subsection (28), the Superintendent shall provide the provider with a list of violations and a reasonable timeline for provider to cure the non-compliance.

(30) If an authorized online course provider fails to correct a violation identified under Subsection (29) within the time provided, the Superintendent may remove the provider from participation in the program.

R277-726-8. Services to Students with Disabilities and other Unique Learning Needs Participating in the Program.

(1)(a) If a student wishes to receive services under Section 504 of the Rehabilitation Act of 1973, the student shall make a request with either the student's primary school of enrollment or a provider.

(b) Responsibility for ensuring a request is evaluated in accordance with federal law, Utah Code, and Board Rule resides with a primary school of enrollment.

(c) If a student's request for services is initially directed to a provider, the provider shall immediately contact the 504 coordinator of the student's primary school of enrollment.

(d) Under the direction of the primary school of enrollment where feasible, the student's primary school of enrollment and the provider shall jointly evaluate a student's request under Subsection (1)(a) and determine if the student is eligible for related aids, accommodations, and services under Section 504.

(e) The provider shall implement the Section 504 plan in accordance with Subsection (1)(d).

(2) If a student's request for services is initially directed to a provider and a good faith effort at cooperation with the student's primary school of enrollment is unsuccessful, the provider may determine student eligibility and provide services.

(3) If a student with an existing Section 504 plan for related aids, accommodations, or services newly enrolls in online courses or requests amendments related to an existing plan for related aids, accommodations, and services:

(a) the primary school of enrollment and the provider shall jointly prepare a Section 504 plan in accordance with Subsection (4); and

(b) the provider shall implement the Section 504 plan and provide related aids, accommodations, and services to the student in accordance with the student's Section 504 plan.

(4) To prepare or amend a 504 plan for related aids, accommodations, and services under Section 504 of the Rehabilitation Act of 1973, the committee evaluating the student shall:

(a) be drawn jointly from the student's primary school of enrollment and the provider; and

(b) include persons knowledgeable about the student, the meaning of the evaluation data, and placement options available in a virtual environment.

(5) If a home or private school student requests services under Section 504 of the Rehabilitation Act of 1973, a provider may determine student eligibility, prepare a 504 plan for the home or private school student's online program, and provide related aids, accommodations, and services.

(6) For a student enrolled in a primary LEA of enrollment, if a student participating in the program qualifies to receive services under the IDEA:

(a) the student's primary LEA of enrollment shall:

(i) forward a copy of an existing IEP or relevant sections to a provider;

(ii) working with a provider LEA representative, review [~~or develop~~]and determine implementation of an IEP for the student within [~~ten days of enrollment~~]a timeline consistent with IDEA requirements;

([~~ii~~]iii) working with a provider LEA representative, [~~update~~]review and revise, as the IEP determines appropriate an existing IEP with necessary accommodations and services, considering the courses selected by the student;

([~~iii~~]iv) provide the IEP described in Subsection (6)(a)(i) to the provider within [~~72~~]24 business hours of completion of the student's IEP or within a timeline consistent with IDEA requirements; and

([~~iv~~]v) continue to claim the student in the primary LEA of enrollment's membership; and

(b) the provider shall provide special education services and accommodations to the student in accordance with the student's IEP[~~described in Subsection (6)(a)(i)~~].

(7) If a home or private school student requests an evaluation for eligibility to receive special education services:

(a) the home or private school student's resident school shall:

(i) evaluate the student's eligibility for services under the IDEA;

(ii) if eligible, the student may enroll in the LEA that will prepare an IEP for the student, with input from the provider LEA, in accordance with the timelines required by the IDEA;

(iii) provide the IEP described in Subsection (7)(a)(ii) to the provider within 72 business hours of completion of the student's IEP; and

(b) the provider shall provide special education services and accommodations to the student in accordance with the student's IEP described in Subsection (7)(a)(i) including in cases where the provider utilizes a third party provider for delivery of educational or other services.

(8)(a) A provider shall implement a Section 504 plan for an eligible student as directed by the primary LEA or school of enrollment.

(b) If a student with an existing Section 504 plan newly enrolls in online courses or requests amendments to an existing plan, the primary school of enrollment and the provider, working jointly, shall prepare a revised Section 504 plan, as appropriate.

(c) If the student's request for services is initially directed to a provider and a good faith effort at cooperation with the student's primary school of enrollment is unsuccessful, the provider may determine student eligibility and provide services.

(d) When preparing or amending a Section 504 plan, the evaluation committee shall include individuals from the student's primary school of enrollment and the provider, including persons knowledgeable about the student, the meaning of the evaluation data, and placement options available in a virtual environment.

(9)(a) A provider shall administer a home language survey upon initial student registration.

(b) If a provider suspects that a student qualifies for alternative language services or other Title III services, a provider shall contact the Title III Coordinator at the student's primary LEA or primary school of enrollment.

(c) A provider shall implement an individual learning plan as directed by the primary LEA or primary school of enrollment for a student who is eligible for alternative language services of Title II services.

(10) For a student needing alternative language services, who is multilingual, an immigrant, or a refugee:

(a) the provider and the primary LEA or primary school of enrollment shall develop an individual learning plan in cooperation with persons knowledgeable about the student, the meaning of the evaluation data, and the placement options available for the student in a virtual environment, which outline a student's current level of ability, and identifies specific goals for future attainment, progress, and exit criteria ;

(b) the primary LEA or primary school of enrollment shall identify the need for alternative language services through administration of a home language survey and WIDA testing; and

(c) the primary LEA or primary school of enrollment shall administer a language instruction Educational Program in which a student learning English is placed for developing and attaining English proficiency, while meeting state standards.

R277-726-9. Limited Appropriations for Special Populations.

(1) The Superintendent shall allocate the annual appropriation for home and private school tuition, along with any carryover or unobligated funds.

(2) The Superintendent shall distribute funds appropriated to the Statewide Online Education Program to support students from small high schools, home schools, or private schools based on the needs of the eligible students.

(3)(a) Subject to legislative appropriations available for this purpose, for each public high school with a student population of less than 1,000 students, the Superintendent shall incentivize program use by small schools by prioritizing small schools to the extent of funding available for this purpose.

(b) The Superintendent shall carry forward unallocated funds to meet the needs of eligible students.

(4) The Superintendent shall determine student and LEA eligibility using prior-year UTREx end of year data.

R277-726-10. Other Information.

(1) A primary school of enrollment shall communicate with a provider, where necessary, to set reasonable timelines and standards and shall inform providers of timelines necessary for reporting grades and credit for graduating seniors.

(2) A provider shall adhere to timelines and standards described in Subsection (1) for student grades and enrollment in online courses for purposes of:

(a) school awards and honors;

(b) Utah High School Activities Association participation; and

(c) high school graduation.

(3) If a student is at risk of academic failure or at risk of not graduating with the student's graduation cohort, a provider shall utilize automated notices or other means to:

(a) inform counselors at the student's primary school of enrollment that student is at risk of academic or other failure; and

(b) before quarter 4 a student's senior school year, inform counselors at the student's primary school of enrollment that the senior student is at risk of failure.

R277-726-11. Certified and Authorized Online Course Provider Application Approval, Program Requirements, and Fees.

(1) An entity other than an authorized online course provider may become a certified online course provider if the entity submits an application on a form provided by the Superintendent.

(2) An entity shall submit an application on or before the annual deadline established by the Superintendent.

(3) The Superintendent shall review each application within a reasonable amount of time and may invite prospective providers for interviews or further discussion of qualifications to clarify outstanding issues.

(4) If the Superintendent finds the application submitted is satisfactory, including a demonstration of the entity's ability to adhere to requirements within the application, this rule, and state law, the Superintendent shall forward the application to the Board for final approval.

(5) Once approved by the Board, an entity shall become a certified online course provider.

(6) A certified online course provider shall adhere to the following requirements to remain certified and in good standing within the program, including:

(a) complying with a process within existing state systems to provide the Superintendent with the provider's educator's licensing, endorsement, certification, and assignment information;

(b) if the provider's educator is teaching an online course for the provider, the educator's online course assignments shall be listed in CACTUS or USIMS under an employing school;

(c) if an authorized online course provider that is not a certified online course provider forwards an educator to the Board for a provider-specific license [-]as described in Sections 53F-4-514 and 53E-6-201, the educator's employment and online course assignments shall be listed in CACTUS or USIMS;

(d) before providing services to students, 100% of the provider's educators assigned as teacher of record for all course sections shall be appropriately licensed and endorsed for any course assignment as required in Rule R277-309;

(e) requirements applicable to an online course provider described in this rule, including the requirement to maintain a course completion rate of at least 80%;

(f) additional requirements prescribed in the application; and

(g) state laws applicable to an online course provider, including Sections 53F-4-501 et. seq. and Sections 53F-4-504 and 53F-4-514.

(7) If the Superintendent finds the certified online course provider is not in compliance with any requirement as outlined in Subsection (6) [~~of this part,~~]the Superintendent shall provide the certified online course provider with a list of non-compliance issues and a reasonable timeline for the certified online course provider to cure the instances of non-compliance.

(8) If a certified online course provider fails to correct instances of non-compliance within the allotted timeline as described in Section 53F-4-504, the certified online course provider shall be removed from the program.

(9) A certified online course provider that has been removed from the program may apply in the application round following removal from the program for re-admission to the program using an application provided by the Superintendent.

(10) A certified online course provider shall remit fees to the Superintendent for participation in the program as follows:

(a) 5% of revenue collected for the first $200,000 received pursuant to Section 53F-4-505; and

(b) 1% of revenue collected after the first $200,000 received pursuant to Sections 53F-4-505 and 53F-4-514.

R277-726-12. Online Concurrent Enrollment.

For a student enrolled in a concurrent enrollment course through an SOEP provider, to the extent there is a conflict between this rule and Title 53F, Chapter 4, Part 5, Statewide Online Education Program, and Title 53E, Chapter 10, Part 3, Concurrent Enrollment, the concurrent enrollment code provisions shall govern.

KEY: statewide online education program
Date of Last Change: 2024[~~August 8, 2023~~]
Notice of Continuation: January 13, 2022
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53F-4-510; 53F-4-514; 53E-3-401

NOTICE OF SUBSTANTIVE CHANGE		
TYPE OF FILING: New		
Rule or Section Number:	**R277-730**	**Filing ID: 56579**

Agency Information

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

General Information

2. Rule or section catchline:
R277-730. Kindergarten Programs
3. Purpose of the new rule or reason for the change:
This rule is being created due to the passage of H.B. 517 during the 2024 General Session, which requires the Utah State Board of Education (USBE) to set minimum standards for half-day kindergarten options.
4. Summary of the new rule or change:
This new rule defines half-day kindergarten options and half-day kindergarten class requirements. In addition, this rule defines "Minimum Standards" as prioritizing mathematics and English language arts. This rule also clarifies that Local Education Agencies (LEA) must define a period of "priority registration" and must clearly communicate the kindergarten options available to parents.

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 Utah State Board of Education (USBE) believes that the fiscal impacts for the USBE and Local Education Agencies (LEA) were captured in the fiscal note to H.B. 517 (2024) and the rule does not add impacts outside those captured by the fiscal note.

B) Local governments:

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

The USBE believes that the fiscal impacts for the USBE and LEAs were captured in the fiscal note to H.B. 517 (2024) and the rule does not add impacts outside those captured by the fiscal note.

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 USBE believes that the fiscal impacts for the USBE and LEAs were captured in the fiscal note to H.B. 517 (2024) and the rule does not add impacts outside those captured by the fiscal note.

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 USBE believes that the fiscal impacts for the USBE and LEAs were captured in the fiscal note to H.B. 517 (2024) and the rule does not add impacts outside those captured by the fiscal note.

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

Regulatory Impact Table

Fiscal Cost	**FY2025**	**FY2026**	**FY2027**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0

Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits	**FY2025**	**FY2026**	**FY2027**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
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 regulatory impact analysis.

Citation Information

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

Article X, Section 3	Section 53G-7-203	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:	07/31/2024

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

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

Agency Authorization Information

Agency head or designee and title:	Angie Stallings, Deputy Superintendent of Policy	**Date:**	06/14/2024

R277. Education, Administration.
R277-730. Kindergarten Programs.
R277-730-1. Authority, Purpose, and Oversight Category.

(1) This rule is authorized by:

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

(b) Subsection 53E-3-401(4), which permits the Board to make rules to execute the Board's duties and responsibilities under the Utah constitution and state law; and

(c) Section 53E-3-401, which requires the Board to establish rules regarding the administration of kindergarten standards.

(2) The purpose of this rule is to establish minimum standards for half-day kindergarten programs in the state.

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

R277-730-2. Definitions.

(1) "Full Curriculum half-day" means the minimum standards required to be covered in a half-day kindergarten option.

(2) "Half-Day Kindergarten Option" means a structure within a kindergarten program that allows for enrollment in half-day kindergarten and may include:

(a) a half-day kindergarten class; or

(b) an option in which a student participates in a portion of a full-day kindergarten class.

(3) "Half-Day Kindergarten Student" means a student who is enrolled in a half-day kindergarten option and generates a .55 Weighted Pupil Unit (WPU) for the LEA.

(4) "Half-day kindergarten class" means a half-day kindergarten class dedicated to serving half-day kindergarten students exclusively.

(5) "Minimum standards" means the state-approved standards for content areas of English language arts and mathematics and recommended inclusion of other content area standards to the fullest extent possible.

(6) "Regional School" means a neighboring school within a district LEA's region.

(7) "Registration" means the timeline an LEA has established and communicated out to their community for priority kindergarten registration.

R277-730-3. Half-Day Kindergarten Options.

(1) Each LEA shall provide and communicate half-day kindergarten options during the time of priority registration and after priority registration for a parent wanting to enroll the parent's child in a half-day option.

(2) The curriculum of a half-day kindergarten option shall align with the minimum standards for kindergarten as defined in Subsection R277-730-2(5).

(3) An LEA's half-day kindergarten options may include:

(a) a half-day option within a full-day kindergarten program; or

(b) a half-day kindergarten class.

(4) An LEA shall offer a half-day kindergarten class when 19 or more students enroll as half-day kindergarten students during the LEA's designated priority registration within the students' boundary school or regional school within the LEA.

(5) Nothing in this subsection prohibits an LEA from offering a half-day kindergarten class outside of the requirements listed in this rule.

R277-730-4. Registration and Parental Notice.

(1) LEAs shall establish a deadline for priority kindergarten registration and clearly communicate that out to the LEA's community by email, posters, or other announcements.

(2) LEAs shall provide clear and comprehensive information to parents or guardians about the available kindergarten options within the LEA during the time of registration.

(3) The information described in Subsection (2) shall include:

(a) a description of the different kindergarten options available, including half-day and full-day kindergarten options;

(b) a typical daily schedule for each option; and

(c) any additional educational resources or opportunities available to parents who select the half-day kindergarten option.

(4) An LEA shall use multiple methods of communication to ensure all parents or guardians receive the information.

(5) The methods described in Subsection (4) may include printed materials, electronic communications, and in-person meetings.

(6) An LEA shall provide information described in this section in languages prevalent in the school community to ensure access by all parents or guardians.

(7) An LEA shall communicate kindergarten options in accordance with Rule R277-217.

KEY: Kindergarten, Half-day option
Date of Last Change: 2024
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-401(4); 53G-7-203

NOTICE OF SUBSTANTIVE CHANGE		
TYPE OF FILING: Amendment		
Rule or Section Number:	**R277-800**	**Filing ID: 56580**

Agency Information

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

General Information

2. Rule or section catchline:
R277-800. Utah Schools of the Deaf and Blind

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

This rule is being amended to make necessary updates to the Utah Schools of the Deaf and Blind (USDB) fiscal procedures.

4. Summary of the new rule or change:

The amendments specifically assign an oversight category, remove a budgetary carry forward limitation, and provide an opportunity for hearing siblings to attend the school for the deaf.

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 this rule. This categorization does not add any requirements or resources in and of itself for USBE or Local Education Agencies (LEA).

The fiscal procedure changes apply to the USDB and allow for greater flexibility in the use of carryforward funds. This will not add costs or savings but allow for additional budgetary flexibility for the USDB.

Additionally, an opportunity for hearing siblings to attend is added with no funding changes for USDB. This is not estimated to have a measurable cost or savings for the USDB and the school can disallow the student to attend if it is not beneficial for the student or the school.

There are no measurable increased costs because this will not add teachers or aides or specialized services for the non hearing impaired sibling student.

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 for the USBE or LEAs.

The changes for the USDB do not apply 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, the USDB, and LEAs.

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

There are no compliance costs for affected persons.

The oversight framework categorization is part of the 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 this rule. This categorization does not add any requirements or resources in and of itself for the USBE or LEAs.

The fiscal procedure changes apply to the USDB and allow for greater flexibility in the use of carryforward funds. This will not add costs or savings but allow for additional budgetary flexibility for the USDB.

Additionally, an opportunity for hearing siblings to attend is added with no funding changes for the USDB. This is not estimated to have a measurable cost or savings for the USDB and the school can disallow the student to attend if it is not beneficial for the student or the school.

There are no measurable increased costs because this will not add teachers or aides or specialized services for the non hearing impaired sibling student.

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

Regulatory Impact Table

Fiscal Cost	**FY2025**	**FY2026**	**FY2027**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits	**FY2025**	**FY2026**	**FY2027**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
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 regulatory impact analysis.

Citation Information

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

Article X, Section 3	Subsection 53E-3-401(4)	Section 53E-8-204
Section 53E-8-402	Section 53E-8-409	

Public Notice Information

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

A) Comments will be accepted until:	07/31/2024

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

Agency Authorization Information

Agency head or designee and title:	Angie Stallings, Deputy Superintendent of Policy	**Date:**	06/14/2024

R277. Education, Administration.
R277-800. Utah Schools for the Deaf and the Blind.
R277-800-1. 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) Section 53E-8-204 which authorizes the Board to make rules regarding the administration of the Utah Schools for the Deaf and the Blind;

(c) Section 53E-8-402, which directs the Board to establish entrance policies and procedures to be considered, consistent with the IDEA, for student placement recommendations at the USDB;

(d) Section 53E-8-409, which directs the Board to establish the USIMAC and outline collaboration and operating procedures for USIMAC and USDB resources; and

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

(2) The purpose of this rule is to provide standards and procedures for the operation of the USDB and the USDB outreach programs and services.

(3) This Rule R277-800 is categorized as Category 4 as described in Rule R277-111.

R277-800-2. Definitions.

(1) "Accessible media producer" means a company or agency that creates fully-accessible, specialized, student-ready formats for curriculum materials, such as:

(a) Braille;

(b) large print;

(c) audio[-]books; or

(d) digital books.

(2)(a) "Assessment" means the process of documenting, usually in measurable terms, knowledge, skills, attitudes, and abilities pertaining to the fields of vision and hearing.

(b) An assessment may include the following areas of focus:

(i) a valid, reliable and appropriate assessment given to determine eligibility for placement and services by a team of qualified professionals and a student's parent or guardian;

(ii) a functional assessment accomplished by observation and measurement of daily living skills and functional use of vision or hearing, or both; and

(iii) academic evaluations as part of the Statewide School Accountability System, including an alternate assessment with appropriate accommodations as indicated on a student's IEP.

(3)(a) "Campus-based program" means a program provided by USDB that offers an alternative to an outreach program for students, ages three to 22, who are blind or visually impaired, deaf or hard of hearing, or deafblind.

(b) Under a campus-based program, services are provided by qualified USDB staff at a USDB site.

(4)(a) "The Chafee Amendment to the Copyright Act" or the "Chafee Amendment" is a federal law, 17 U.S.C. 121, that allows an authorized entity to reproduce or distribute copyrighted materials in specialized formats for students who are blind or have other print disabilities without the need to obtain permission of the copyright owner.

(b) Authorized entities under the Chafee Amendment include governmental or nonprofit organizations that have a primary mission to provide copyrighted works in specialized formats for students who are blind or have other print disabilities.

(5) "Child Find" means activities and strategies designed to locate, evaluate, and identify individuals eligible for services under the IDEA.

(6) "Consultation" means a meeting for discussion or seeking advice.

(7) "Designated LEA" means the local education agency assigned by a student's IEP or Section 504 team to have primary responsibility for ensuring that all rights and requirements regarding individual student assessment, eligibility services, and procedural safeguards are satisfied consistent with the IDEA.

(8) "Deafblindness" or "deafblind" means written verification provided by a medical professional stating that an individual has concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for students with deafness or students with blindness.

(9) "Deafness" is a hearing impairment that is so severe that the student is impaired in processing linguistic information through hearing, with or without amplification, and that adversely affects a student's educational performance.

(10) "Educational Resource Center" or "ERC" is a center under the direction of the USDB that:

(a) provides information, technology, and instructional materials to assist children who are deaf, hard of hearing, blind, visually impaired, and deafblind in progressing in the curriculum; and

(b) facilitates access to materials, information, and training for teachers and parents of children who are deaf, hard of hearing, blind, visually impaired, and deafblind.

(11) "Extension classroom" means a classroom provided by an LEA where USDB provides a full-time classroom teacher and related services to students who remain enrolled in the LEA's general education programs.

(12) "Hearing loss" is an impairment in hearing, whether permanent or fluctuating, that adversely affects a student's educational performance, but that is not included under the definition of deafness.

(13) "National Instructional Materials Access Center" or "NIMAC" is a central national repository that receives file sets in the NIMAS from publishers to maintain, catalog, and house for future reference file sets for states to use with students who have print disabilities and require accessible alternate formats.

(14) "National Instructional Materials Accessibility Standard" or "NIMAS" means the electronic standard that enables all producers of alternate formats for students with print disabilities to work from one standard format available from publishers for this purpose.

(15)(a) "Outreach program" is a program provided by the USDB that offers an alternative to a campus-based program for students ages three to 22 who are blind or visually impaired, deaf or hard of hearing, or deafblind.

(b) In an outreach program, services are provided at a student's resident school or at a designated school by a qualified teacher of the blind or visually impaired, deaf or hard of hearing, or deafblind.

(16)(a) "Related services" means transportation and such developmental, corrective, and other supportive services as are required to assist a student with disability to benefit from special education.

(b) Related services may include:

(i) speech-language pathology services;

(ii) audiology services;

(iii) interpreting services;

(iv) psychological services;

(v) physical and occupational therapy;

(vi) recreation, including therapeutic recreation;

(vii) early identification and assessment of disabilities in students;

(viii) counseling services, including rehabilitation counseling;

(ix) orientation and mobility services;

(x) health services and school nursing services;

(xi) social work services in schools;

(xii) parent counseling and training; or

(xi) low vision services.

(17) "Section 504 accommodation plan" means a plan required by Section 504 of the Rehabilitation Act of 1973, which is designed to accommodate an individual who has been determined, as a result of an evaluation, to have a physical or mental impairment that substantially limits one or more major life activities.

(18) "Technical assistance" means assistance to public education employees, licensed educators, parents, and families in significant areas of need by someone who has the expertise necessary to give council and training in designated areas.

(19) "Utah State Instructional Materials Access Center" or "USIMAC" means a center that receives NIMAS electronic file sets and produces them in the accessible alternate format required by students with print disabilities.

(20)(a) "Visual impairment," is an impairment in vision that, even with correction, adversely affects a student's educational performance.

(b) "Visual impairment" includes both partial sight and blindness that adversely affect a student's educational performance.

(21) "Weighted pupil unit" or "WPU" means the basic unit used to calculate the amount of state funds for which a school district or charter school is eligible.

R277-800-3. Operation of USDB.

(1) Consistent with Section 53E-8-204, the Board is the governing board of the USDB.

(2) The USDB superintendent, appointed consistent with Subsection 53E-8-204(2), is subject to the direction of the Board and the Superintendent.

(3) The USDB superintendent shall serve subject to the following:

(a) the USDB superintendent's term of office is for two years and until a successor is appointed;

(b) the Board shall set the USDB superintendent's compensation for services;

(c) the USDB superintendent shall have, at a minimum, an annual evaluation, as directed by the Board;

(d) the USDB superintendent qualifications shall be established by the Board; and

(e) the duties of the USDB superintendent shall be established by the Board.

(4) The Superintendent shall support, provide assistance, and work cooperatively with the USDB in providing services to designated Utah students.

(5) The Superintendent shall assign a liaison to provide appropriate supervision to the USDB to ensure compliance with the law.

(6) The Superintendent shall assist the USDB, its superintendent, and associate superintendents in adopting policies and preparing an annual budget that are consistent with the law.

(7) The Board shall approve the annual budget and expenditures of USDB.

(8)(a) The USDB superintendent shall, subject to the approval of the Board, appoint an associate superintendent to administer the Utah School for the Deaf and an associate superintendent to administer the Utah School for the Blind.

(b) Qualifications of a USDB associate superintendent shall be aligned with the requirements of Section 53E-8-204.

(9)(a) The USDB superintendent and associate superintendents may hire staff and teachers as needed for the USDB.

(b) Educators and related service providers shall be appropriately licensed and credentialed for their specific assignments.

(10) In employment practices and decisions, the USDB superintendent shall maintain the accreditation of the USDB school and programs.

(11) The USDB superintendent and associate superintendents shall communicate regularly and effectively with the Board and provide a written report to the Board at least annually in adequate time before the November legislative interim meeting, or at such other time as requested by the Board.

(12) The USDB report shall include the data required by Subsection 53E-8-204(6).

(13) USDB shall ensure that each child or student served by USDB is assigned a unique student identifier (SSID) to allow for annual data collection and reporting of achievement of current and past students.

(14) USDB shall provide the Superintendent with a listing of past and current children or students, including the assigned unique student identifier, served by USDB by September 1 of each year to facilitate the required data collection.

(15) The USDB Advisory Council shall fulfill the role of a school community council in accordance with Section R277-477-3.

R277-800-4. USDB or Student's District of Residence[/] or Charter School as Designated LEA.

(1) To be eligible to receive free services from the USDB, a student must meet the requirements of Section 53E-8-401.

(2)(a) A student's IEP or Section 504 accommodation plan shall determine a student's placement at the USDB, in a district school or charter school.

(b) USDB shall limit its services for students who are school-age to those on an IEP or Section 504 accommodation plan.

(3) Consistent with Subsection 53E-8-401(3), an IEP team or Section 504 team shall determine the appropriate placement for each blind, deaf, or deafblind student consistent with Board Special Education Rules incorporated by reference in Section R277-750-2.

(4)(a) It is the responsibility of the student's district of residence or charter school to conduct Child Find, and to convene the initial IEP or Section 504 team meeting to determine a student's placement.

(b) A student's initial IEP or Section 504 accommodation plan meeting shall include a representative from the student's district of residence or charter school and a representative from the USDB.

(5)(a) If USDB is the designated LEA for a student, USDB has full responsibility for all services defined in the student's IEP or Section 504 accommodation plan.

(b) Notwithstanding USDB's designation as LEA for a student, a representative from the district of residence or charter school remains a required member of the IEP or Section 504 accommodation plan team.

(6) If a district of residence or charter school is the LEA designated to provide services to a student with an IEP or Section 504 accommodation plan, the district of residence or charter school has the responsibility for providing instruction and services for the student except that the USDB:

(a) may be designated by the team as a related service provider; and

(b) remains a required member of the student's IEP or 504 accommodation plan team.

(7) A student's IEP or Section 504 accommodation plan shall clearly define what services are to be provided by a related service provider.

(8) The IEP or Section 504 accommodation plan team shall determine the designated LEA for student placement.

(9) If a parent is dissatisfied with a student's placement at USDB, the student's district of residence, or charter school, the parent may access dispute resolution procedures, consistent with Utah State Board of Education Special Education Rules, adopted by the Board in Section R277-750-2

(10) If a student's IEP or Section 504 accommodation plan provides for services to be provided by both the USDB and the student's district of residence, or for the USDB and district of residence to share responsibility for serving a student, a parent may access dispute resolution procedures consistent with Utah State Board of Education Special Education Rules, adopted by the Board in Section R277-750-2.

R277-800-5. Assessment of USDB Students Served in LEAs of Residence.

(1) An appropriate specialist shall assess a student who may be deaf, hard of hearing, blind, visually impaired, or deafblind using statewide assessment results and in compliance with Board rule and state and federal law.

(2) The USDB shall establish an assessment policy and guidelines to implement required assessments, which address:

(a) appropriate, complete, and timely evaluations of students;

(b) procedures for administration of assessments in addition to those required by the law, as determined by IEPs, Section 504 accommodation plans, and individual teachers;

(c) complete and accurate required assessments available to eligible students consistent with state and LEA assessment timelines and availability of materials for non-disabled students;

(d) staff professional development and preparation on appropriate administration of assessments and reporting of assessment results; and

(e) procedures to ensure appropriate interpretation and use of assessments and results for parents and USDB personnel.

R277-800-6. Extension Classrooms.

(1) The USDB and an LEA may negotiate to share the costs for providing more efficient, cost-effective, and convenient services to students who are deaf, blind, or deafblind in extension classrooms in locations other than the USDB campus.

(2) If the USDB and an LEA enter into an agreement in accordance with Subsection (1), the LEA shall provide:

(a) classrooms;

(b) basic instructional materials;

(c) physical education, music, media, school lunch, and other programs and services, consistent with those programs and services provided to other students within the LEA;

(d) administrative support;

(e) basic secretarial services;

(f) special education and related services; and

(g) IT support.

(3) If the USDB and an LEA enter into an agreement in accordance with Subsection (1), the USDB shall provide:

(a) classroom instructors, including aides; and

(b) instructional materials specific to the disability of the students.

(4) An agreement pursuant to Subsection (1) may reassign the responsibilities of the USDB and a school district or charter school as negotiated between the LEA and the USDB.

(5) An LEA shall claim the state WPU if the LEA provides all items or services identified in Subsection (2).

R277-800-7. USDB Fiscal Procedures.

(1) The USDB shall keep fiscal, program, and accounting records as required by the Board and shall submit reports required by the Board.

(2) The USDB shall follow state standards for fiscal procedures, auditing, and accounting, consistent with Subsection 53E-8-203(3).

(3) The USDB is a public state entity under the direction of the Board and as such is subject to state laws and exemptions consistent with Section 53E-8-203.

[~~(4)(a) The USDB shall prepare and present an annual budget to the Board that includes no more than a 5% carryover of any one fund, including reimbursement funds from federal programs.~~

~~(b) The five percent carryover prohibition does not apply to funds received under Section 53F-2-404 and Section 12 of the Utah Enabling Act.~~

] ([~~5~~]4)(a) The Superintendent shall recover federal reimbursement funds, [(]IDEA, and Medicaid[~~)~~] quarterly during the year.

(b) The Superintendent shall identify reimbursement amounts in the current year's budget, but in no event later than the subsequent year's budget.

([~~6~~]5)(a) The USDB shall use the revenue from the federal trust land grant designated for the benefit of the blind and the deaf, solely for the benefit of deaf, blind, and deafblind students.

(b) The recommended or designated use of federal trust land funds is subject to review by the Board.

R277-800-8. Utah State Instructional Materials Access Center.

(1) USIMAC shall produce core educational materials, including print and digital textbooks and related core materials, in accessible formats to ensure that all students eligible under the Chafee Amendment receive their materials in a timely manner.

(2) The Superintendent shall oversee the operations of the USIMAC.

(3) The USDB is the fiscal agent and operates the USIMAC to the extent of funds received annually from budgetary appropriations.

(4) An LEA may purchase or provide accessible educational materials from another source using the LEA's own funding or request the production of accessible educational materials in accessible formats from USIMAC in accordance with established procedures to ensure timely access for eligible students.

(5)(a) USIMAC shall provide a textbook and related core educational materials in an accessible format by the beginning of the school year if requested no later than April 1 of the preceding school year by an LEA.

(b) Notwithstanding Subsection (5)(a), if an LEA requests educational materials in [~~b~~]Braille, USIMAC will provide the first three volumes of a textbook by the beginning of the school year, and will provide additional volumes ahead of the pacing guide submitted by the LEA.

(6) The USDB Educational Resource Center shall serve as the repository and distribution center for USIMAC.

(7) A student is eligible for accessible educational materials from USIMAC, including Braille, audio, large print, or accessible PDFs, following an LEA determination that the student is eligible in accordance with:

(a) the Chafee Amendment;

(b) IDEA; or

(c) Section 504 of the Rehabilitation Act.

(8) An LEA may request textbooks consisting of static text and images for eligible students served by the USDB or the LEA consistent with a student's IEP or Section 504 accommodation plan.

(9) When an LEA requests a core instructional textbook, USIMAC may:

(a) provide the textbook to the LEA from its existing inventory;

(b) purchase the textbook and provide the textbook to the LEA from another source, which may include;

(i) the American Printing House for the Blind using state acquired federal funds designated specifically for USIMAC materials; or

(ii) another accessible media producer; or

(c)(i) provide a regular hard print copy of the textbook, or equivalent digital file in PDF format for digital print textbooks; and

(ii) produce and distribute the textbook in the needed accessible format.

(10)(a) An LEA or publisher shall send hard copy and digital textbooks and related core educational materials adopted by the LEA to the NIMAC in a valid XML-based NIMAS format for use in the production of accessible formats such as [~~b~~]Braille, large print, and digital text.

(b)(i) Teacher-created educational materials, other than textbooks and related educational materials approved by an LEA, are not eligible for submission to USIMAC.

(ii) An LEA is responsible to make materials described in Subsection (b)(i) accessible and to provide the materials to students in a timely manner.

(11)(a) All approved textbook and digital textbook contracts for the state of Utah for educational materials, textbooks, and related core printed materials shall include a provision for making NIMAS file sets available through the NIMAC in accordance with the IDEA and Board Instructional Materials Contract timelines.

(b) If USIMAC [~~is unable to~~]cannot obtain the NIMAS file set from the NIMAC because the publisher fails to timely provide the NIMAS file set to the NIMAC in accordance with the IDEA and Board Instructional Materials Contract timelines, USIMAC may:

(i) bill the textbook publisher the difference in the cost of producing the alternate format textbook without the benefit of the NIMAS file set; or

(ii) request authorization from the Board to seek damages from the publisher for failure to meet contract provisions.

(c) The Superintendent shall advise publishers of the provisions of this Subsection (11).

(d) The Utah Instructional Materials Commission created under Rule R277-469 may not approve textbooks and materials from publishers that have a pattern of not providing materials and textbooks for students with disabilities in a timely manner, consistent with the law and Board rules.

(12)(a) An LEA may request and access audio[-]books through USIMAC, as appropriate, or through other sources.

(b) Membership required for other sources is the responsibility of the LEA designated as the responsible entity for serving the student in the IEP or Section 504 accommodation plan.

R277-800-9. Enrollment of Siblings.

(1) USDB may enroll the sibling of a student who is deaf subject to the considerations set forth in this Section R277-800-9.

(2) A hearing sibling attending USDB retains all rights of a traditional public school student.

(3) Enrollment of a hearing sibling is limited to:

(a) siblings of students who are enrolled in a campus program; and

(b) one hearing sibling per class.

(4) The USDB Superintendent shall evaluate the enrollment of a hearing sibling, including:

(a) whether enrollment of the hearing sibling would be a benefit to:

(i) the student who is deaf;

(ii) the hearing sibling; and

(iii) the other students in the deaf program; and

(b) whether the hearing sibling has a record of behavior problems or other conditions that would impede the development of the students who are deaf or hard of hearing.

(5) If a parent enrolls a hearing sibling at USDB, the parent shall agree at the time of registration:

(a) that enrollment for the hearing sibling is within the discretion of the school and may be rescinded at any time with or without cause; and

(b) that the hearing sibling knows or is willing to learn American Sign Language and embrace the Deaf culture while at school.

KEY: educational administration
Date of Last Change: 2024[~~June 7, 2023~~]
Notice of Continuation: August 19, 2021
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-401(4); 53E-8-204; 53E-8-402; 53E-8-409

NOTICE OF SUBSTANTIVE CHANGE		
TYPE OF FILING: Amendment		
Rule or Section Number:	**R277-926**	**Filing ID: 56581**

Agency Information

1. Title catchline:	Education, Administration
Building:	Board of Education
Street address:	250 E 500 S
City, state:	Salt Lake City, UT

Mailing address:	PO Box 144200	
City, state and zip:	Salt Lake City, UT 84114-4200	
Contact persons:		
Name:	**Phone:**	**Email:**
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule or section catchline:

R277-926. Certification of Residential Treatment Center Special Education Program

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

Staff reviewed Rule R277-926 in conjunction with its five-year review. Staff recommended removal of an outdated requirement for Residential Treatment Center (RTC) approvals.

4. Summary of the new rule or change:

The amendments specifically assign an oversight category and update the certification requirements for RTCs.

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 USBE or Local Education Agencies (LEA).

The changes remove a reference to applications before 2020 and do not change current practices and therefore do not impact the USBE or RTCs.

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

The RTC updates do not affect 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 RTCs.

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

The changes remove a reference to applications before 2020 and do not change current practices and therefore, do not impact the USBE or RTCs.

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

The changes remove a reference to applications before 2020 and do not change current practices and therefore, do not impact the USBE or RTCs.

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

Regulatory Impact Table			
Fiscal Cost	**FY2025**	**FY2026**	**FY2027**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits	**FY2025**	**FY2026**	**FY2027**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
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 regulatory impact analysis.

Citation Information

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

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

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:	07/31/2024

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

Agency Authorization Information

Agency head or designee and title:	Angie Stallings, Deputy Superintendent of Policy	**Date:**	06/14/2024

R277. Education, Administration.
R277-926. Certification of Residential Treatment Center Special Education Program.
R277-926-1. Authority, [~~and~~]Purpose, and Oversight Category.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision of public education in the Board; 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 [~~S~~]state[~~ of Utah~~] law.

(2) The purpose of this rule is to provide a certification process and procedure for residential treatment centers where IEP teams place [~~an~~]in-state or out-of-state special education students for purposes of receiving a free and appropriate public education.

(3) This Rule R277-926 is categorized as Category 4 as described in Rule R277-111.

R277-926-2. Definitions.

(1) "Nonsectarian" means a nonpublic school or agency that is not owned, operated, controlled by, or formally affiliated with a religious group or sect, whatever might be the actual character of the education program or the primary purpose of the facility.

(2)(a) "Residential Treatment Center" or "RTC" means a private, or nonsectarian establishment that provides related services necessary for a student with special needs to benefit educationally from the student's IEP.

(b) "Residential Treatment Center" or "RTC" does not include an organization or agency that operates as a public agency or offers public service, including:

(i) a state or local agency;

(ii) an affiliate of a state or local agency including:

(A) a private, nonprofit corporation established or operated by a state or local agency;

(B) a public university or college; or

(C) a public hospital.

(3) "Qualified personnel" means an in-classroom staff member who:

(a) provides assistance with a student's education;

(b) has met requirements for federal and state certification and licensing requirements that apply to the area in which the staff member is providing services, including [~~board approved~~]Board or Utah Department of Professional Licensing requirements; and

(c) actively adheres to the standards of professional practice established in federal and [~~State of Utah~~]state law [~~or~~]and regulation.

R277-926-3. Certification of a Residential Treatment Center.

(1) An RTC shall have the RTC's special needs program certified by the Superintendent before providing services for a free and appropriate public education to in-state or out-of-state students with special education needs and a current IEP from an LEA.

(2) An RTC seeking certification shall apply for an initial or renewal certification in a form prescribed by the Superintendent.

(3) An RTC's application shall include:

(a) a detailed description of the RTC's general and special education program provided, including:

(i) minimum instructional minutes for each grade level served;

(ii) specially designed instruction and related services;

(iii) evidence of age-[-]appropriate core curriculum that aligns with the Utah core standards or aligns with the core standards of the student's state of origin;

(iv) for grades K-8, evidence showing the use of at least one resource, including a textbook or curricular program, adopted by the student's state of origin or Utah for each core standard subject;

(v) for grades 9-12, evidence showing alignment of curriculum for core standard subjects with an LEA's curriculum in Utah or the student's state of origin;

(b) evidence, including educator licenses of qualified personnel for each subject area including:

(i) English language arts;

(ii) Math;

(iii) Science;

(iv) Special Education; and

(v) Related services.

(c) documentation of training implementation and supervision in a special education program of paraprofessionals as described by the Special Education Rules Manual incorporated by reference in Rule R277-750;

(d) an assurance that each student, aged 14 years and above, has a transition plan as described in Subsection R277-926-4(3)(b);

(e) evidence that an RTC is collaborating with a student's LEA of origin's fully constituted IEP team to:

(i) carry out the specific requirements of the student's IEP, including the general requirements described in Subsection R277-926-4(3)(b);

(ii) facilitate an annual IEP review; and

(iii) when necessary, participate in the student's triennial evaluation, including:

(A) an outlined process for the evaluation;

(B) the ability to allow on-site accessibility to third parties required for evaluation participation; and

(C) collaborate with the LEA of origin for the administration of the assessment.

(f) a description of the RTC's incident management process and procedures for a student, and reporting requirements described in Subsection R277-926-4(3)(c);

(g) evidence of how meaningful parental involvement is facilitated;

(h) documentation showing all staff at the RTC have been fingerprinted and have passed state and federal criminal background checks before being allowed to have contact with any student;

(i) an assurance showing participation in the LEA of origin with federal Child Find mandates as outlined in 20 U.S.C. 1412(a)(3);

(j) an assurance that the RTC is a nonsectarian RTC; and

(k) if applicable, a copy of the Private School Affidavit filed with a student's state of origin.

(4) [~~Except as provided in Subsection (7), an~~]An RTC may apply for an initial certification and receive notification of certification approval or denial within 60 days of an on-site review.

(5) An RTC shall apply for certification renewal no later than 60 days before the expiration of the RTC's current certification.

(6) [~~Except as provided in Subsection (7), the~~]The Superintendent shall provide the RTC notice of the Superintendent's approval or denial of the RTC's application for certification within 60 days of an on-site review.

[~~(7) For an application received before January 1, 2020, the Superintendent shall notify an RTC of the Superintendent's approval or denial of the RTC's request for certification within 45 days.~~

] ([~~8~~]7) An RTC with a pending application shall be subject to an on-site review by the Superintendent within 60 days of the RTC submitting the RTC's application.

([~~9~~]8) An RTC's application for certification and on-site review shall be reviewed collectively by the Superintendent in considering approval or denial of certification.

([~~10~~]9) An RTC shall be informed of compliance errors at the time of the on-site review and will be provided six weeks to correct the compliance errors before a final certification decision is made.

([~~11~~]10) If approved, an RTC's certification lasts for two years from the date of approval and is subject to monitoring protocols as described in Section R277-926-4.

([~~12~~]11) If the Superintendent denies an RTC's application for certification, the Superintendent shall provide the reason for the denial in writing to the RTC.

([~~13~~]12) If an RTC operates a special needs program at more than one site, the RTC shall submit a separate certification application for each site.

R277-926-4. Certification Maintenance and General Monitoring.

(1) An RTC that has been certified is subject to periodic monitoring and review.

(2) An RTC shall ensure general compliance with the requirements of this rule, state law, and federal law by providing the Superintendent with:

(a) documentation, including:

(i) applicable student and program records; and

(ii) information for which the Board is responsible;

(b) access to on-site visits at any time; and

(c) any combination of Subsections (a) and (b).

(3) An RTC that has been certified shall comply with all requirements of this rule[~~, State of Utah law~~] and state and federal law, including the following requirements:

(a) collaborating with an LEA of origin to maintain and facilitate a plan for transition from the RTC to a less restrictive setting or from a less restrictive setting to an RTC;

(b) collaborating with the LEA of origin on a student's IEP through:

(i) timely and appropriate IEP progress monitoring;

(ii) documentation of a student's specially designed instruction and related services such as:

(A) service provisions;

(B) treatment notes; and

(C) service logs;

(iii) post secondary transition plans for students age 14 and older, including:

(A) a list of a relevant course of study related to needs and ability of the student;

(B) a list of all required transition assessments needed; and

(C) age of majority documentation;
(iv) sign-in or attendance sheets for each IEP meeting held for a student; and
([~~i~~]v) adhering to all other applicable state and federal laws;
(c) when appropriate, establishing a discipline guide consistent with IDEA that includes a behavior intervention plan with the following minimum components:
(i) general behavior goals;
(ii) crisis de-escalation and restraint training and training frequency;
(iii) restraint and seclusion policies and procedures consistent with state and federal law; and
(iv) parental notification policies requiring notice within at least 24-hours.
(4) An RTC shall notify the Superintendent within 45 days if the RTC makes any material change to the RTC's special education program.
(5) An RTC shall notify the Superintendent within 48 hours if:
(a) any staff member is charged with a felony or misdemeanor, other than a Class C violation of Title 41, Motor Vehicles; or
(b) a law enforcement agency or the Division of Child and Family Services initiates an investigation regarding a student health or safety concern.
(6) If a certified RTC is found to be noncompliant with [~~Rule R277-926, State of Utah law, or~~]this rule or state or federal law, the Superintendent may suspend or revoke the RTC's certification as outlined in Section R277-926-5.

R277-926-5. Revocation of Certification.
(1) The Superintendent may revoke an RTC's certification at any time if the RTC fails to comply with the requirements of [~~Rule R277-926, State of Utah law,~~]this rule or state or federal law.
(2) The Superintendent shall provide the reason for revocation of the RTC's certification in writing to the RTC and provide a 30-day cure period before revocation may occur.
(3) If an RTC does not correct identified non-compliance described in Subsection (2) within the 45-day correction period, the Superintendent shall revoke the RTC's certification.
(4) If an RTC's certification is revoked, the RTC:
(a) may not receive new students into the RTC's special education program; and
(b) may maintain the students currently attending the RTC's special education program.
(5) An RTC may reapply for certification within 12 months following the RTC's completed corrective action in response to the Superintendent's reasons for revocation described in Subsection (2).

R277-926-6. Request for Review.
(1) A public education agency that contracts with a certified RTC may request the Superintendent to review the status of the RTC's certification.
(2) The Superintendent shall establish a mechanism for referrals, complaints, and information related to the status of an RTC's certification.
(3) The Superintendent shall conduct a review pursuant to this in accordance with all requirements in Sections R277-926-4 and R277-926-5.

R277-926-7. RTC Appeal of Certification Application Denial or Certification Revocation.
(1) An RTC may file an appeal to the Board of an adverse decision of the Superintendent resulting in the denial of application or revocation of a certification.
(2) An appeal pursuant to this rule shall be an informal adjudication.
(3) An appeal described in Subsection (1) shall be made in writing and within 30 days of the date of the Superintendent's action.
(4) The Board may:
(a) review the appeal as a full board; or
(b) refer the appeal to the Board's audit committee to make a recommendation to the Board for action.

KEY: residential treatment centers, special education, certification
Date of Last Change: 2024[~~June 7, 2023~~]
Notice of Continuation: June 7, 2024
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-401(4)

NOTICE OF SUBSTANTIVE CHANGE		
TYPE OF FILING: Amendment		
Rule or Section Number:	**R313-15-1206**	**Filing ID: 56553**

Agency Information

1. Title catchline:	Environmental Quality, Waste Management and Radiation Control, Radiation

Building:	Multi-Agency State Office Building	
Street address:	195 N 1950 W	
City, state:	Salt Lake City, UT	
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:

R313-15-1206. Reports of Transactions Involving Nationally Tracked Sources

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

The reason for the change to this rule is that the Nuclear Regulatory Commission (NRC) has made corrections and updates to its regulations.

As an Agreement State with the NRC for the radioactive materials program, Utah is required to maintain regulatory compatibility with the corresponding NRC radioactive materials regulations.

The Division of Waste Management and Radiation Control, Radiation (Division) is adopting the changes that the NRC designated as necessary for an Agreement State to adopt to maintain regulatory compatibility with the NRC.

4. Summary of the new rule or change:

Subsection R313-15-1206(8) is being deleted from this rule as required to maintain compatibility with the NRC. This change is removing outdated reporting requirements from the rule.

Additionally, the Division is correcting formatting and other administrative 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 is no cost or savings to the state budget due to this amendment because there are no new requirements for the agency to complete and the requirements being removed did not require any state agencies to do anything so removing them will not result in a savings.

B) Local governments:

There is no cost or savings to local governments due to this amendment because there are no local governments in Utah that possess Category 1 or 2 nationally-tracked sources.

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

This amendment will not result in any costs to any small businesses that must comply with this rule because it does not add any new requirements.

There could be a small savings due to the removal of the requirement to submit reports to the NRC but the savings are too small to measure.

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

This amendment will not result in any costs to any non-small businesses that must comply with this rule because it does not add any new requirements.

There could be a small savings due to the removal of the requirement to submit reports to the NRC but the savings are too small to measure.

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 will not result in any costs to any persons other than small businesses, non-small businesses, state or local governments that must comply with this rule because it does not add any new requirements.

There could be a small savings due to the removal of the requirement to submit reports to the NRC but the savings are too small to measure.

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 because it does not add any new requirements to this rule.

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

Regulatory Impact Table

Fiscal Cost	**FY2025**	**FY2026**	**FY2027**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits	**FY2025**	**FY2026**	**FY2027**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
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 19-6-104	

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:	07/31/2024

9. This rule change MAY become effective on:	09/16/2024

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:**	06/13/2024

R313. Environmental Quality, Waste Management and Radiation Control, Radiation.
R313-15. Standards for Protection Against Radiation.
R313-15-1206. Reports of Transactions Involving Nationally Tracked Sources.

Each licensee who manufactures, transfers, receives, disassembles, or disposes of a nationally tracked source shall complete and submit a National Source Tracking Transaction Report as specified in Subsections R313-15-1206[~~paragraphs~~](1) through R313-15-1206(5) [~~of this section~~]for each type of transaction.

(1) Each licensee who manufactures a nationally tracked source shall complete and submit a National Source Tracking Transaction Report. The report [~~must~~]shall include the following information:

(a) [~~T~~]the name, address, and license number of the reporting licensee;
(b) [~~T~~]the name of the individual preparing the report;
(c) [~~T~~]the manufacturer, model, and serial number of the source;
(d) [~~T~~]the radioactive material in the source;
(e) [~~T~~]the initial source strength in becquerels, [~~(~~]curies[~~)~~], at the time of manufacture; and
(f) [~~T~~]the manufacture date of the source.

(2) Each licensee that transfers a nationally tracked source to another person shall complete and submit a National Source Tracking Transaction Report. The report [~~must~~]shall include the following information:

(a) [~~T~~]the name, address, and license number of the reporting licensee;
(b) [~~T~~]the name of the individual preparing the report;
(c) [~~T~~]the name and license number of the recipient facility and the shipping address;
(d) [~~T~~]the manufacturer, model, and serial number of the source or, if not available, other information to uniquely identify the source;
(e) [~~T~~]the radioactive material in the source;
(f) [~~T~~]the initial or current source strength in becquerels, [~~(~~]curies[~~)~~];
(g) [~~T~~]the date for which the source strength is reported;
(h) [~~T~~]the shipping date;
(i) [~~T~~]the estimated arrival date; and
(j) [~~F~~]for nationally tracked sources transferred as waste under a Uniform Low-Level Radioactive Waste Manifest, the waste manifest number and the container identification of the container with the nationally tracked source.

(3) Each licensee that receives a nationally tracked source shall complete and submit a National Source Tracking Transaction Report. The report [~~must~~]shall include the following information:

(a) [~~T~~]the name, address, and license number of the reporting licensee;
(b) [~~T~~]the name of the individual preparing the report;
(c) [~~T~~]the name, address, and license number of the person that provided the source;
(d) [~~T~~]the manufacturer, model, and serial number of the source or, if not available, other information to uniquely identify the source;
(e) [~~T~~]the radioactive material in the source;
(f) [~~T~~]the initial or current source strength in becquerels, [~~(~~]curies[~~)~~];
(g) [~~T~~]the date for which the source strength is reported;
(h) [~~T~~]the date of receipt; and
(i) [~~F~~]for material received under a Uniform Low-Level Radioactive Waste Manifest, the waste manifest number and the container identification with the nationally tracked source.

(4) Each licensee that disassembles a nationally tracked source shall complete and submit a National Source Tracking Transaction Report. The report [~~must~~]shall include the following information:

(a) [~~T~~]the name, address, and license number of the reporting licensee;
(b) [~~T~~]the name of the individual preparing the report;
(c) [~~T~~]the manufacturer, model, and serial number of the source or, if not available, other information to uniquely identify the source;
(d) [~~T~~]the radioactive material in the source;
(e) [~~T~~]the initial or current source strength in becquerels, [~~(~~]curies[~~)~~];
(f) [~~T~~]the date for which the source strength is reported; and
(g) [~~T~~]the disassemble date of the source.

(5) Each licensee who disposes of a nationally tracked source shall complete and submit a National Source Tracking Transaction Report. The report [~~must~~]shall include the following information:

(a) [~~T~~]the name, address, and license number of the reporting licensee;
(b) [~~T~~]the name of the individual preparing the report;
(c) [~~T~~]the waste manifest number;
(d) [~~T~~]the container identification with the nationally tracked source[~~-~~];
(e) [~~T~~]the date of disposal; and

(f) [~~T~~]the method of disposal.

(6) The reports discussed in Subsections R313-15-1206[~~paragraphs~~](1) through R313-15-1206(5) [~~of this section must~~]shall be submitted by the close of the next business day after the transaction. A single report may be submitted for multiple sources and transactions. The reports [~~must~~]shall be submitted to the National Source Tracking System by using:

(a) [~~T~~]the on-line National Source Tracking System;

(b) [~~E~~]electronically using a computer-readable format;

(c) [~~B~~]by facsimile;

(d) [~~B~~]by mail to the address on the National Source Tracking Transaction Report Form, [~~(~~]NRC Form 748[~~)~~]; or

(e) [~~B~~]by telephone with followup by facsimile or mail.

(7) Each licensee shall correct any error in previously filed reports or file a new report for any missed transaction within [~~5~~]five business days of the discovery of the error or missed transaction. [~~Such~~]These errors may be detected by a variety of methods such as administrative reviews or by physical inventories required by regulation. In addition, each licensee shall reconcile the inventory of nationally tracked sources possessed by the licensee against that licensee's data in the National Source Tracking System. The reconciliation [~~must~~]shall be conducted during the month of January in each year. The reconciliation process [~~must~~]shall include resolving any discrepancies between the National Source Tracking System and the actual inventory by filing the reports identified by Subsections R313-15-1206[~~paragraphs~~](1) through R313-15-1206(5)[~~of this section~~]. By January 31 of each year, each licensee [~~must~~]shall submit to the National Source Tracking System confirmation that the data in the National Source Tracking System is correct.[

~~(8) Each licensee that possesses Category 1 nationally tracked sources shall report its initial inventory of Category 1 nationally tracked sources to the National Source Tracking System by November 15, 2007. Each licensee that possesses Category 2 nationally tracked sources shall report its initial inventory of Category 2 nationally tracked sources to the National Source Tracking System by November 30, 2007. The information may be submitted by using any of the methods identified by paragraph (6)(a) through (6)(d) of this section. The initial inventory report must include the following information:~~

~~(a) The name, address, and license number of the reporting licensee;~~

~~(b) The name of the individual preparing the report;~~

~~(c) The manufacturer, model, and serial number of each nationally tracked source or, if not available, other information to uniquely identify the source;~~

~~(d) The radioactive material in the sealed source;~~

~~(e) The initial or current source strength in becquerels (curies); and~~

~~(f) The date for which the source strength is reported.~~]

KEY: radioactive materials, contamination, waste disposal, safety
Date of Last Change: 2024[~~January 17, 2023~~]
Notice of Continuation: October 19, 2021
Authorizing, and Implemented or Interpreted Law: 19-3-104; 19-6-104

NOTICE OF SUBSTANTIVE CHANGE		
TYPE OF FILING: Amendment		
Rule or Section Number:	**R313-22-75**	**Filing ID: 56554**

Agency Information

1. Title catchline:	Environmental Quality, Waste Management and Radiation Control, Radiation	
Building:	Multi-Agency State Office Building	
Street address:	195 N 1950 W	
City, state:	Salt Lake City, UT	
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:

R313-22-75. Special Requirements for a Specific License to Manufacture, Assemble, Repair, or Distribute Commodities, Products, or Devices That Contain Radioactive Material

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

As an Agreement State with the Nuclear Regulatory Commission (NRC) for the radioactive materials program, Utah is required to maintain regulatory compatibility with the corresponding NRC radioactive materials regulations.

The Division of Waste Management and Radiation Control, Radiation is adopting the changes that the NRC designated as necessary for an Agreement State to adopt to maintain regulatory compatibility with the NRC.

4. Summary of the new rule or change:

The date of the version of 10 CFR 35.55(a) that is incorporated by reference in Subsection R313-22-75(8)(b)(v)(A) is being changed to 2021.

The NRC is amending its regulations to make miscellaneous corrections. These changes include correcting mailing addresses, typographical errors, grammatical errors, punctuation, references, spelling, agency names, office titles; removing outdated reporting requirements; removing obsolete language, clarifying language; adding metric units; correcting formatting, updating an authority citation, updating internal procedures, inserting missing language, updating the street address for the NRC's Region I office, and updating the phone number for the NRC's Region IV office.

Fiscal Information

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

A) State budget:

There is no cost or savings to the state budget due to this amendment because the amendments do not add any new requirements that could result in costs for state agencies, nor does it remove any existing requirements.

B) Local governments:

There is no cost or savings to local governments due to this amendment because the amendments do not add any new requirements that could result in costs for local governments, nor does it remove any existing requirements.

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

There is no cost or savings to small businesses due to this amendment because the amendments do not add any new requirements that could result in costs for small businesses, nor does it remove any existing requirements.

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

There is no cost or savings to non-small businesses due to this amendment because the amendments do not add any new requirements that could result in costs for non-small businesses, nor does it 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***)**:o**

This amendment will not result in any costs to other persons than small businesses, non-small businesses, state or local governments that must comply with this rule because the amendments do not add any new requirements that could result in costs for any persons other than small businesses, non-small businesses, state or local governments, nor does it remove any existing requirements

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 because it does not add any new requirements to the rule.

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

Regulatory Impact Table			
Fiscal Cost	**FY2025**	**FY2026**	**FY2027**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits	**FY2025**	**FY2026**	**FY2027**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
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 19-6-104	

Incorporations by Reference Information

7. Incorporations by Reference:	
A) This rule adds or updates the following title of materials incorporated by references:	
Official Title of Materials Incorporated (from title page)	10 CFR 35
Publisher	Office of the Federal Register
Issue Date	August 31, 2021

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:	07/31/2024

9. This rule change MAY become effective on:	09/16/2024
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:**	06/13/2024

R313. Environmental Quality, Waste Management and Radiation Control, Radiation.
R313-22. Specific Licenses.

R313-22-75. Special Requirements for a Specific License to Manufacture, Assemble, Repair, or Distribute Commodities, Products, or Devices That Contain Radioactive Material.

(1) Licensing the introduction of radioactive material in exempt concentrations into products or materials, and transfer of ownership or possession of the products and materials.

(a) The authority to introduce radioactive material in exempt concentrations into equipment, devices, commodities or other products may be received only from the Nuclear Regulatory Commission, Washington, D.C. 20555; and

(b) The manufacturer, processor or producer of equipment, devices, commodities or other products containing exempt concentrations of radioactive materials may get the authority to transfer possession or control of the equipment, devices, commodities, or other products containing exempt concentrations to a person who is exempt from regulatory requirements only from the Nuclear Regulatory Commission, Washington, D.C. 20555.

(2) Licensing the distribution of radioactive material in exempt quantities. Authority to transfer possession or control by the manufacturer, processor or producer of equipment, devices, commodities or other products containing byproduct material whose subsequent possession, use, transfer, and disposal by another person who is exempted from regulatory requirements may be received only from the Nuclear Regulatory Commission, Washington, D.C. 20555.

(3) Reserved

(4) Licensing the manufacture and distribution of devices to a person generally licensed under Subsection R313-21-22(4).

(a) An application for a specific license to manufacture or distribute devices containing radioactive material, excluding special nuclear material, to a person generally licensed under Subsection R313-21-22(4) or equivalent regulations of the Nuclear Regulatory Commission, an Agreement State or a Licensing State will be approved if:

(i) the applicant satisfies the general requirements of Section R313-22-33;

(ii) the applicant submits sufficient information relating to the design, manufacture, prototype testing, quality control, labels, proposed uses, installation, servicing, leak testing, operating and safety instructions, and potential hazards of the device to provide reasonable assurance that:

(A) the device can be safely operated by a person not having training in radiological protection;

(B) under ordinary conditions of handling, storage, and use of the device, the radioactive material contained in the device will not be released or inadvertently removed from the device, and it is unlikely that a person will receive in one year, a dose [~~in excess of ten percent~~]more than 10% of the annual limits specified in Subsection R313-15-201(1); and

(C) under accident conditions, such as fire and explosion, associated with handling, storage, and use of the device, it is unlikely that a person would receive an external radiation dose or dose commitment [~~in excess of~~]more than the organ doses shown in Table 2;

TABLE 2	
Whole body, head and truck, active blood forming organs, gonads, or lens of the eye	150.0mSv, 15 rems
Hands and forearms, feet and ankles, localized areas of skin averaged over areas no larger than one square centimeter	2.0 Sv, 200 rems
Other organs	500.0 mSv, 50 rems

(iii) each device bears a durable, legible, clearly visible label or labels approved by the director, which contain in a clearly identified and separate statement:

(A) instructions and precautions necessary to assure safe installation, operation, and servicing of the device; documents such as operating and service manuals may be identified in the label and used to provide this information;

(B) the requirement, or lack of requirement, for leak testing, or for testing an "on-off" mechanism and indicator, including the maximum time interval for testing, and the identification of radioactive material by radionuclide, quantity of radioactivity, and date of determination of the quantity; and

(C) the information called for in one of the statements in either Subsection R313-22-75(4)(a)(iii)(C)(I) or R313-22-75(4)(a)(iii)(C)(II), as appropriate, in this or substantially similar form:

(I) "The receipt, possession, use and transfer of this device, Model No. ....., Serial No. ....., are subject to a general license or the equivalent, and the regulations of the Nuclear Regulatory Commission or a state with which the Nuclear Regulatory Commission has entered into an agreement for the exercise of regulatory authority. This label shall be maintained on the device in a legible condition. Removal of this label is prohibited." The label shall be printed with the words "CAUTION -RADIOACTIVE MATERIAL" and the name of the manufacturer or distributor shall appear on the label. The model, serial number, and name of the manufacturer or distributor may be omitted from this label provided the information is elsewhere specified in labeling affixed to the device; or

(II) "The receipt, possession, use and transfer of this device, Model No. ....., Serial No. ....., are subject to a general license or the equivalent, and the regulations of a Licensing State. This label shall be maintained on the device in a legible condition. Removal of this label is prohibited." The label shall be printed with the words "CAUTION - RADIOACTIVE MATERIAL" and the name of the manufacturer or distributor shall appear on the label. The model, serial number, and name of the manufacturer or distributor may be omitted from this label provided the information is elsewhere specified in labeling affixed to the device;

(iv) each device having a separable source housing that provides the primary shielding for the source also bears, on the source housing, a durable label containing the device model number and serial number, the isotope and quantity, the words, "Caution-Radioactive Material," the radiation symbol described in Section R313-15-901, and the name of the manufacturer or initial distributor;

(v) each device meeting the criteria of Subsection R313-21-22(4)(c)(xiii)(A), bears a permanent label, for example, embossed, etched, stamped, or engraved, affixed to the source housing if separable, or the device if the source housing is not separable, that includes the words, "Caution-Radioactive Material," and, if practicable, the radiation symbol described in Section R313-15-901; and

(vi) the device has been registered in the Sealed Source and Device Registry.

(b) In the event the applicant desires that the device be required to be tested at intervals longer than six months, either for proper operation of the "on-off" mechanism and indicator, if any, or for leakage of radioactive material or for both, the applicant shall include in the application sufficient information to demonstrate that a longer interval is justified by performance characteristics of the device or similar devices and by design features that have a significant bearing on the probability or consequences of leakage of radioactive material from the device or failure of the "on-off" mechanism and indicator. In determining the acceptable interval for the test for leakage of radioactive material, the director will consider information that includes:

(i) primary containment, or source capsule;

(ii) protection of primary containment;

(iii) method of sealing containment;

(iv) containment construction materials;

(v) form of contained radioactive material;

(vi) maximum temperature withstood during prototype tests;

(vii) maximum pressure withstood during prototype tests;

(viii) maximum quantity of contained radioactive material;

(ix) radiotoxicity of contained radioactive material; and

(x) operating experience with identical devices or similarly designed and constructed devices.

(c) In the event the applicant desires that the general licensee under Subsection R313-21-22(4), or under equivalent regulations of the Nuclear Regulatory Commission, an Agreement State or a Licensing State be authorized to install the device, collect the sample to be analyzed by a specific licensee for leakage of radioactive material, service the device, test the "on-off" mechanism and indicator, or remove the device from installation, the applicant shall include in the application written instructions to be followed by the general licensee, estimated calendar quarter doses associated with this activity or activities, and basis for these estimates. The submitted information shall demonstrate that performance of this activity or activities by an individual untrained in radiological protection, in addition to other handling, storage, and use of devices under the general license, is unlikely to cause that individual to receive a dose [~~in excess of ten percent~~]more than 10% of the annual limits specified in Subsection R313-15-201(1).

(d)(i) If a device containing radioactive material is to be transferred for use under the general license contained in Subsection R313-21-22(4), each person that is licensed under Subsection R313-22-75(4) shall provide the information specified in Subsections R313-22-75(4)(d)(i)(A) through R313-22-75(4)(d)(i)(E) to each person to whom a device is to be transferred. This information shall be provided before the device may be transferred. In the case of a transfer through an intermediate person, the information shall also be provided to the intended user before initial transfer to the intermediate person. The required information includes:

(A) a copy of the general license contained in Subsection R313-21-22(4). If Subsections R313-21-22(4)(c)(ii) through R313-21-22(4)(c)(iv) or R313-21-22(4)(c)(xiii) do not apply to the particular device, those paragraphs may be omitted;

(B) a copy of Sections R313-12-51, R313-15-1201, and R313-15-1202;

(C) a list of services that can only be performed by a specific licensee;

(D) information on acceptable disposal options including estimated costs of disposal; and

(E) an indication that the director's policy is to issue civil penalties for improper disposal.

(ii) If radioactive material is to be transferred in a device for use under an equivalent general license of the Nuclear Regulatory Commission, an Agreement State, or Licensing State, each person that is licensed under Subsection R313-22-75(4) shall provide the information specified in Subsections R313-22-75(4)(d)(ii)(A) through R313-22-75(4)(d)(ii)(D) to each person to whom a device is to be transferred. This information shall be provided before the device may be transferred. In the case of a transfer through an intermediate person, the information shall also be provided to the intended user before initial transfer to the intermediate person. The required information includes:

(A) a copy of an Agreement State's or Licensing State's regulations equivalent to Sections R313-12-51, R313-15-1201, R313-15-1202, and Subsection R313-21-22(4) or a copy of 10 CFR 31.5, 10 CFR 31.2, 10 CFR 30.51, 10 CFR 20.2201, and 10 CFR 20.2202. If a copy of the Nuclear Regulatory Commission regulations is provided to a prospective general licensee in lieu of the Agreement State's or Licensing State's regulations, it shall be accompanied by a note explaining that use of the device is regulated by the Agreement State or Licensing State. If certain paragraphs of the regulations do not apply to the particular device, those paragraphs may be omitted;

(B) a list of services that can only be performed by a specific licensee;

(C) information on acceptable disposal options including estimated costs of disposal; and

(D) the name or title, address, and phone number of the contact at the Nuclear Regulatory Commission, Agreement State, or Licensing State where additional information may be received.

(iii) An alternative approach to informing customers may be proposed by the licensee for approval by the director.

(iv) Each device that is transferred after February 19, 2002, shall meet the labeling requirements in Subsection R313-22-75(4)(a)(iii).

(v) If a notification of bankruptcy has been made under Section R313-19-34 or the license is to be terminated, each person licensed under Subsection R313-22-75(4) shall provide, upon request, to the Director, the Nuclear Regulatory Commission, or an appropriate Agreement State or Licensing State, records of final disposition required under Subsection R313-22-75(4)(d)(vii)(H).

(vi) Each person licensed under Subsection R313-22-75(4) to initially transfer devices to a generally licensed person shall comply with the requirements of Subsections R313-22-75(4)(d)(vi) and R313-22-75(4)(d)(vii).

(A) The person shall report each transfer of devices to a person for use under the general license under Subsection R313-21-22(4) and each receipt of devices from a person licensed under Subsection R313-21-22(4) to the director. The report shall be submitted on a quarterly basis on Form 653, "Transfers of Industrial Devices Report" as prescribed by the Nuclear Regulatory Commission, or in a clear and legible report containing the data required by the form.

(B) The required information for transfers to general licensees includes:

(I) the identity of each general licensee by name and mailing address for the location of use. If there is no mailing address for the location of use, an alternative address for the general licensee shall be submitted along with information on the actual location of use[~~.~~];

(II) the name, title, and phone number of the person identified by the general licensee as having knowledge of and authority to take required actions to ensure compliance with the appropriate rules, regulations and requirements;

(III) the date of transfer;

(IV) the type, model number, and serial number of device transferred; and

(V) the quantity and type of radioactive material contained in the device.

(C) If one or more intermediate persons will temporarily [~~possess~~]have the device at the intended place of use before its possession by the user, the report shall include the information required by Subsection R313-22-74(4)(d)(vi)(B) for both the intended user and each intermediate person, and clearly designate the intermediate person.

(D) For devices received from a Subsection R313-21-22(4) general licensee, the report shall include the identity of the general licensee by name and address, the type, model number, and serial number of the device received, the date of receipt, and, in the case of devices not initially transferred by the reporting licensee, the name of the manufacturer or initial transferor.

(E) If the licensee makes changes to a device possessed by a Subsection R313-21-22(4) general licensee that would require the label to be changed to update required information, the report shall identify the general licensee, the device, and the changes to information on the device label.

(F) The report shall cover each calendar quarter, shall be filed within 30 days of the end of the calendar quarter, and shall clearly state the period covered by the report.

(G) The report shall clearly identify the specific licensee submitting the report and include the license number of the specific licensee.

(H) If no transfers have been made to or from a person generally licensed under Subsection R313-21-22(4) during the reporting period, the report shall so state.

(vii) The person shall report each transfer of devices to a person for use under a general license in the Nuclear Regulatory Commission's, an Agreement State's, or Licensing State's regulations that are equivalent to Subsection R313-21-22(4) and each receipt of devices from general licensees in the Nuclear Regulatory Commission's, Agreement State's, or Licensing State's jurisdiction to the Nuclear Regulatory Commission, or to the responsible Agreement State or Licensing State agency. The report shall be submitted on Form 653, "Transfers of Industrial Devices Report" as prescribed by the Nuclear Regulatory Commission, or in a clear and legible report containing the data required by the form.

(A) The required information for transfers to general licensee includes:

(I) the identity of each general licensee by name and mailing address for the location of use. If there is no mailing address for the location of use, an alternative address for the general licensee shall be submitted along with information on the actual location of use[~~.~~];

(II) the name, title, and phone number of the person identified by the general licensee as having knowledge of and authority to take required actions to ensure compliance with the appropriate rules, regulations and requirements;

(III) the date of transfer;

(IV) the type, model number, and serial number of the device transferred; and

(V) the quantity and type of radioactive material contained in the device.

(B) If one or more intermediate persons will temporarily [~~possess~~]have the device at the intended place of use before its possession by the user, the report shall include the information required by Subsection R313-22-75(4)(d)(vii)(A) for both the intended user and each intermediate person, and clearly designate the intermediate person.

(C) For devices received from a general licensee, the report shall include the identity of the general licensee by name and address, the type, model number, and serial number of the device received, the date of receipt, and, in the case of devices not initially transferred by the reporting licensee, the name of the manufacturer or initial transferor.

(D) If the licensee makes changes to a device possessed by a general licensee that would require the label to be changed to update required information, the report shall identify the general licensee, the device, and the changes to information on the device label.

(E) The report shall cover each calendar quarter, shall be filed within 30 days of the end of the calendar quarter, and shall clearly state the period covered by the report.

(F) The report shall clearly identify the specific licensee submitting the report and shall include the license number of the specific licensee.

(G) If no transfers have been made to or from a Nuclear Regulatory Commission licensee, or to or from a particular Agreement State or Licensing State licensee during the reporting period, this information shall be reported to the Nuclear Regulatory Commission or the responsible Agreement State or Licensing State agency upon request of the agency.

(H) The person shall maintain any information concerning transfers and receipts of devices that supports the reports required by Subsection R313-22-75(4)(d)(vii). Records required by Subsection R313-22-75(4)(d)(vii)(H) shall be maintained for a period of three years following the date of the recorded event.

(5) Special requirements for the manufacture, assembly, or repair of luminous safety devices for use in aircraft. An application for a specific license to manufacture, assemble or repair luminous safety devices containing tritium or promethium-147 for use in aircraft for distribution to a person generally licensed under Subsection R313-21-22(5) will be approved if:

(a) the applicant satisfies the general requirements of Section R313-22-33; and

(b) the applicant satisfies the requirements of 10 CFR 32.53 through 32.56 (2015) or their equivalent.

(6) Special requirements for license to manufacture or initially transfer calibration sources containing americium-241, plutonium or radium-226 for distribution to a person generally licensed under Subsection R313-21-22(7). An application for a specific license to manufacture calibration and reference sources containing americium-241, plutonium or radium-226 to a person generally licensed under Subsection R313-21-22(7) will be approved if:

(a) the applicant satisfies the general requirements of Section R313-22-33; and

(b) the applicant satisfies the requirements of 10 CFR 32.57 through 32.59, and 10 CFR 70.39 (2015), or their equivalent.

(7) Manufacture and distribution of radioactive material for certain in vitro clinical or laboratory testing under general license. An application for a specific license to manufacture or distribute radioactive material for use under the general license of Subsection R313-21-22(9) will be approved if:

(a) the applicant satisfies the general requirements specified in Section R313-22-33;

(b) the radioactive material is to be prepared for distribution in prepackaged units of:

(i) iodine-125 in units not exceeding 370 kilobecquerel, ten uCi, each;

(ii) iodine-131 in units not exceeding 370 kilobecquerel, ten uCi, each;

(iii) carbon-14 in units not exceeding 370 kilobecquerel, ten uCi, each;

(iv) hydrogen-3, [~~(~~]tritium[~~)~~], in units not exceeding 1.85 megabecquerel, 50 uCi, each;

(v) iron-59 in units not exceeding 740.0 kilobecquerel, 20 uCi, each;

(vi) cobalt-57 in units not exceeding 370 kilobecquerel, ten uCi, each;

(vii) selenium-75 in units not exceeding 370 kilobecquerel, ten uCi, each; or

(viii) mock iodine-125 in units not exceeding 1.85 kilobecquerel, 0.05 uCi, of iodine-129 and 1.85 kilobecquerel, 0.05 uCi, of americium-241 each; and

(c) prepackaged units bear a durable, clearly visible label:

(i) identifying the radioactive contents as to chemical form and radionuclide, and indicating that the amount of radioactivity does not exceed 370 kilobecquerel, ten uCi, of iodine-125, iodine-131, carbon-14, cobalt-57, or selenium-75; 1.85 megabecquerel, 50 uCi, of hydrogen-3, [~~(~~]tritium[~~)~~]; 740.0 kilobecquerel, 20 uCi, of iron-59; or Mock Iodine-125 in units not exceeding 1.85 kilobecquerel, 0.05 uCi, of iodine-129 and 1.85 kilobecquerel, 0.05 uCi, of americium-241 each; and

(ii) displaying the radiation caution symbol described in Section R313-15-901 and the words, "CAUTION, RADIOACTIVE MATERIAL," [~~-~~] and "Not for Internal or External Use in Humans or Animals";

(d) one of the statements in either Subsection R313-22-75(7)(d)(i) or R313-22-75(7)(d)(ii), as appropriate, or a substantially similar statement that contains the information called for in one of the statements in either Subsection R313-22-75(7)(d)(i) or R313-22-75(7)(d)(ii), appears on a label affixed to each prepackaged unit or appears in a leaflet or brochure that accompanies the package:

(i) "This radioactive material shall be received, acquired, possessed and used only by physicians, veterinarians, clinical laboratories or hospitals and only for in vitro clinical or laboratory tests not involving internal or external administration of the material, or the radiation therefrom, to human beings or animals. Its receipt, acquisition, possession, use and transfer are subject to the regulations and a general license of the Nuclear Regulatory Commission or of a state that the Nuclear Regulatory Commission has entered into an agreement for the exercise of regulatory authority.

.....

Name of Manufacturer"; or

(ii) "This radioactive material shall be received, acquired, possessed and used only by physicians, veterinarians, clinical laboratories or hospitals and only for in vitro clinical or laboratory tests not involving internal or external administration of the material, or the radiation therefrom, to human beings or animals. Its receipt, acquisition, possession, use and transfer are subject to the regulations and a general license of a Licensing State.

.....

Name of Manufacturer"; and

(e) the label affixed to the unit, or the leaflet or brochure that accompanies the package, contains adequate information as to the precautions to be observed in handling and storing radioactive material. In the case of the Mock Iodine-125 reference or calibration source, the information accompanying the source shall also contain directions to the licensee regarding the waste disposal requirements set out in Section R313-15-1001.

(8) Licensing the manufacture and distribution of ice detection devices. An application for a specific license to manufacture and distribute ice detection devices to a person generally licensed under Subsection R313-21-22(10) will be approved if:

(a) the applicant satisfies the general requirements of Section R313-22-33; and

(b) the criteria of 10 CFR 32.61[~~-~~] and 32.62, 2015 ed. are met.

(9) Manufacture, preparation, or transfer for commercial distribution of radioactive drugs containing radioactive material for medical use under Rule R313-32.

(a) An application for a specific license to manufacture and distribute radiopharmaceuticals containing radioactive material for use by a person licensed pursuant to Rule R313-32 will be approved if:

(i) the applicant satisfies the general requirements specified in Section R313-22-33;

(ii) the applicant submits evidence that the applicant is at least registered, licensed or operating as one of the entities listed in Subsections R313-22-75(9)(a)(ii)(A) through R313-22-75(9)(a)(ii)(E):

(A) registered with the U[~~.~~]S[~~.~~] Food and Drug Administration (FDA) as the owner or operator of a drug establishment that engages in the manufacture, preparation, propagation, compounding, or processing of a drug under 21 CFR 207.17(a);

(B) registered or licensed with a state agency as a drug manufacturer;

(C) licensed as a pharmacy by a state board of pharmacy;

(D) operating as a nuclear pharmacy within a federal medical institution; or

(E) registered with a state agency as a Positron Emission Tomography (PET) drug production facility;

(iii) the applicant submits information on the radionuclide; the chemical and physical form; the maximum activity per vial, syringe, generator, or other container of the radioactive drug; and the shielding provided by the packaging to show it is appropriate for the safe handling and storage of the radioactive drugs by medical use licensees; and

(iv) the applicant commits to the labeling requirements in either Subsection R313-22-75(9)(a)(iv)(A) or R313-22-75(9)(a)(iv)(B):

(A) A label is affixed to each transport radiation shield, whether it is constructed of lead, glass, plastic, or other material, of a radioactive drug to be transferred for commercial distribution. The label shall include the radiation symbol and the words "CAUTION, RADIOACTIVE MATERIAL" or "DANGER, RADIOACTIVE MATERIAL,"[~~,~~] the name of the radioactive drug or its abbreviation, and the quantity of radioactivity at a specified date and time. For radioactive drugs with a half life greater than 100 days, the time may be omitted.

(B) A label is affixed to each syringe, vial, or other container used to hold a radioactive drug to be transferred for commercial distribution. The label shall include the radiation symbol and the words "CAUTION, RADIOACTIVE MATERIAL" or "DANGER, RADIOACTIVE MATERIAL" and an identifier that ensures that the syringe, vial, or other container can be correlated with the information on the transport radiation shield label.

(b) A licensee described by Subsection[~~s~~] R313-22-75(9)(a)(ii)(C) or R313-22-75(9)(a)(ii)(D):

(i) may have either an authorized nuclear pharmacist, as specified in Subsections R313-22-75(9)(b)(ii) and R313-22-75(9)(b)(iv), or an individual under the supervision of an authorized nuclear pharmacist as specified in Rule R313-32, which incorporates 10 CFR 35.27 (2021) by reference prepare radioactive drugs for medical use, as defined in Rule R313-32, which incorporates 10 CFR 35.2 (2021) by reference;

(ii) may allow a pharmacist to work as an authorized nuclear pharmacist if:

(A) this individual qualifies as an authorized nuclear pharmacist as defined in Rule R313-32, which incorporates 10 CFR 35.2 (2021) by reference;

(B) this individual meets the requirements specified in Rule R313-32, which incorporates 10 CFR 35.55(b) and 10 CFR 35.59 (2021) by reference and the licensee has received an approved license amendment identifying this individual as an authorized nuclear pharmacist; or

(C) this individual is designated as an authorized nuclear pharmacist in accordance with Subsection R313-22-75(9)(b)(iv);

(iii) the actions authorized in Subsections R313-22-75(9)(b)(i) and R313-22-75(9)(b)(ii) are permitted in spite of more restrictive language in license conditions;

(iv) may designate a pharmacist, as defined in Rule R313-32, which incorporates 10 CFR 35.2 (2021) by reference, as an authorized nuclear pharmacist if:

(A) the individual was a nuclear pharmacist preparing only radioactive drugs containing accelerator produced radioactive material[~~,~~]; and

(B) the individual practiced at a pharmacy at a government agency or federally recognized Indian Tribe before November 30, 2007, or at any other pharmacies before August 8, 2009, or an earlier date as noticed by the NRC; and

(v) shall provide to the director:

(A) a copy of each individual's certification by a specialty board whose certification process has been recognized by the Nuclear Regulatory Commission or Agreement State as specified in Rule R313-32, which incorporates 10 CFR 35.55(a) (2021) by reference; or

(B) the Nuclear Regulatory Commission or Agreement State license; or

(C) the permit issued by a licensee or Commission master materials permittee of broad scope or the authorization from a commercial nuclear pharmacy authorized to list its own authorized nuclear pharmacist; or

(D) the permit issued by a U[~~.~~]S[~~.~~] Nuclear Commission master materials licensee; or

(E) documentation that only accelerator produced radioactive materials were used in the practice of nuclear pharmacy at a government agency or federally recognized Indian Tribe before November 30, 2007 or at any other locations of use before August 8, 2009, or an earlier date as noticed by the NRC; and

(F) a copy of the state pharmacy licensure or registration, no later than 30 days after the date that the licensee allows, pursuant to Subsections R313-22-75(9)(b)(ii)(A) and R313-22-75(9)(b)(ii)(C), the individual to work as an authorized nuclear pharmacist.

(c) A licensee shall [~~possess~~]have and use instrumentation to measure the radioactivity of radioactive drugs. The licensee shall have procedures for use of the instrumentation. The licensee shall measure, by direct measurement or by combination of measurements and calculations, the amount of radioactivity in dosages of alpha-, beta-, or photon-emitting radioactive drugs before transfer for commercial distribution. In addition, the licensee shall:

(i) perform tests before initial use, periodically, and following repair, on each instrument for accuracy, linearity, and geometry dependence, as appropriate for the use of the instrument, and make adjustments if necessary; and

(ii) check each instrument for constancy and proper operation at the beginning of each day of use.

(d) A licensee shall satisfy the labeling requirements in Subsection R313-22-75(9)(a)(iv).

(e) Nothing in Subsection R313-22-75(9) relieves the licensee from complying with applicable FDA, or federal, and state requirements governing radioactive drugs.

(10) Manufacture and distribution of sources or devices containing radioactive material for medical use. An application for a specific license to manufacture and distribute sources and devices containing radioactive material to a person licensed under Rule R313-32 for use as a

calibration, transmission, or reference source or for the uses listed in Rule R313-32, which incorporates 10 CFR 35.400, 10 CFR 35.500, 10 CFR 35.600, and 10 CFR 35.1000 (2021) by reference, will be approved if:

(a) the applicant satisfies the general requirements in Section R313-22-33;

(b) the applicant submits sufficient information regarding each type of source or device pertinent to an evaluation of its radiation safety, including:

(i) the radioactive material contained, its chemical and physical form and amount;

(ii) details of design and construction of the source or device; and

(iii) procedures for, and results of, prototype tests to demonstrate that the source or device will maintain its integrity under stresses likely to be encountered in normal use and accidents;

(iv) for devices containing radioactive material, the radiation profile of a prototype device;

(v) details of quality control procedures to assure that production sources and devices meet the standards of the design and prototype tests;

(vi) procedures and standards for calibrating sources and devices;

(vii) legend and methods for labeling sources and devices as to their radioactive content; and

(viii) instructions for handling and storing the source or device from the radiation safety standpoint, these instructions are to be included on a durable label attached to the source or device or attached to a permanent storage container for the source or device. Instructions that are too lengthy for a label may be summarized on the label and printed in detail on a brochure that is referenced on the label;

(c) the label affixed to the source or device, or to the permanent storage container for the source or device, contains information on the radionuclide, quantity and date of assay, and a statement that the source or device is licensed by the director for distribution to a person licensed pursuant to Rule R313-32, which incorporates 10 CFR 35.18, 10 CFR 35.400, 10 CFR 35.500, and 10 CFR 35.600 (2021) by reference, or under equivalent regulations of the Nuclear Regulatory Commission, an Agreement State or a Licensing State. Labeling for sources that do not require long term storage may be on a leaflet or brochure that accompanies the source;

(d) the source or device has been registered in the Sealed Source and Device Registry.

(e) In the event the applicant desires that the source or device be required to be tested for leakage of radioactive material at intervals longer than six months, the applicant shall include in the application sufficient information to demonstrate that a longer interval is justified by performance characteristics of the source or device or similar sources or devices and by design features that have a significant bearing on the probability or consequences of leakage of radioactive material from the source.

(f) In determining the acceptable interval for test of leakage of radioactive material, the director shall consider information that includes:

(i) primary containment or source capsule[,];

(ii) protection of primary containment[,];

(iii) method of sealing containment[,];

(iv) containment construction materials[,];

(v) form of contained radioactive material[,];

(vi) maximum temperature withstood during prototype tests[,];

(vii) maximum pressure withstood during prototype tests[,];

(viii) maximum quantity of contained radioactive material[,];

(ix) radiotoxicity of contained radioactive material[,]; and

(x) operating experience with identical sources or devices or similarly designed and constructed sources or devices.

(11) Requirements for license to manufacture and distribute industrial products containing depleted uranium for mass-volume applications.

(a) An application for a specific license to manufacture industrial products and devices containing depleted uranium for use pursuant to Subsection R313-21-21(7) or equivalent regulations of the Nuclear Regulatory Commission or an Agreement State will be approved if:

(i) the applicant satisfies the general requirements specified in Section R313-22-33;

(ii) the applicant submits sufficient information relating to the design, manufacture, prototype testing, quality control procedures, labeling or marking, proposed uses and potential hazards of the industrial product or device to provide reasonable assurance that possession, use or transfer of the depleted uranium in the product or device is not likely to cause an individual to receive a radiation dose [~~in excess of ten percent~~]more than 10% of the annual limits specified in Subsection R313-15-201(1); and

(iii) the applicant submits sufficient information regarding the industrial product or device and the presence of depleted uranium for a mass-volume application in the product or device to provide reasonable assurance that unique benefits will accrue to the public because of the usefulness of the product or device.

(b) In the case of an industrial product or device whose unique benefits are questionable, the director will approve an application for a specific license under Subsection R313-22-75(11) only if the product or device is found to combine a high degree of utility and low probability of uncontrolled disposal and dispersal of significant quantities of depleted uranium into the environment.

(c) The director may deny an application for a specific license under Subsection R313-22-75(11) if the end use of the industrial product or device cannot be reasonably foreseen.

(d) A person licensed pursuant to Subsection R313-22-75(11)(a) shall:

(i) maintain the level of quality control required by the license in the manufacture of the industrial product or device, and in the installation of the depleted uranium into the product or device;

(ii) label or mark each unit to:

(A) identify the manufacturer of the product or device and the number of the license where the product or device was manufactured, the fact that the product or device contains depleted uranium, and the quantity of depleted uranium in each product or device; and

(B) state that the receipt, possession, use and transfer of the product or device are subject to a general license or the equivalent and the regulations of the Nuclear Regulatory Commission or an Agreement State;

(iii) assure that the uranium before being installed in each product or device has been impressed with the legend "Depleted Uranium" clearly legible through a plating or other covering;

(iv) furnish to each person to whom depleted uranium in a product or device is transferred for use pursuant to the general license contained in Subsection R313-21-21(5) or its equivalent:

(A) a copy of the general license contained in Subsection R313-21-21(7) and a copy of form DWMRC-12; or

(B) a copy of the general license contained in the Nuclear Regulatory Commission's or Agreement State's regulation equivalent to Subsection R313-21-21(7) and a copy of the Nuclear Regulatory Commission's or Agreement State's certificate, or alternatively, furnish a copy of the general license contained in Subsection R313-21-21(7) and a copy of form DWMRC-12 with a note explaining that use of the product or device is regulated by the Nuclear Regulatory Commission or an Agreement State under requirements substantially equivalent to those in Subsection R313-21-21(7);

(v) report to the director each transfer of industrial products or devices to a person for use under the general license in Subsection R313-21-21(7). The report shall identify each general licensee by name and address, an individual by name or position who may constitute a point of contact between the director and the general licensee, the type and model number of device transferred, and the quantity of depleted uranium contained in the product or device. The report shall be submitted within [~~thirty~~]30 days after the end of the calendar quarter when the product or device is transferred to the generally licensed person. If no transfers have been made to a person generally licensed under Subsection R313-21-21(7) during the reporting period, the report shall so state;

(vi) provide certain other reports as follows:

(A) report to the Nuclear Regulatory Commission each transfer of industrial products or devices to a person for use under the Nuclear Regulatory Commission general license in 10 CFR 40.25 (2010);

(B) report to the responsible state agency each transfer of devices manufactured and distributed pursuant to Subsection R313-22-75(11) for use under a general license in that state's regulations equivalent to Subsection R313-21-21(7)[~~,~~];

(C) reports shall identify each general licensee by name and address, an individual by name or position who may constitute a point of contact between the agency and the general licensee, the type and model number of the device transferred, and the quantity of depleted uranium contained in the product or device. The report shall be submitted within [~~thirty~~]30 days after the end of each calendar quarter when a product or device is transferred to the generally licensed person;

(D) if no transfers have been made to Nuclear Regulatory Commission licensees during the reporting period, this information shall be reported to the Nuclear Regulatory Commission[~~,~~]; and

(E) if no transfers have been made to general licensees within a particular Agreement State during the reporting period, this information shall be reported to the responsible Agreement State agency upon the request of that agency; and

(vii) records shall be kept showing the name, address and point of contact for each general licensee to whom the person transfers depleted uranium in industrial products or devices for use pursuant to the general license provided in Subsection R313-21-21(7) or equivalent regulations of the Nuclear Regulatory Commission or an Agreement State. The records shall be maintained for a period of two years and shall show the date of each transfer, the quantity of depleted uranium in the product or device transferred, and compliance with the report requirements of Subsection R313-22-75(11).

KEY: specific licenses, decommissioning, broad scope, radioactive materials
Date of Last Change: [~~February 1, ~~]2024
Notice of Continuation: April 8, 2021
Authorizing, and Implemented or Interpreted Law: 19-3-104; 19-6-104

NOTICE OF SUBSTANTIVE CHANGE		
TYPE OF FILING: Amendment		
Rule or Section Number:	**R313-32-2**	**Filing ID: 56555**

Agency Information

1. Title catchline:	Environmental Quality, Waste Management and Radiation Control, Radiation	
Building:	MASOB	
Street address:	195 N 1950 W	
City, state:	Salt Lake City, UT	
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:

R313-32-2. Clarifications or Exceptions

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

The Nuclear Regulatory Commission (NRC) is amending its regulations to make miscellaneous corrections. These changes include correcting mailing addresses, typographical errors, grammatical errors, punctuation, references, spelling, agency names, office titles; removing outdated reporting requirements; removing obsolete language, clarifying language; adding metric units; correcting formatting, updating an authority citation, updating internal procedures, inserting missing language, updating the street address for the NRC's Region I office, and updating the phone number for the NRC's Region IV office.

As an Agreement State with the NRC for the radioactive materials program, Utah is required to maintain regulatory compatibility with the corresponding NRC radioactive materials regulations. The Division of Waste Management and Radiation Control, Radiation is adopting the changes that the NRC designated as necessary for an Agreement State to adopt to maintain regulatory compatibility with the NRC.

4. Summary of the new rule or change:

The date of the version of 10 CFR 35.2 through 35.7; 35.10(d) through 35.10(f); 35.11(a) through 35.11(b); 35.12; and 35.13(b) through 35.3204 that is incorporated by reference in Section R313-32-2 is being changed to 2022.

Fiscal Information

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

A) State budget:

There is no cost or savings to the state budget due to this amendment because the amendments do not add any new requirements that could result in costs for state agencies, nor does it remove any existing requirements.

B) Local governments:

There is no cost or savings to local governments due to this amendment because the amendments do not add any new requirements that could result in costs for local governments, nor does it remove any existing requirements.

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

There is no cost or savings to small businesses due to this amendment because the amendments do not add any new requirements that could result in costs for small businesses, nor does it remove any existing requirements.

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

There is no cost or savings to non-small businesses due to this amendment because the amendments do not add any new requirements that could result in costs for non-small businesses, nor does it 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***)**:**

This amendment will not result in any costs to any other persons other than small businesses, non-small businesses, state or local governments that must comply with this rule because the amendments do not add any new requirements that could result in costs for any persons other than small businesses, non-small businesses, state or local governments, nor does it remove any existing requirements.

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 because it does not add any new requirements to the rule.

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

Regulatory Impact Table

Fiscal Cost	**FY2025**	**FY2026**	**FY2027**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits	**FY2025**	**FY2026**	**FY2027**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
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	

Incorporations by Reference Information

7. Incorporations by Reference:

A) This rule adds or updates the following title of materials incorporated by references:

Official Title of Materials Incorporated (from title page)	Title 10 – Energy, Chapter I – Nuclear Regulatory Commission, Part 35 Medical Use of Byproduct Material
Publisher	Federal Government
Issue Date	November 30, 2022

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:	07/31/2024

9. This rule change MAY become effective on:	09/16/2024

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	Douglas J. Hansen, Division Director	**Date:**	06/13/2024

designee and title:			

R313. Environmental Quality, Waste Management and Radiation Control, Radiation.
R313-32. Medical Use of Radioactive Material.
R313-32-2. Clarifications or Exceptions.

For [~~the purposes of~~]Rule R313-32, 10 CFR 35.2 through 35.7; 35.10(d) through 35.10(f); 35.11(a) through 35.11(b); 35.12; and 35.13(b) through 35.3204 (2022[~~0~~]) are incorporated by reference with the following clarifications or exceptions:

(1) The exclusion of the following:

(a) [~~I~~]in 10 CFR 35.2, exclude definitions for "Address of Use," "Agreement State," "Area of Use," "Dentist," "Pharmacist," "Physician," "Podiatrist," and "Sealed Source";

(b) [~~I~~]in 10 CFR 35.19, exclude "or the common defense and security ";

(c) [~~I~~]in 10 CFR 35.3067, exclude ", with a copy to the Director, Office of Nuclear Material Safety and Safeguards"; and

(d) [~~I~~]in 10 CFR 35.3045(d), 10 CFR 3047(d), 10 CFR 35.3067, and 10 CFR 35.3204(b), exclude "By an appropriate method listed in Sec. 30.6(a) of this chapter,".

(2) The substitution of the following date references:

(a) "May 13, 2005" for "October 24, 2002"; and

(b) "December 31, 2019" for "January 14, 2019".

(3) The substitution of the following rule references:

(a) "Rules R313-32 and R313-15" for reference to "this part and 10 CFR Part 20" in 10 CFR 35.61(a);

(b) "Rule R313-15" for reference to "Part 20 of this chapter" in 10 CFR 35.70(a) and 10 CFR 35.80(a)(4);

(c) "Rules R313-19 and R313-22" for reference to "Part 30 of this chapter" in 10 CFR 35.18(a)(4);

(d) "Rules R313-19 and R313-22 or equivalent Nuclear Regulatory Commission or Agreement State requirements" for reference to "10 CFR Part 30 or the equivalent requirements of an Agreement State" in 10 CFR 35.49(c);

(e) "10 CFR Part 30" for reference to "Part 30 of this chapter" as found in 10 CFR 35.65(a)(4);

(f) "Rules R313-15, R313-19, and R313-22" for reference to "parts 20 and 30 of this chapter" as found in 10 CFR 35.63(e)(1);

(g) "Section R313-12-110" for reference to "Sec. 30.6 of this chapter" as found in 10 CFR 35.14(c);

(h) "Section R313-15-101" for reference to "Sec. 20.1101 of this chapter" as found in 10 CFR 35.24(a);

(i) "Subsection R313-15-301(1)(a)" for reference to "Sec. 20.1301(a)(1) of this chapter" as found in 10 CFR 35.310(a)(2)(i) and 10 CFR 35.410(a)(4)(i);

(j) "Subsection R313-15-301(1)(c)" for reference to "Sec. 20.1301(c) of this chapter" as found in 10 CFR 35.310(a)(2)(ii) and 10 CFR 35.410(a)(4)(ii);

(k) "Section R313-15-501" for reference to "Sec. 20.1501 of this chapter" as found in 10 CFR 35.652(a);

(l) "Section R313-18-12" for reference to "Sec. 19.12 of this chapter" as found in 10 CFR 35.27(a)(1), 10 CFR 35.27(b)(1), 10 CFR 35.310, and 10 CFR 35.410;

(m) "Rules R313-19, R313-22 and Subsection R313-22-75(10) or equivalent U.S. Nuclear Regulatory Commission or Agreement State requirements" for reference to "10 CFR Part 30 and Sec. 32.74 of this chapter or equivalent requirements of an Agreement State" as found in 10 CFR 35.49(a);

(n) "Subsection R313-22-75(10) or equivalent Nuclear Regulatory Commission or Agreement State requirements" for references to "Sec. 32.74 of this chapter or equivalent Agreement State regulations" found in 10 CFR 35.65(a)(1) and 10 CFR 35.65(a)(2);

(o) "Rule R313-70" for reference to "Part 170 of this chapter";

(p) "Subsection R313-19-34(2)" for reference to "Sec. 30.34(b) of this chapter" as found in 10 CFR 35.14(b)(4);

(q) "Section R313-22-50" for reference to "Part 33 of this chapter" in 10 CFR 35.15;

(r) "Subsection R313-22-50(2)" for reference to "Sec. 33.13 of this chapter" in 10 CFR 35.12(e);

(s) "Subsection R313-22-75(9)(b)(iv)" for reference to "Sec. 32.72(b)(4)" in 10 CFR 35.2 for the definition of Authorized Nuclear Pharmacist;

(t) "Subsection R313-22-75(9) or equivalent Nuclear Regulatory Commission or Agreement State requirements" for reference to "Sec. 32.72 of this chapter or equivalent Agreement State requirements" as found in 10 CFR 35.63(b)(2)(i), 10 CFR 35.63(c)(3)(i), 10 CFR 35.100(a)(1), 10 CFR 35.200(a)(1), and 10 CFR 35.300(a)(1); and

(u) "Subsection R313-22-32(9) or equivalent Nuclear Regulatory Commission or Agreement State requirements" for reference to "Sec. 30.32(j) of this chapter or equivalent Agreement State requirements" as found in 10 CFR 35.63(b)(2)(iii), 10 CFR 35.63(c)(3)(ii), 10 CFR 35.100(a)(2), 10 CFR 35.200(a)(2), or 10 CFR 35.300(a)(2).

(4) The substitution of the following terms:

(a) "radioactive material" for reference to "byproduct material";

(b) "a director, a Nuclear Regulatory Commission, or Agreement State" for reference to "an NRC or Agreement State" in 10 CFR 35.63(b)(2)(ii), 10 CFR 35.100(c), 10 CFR 35.200(c), or 10 CFR 35.300(c);

(c) "director is (801) 536-0200 or after hours, (801) 536-4123" for "NRC Operations Center is (301) 816-5100" as found in the footnote included for 10 CFR 35.3045(c);

(d) "Form DWMRC-01, 'Application for Radioactive Material License'" for reference to "NRC Form 313, 'Application for Material License'" as found in 10 CFR 35.12(b)(1), 10 CFR 35.12(c)(1)(i) and 10 CFR 35.18(a)(1);

(e) "Form DWMRC-01" for reference to "NRC Form 313" as found in 10 CFR 35.12(c)(1)(ii);

(f) "medical use license issued by the director" for reference to "NRC medical use license" in 10 CFR 35.6(c);

(g) "director, the U.S. Nuclear Regulatory Commission, or an Agreement State" for reference to "Commission or Agreement State" in 10 CFR 35.2 for the definitions of Authorized Medical Physicist (2)(i), Authorized Nuclear Pharmacist (2)(iii) and Radiation Safety Officer (2)(i), in 10 CFR 35.57(b)(1), [~~(~~]first instance[~~)~~], 10 CFR 35.57(b)(2), [~~(~~]first instance[~~)~~], 10 CFR 35.433(a)(2)(i); or for references to "Commission or an Agreement State" in 10 CFR 35.2 for the definitions of Associate Radiation Safety Officer (2)(i) and Ophthalmic Physicist (2)(i), 10 CFR 35.11(a),in 10 CFR 35.50(a), 10 CFR 35.50(a)(2)(ii)(A), 10 CFR 35.50(c)(1), 10 CFR 35.51(a), 10 CFR 35.51(a)(2)(i), 10 CFR 35.55(a), 10 CFR 35.190(a), 10 CFR 35.290(a), 10 CFR 35.390(a), 10 CFR 35.392(a), 10 CFR 35.394(a), 10 CFR 35.396(a)(3), 10 CFR 35.433(a)(2)(i), 10 CFR 35.490(a), 10 CFR 35.590(a), 10 CFR 35.605(a), 110 CFR 35.605(b), 10 CFR 35.605(c), 10 CFR 35.655(b) and 10 CFR 35.690(a);

(h) "director, a U.S. Nuclear Regulatory Commission, or an Agreement State" for references to "Commission or Agreement State" in 10 CFR 35.2 for the definitions of Authorized Medical Physicist (2)(iii), Authorized Nuclear Pharmacist (2)(i), Authorized User (2)(i), Authorized User (2)(iii) and Ophthalmic Physicist (2)(ii), in 10 CFR 13(b)(4)(ii), 10 CFR 35.14(a)(2), [~~(~~]second instance[~~)~~], 10 CFR 35.57(a)(1), [~~(~~]second instance[~~)~~], 10 CFR 35.57(b)(1), [~~(~~]second instance[~~)~~], 10 CFR 35.57(b)(2), [~~(~~]second instance[~~)~~]; or for references to "Commission or an Agreement State" in 10 CFR 35.50(c)(2), [~~(~~]second instance[~~)~~];

(i) "license issued by the director, the Nuclear Regulatory Commission, or the Agreement State" for reference to "Commission or Agreement State license" in 10 CFR 35.14(a)(2), [~~(~~]first instance[~~)~~];

(j) "director" for reference to "NRC Operations Center" in 10 CFR 35.3045(c), 10 CFR 35.3047(c), and 10 CFR 35.3204(a);

(k) "license issued by the director, the Nuclear Regulatory Commission or an Agreement State" for reference to "Commission or Agreement State license" in 10 CFR 35.13(b)(4)(i), 10 CFR 35.14(a)(2), [~~(~~]first instance[~~)~~], 10 CFR 35.50(b)(1)(ii) or for reference to "Commission or an Agreement State license" in 10 CFR 35.50(b)(1)(ii), 10 CFR 35.50(c)(2), and 10 CFR 35.57(a)(2);

(l) "director at the address specified in Section R313-12-110" for reference to "appropriate NRC Regional Office listed in Sec. 30.6 of this chapter" in 10 CFR 35.3045(d), 10 CFR 35.3047(d), 10 CFR 35.3067, and 10 CFR 35.3204(b);

(m) "board" for reference to "Commission" in 10 CFR 35.18(a)(3), [~~(~~]second instance[~~)~~], and 10 CFR 35.19;

(n) "director" for reference to "Commission" in 10 CFR 35.12(d)(4), 10 CFR 35.14(a), 10 CFR 35.14(b), 10 CFR 35.18(a), 10 CFR 35.18(a)(3), [~~(~~]first instance[~~)~~], 10 CFR 35.18(b), 10 CFR 35.24(a)(1), 10 CFR 35.24(c), 10 CFR 35.26(a), and 10 CFR 35.1000(b);

(o) "director" for reference to "NRC" in 10 CFR 35.3045(g)(1), 10 CFR 35.3047(f)(1), and 10 CFR 35.3204(a), [~~(~~]second instance[~~)~~];

(p) "Nuclear Regulatory Commission" for reference to "Commission" in 10 CFR 35.67(b)(2);

(q) "the director" for reference to "NRC" in 10 CFR 35.13(b)(4)(i);

(r) "licenses issued by the director" for reference to "NRC licenses" in 10 CFR 35.57(c);

(s) "director, the Nuclear Regulatory Commission, or an Agreement State" for reference to "NRC" in 10 CFR 35.13(b)(5), 10 CFR 35.14(a)(2), 10 CFR 35.57(b)(3), and 10 CFR 35.57(a)(4); and

(t) "(c)" for reference to "(b)" in 10 CFR 35.92.

(5) The addition of the following to 10 CFR 35.92:

(a) Reserved.

(b) The director may approve a radioactive material with a physical half-life of greater than 120 days but less than 175 days for decay-in-storage before disposal without regard to its radioactivity on a case by case basis if the licensee:

([~~1~~]i) requests an amendment to the licensee's radioactive materials license for the approval;

([~~2~~]ii) can demonstrate that the radioactive waste will be safely stored, and accounted for during the decay-in-storage period and that the additional radioactive waste will not exceed the licensee's radioactive waste storage capacity; and

([~~3~~]iii) commits to monitor the waste before disposal as stated in [~~paragraphs~~]10 CFR 35.92(a)(1) and 10 CFR 35.92(a)(2) [~~of this section~~]before the waste is disposed.[~~"~~]

KEY: radioactive materials, radiopharmaceutical, brachytherapy, nuclear medicine
Date of Last Change: [~~February 1,~~] 2024
Notice of Continuation: April 8, 2021
Authorizing, and Implemented or Interpreted Law: 19-3-104; 19-6-107

NOTICE OF SUBSTANTIVE CHANGE		
TYPE OF FILING: Amendment		
Rule or Section Number:	**R313-37-3**	**Filing ID: 56556**

Agency Information

1. Title catchline:	Environmental Quality, Waste Management and Radiation Control, Radiation
Building:	MASOB
Street address:	195 N 1950 W
City, state:	Salt Lake City, UT
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:

R313-37-3. Clarifications or Exceptions

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

The Nuclear Regulatory Commission (NRC) is amending its regulations to make miscellaneous corrections. These changes include correcting mailing addresses, typographical errors, grammatical errors, punctuation, references, spelling, agency names, office titles; removing outdated reporting requirements; removing obsolete language, clarifying language; adding metric units; correcting formatting, updating an authority citation, updating internal procedures, inserting missing language, updating the street address for the NRC's Region I office, and updating the phone number for the NRC's Region IV office.

As an Agreement State with the NRC for the radioactive materials program, Utah is required to maintain regulatory compatibility with the corresponding NRC radioactive materials regulations. The Division of Waste Management and Radiation Control, Radiation is adopting the changes that the NRC designated as necessary for an Agreement State to adopt to maintain regulatory compatibility with the NRC.

4. Summary of the new rule or change:

The date of the version of 10 CFR 37.5, 37.11(c), 37.21 through 37.43(d)(8), 37.45 through 37.103, and Appendix A to 10 CFR 37 that is incorporated by reference in Section R313-37-3 is being changed to 2021.

Fiscal Information

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

A) State budget:

There is no cost or savings to the state budget due to this amendment because the amendments do not add any new requirements that could result in costs for state agencies, nor does it remove any existing requirements.

B) Local governments:

There is no cost or savings to local governments due to this amendment because the amendments do not add any new requirements that could result in costs for local governments, nor does it remove any existing requirements.

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

There is no cost or savings to small businesses due to this amendment because the amendments do not add any new requirements that could result in costs for small businesses, nor does it remove any existing requirements.

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

There is no cost or savings to non-small businesses due to this amendment because the amendments do not add any new requirements that could result in costs for non-small businesses, nor does it 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***)**:**

This amendment will not result in any costs to other persons than small businesses, non-small businesses, state or local governments that must comply with this rule because the amendments do not add any new requirements that could result in costs for any persons other than small businesses, non-small businesses, state or local governments, nor does it remove any existing requirements

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 because it does not add any new requirements to the rule.

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

Regulatory Impact Table

Fiscal Cost	**FY2025**	**FY2026**	**FY2027**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits	**FY2025**	**FY2026**	**FY2027**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
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 19-3-103	Section 19-3-104	

Incorporations by Reference Information

7. Incorporations by Reference:

A) This rule adds or updates the following title of materials incorporated by references:

Official Title of Materials Incorporated (from title page)	Title 10 – Energy, Chapter I – Nuclear Regulatory Commission, Part 37 Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material
Publisher	Federal Government
Issue Date	August 31, 2021

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:	07/31/2024

9. This rule change MAY become effective on:	09/16/2024

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:**	06/13/2024

R313. Environmental Quality, Waste Management and Radiation Control, Radiation.
R313-37. Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material.
R313-37-3. Clarifications or Exceptions.

For [~~purposes of~~]Rule R313-37, 10 CFR 37.5, 37.11(c), 37.21 through 37.43(d)(8), 37.45 through 37.103, and Appendix A to 10 CFR 37 (202[~~0~~]1), are incorporated by reference with the following clarifications or exceptions:

(1) The exclusion of the following:

(a) In 10 CFR 37.5, exclude definitions for "Act", "Agreement State", "Becquerel", "Byproduct Material", "Commission", "Curie", "Government Agency", "License", "License issuing authority", "Lost or missing licensed material", "Person", "State", and "United States".

(2) The substitution of the following wording:

(a) "Utah Radiation Control Rule" for references to:

(i) "Commission regulation" in 10 CFR 37.101; and

(ii) "regulation" in 10 CFR 37.103;

(b) "Utah Radiation Control Rules" for reference to:

(i) "regulations and laws" in 10 CFR 37.31(d);

(ii) "Commission requirements" in 10 CFR 37.43(a)(3) and 37.43(c)(1)(ii); and

(iii) "regulations in this part" in 10 CFR 37.103;

(c) "[~~D~~]director" for references to:

(i) "appropriate NRC regional office listed in Section 30.6(b)(2) of this Chapter" in 10 CFR 37.45(b);

(ii) "Commission" in 10 CFR 37.103;

(iii) "NRC" in 10 CFR 37.31(d), 37.43(c)(3)(iii), 37.57(a), [~~(~~]second instance of NRC[~~)~~], and (c), 37.77, and 37.77(a)(1), [~~(~~]first instance[~~)~~], and (3), and 37.81(g);

(iv) "NRC's Director, Division of Security Policy, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 29555-0001" in 10 CFR 37.77(c)(2) and 37.77(d);

(v) "NRC's Director of Nuclear Security, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 29555-0001" in 10 CFR 37.77(c)(1);

(vi) "NRC's Operations Center" in 10 CFR 37.81(a) and (b);

(vii) "NRC's Operations Center (301-816-5100)" in 10 CFR 37.57(a) and (b) and 37.81(a) through (f);

(viii) "NRC regional office specified in section 30.6 of this chapter" in 10 CFR 37.41.(a)(3); and

(ix) "Director, Office of Nuclear Material Safety and Safeguards in 10 CFR 37.23(b)(2)"[~~.~~];

(d) "Director, the U.S. Nuclear Regulatory Commission, or an Agreement State" for references to "Commission or an Agreement State" in 10 CFR 37.71 and 37.71(a) and (b);

(e) "U.S. Nuclear Regulatory Commission's Security Orders or the legally binding requirement issued by Agreement States" for references to "Security Orders" in 10 CFR 37.21(a)(3), 37.25(b)(2), and 37.41(a)(3);

(f) "mail, hand delivery, or electronic submission" for references to "an appropriate method listed in section 37.7" in 10 CFR 37.57(c) and 37.81(g); and

(g) "shall, by mail, hand delivery, or electronic submission," for reference to "shall use an appropriate method listed in section 37.7 to" in 10 CFR 37.27(c).

(3) The substitution of the following rule references:

(a) "Subsection R313-19-41(4)" for reference to "section 30.41(d) of this chapter." In 10 CFR 37.71;

(b) "Section R313-19-100, [~~(~~]incorporating 10 CFR 71.97 by reference[~~)~~]," for reference to "section 71.97 of this chapter" in 10 CFR 37.73(b);

(c) "Section R313-19-100, [~~(~~]incorporating 10 CFR 71.97(b) by reference[~~)~~]," for reference to "section 71.97(b) of this chapter" in 10 CFR 37.73(b); and

(d) "10 CFR 73" for references to "part 73 of this chapter" in 10 CFR 37.21(c)(4), 37.25(b)2), and 37.27(a)(4).

KEY: radioactive materials, security, fingerprinting, transportation
Date of Last Change: 2024[~~January 15, 2021~~]
Notice of Continuation: October 19, 2021
Authorizing, and Implemented or Interpreted Law: 19-3-103; 19-3-104

NOTICE OF SUBSTANTIVE CHANGE		
TYPE OF FILING: Amendment		
Rule or Section Number:	**R357-15**	**Filing ID: 56545**

Agency Information

1. Title catchline:	Governor, Economic Opportunity	
Building:	World Trade Center	
Street address:	60 E South Temple	
City, state:	Salt Lake City, UT	
Contact persons:		
Name:	**Phone:**	**Email:**
Gregory Jeffs	801-538-8680	gjeffs@utah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule or section catchline:

R357-15. Enterprise Zone Tax Credit

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

The purpose of this rule filing is to increase clarity by adding definitions, removing outdated procedures, and changing wording and punctuation for increased clarity.

4. Summary of the new rule or change:

Section R357-15-1 is amended to make style change for clarity.

Section R357-15-2 is amended to add definitions.

Section R357-15-3 removes paper format of applications.

Section R357-15-4 is amended to make grammar and style changes for clarity.

Section R357-15-5 is amended to make style changes for clarity.

Section R357-15-6 is amended to make style changes for clarity.

Fiscal Information

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

A) State budget:

There is no new aggregate anticipated costs or savings to the state budget.

This rule is merely adding definitions, clarifying language and terms, and updating procedures.

B) Local governments:

There is no new aggregate anticipated cost of savings to local governments because local governments are not required to comply with or enforce this rule.

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

There is no new aggregate anticipated cost or savings to small businesses because this proposed amendment has $0 cost to businesses, nor does it increase the costs associated with any existing obligation.

Participation in the program is optional.

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

There is no new aggregate anticipated cost or savings to non-small businesses because this proposed amendment has $0 cost to businesses, nor does it create any new obligations.

Participation in the program is optional.

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

There is no new aggregate anticipated cost or savings to persons other than small businesses, businesses, or local government entities because this proposed amendment does not create new obligations for persons other than small businesses, businesses, or local government entities, nor does it increase the costs associated with any existing obligation.

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

There are no new compliance costs for affected persons because participation in the program is optional.

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

Regulatory Impact Table

Fiscal Cost	**FY2025**	**FY2026**	**FY2027**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits	**FY2025**	**FY2026**	**FY2027**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
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 Governor's Office of Economic Opportunity, Ryan Starks, has reviewed and approved this regulatory impact analysis.

Citation Information

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

Section 63N-2-213

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:	07/31/2024

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

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

Agency Authorization Information

Agency head or designee and title:	Ryan Starks, Executive Director	Date:	05/31/2024

R357. Governor, Economic Opportunity.
R357-15. Enterprise Zone Tax Credit.
R357-15-1. Authority.

[~~(1)~~]Subsection 63N-2-213(6) requires the office to make rules establishing the form and content of an application for an enterprise zone tax credit, the documentation required to receive an enterprise zone tax credit, and the administration of the program, including relevant timelines and deadlines.

R357-15-2. Definitions.

In addition to the definitions under Sections 63N-2-202, 59-7-614.10, and 59-10-1037 the following terms are defined:

(1) "Annual investment", "Investment" or "Qualifying investment" means the purchase of most types of tangible property, except land, such as buildings, machinery, vehicles, furniture, and equipment that:

(a) qualifies for depreciation under the Internal Revenue Service's Form 4562; and

(b) is put into service at an operating address of the business entity, that is within an enterprise zone designated by the office for the applicable tax year.

(2) "Baseline" means the highest number of employee positions that existed at the business entity in the previous taxable year.

(3) "Qualified business use vehicle" means an automobile, light truck, heavy truck, van, utility vehicle, boat, recreational vehicle, airplane, or motorcycle.

(4) "New full-time employee position" means a position that has been newly created in addition to the baseline filled by an employee working at least 30 hours per week where the period ends in the tax year for which the credit is claimed.

(5) "Payment documentation" means a[~~,~~]:

(a) bank statement;

(b) cleared check;

(c) signed and executed financing agreement; or

(d) signed statement from the seller confirming the payer, payee, date paid, and amount paid for cash payments.

(6) "Purchase documentation" means a bill of sale, contract of sale, receipt, invoice, or other documentation which identifies the buyer, seller, purchase price, items purchased, and the date of purchase.

(7) "Residential rental property" means the same as Internal Revenue Service's publication 527.

(8) "Retail trade" means a business entity that collects sales and use tax based on Section 59-12-103.

(9) "Same ownership" means two or more business entities that are owned or partially owned by the same individual or individuals.

([~~7~~]10) "Value-added business entity" means a company that creates a change in the physical state or form of a product in a manner that enhances its value, thus expanding the customer base of the product. Examples include milling wheat into flour or making strawberries into jam.

R357-15-3. Application Form and Content.

(1) An application form will be provided by the office and will contain the following content:

(a) General submission instructions;

(b) Types of tax credits available to be claimed;

(c) Criteria for qualification for each tax credit;

(d) Any required deadlines and relevant timelines; and

(e) Any required documents and information necessary for verification and approval of the application.

(2) The application shall be created in an electronic format available to the public at business.utah.gov

[~~(3) The application shall also be available in paper format for any person or entity that requests a paper copy via mail or telephone.~~]

R357-15-4. Required Documentation and Verification Information.

(1) To claim any of the tax credits available under Section 63N-2-201 the following basic information must be provided to the office:

(a) business entity's name that is claiming a tax credit on a Utah Tax filing submission;

(b) contact name, email, phone number, mailing address and relevant titles;

(c) the physical operating address where the business entity is located including a screenshot of the address pinpoint within the enterprise zone as found on locate.utah.gov.

(d) the business entity's tax identification number whether a federally provided employer identification number or a Social Security Number; and

(e) information as required under Section R357-15-3.

(2) To qualify for any of the employment tax credits under Subsections 63N-2-213(7)(a) through (d) the following documentation and information is required:

(a) current total of [~~all~~]employees at any point during the taxable year and previous taxable including the quarterly total of employees as reported to the Department of Workforce Services[~~ for the previous taxable year~~];

(b) the number of new full-time employee positions created above the baseline. For each new full-time employee position above the baseline the applicant must provide:

(i) employee name;

(ii) employee wages paid;
(iii) employee hours worked;
(iv) employee Hire date and termination date if applicable;
(v) if applicable, proof of employer-sponsored health insurance program if the employer pays at least 50% of the premium cost;
(vi) if applicable, evidence that the business entity adds value to agricultural commodities through manufacturing or processing, including a list of sample products or processes.
(3) To qualify for the private capital investment tax credit under Subsections 63N-2-213(7)(e) and (f) the following documentation and information is required:
(a) If the private capital investment is for the rehabilitation of a building in an enterprise zone the applicant must provide:
(i) the rehabilitated building's physical address;
(ii) documents showing the current owner such as the deed or mortgage documents;
(iii) the date the building was last occupied;
(iv) a current occupancy permit or certificate;
(v) purchase documentation of rehabilitation expenses totaling the amount the tax credit is calculated from;
(vi) one or more forms of payment documentation validating any rehabilitation expense with an amount claimed equal to or greater than the amount established by the office is paid in entirety; and
(vii) any other documentation requested by the office including a sworn affidavit confirming the rehabilitation costs from the owner of the building if applicant is not the owner of the building.
(b) If the private capital investment is a qualifying investment in plant, equipment, or other depreciable property in an enterprise zone the applicant must provide:
(i) an itemized list of qualified investments being claimed for the credit on a template provided by the office;
(ii) purchase documentation for any investment claimed;
(iii) one or more forms of payment documentation validating an investment with an amount claimed that is equal to or greater than an amount established by the office is paid in entirety; and
(iv) property and real estate investments also require:
(A) a settlement statement; and
(B) property tax notice with building and land values separated from total property value.
(v) qualified business use vehicle and other motor vehicle investments also require business use percentage.

R357-15-5. Application Review and Authorization Process for an Enterprise Zone Tax Credit.
(1) The office shall review submitted applications within a reasonable amount of time and approve or deny the application as follows:
(a) the office shall review tax credits claimed and documentation provided; and
(b) the office may request additional documentation or information if the office determines that further verification is required. Failure to comply with a request for additional documentation may result in a denial of the application.
(2) The office will issue tax credit certificates for tax credits for which an applicant has applied, qualified and been approved by the office. This office may issue a partial approval if only parts of the application are determined to qualify.
(3) The office must provide written notice that includes its reasoning when denying any or a portion of a tax credit application.
(4) If approved in whole or in part, the office shall provide any necessary documents and instructions, approved by the Utah Tax Commission, for claiming the tax credit.
(5)(a) When a business entity is seeking to receive a tax credit for the purchase of a qualified business use vehicle, in conformity with Subsection 63N-2-213(7)(f), the office [~~shall~~]may not grant a tax credit for the trade in value of a qualified business use vehicle that the business entity traded into the purchase of the vehicle for which the tax credit is being sought;
(b) The amount claimed toward[~~s~~] investment in a qualified business use vehicle or a motor vehicle described in Subsection R357-15-4(3)(b)(v) is determined as acquisition cost, less any trade in value in accordance with Subsection R357-15-5(5), multiplied by the business use percentage.
(c) a qualified business use vehicle with partial business use and personal use will be treated as 100% business use.
(6) The trade in value in a purchase may be claimed toward[~~s~~] a state tax credit for private capital investment that is qualifying investment in plant, equipment, or other depreciable property when, in the purchase that qualifies as investment by the business entity, there was traded in:
(a) plant, equipment, or other depreciable property that qualifies for depreciation on IRS Form 4562 and is not a qualified business use vehicle and if not previously awarded;
(b) a qualified business use vehicle that was traded in by an individual who is an owner or officer of the applying business entity; or
(c) a building, property, or other real estate investment that qualifies for depreciation on IRS Form 4562.
([~~6~~]7) The office may deny claims of investment for software purchases that are cloud services or software as a service.
([~~7~~]8) The office may deny claims for investment purchased [~~prior to~~]before the three previous taxable years.
([~~8~~]9) The office may deny claims for investments purchased from a[~~nother~~] business entity with the same ownership.
([~~9~~]10) The office may deny claims if the only connection to an enterprise zone for a business entity is a P.O. Box.
([~~10~~]11) The office may deny claims for investment that was transferred from personal use to business use unless the original investment and personal use occurred within the same taxable year the asset was placed into service by the applying business entity.
([~~11~~]12) [~~The office may deny claims for state tax credits under Subsections 63N-2-213(7)(a) through (f) if 51% of a business entity's employees that are employed at facilities, that are within a designated enterprise zone, of a business entity do not reside within the county in~~

~~which the enterprise zone is located or an enterprise zone that is immediately adjacent or contiguous to the county in which the enterprise zone is located as per Section 63N-2-212.~~]The office shall deny claims if a business entity:

(a) produces revenue of 51% or more in retail trade;

(b) is a residential rental property business; or

(c) is a public utilities business.

R357-15-6. Appeal of Application Denial.

[~~(1)~~]A hearing contesting the denial of an application in whole or in part of an enterprise zone tax credit is designated as informal hearings.

KEY: enterprise zones, tax credits
Date of Last Change: 2024[~~November 22, 2021~~]
Notice of Continuation: March 11, 2021
Authorizing, and Implemented or Interpreted Law: 63N-2-213(6)

NOTICE OF SUBSTANTIVE CHANGE		
TYPE OF FILING: Repeal and Reenact		
Rule or Section Number:	**R590-146**	**Filing ID: 56552**

Agency Information

1. Title catchline:	Insurance, Administration	
Building:	Taylorsville State Office Building	
Street address:	4315 S 2700 W	
City, state	Taylorsville, UT	
Mailing address:	PO Box 146901	
City, state and zip:	Salt Lake City, UT 84114-6901	
Contact persons:		
Name:	**Phone:**	**Email:**
Steve Gooch	801-957-9322	sgooch@utah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule or section catchline:

R590-146. Medicare Supplement Insurance Standards

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

This rule is being changed in compliance with Executive Order No. 2021-12.

During the review of this rule, the Department of Insurance (Department) discovered a number of minor issues that needed to be amended.

4. Summary of the new rule or change:

The majority of the changes are being done to fix style issues to bring this rule text more in line with the Rulewriting Manual for Utah standards.

Other changes make the language of this rule more clear and update the new Severability section (R590-146-75) to use the Department's current language. The changes do not add, remove, or change any regulations or requirements.

The filing was submitted as a repeal and reenactment instead of an amendment solely due to the volume of changes, not the substantiveness of any change.

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.

The changes are largely clerical in nature and will not change how the Department functions.

B) Local governments:

There is no anticipated cost or savings to local governments.

The changes are largely clerical in nature and will not affect local governments.

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

There is no anticipated cost or savings to small businesses.

The changes are largely clerical in nature, and will not affect small businesses.

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

There is no anticipated cost or savings to non-small businesses.

The changes are largely clerical in nature, and will not affect non-small businesses.

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

There is no anticipated cost or savings to any other persons.

The changes are largely clerical in nature.

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

There are no compliance costs for any affected persons.

The changes are largely clerical in nature.

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

Regulatory Impact Table

Fiscal Cost	**FY2025**	**FY2026**	**FY2027**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits	**FY2025**	**FY2026**	**FY2027**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
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 Insurance Department, Jonathan T. Pike, has reviewed and approved this regulatory impact analysis.			

Citation Information

6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:		
Section 31A-2-201	Section 31A-2-201.1	Section 31A-22-620
Section 31A-23a-402		

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:	07/31/2024

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

Agency Authorization Information

Agency head or designee and title:	Steve Gooch, Public Information Officer	**Date:**	06/13/2024

R590. Insurance, Administration.
R590-146. Medicare Supplement Insurance Standards.
[~~R590-146-1. Authority.~~

~~This rule is issued pursuant to the authority vested in the commissioner under Section 31A-22-620 requiring the commissioner to adopt rules to establish minimum standards for individual and group Medicare supplement insurance.~~

~~R590-146-2. Purpose.~~

~~The purpose of this rule is to provide for the reasonable standardization of coverage and simplification of terms and benefits of Medicare supplement policies; to facilitate public understanding and comparison of such policies; to eliminate provisions contained in such policies which may be misleading or confusing in connection with the purchase of such policies or with the settlement of claims; to provide for full disclosures in the sale of accident and sickness insurance coverages to persons eligible for Medicare; and to establish rating and reporting requirements.~~

~~R590-146-3. Applicability and Scope.~~

~~A. Except as otherwise specifically provided in Sections 7, 13, 14, 17 and 22, this rule shall apply to:~~
~~(1) all Medicare supplement policies delivered or issued for delivery in this state on or after the effective date of this rule; and~~
~~(2) all certificates issued under group Medicare supplement policies, which certificates have been delivered or issued for delivery in this state.~~
~~B. This rule shall not apply to a policy or contract of one or more employers or labor organizations, or of the trustees of a fund established by one or more employers or labor organizations, or combination thereof, for employees or former employees, or a combination thereof, or for members or former members, or a combination thereof, of the labor organizations.~~

~~R590-146-4. Definitions.~~

~~For purposes of this rule:~~
~~A. "Applicant" means:~~
~~(1) in the case of an individual Medicare supplement policy, the person who seeks to contract for insurance benefits, and~~
~~(2) in the case of a group Medicare supplement policy, the proposed certificateholder.~~
~~B. "Bankruptcy" means when a Medicare Advantage organization that is not an issuer has filed, or has had filed against it, a petition for declaration of bankruptcy and has ceased doing business in the state.~~
~~C. "Certificate" means any certificate delivered or issued for delivery in this state under a group Medicare supplement policy.~~
~~D. "Certificate form" means the form on which the certificate is delivered or issued for delivery by the issuer.~~
~~E. "Continuous period of creditable coverage" means the period during which an individual was covered by creditable coverage, if during the period of the coverage the individual had no breaks in coverage greater than 63 days.~~

F. "Employee welfare benefit plan" means a plan, fund or program of employee benefits as defined in 29 U.S.C. Section 1002, Employee Retirement Income Security Act.

G. "Insolvency" means when an issuer, licensed to transact the business of insurance in this state, has had a final order of liquidation entered against it with a finding of insolvency by a court of competent jurisdiction in the issuer's state of domicile.

H. "Issuer" means an insurance company, fraternal benefit society, health care service plan, health maintenance organization, and any other entity delivering or issuing for delivery in this state a Medicare supplement policy or certificate.

I. "Medicare" means the "Health Insurance for the Aged Act," Title XVIII of the Social Security Amendments of 1965, as then constituted or later amended.

J. "Medicare Advantage plan" means a plan of coverage for health benefits under Medicare Part C as defined in 42 U.S.C. 1395w-28(b)(1), and includes:

(1) coordinated care plans which provide health care services, including but not limited to health maintenance organization plans, with or without a point-of-service option, plans offered by provider-sponsored organizations, and preferred provider organization plans;

(2) medical savings account plans coupled with a contribution into a Medicare Advantage plan medical savings account; and

(3) Medicare Advantage private fee-for-service plans.

K.(1) "Medicare supplement policy" means a group or individual policy of accident and health insurance or a subscriber contract of hospital and medical service associations or health maintenance organizations, other than a policy issued pursuant to a contract under Section 1876 of the federal Social Security Act, 42 U.S.C. Section 1395 et seq., or an issued policy under a demonstration project specified in 42 U.S.C. Section 1395ss(g)(1), which is advertised, marketed or designed primarily as a supplement to reimbursements under Medicare for the hospital, medical or surgical expenses of persons eligible for Medicare.

(2) "Medicare supplement policy" does not include Medicare Advantage plans established under Medicare Part C, Outpatient Prescription Drug plans established under Medicare Part D, or any Health Care Prepayment Plan, HCPP, that provides benefits pursuant to an agreement under Section 1833(a)(1)(A) of the Social Security Act.

L. "Newly eligible" means those individuals who become eligible for Medicare due to age, disability or end-stage renal disease on or after January 1, 2020.

M. "Pre-Standardized Medicare supplement benefit plan," "Pre-Standardized benefit plan" or "Pre-Standardized plan" means a group or individual policy of Medicare supplement insurance issued prior to December 12, 1994.

N. "1990 Standardized Medicare supplement benefit plan," "1990 Standardized benefit plan" or "1990 plan" means a group or individual policy of Medicare supplement insurance issued on or after July 30, 1992 and with an effective date of coverage prior to June 1, 2010 and includes Medicare supplement insurance policies and certificates renewed on or after that date which are not replaced by the issuer at the request of the insured.

O. "2010 Standardized Medicare supplement benefit plan," "2010 Standardized benefit plan" or "2010 plan" means a group or individual policy of Medicare supplement insurance issued with an effective date of coverage on or after June 1, 2010.

P. "Policy form" means the form on which the policy is delivered or issued for delivery by the issuer.

Q. "Secretary" means the Secretary of the United States Department of Health and Human Services.

R590-146-5. Policy Definitions and Terms.

No policy or certificate may be advertised, solicited or issued for delivery in this state as a Medicare supplement policy or certificate unless the policy or certificate contains definitions or terms, which conform to the requirements of this section.

A. "Accident," "accidental injury," or "accidental means" shall be defined to employ result language and shall not include words, that establish an accidental means test or use words such as external, violent, visible wounds, or similar words of description or characterization.

(1) The definition shall not be more restrictive than the following: "Injury or injuries for which benefits are provided means accidental bodily injury sustained by the insured person which is the direct result of an accident, independent of disease or bodily infirmity or any other cause, and occurs while insurance coverage is in force."

(2) The definition may provide that injuries shall not include injuries for which benefits are provided or available under any workers' compensation, employer's liability or similar law, or motor vehicle no-fault plan, unless prohibited by law.

B. "Benefit period" or "Medicare benefit period" shall not be defined more restrictively than as defined in the Medicare program.

C. "Convalescent nursing home," "extended care facility," or "skilled nursing facility" shall not be defined more restrictively than as defined in the Medicare program.

D. "Health care expenses" means, for purposes of Section 14, expenses of health maintenance organizations associated with the delivery of health care services, which expenses are analogous to incurred losses of insurers.

E. "Hospital" may be defined in relation to its status, facilities and available services or to reflect its accreditation by the Joint Commission on Accreditation of Hospitals, but not more restrictively than as defined in the Medicare program.

F. "Medicare" shall be defined in the policy and certificate. Medicare may be substantially defined as "The Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965 as Then Constituted or Later Amended," or "Title I, Part I of Public Law 89-97, as Enacted by the Eighty-Ninth Congress of the United States of America and popularly known as the Health Insurance for the Aged Act, as then constituted and any later amendments or substitutes thereof," or words of similar import.

G. "Medicare eligible expenses" shall mean expenses of the kinds covered by Medicare Parts A and B, to the extent recognized as reasonable and medically necessary by Medicare.

H. "Physician" shall not be defined more restrictively than as defined in the Medicare program.

I. "Sickness" shall not be defined to be more restrictive than the following:

"Sickness means illness or disease of an insured person which first manifests itself after the effective date of insurance and while the insurance is in force."

~~The definition may be further modified to exclude sicknesses or diseases for which benefits are provided under any workers' compensation, occupational disease, employer's liability or similar law.~~

~~R590-146-6. Policy Provisions.~~

~~A. Except for permitted preexisting condition clauses as described in Subsections 7.A.(1), 8.A.(1), and 8a.A.(1) of this rule, no policy or certificate may be advertised, solicited or issued for delivery in this state as a Medicare supplement policy if the policy or certificate contains limitations or exclusions on coverage that are more restrictive than those of Medicare.~~

~~B. No Medicare supplement policy or certificate may use waivers to exclude, limit or reduce coverage or benefits for specifically named or described preexisting diseases or physical conditions.~~

~~C. No Medicare supplement policy or certificate in force in the state shall contain benefits that duplicate benefits provided by Medicare.~~

~~D.(1) Subject to Subsections 7.A.(4), (5) and (7) and 8.A.(4) and (5) of this rule, a Medicare supplement policy with benefits for outpatient prescription drugs in existence prior to January 1, 2006 shall be renewed for current policyholders who do not enroll in Part D at the option of the policyholder.~~

~~(2) A Medicare supplement policy with benefits for outpatient prescription drugs shall not be issued after December 31, 2005.~~

~~(3) After December 31, 2005, a Medicare supplement policy with benefits for outpatient prescription drugs may not be renewed after the policyholder enrolls in Medicare Part D unless:~~

~~(a) The policy is modified to eliminate outpatient prescription coverage for expenses of outpatient prescription drugs incurred after the effective date of the individual's coverage under a Part D plan, and;~~

~~(b) Premiums are adjusted to reflect the elimination of outpatient prescription coverage at the time of Medicare Part D enrollment, accounting for any claims paid, if applicable.~~

~~R590-146-7. Minimum Benefit Standards for Pre-Standardized Medicare Supplement Benefit Plan Policies or Certificates Issued for Delivery Prior to July 30, 1992.~~

~~No policy or certificate may be advertised, solicited or issued for delivery in this state as a Medicare supplement policy or certificate unless it meets or exceeds the following minimum standards. These are minimum standards and do not preclude the inclusion of other provisions or benefits which are not inconsistent with these standards.~~

~~A. General Standards. The following standards apply to Medicare supplement policies and certificates and are in addition to all other requirements of this rule.~~

~~(1) A Medicare supplement policy or certificate shall not exclude or limit benefits for losses incurred more than six months from the effective date of coverage because it involved a preexisting condition. The policy or certificate shall not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six months before the effective date of coverage.~~

~~(2) A Medicare supplement policy or certificate shall not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents.~~

~~(3) A Medicare supplement policy or certificate shall provide that benefits designed to cover cost sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible, copayment, or coinsurance amounts. Premiums may be modified to correspond with such changes.~~

~~(4) A "noncancellable," "guaranteed renewable," or "noncancellable and guaranteed renewable" Medicare supplement policy shall not:~~

~~(a) provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than the nonpayment of premium; or~~

~~(b) be canceled or nonrenewed by the issuer solely on the grounds of deterioration of health.~~

~~(5)(a) Except as authorized by the commissioner of this state, an issuer shall neither cancel nor nonrenew a Medicare supplement policy or certificate for any reason other than nonpayment of premium or material misrepresentation.~~

~~(b) If a group Medicare supplement insurance policy is terminated by the group policyholder and not replaced as provided in this Subsection (5)(d), the issuer shall offer certificateholders an individual Medicare supplement policy. The issuer shall offer the certificateholder at least the following choices:~~

~~(i) an individual Medicare supplement policy currently offered by the issuer having comparable benefits to those contained in the terminated group Medicare supplement policy; and~~

~~(ii) an individual Medicare supplement policy which provides only such benefits as are required to meet the minimum standards as defined in Subsection 8a.B. of this rule.~~

~~(c) If membership in a group is terminated, the issuer shall:~~

~~(i) offer the certificateholder the conversion opportunities described in Subsection (b); or~~

~~(ii) at the option of the group policyholder, offer the certificateholder continuation of coverage under the group policy.~~

~~(d) If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the issuer of the replacement policy shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new group policy shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced.~~

~~(6) Termination of a Medicare supplement policy or certificate shall be without prejudice to any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be predicated upon the~~

~~continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or to payment of the maximum benefits. Receipt of Medicare Part D benefits will not be considered in determining a continuous loss.~~

~~(7) If a Medicare supplement policy eliminates an outpatient prescription drug benefit as a result of requirements imposed by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, the modified policy shall be deemed to satisfy the guaranteed renewal requirements of this subsection.~~

~~B. Minimum Benefit Standards. Every issuer shall include the following benefits:~~

~~(1) coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period;~~

~~(2) coverage for either all or none of the Medicare Part A inpatient hospital deductible amount;~~

~~(3) coverage of Part A Medicare eligible expenses incurred as daily hospital charges during use of Medicare's lifetime hospital inpatient reserve days;~~

~~(4) upon exhaustion of all Medicare hospital inpatient coverage including the lifetime reserve days, coverage of 90% of all Medicare Part A eligible expenses for hospitalization not covered by Medicare subject to a lifetime maximum benefit of an additional 365 days;~~

~~(5) coverage under Medicare Part A for the reasonable cost of the first three pints of blood, or equivalent quantities of packed red blood cells, as defined under federal regulations, unless replaced in accordance with federal regulations or already paid for under Part B;~~

~~(6) coverage for the coinsurance amount, or in the case of hospital outpatient department services paid under a prospective payment system, the copayment amount, of Medicare eligible expenses under Part B regardless of hospital confinement, subject to a maximum calendar year out-of-pocket amount equal to the Medicare Part B deductible, $100; and~~

~~(7) effective January 1, 1990, coverage under Medicare Part B for the reasonable cost of the first three pints of blood, or equivalent quantities of packed red blood cells, as defined under federal regulations, unless replaced in accordance with federal regulations or already paid for under Part A, subject to the Medicare deductible amount.~~

~~R590-146-8. Benefit Standards for 1990 Standardized Medicare Supplement Benefit Plan Policies or Certificates Issued for Delivery on or After July 30, 1992 and with an Effective Date for Coverage Prior to June 1, 2010.~~

~~The following standards are applicable to all Medicare supplement policies or certificates delivered or issued for delivery in this state on or after July 30, 1992 and with an effective date for coverage prior to June 1, 2010. No policy or certificate may be advertised, solicited, delivered or issued for delivery in this state as a Medicare supplement policy or certificate unless it complies with these benefit standards.~~

~~A. General Standards. The following standards apply to Medicare supplement policies and certificates and are in addition to all other requirements of this rule.~~

~~(1) A Medicare supplement policy or certificate shall not exclude or limit benefits for losses incurred more than six months from the effective date of coverage because it involved a preexisting condition. The policy or certificate may not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six months before the effective date of coverage.~~

~~(2) A Medicare supplement policy or certificate shall not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents.~~

~~(3) A Medicare supplement policy or certificate shall provide that benefits designed to cover cost sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible, co-payment, or coinsurance amounts. Premiums may be modified to correspond with such changes.~~

~~(4) No Medicare supplement policy or certificate shall provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than the nonpayment of premium.~~

~~(5) Each Medicare supplement policy shall be guaranteed renewable.~~

~~(a) The issuer shall not cancel or nonrenew the policy solely on the ground of health status of the individual.~~

~~(b) The issuer shall not cancel or nonrenew the policy for any reason other than nonpayment of premium or material misrepresentation.~~

~~(c) If the Medicare supplement policy is terminated by the group policyholder and is not replaced as provided under Subsection (5)(e), the issuer shall offer certificateholders an individual Medicare supplement policy which, at the option of the certificateholder:~~

~~(i) provides for continuation of the benefits contained in the group policy; or~~

~~(ii) provides for benefits that otherwise meet the requirements of this subsection.~~

~~(d) If an individual is a certificateholder in a group Medicare supplement policy and the individual terminates membership in the group, the issuer shall:~~

~~(i) offer the certificateholder the conversion opportunity described in Subsection (5)(c); or~~

~~(ii) at the option of the group policyholder, offer the certificateholder continuation of coverage under the group policy.~~

~~(e) If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the issuer of the replacement policy shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new policy shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced.~~

~~(f) If a Medicare supplement policy eliminates an outpatient prescription drug benefit as a result of requirements imposed by the Medicare Prescription Drug, Improvement and Modernization Act of 2003, the modified policy shall be deemed to satisfy the guaranteed renewal requirements of this subsection.~~

~~(6) Termination of a Medicare supplement policy or certificate shall be without prejudice to any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be conditioned upon~~

the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or payment of the maximum benefits. Receipt of Medicare Part D benefits will not be considered in determining a continuous loss.

(7)(a) A Medicare supplement policy or certificate shall provide that benefits and premiums under the policy or certificate shall be suspended at the request of the policyholder or certificateholder for the period, not to exceed 24 months, in which the policyholder or certificateholder has applied for and is determined to be entitled to medical assistance under Title XIX of the Social Security Act, but only if the policyholder or certificateholder notifies the issuer of the policy or certificate within 90 days after the date the individual becomes entitled to assistance.

(b) If suspension occurs and if the policyholder or certificateholder loses entitlement to medical assistance, the policy or certificate shall be automatically reinstituted, effective as of the date of termination of entitlement, if the policyholder or certificateholder provides notice of loss of entitlement within 90 days after the date of loss and pays the premium attributable to the period.

(c) Each Medicare supplement policy shall provide that benefits and premiums under the policy shall be suspended, for the period provided by federal regulation, at the request of the policyholder if the policyholder is entitled to benefits under Section 226 (b) of the Social Security Act and is covered under a group health plan, as defined in Section 1862 (b)(1)(A)(v) of the Social Security Act. If suspension occurs and if the policyholder or certificateholder loses coverage under the group health plan, the policy shall be automatically reinstituted, effective as of the date of loss of coverage, if the policyholder provides notice of loss of coverage within 90 days after the date of the loss.

(d) Reinstitution of coverages as described in Subsections (b) and (c):

(i) shall not provide for any waiting period with respect to treatment of preexisting conditions;

(ii) shall provide for resumption of coverage that is substantially equivalent to coverage in effect before the date of suspension. If the suspended Medicare supplement policy provided coverage for outpatient prescription drugs, reinstitution of the policy for Medicare Part D enrollees shall be without coverage for outpatient prescription drugs and shall otherwise provide substantially equivalent coverage to the coverage in effect before the date of suspension; and

(iii) shall provide for classification of premiums on terms at least as favorable to the policyholder or certificateholder as the premium classification terms that would have applied to the policyholder or certificateholder had the coverage not been suspended.

(8) If an issuer makes a written offer to the Medicare supplement policyholders or certificateholders of one or more of its plans, to exchange during a specified period from his or her 1990 plan, as described in Section 9 of this rule, to a 2010 plan, as described in Section 9a of this rule, the offer and subsequent exchange shall comply with the following requirements:

(a) An issuer need not provide justification to the commissioner if the insured replaces a 1990 Plan policy or certificate with an issue age rated 2010 Plan policy or certificate at the insured's original issue age and duration. If an insured's policy or certificate to be replaced is priced on an issue age rate schedule at the time of such offer, the rate charged to the insured for the new exchanged policy shall recognize the policy reserve buildup, due to the pre-funding inherent in the use of an issue age rate basis, for the benefit of the insured. The method proposed to be used by an issuer shall be filed with the commissioner.

(b) The rating class of the new policy or certificate shall be the class closest to the insured's class of the replaced coverage.

(c) An issuer may not apply new pre-existing condition limitations or a new incontestability period to the new policy for those benefits contained in the exchanged 1990 plan policy for certificate of the insured, but may apply pre-existing condition limitations of no more than six months to any added benefits contained in the new 2010 plan policy or certificate not contained in the exchanged policy.

(d) The new policy or certificate shall be offered to all policyholders or certificateholders within a given plan, except where the offer or issue would be in violation of state or federal law.

B. Standards for Basic, Core, Benefits Common to All Benefit Plans A through J.

Every issuer shall make available a policy or certificate including only the following basic core package of benefits to each prospective insured. An issuer may make available to prospective insureds any of the other Medicare Supplement Insurance Benefit Plans in addition to the basic core package, but not in lieu of it.

(1) Coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period.

(2) Coverage of Part A Medicare eligible expenses incurred for hospitalization to the extent not covered by Medicare for each Medicare lifetime inpatient reserve day used.

(3) Upon exhaustion of the Medicare hospital inpatient coverage including the lifetime reserve days, coverage of 100% of the Medicare Part A eligible expenses for hospitalization paid at the applicable prospective payment system, PPS, rate or other appropriate Medicare standard of payment, subject to a lifetime maximum benefit of an additional 365 days. The provider shall accept the issuer's payment as payment in full and may not bill the insured for any balance.

(4) Coverage under Medicare Parts A and B for the reasonable cost of the first three pints of blood, or equivalent quantities of packed red blood cells, as defined under federal regulations, unless replaced in accordance with federal regulations.

(5) Coverage for the coinsurance amount, or in the case of hospital outpatient department services paid under a prospective payment system, the copayment amount, of Medicare eligible expenses under Part B regardless of hospital confinement, subject to the Medicare Part B deductible.

C. Standards for Additional Benefits. The following additional benefits shall be included in Medicare Supplement Benefit Plans B through J only as provided by Section 9 of this rule.

(1) Medicare Part A Deductible: Coverage for all the Medicare Part A inpatient hospital deductible amount per benefit period.

(2) Skilled Nursing Facility Care: Coverage for the actual billed charges up to the coinsurance amount from the 21st day through the 100th day in a Medicare benefit period for post hospital skilled nursing facility care eligible under Medicare Part A.

(3) Medicare Part B Deductible: Coverage for all the Medicare Part B deductible amount per calendar year regardless of hospital confinement.

(4) 80% of the Medicare Part B Excess Charges: Coverage for 80% of the difference between the actual Medicare Part B charge as billed, not to exceed any charge limitation established by the Medicare program or state law, and the Medicare-approved Part B charge.

(5) 100% of the Medicare Part B Excess Charges: Coverage for all of the difference between the actual Medicare Part B charge as billed, not to exceed any charge limitation established by the Medicare program or state law, and the Medicare-approved Part B charge.

(6) Basic Outpatient Prescription Drug Benefit: Coverage for 50% of outpatient prescription drug charges, after a $250 calendar year deductible, to a maximum of $1,250 in benefits received by the insured per calendar year, to the extent not covered by Medicare. The outpatient prescription drug benefit may be included for sale or issuance in a Medicare supplement policy until January 1, 2006.

(7) Extended Outpatient Prescription Drug Benefit: Coverage for 50% of outpatient prescription drug charges, after a $250 calendar year deductible to a maximum of $3,000 in benefits received by the insured per calendar year, to the extent not covered by Medicare. The outpatient prescription drug benefit may be included for sale or issuance in a Medicare supplement policy until January 1, 2006.

(8) Medically Necessary Emergency Care in a Foreign Country: Coverage to the extent not covered by Medicare for 80% of the billed charges for Medicare-eligible expenses for medically necessary emergency hospital, physician and medical care received in a foreign country, which care would have been covered by Medicare if provided in the United States and which care began during the first 60 consecutive days of each trip outside the United States, subject to a calendar year deductible of $250, and a lifetime maximum benefit of $50,000. For purposes of this benefit, "emergency care" shall mean care needed immediately because of an injury or an illness of sudden and unexpected onset.

(9) Preventive Medical Care Benefit.

(a) Coverage for the following preventive health services not covered by Medicare:

(i) an annual clinical preventive medical history and physical examination that may include tests and services from Subsection (b) and patient education to address preventive health care measures; and

(ii) preventive screening tests or preventive services, the selection and frequency of which is determined to be medically appropriate by the attending physician.

(b) Reimbursement shall be for the actual charges up to 100% of the Medicare-approved amount for each service, as if Medicare were to cover the service as identified in American Medical Association Current Procedural Terminology, AMA CPT, codes, to a maximum of $120 annually under this benefit. This benefit shall not include payment for any procedure covered by Medicare.

(10) At-Home Recovery Benefit: Coverage for services to provide short term, at-home assistance with activities of daily living for those recovering from an illness, injury or surgery.

(a) For purposes of this benefit, the following definitions shall apply:

(i) "Activities of daily living" include, but are not limited to bathing, dressing, personal hygiene, transferring, eating, ambulating, assistance with drugs that are normally self-administered, and changing bandages or other dressings.

(ii) "Care provider" means a duly qualified or licensed home health aide or homemaker, personal care aide or nurse provided through a licensed home health care agency or referred by a licensed referral agency or licensed nurses registry.

(iii) "Home" shall mean any place used by the insured as a place of residence, provided that the place would qualify as a residence for home health care services covered by Medicare. A hospital or skilled nursing facility shall not be considered the insured's place of residence.

(iv) "At-home recovery visit" means the period of a visit required to provide at-home recovery care, without limit on the duration of the visit, except each consecutive four hours in a 24-hour period of services provided by a care provider is one visit.

(b) Coverage Requirements and Limitations

(i) At-home recovery services provided shall be primarily services, which assist in activities of daily living.

(ii) The insured's attending physician shall certify that the specific type and frequency of at-home recovery services are necessary because of a condition for which a home care plan of treatment was approved by Medicare.

(iii) Coverage is limited to:

(I) no more than the number and type of at-home recovery visits certified as necessary by the insured's attending physician. The total number of at-home recovery visits shall not exceed the number of Medicare approved home health care visits under a Medicare approved home care plan of treatment;

(II) the actual charges for each visit up to a maximum reimbursement of $40 per visit;

(III) $1,600 per calendar year;

(IV) seven visits in any one week;

(V) care furnished on a visiting basis in the insured's home;

(VI) services provided by a care provider as defined in this section;

(VII) at-home recovery visits while the insured is covered under the policy or certificate and not otherwise excluded; and

(VIII) at-home recovery visits received during the period the insured is receiving Medicare approved home care services or no more than eight weeks after the service date of the last Medicare approved home health care visit.

(c) Coverage is excluded for:

(i) home care visits paid for by Medicare or other government programs; and

(ii) care provided by family members, unpaid volunteers or providers who are not care providers.

D. Standards for Plans K and L.

(1) Standardized Medicare supplement benefit plan K shall consist of the following:

(a) coverage of 100% of the part A hospital coinsurance amount for each day used from the 61st through the 90th day in any Medicare benefit period;

(b) coverage of 100% of the Part A hospital coinsurance amount for each Medicare lifetime inpatient reserve day used from the 91st through the 150th day in any Medicare benefit period;

(c) upon exhaustion of the Medicare hospital inpatient coverage, including the lifetime reserve days, coverage of 100% of the Medicare Part A eligible expenses for hospitalization paid at the applicable prospective payment system, PPS, rate, or other appropriate Medicare standard of payment, subject to a lifetime maximum benefit of an additional 365 days. The provider shall accept the issuer's payment as payment in full and may not bill the insured for any balance;

(d) Medicare Part A Deductible: Coverage for 50% of the Medicare Part A inpatient hospital deductible amount per benefit period until the out-of-pocket limitation is met as described in Subsection (j);

(e) skilled Nursing Facility Care: Coverage for 50% of the coinsurance amount for each day used from the 21st day through the 100th day in a Medicare benefit period for post-hospital skilled nursing facility care eligible under Medicare Part A until the out-of-pocket limitation is met as described in Subsection (j);

(f) hospice Care: Coverage for 50% of the cost sharing for all Part A Medicare eligible expenses and respite care until the out-of-pocket limitation is met as described in Subsection (j);

(g) coverage for 50%, under Medicare Part A or B, of the reasonable cost of the first three pints of blood, or equivalent quantities of packed red blood cells, as defined under federal regulations, unless replaced in accordance with federal regulations until the out-of-pocket limitation is met as described in Subsection (j);

(h) except for coverage provided in Subsection (i) below, coverage for 50% of the cost sharing otherwise applicable under Medicare Part B after the policyholder pays the Part B deductible until the out-of-pocket limitation is met as described in Subsection (j) below;

(i) coverage of 100% of the cost sharing for Medicare Part B preventive services after the policyholder pays the Part B deductible; and

(j) coverage of 100% of all cost sharing under Medicare Part A and B for the balance of the calendar year after the individual has reached the out-of-pocket limitation on annual expenditures under Medicare Part A and B of $4000 in 2006, indexed each year by the appropriate inflation adjustment specified by the Secretary of the U.S. Department of Health and Human Services.

(2) Standardized Medicare supplement benefit plan "L" shall consist of the following:

(a) The benefits described in Subsections D.(1)(a), (b), (c) and (i);

(b) The benefits described in Subsections D.(1) (d), (e), (f), (g) and (h), but substituting 75% for 50%; and

(c) The benefit described in Subsection D.(1)(j), but substituting $2000 for $4000.

R590-146-8a. Benefit Standards for 2010 Standardized Medicare Supplement Benefit Plan Policies or Certificates Issued for Delivery with an Effective Date for Coverage on or After June 1, 2010.

The following standards are applicable to all Medicare supplement policies or certificates delivered or issued for delivery in this state with an effective date of coverage on or after June 1, 2010. No policy or certificate may be advertised, solicited, delivered, or issued for delivery in this state as a Medicare supplement policy or certificate unless it complies with these benefit standards. No issuer may offer any 1990 plan for sale on or after June 1, 2010. Benefit standards applicable to Medicare supplement policies and certificates issued with an effective date for coverage prior to June 1, 2010 remain subject to the requirements of Section 9 of this rule.

A. General Standards. The following standards apply to Medicare supplement policies and certificates and are in addition to all other requirements of this rule.

(1) A Medicare supplement policy or certificate shall not exclude or limit benefits for losses incurred more than 6 months from the effective date of coverage because it involved a preexisting condition. The policy or certificate may not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within 6 months before the effective date of coverage.

(2) A Medicare supplement policy or certificate shall not indemnify against losses resulting from a sickness on a different basis than losses resulting from accidents.

(3) A Medicare supplement policy or certificate shall provide that benefits designed to cover cost sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible, copayment, or coinsurance amounts. Premiums may be modified to correspond with such changes.

(4) No Medicare supplement policy or certificate shall provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than the nonpayment of premium.

(5) Each Medicare supplement policy shall be guaranteed renewable.

(a) The issuer shall not cancel or nonrenew the policy solely on the ground of health status of the individual.

(b) The issuer shall not cancel or nonrenew the policy for any reason other than nonpayment of premium or material misrepresentation.

(c) If the Medicare supplement policy is terminated by the group policyholder and is not replaced as provided under Subsection A.(5)(e), the issuer shall offer certificateholders an individual Medicare supplement policy which (at the option of the certificateholder):

(i) provides for continuation of the benefits contained in the group policy; or

(ii) provides for benefits that otherwise meet the requirements of this subsection.

(d) If an individual is a certificateholder in a group Medicare supplement policy and the individual terminates membership in the group, the issuer shall:

(i) offer the certificateholder the conversion opportunity described in Subsection (A)(5)(c); or

(ii) at the option of the group policyholder, offer the certificateholder continuation of coverage under the group policy.

(e) If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the issuer of the replacement policy shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new policy shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced.

(6) Termination of a Medicare supplement policy or certificate shall be without prejudice to any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be conditioned upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or payment of the maximum benefits. Receipt of Medicare Part D benefits will not be considered in determining a continuous loss.

(7)(a) A Medicare supplement policy or certificate shall provide that benefits and premiums under the policy or certificate shall be suspended at the request of the policyholder or certificateholder for the period, not to exceed 24 months, in which the policyholder or certificateholder has applied for and is determined to be entitled to medical assistance under Title XIX of the Social Security Act, but only if the policyholder or certificateholder notifies the issuer of the policy or certificate within 90 days after the date the individual becomes entitled to assistance.

(b) If suspension occurs and if the policyholder or certificateholder loses entitlement to medical assistance, the policy or certificate shall be automatically reinstituted, effective as of the date of termination of entitlement, as of the termination of entitlement if the policyholder or certificateholder provides notice of loss of entitlement within 90 days after the date of loss and pays the premium attributable to the period, effective as of the date of termination of entitlement.

(c) Each Medicare supplement policy shall provide that benefits and premiums under the policy shall be suspended, for any period that may be provided by federal regulation, at the request of the policyholder if the policyholder is entitled to benefits under Section 226(b) of the Social Security Act and is covered under a group health plan, as defined in Section 1862(b)(1)(A)(v) of the Social Security Act. If suspension occurs and if the policyholder or certificateholder loses coverage under the group health plan, the policy shall be automatically reinstituted, effective as of the date of loss of coverage if the policyholder provides notice of loss of coverage within 90 days after the date of the loss.

(d) Reinstitution of coverages as described in Subsections (7)(b) and (c):

(i) shall not provide for any waiting period with respect to treatment of preexisting conditions;

(ii) shall provide for resumption of coverage that is substantially equivalent to coverage in effect before the date of suspension; and

(iii) shall provide for classification of premiums on terms at least as favorable to the policyholder or certificateholder as the premium classification terms that would have applied to the policyholder or certificateholder had the coverage not been suspended.

B. Standards for Basic, Core, Benefits Common to Medicare Supplement Insurance Benefit Plans A, B, C, D, F, F with High Deductible, G, M, N. Every issuer of Medicare supplement insurance benefit plans shall make available a policy or certificate including only the following basic core package of benefits to each prospective insured. An issuer may make available to prospective insureds any of the other Medicare Supplement Insurance Benefit Plans in addition to the basic core package, but not in lieu of it.

(1) Coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period.

(2) Coverage of Part A Medicare eligible expenses incurred for hospitalization to the extent not covered by Medicare for each Medicare lifetime inpatient reserve day used.

(3) Upon exhaustion of the Medicare hospital inpatient coverage, including the lifetime reserve days, coverage of 100% of the Medicare Part A eligible expenses for hospitalization paid at the applicable prospective payment system, PPS, rate, or other appropriate Medicare standard of payment, subject to a lifetime maximum benefit of an additional 365 days. The provider shall accept the issuer's payment as payment in full and may not bill the insured for any balance.

(4) Coverage under Medicare Parts A and B for the reasonable cost of the first 3 pints of blood, or equivalent quantities of packed red blood cells, as defined under federal regulations, unless replaced in accordance with federal regulations.

(5) Coverage for the coinsurance amount, or in the case of hospital outpatient department services paid under a prospective payment system, the copayment amount, of Medicare eligible expenses under Part B regardless of hospital confinement, subject to the Medicare Part B deductible.

(6) Coverage of cost sharing for all Part A Medicare eligible hospice care and respite care expenses.

C. Standards for Additional Benefits. The following additional benefits shall be included in Medicare supplement benefit Plans B, C, D, F, F with High Deductible, G, M, N as provided by Section 9a.

(1) Medicare Part A Deductible: Coverage for 100% of the Medicare Part A inpatient hospital deductible amount per benefit period.

(2) Medicare Part A Deductible: Coverage for 50% of the Medicare Part A inpatient hospital deductible amount per benefit period.

(3) Skilled Nursing Facility Care: Coverage for the actual billed charges up to the coinsurance amount from the 21st day through the 100th day in a Medicare benefit period for post-hospital skilled nursing facility care eligible under Medicare Part A.

(4) Medicare Part B Deductible: Coverage for 100% of the Medicare Part B deductible amount per calendar year regardless of hospital confinement.

(5) One hundred percent, 100%, of the Medicare Part B Excess Charges: Coverage for all of the difference between the actual Medicare Part B charges as billed, not to exceed any charge limitation established by the Medicare program or state law, and the Medicare-approved Part B charge.

(6) Medically Necessary Emergency Care in a Foreign Country: Coverage to the extent not covered by Medicare for 80% of the billed charges for Medicare-eligible expenses for medically necessary emergency hospital, physician and medical care received in a foreign country, which care would have been covered by Medicare if provided in the United States and which care began during the first 60 consecutive days of each trip outside the United States, subject to a calendar year deductible of $250, and a lifetime maximum benefit of $50,000. For purposes of this benefit, "emergency care" shall mean care needed immediately because of an injury or an illness of sudden and unexpected onset.

R590-146-9. Standard Medicare Supplement Benefit Plans for 1990 Standardized Medicare Supplement Benefit Plan Policies or Certificates Issued for Delivery After July 30, 1992 and with an Effective Date for Coverage Prior to June 1, 2010.

~~A. An issuer shall make available to each prospective policyholder and certificateholder a policy form or certificate form containing only the basic core benefits, as defined in Subsection 8.B. of this rule.~~

~~B. No groups, packages or combinations of Medicare supplement benefits other than those listed in this section may be offered for sale in this state, except as may be permitted in Subsection 9.G. and Section 10 of this rule.~~

~~C. Benefit plans shall be uniform in structure, language, designation and format to the standard benefit plans A through L listed in this section and conform to the definitions in Section 4 of this rule. Each benefit shall be structured in accordance with the format provided in Subsections 8.B. and 8.C., or 8.D. and list the benefits in the order shown in this subsection. For purposes of this section, "structure, language, and format" means style, arrangement and overall content of a benefit.~~

~~D. An issuer may use, in addition to the benefit plan designations required in Subsection C, other designations to the extent permitted by law.~~

~~E. Make-up of benefit plans:~~

~~(1) Standardized Medicare supplement benefit plan A shall be limited to the basic, core, benefits common to all benefit plans, as defined in Subsection 8.B. of this rule.~~

~~(2) Standardized Medicare supplement benefit plan B shall include only the following: The core benefit as defined in Subsection 8.B. of this rule, plus the Medicare Part A deductible as defined in Subsection 8.C.(1).~~

~~(3) Standardized Medicare supplement benefit plan C shall include only the following: The core benefit as defined in Subsection 8.B. of this rule, plus the Medicare Part A deductible, skilled nursing facility care, Medicare Part B deductible and medically necessary emergency care in a foreign country as defined in Subsections 8.C.(1), (2), (3) and (8) respectively.~~

~~(4) Standardized Medicare supplement benefit plan D shall include only the following: The core benefit, as defined in Subsection 8.B. of this rule, plus the Medicare Part A deductible, skilled nursing facility care, medically necessary emergency care in a foreign country and the at-home recovery benefit as defined in Subsections 8.C.(1), (2), (8) and (10) respectively.~~

~~(5) Standardized Medicare supplement benefit plan E shall include only the following: The core benefit as defined in Subsection 8.B. of this rule, plus the Medicare Part A deductible, skilled nursing facility care, medically necessary emergency care in a foreign country and preventive medical care as defined in Subsections 8.C.(1), (2), (8) and (9) respectively.~~

~~(6) Standardized Medicare supplement benefit plan F shall include only the following: The core benefit as defined in Subsection 8.B. of this rule, plus the Medicare Part A deductible, the skilled nursing facility care, the Part B deductible, 100% of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as defined in Subsections 8.C.(1), (2), (3), (5) and (8) respectively.~~

~~(7) Standardized Medicare supplement benefit high deductible plan F shall include only the following: 100% of covered expenses following the payment of the annual high deductible plan F deductible. The covered expenses include the core benefit as defined in Subsection 8.B. of this rule, plus the Medicare Part A deductible, skilled nursing facility care, the Medicare Part B deductible, 100% of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as defined in Subsections 8.C.(1), (2), (3), (5) and (8) respectively. The annual high deductible plan F deductible shall consist of out-of-pocket expenses, other than premiums, for services covered by the Medicare supplement plan F policy, and shall be in addition to any other specific benefit deductibles. The annual high deductible Plan F deductible shall be $1500 for 1998 and 1999, and shall be based on the calendar year. It shall be adjusted annually thereafter by the Secretary to reflect the change in the Consumer Price Index for all urban consumers for the 12-month period ending with August of the preceding year, and rounded to the nearest multiple of $10.~~

~~(8) Standardized Medicare supplement benefit plan G shall include only the following: The core benefit as defined in Subsection 8.B. of this rule, plus the Medicare Part A deductible, skilled nursing facility care, 80% of the Medicare Part B excess charges, medically necessary emergency care in a foreign country, and the at-home recovery benefit as defined in Subsections 8.C.(1), (2), (4), (8) and (10) respectively.~~

~~(9) Standardized Medicare supplement benefit plan H shall consist of only the following: The core benefit as defined in Subsection 8.B. of this rule, plus the Medicare Part A deductible, skilled nursing facility care, basic prescription drug benefit and medically necessary emergency care in a foreign country as defined in Subsections 8.C.(1), (2), (6) and (8) respectively. The prescription drug benefit shall not be included in a Medicare supplement policy sold after December 31, 2005.~~

~~(10) Standardized Medicare supplement benefit plan I shall consist of only the following: The core benefit as defined in Subsection 8.B. of this rule, plus the Medicare Part A deductible, skilled nursing facility care, 100% of the Medicare Part B excess charges, basic prescription drug benefit, medically necessary emergency care in a foreign country and at-home recovery benefit as defined in Subsections 8.C.(1), (2), (5), (6), (8) and (10) respectively. The outpatient prescription drug benefit shall not be included in a Medicare supplement policy sold after December 31, 2005.~~

~~(11) Standardized Medicare supplement benefit plan J shall consist of only the following: The core benefit as defined in Subsection 8.B. of this rule, plus the Medicare Part A deductible, skilled nursing facility care, Medicare Part B deductible, 100% of the Medicare Part B excess charges, extended prescription drug benefit, medically necessary emergency care in a foreign country, preventive medical care and at-home recovery benefit as defined in Subsections 8.C.(1), (2), (3), (5), (7), (8), (9) and (10) respectively. The outpatient prescription drug benefit shall not be included in a Medicare supplement policy sold after December 31, 2005.~~

~~(12) Standardized Medicare supplement benefit high deductible plan J shall consist of only the following: 100% of covered expenses following the payment of the annual high deductible plan J deductible. The covered expenses include the core benefit as defined in Subsection 8.B. of this rule, plus the Medicare Part A deductible, skilled nursing facility care, Medicare Part B deductible, 100% of the Medicare Part B excess charges, extended outpatient prescription drug benefit, medically necessary emergency care in a foreign country, preventive medical care benefit and at-home recovery benefit as defined in Subsections 8.C.(1), (2), (3), (5), (7), (8), (9) and (10) respectively. The annual high deductible plan J deductible shall consist of out-of-pocket expenses, other than premiums, for services covered by the Medicare supplement plan J policy, and shall be in addition to any other specific benefit deductibles. The annual deductible shall be $1500 for 1998 and 1999, and shall be based on a calendar year. It shall be adjusted annually thereafter by the Secretary to reflect the change in the Consumer Price Index~~

for all urban consumers for the twelve-month period ending with August of the preceding year, and rounded to the nearest multiple of $10. The outpatient prescription drug benefit shall not be included in a Medicare supplement policy sold after December 31, 2005.

(F) Make-up of two Medicare supplement plans mandated by The Medicare Prescription Drug, Improvement and Modernization Act of 2003, MMA.

(1) Standardized Medicare supplement benefit plan K shall consist of only those benefits described in Subsection 8.D.(1).

(2) Standardized Medicare supplement benefit plan L shall consist of only those benefits described in Subsection 8.D.(2).

(G) New or Innovative Benefits: An issuer may, with the prior approval of the commissioner, offer policies or certificates with new or innovative benefits in addition to the benefits provided in a policy or certificate that otherwise complies with the applicable standards. The new or innovative benefits may include benefits that are appropriate to Medicare supplement insurance, new or innovative, not otherwise available, cost-effective, and offered in a manner that is consistent with the goal of simplification of Medicare supplement policies. After December 31, 2005, the innovative benefit shall not include an outpatient prescription drug benefit.

R590-146-9a. Standard Medicare Supplement Benefit Plans for 2010 Standardized Medicare Supplement Benefit Plan Policies or Certificates Issued for Delivery with an Effective Date for Coverage on or After June 1, 2010.

The following standards are applicable to all Medicare supplement policies or certificates delivered or issued for delivery in this state with an effective date for coverage on or after June 1, 2010. No policy or certificate may be advertised, solicited, delivered, or issued for delivery in this state as a Medicare supplement policy or certificate unless it complies with these benefit plan standards. Benefit plan standards applicable to Medicare supplement policies and certificates with an effective date of coverage before June 1, 2010 remain subject to the requirements of Sections 8a and 9 of this rule.

A.(1) An issuer shall make available to each prospective policyholder and certificateholder a policy form or certificate form containing only the basic core benefits, as defined in Subsection 8a.B. of this rule.

(2) If an issuer makes available any of the additional benefits described in Subsection 8a.C., or offers standardized benefit Plan K or L, as described in Subsections 9a.E.(8) and (9) of this rule, then the issuer shall make available to each prospective policyholder and certificateholder, in addition to a policy form or certificate form with only the basic core benefits as described in Subsection (1), a policy form or certificate form containing either standardized benefit Plan C, as described in Subsection 9a.E.(3) of this rule, or standardized benefit Plan F, as described in Subsection 9a.E.(5) of this rule.

B. No groups, packages or combinations of Medicare supplement benefits other than those listed in this Subsection shall be offered for sale in this state, except as may be permitted in Subsection 9a.F. and in Section 10 of this rule.

C. Benefit plan shall be uniform in structure, language, designation and format to the standard benefit plans listed in this subsection and conform to the definitions in Section 4 of this rule. Each benefit shall be structured in accordance with the format provide in Subsections 8a.B. and C. of this rule; or, in the case of plans K or L, in Subsections 9a.E.(8) or (9) of this rule and list the benefits in the order shown. For purposes of this subsection, "structure, language, and format" means style, arrangement and overall content of a benefit.

D. In addition to the benefit plan designations required in Subsection C, an issuer may use other designations to the extent permitted by law.

E. Make-up of 2010 Standardized Benefit Plans:

(1) Standardized Medicare supplement benefit Plan A shall include only the following: The basic core benefits as defined in Subsection 8a.B. of this rule.

(2) Standardized Medicare supplement benefit Plan B shall include only the following: the basic core benefit as defined in Subsection 8a.B. of this rule, plus 100% of the Medicare Part A deductible as defined in Subsection 8a.C.(1) of this rule.

(3) Standardized Medicare supplement benefit Plan C shall include only the following: The basic core benefit as defined in Subsection 8a.B. of this rule, plus 100% of the Medicare Part A deductible, skilled nursing facility care, 100% of the Medicare Part B deductible, and medically necessary emergency care in a foreign country as defined in Subsections 8a.C.(1), (3), (4), and (6) of this rule, respectively.

(4) Standardized Medicare supplement benefit Plan D shall include only the following: The basic core benefit as defined in Subsection 8a.B. of this rule, plus 100% of the Medicare Part A deductible, skilled nursing facility care, and medically necessary emergency care in a foreign country as defined in Subsections 8a.C.(1), (3), and (6) of this rule, respectively.

(5) Standardized Medicare supplement benefit Plan F shall include only the following: The basic core benefit as defined in Subsection 8a.B. of this rule, plus 100% of the Medicare Part A deductible, skilled nursing facility care, 100% of the Medicare Part B deductible, 100% of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as defined in Subsections 8a.C.(1), (3), (4), (5), and (6) of this rule, respectively.

(6) Standardized Medicare supplement benefit Plan F With High Deductible shall include only the following: 100% of covered expenses following the payment of the annual deductible set forth in Subsection (b).

(a) The basic core benefit as defined in Subsection 8a.B. of this rule, 100% of the Medicare Part A deductible, skilled nursing facility care, 100% of the Medicare Part B deductible, 100% of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as defined in Subsections 8a.C.(1), (3), (4), (5), and (6) of this rule, respectively.

(b) The annual deductible in Plan F With High Deductible shall consist of out-of-pocket expenses, other than premiums, for services covered by Plan F, and shall be in addition to any other specific benefit deductibles. The basis for the deductible shall be $1500 and shall be adjusted annually from 1999 by the Secretary of the U.S. Department of Health and Human Services to reflect the change in the consumer Price Index for all urban consumers for the 12-month period ending with August of the preceding year, and rounded to the nearest multiple of ten dollars.

(7) Standardized Medicare supplement benefit Plan G shall include only the following: The basic core benefit as defined in Subsection 8a.B. of this rule, plus 100% of the Medicare Part A deductible, skilled nursing facility care, 100% of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as defined in Subsections 8a.C.(1), (3), (5), and (6) of this rule,

~~respectively. Effective January 1, 2020, the standardized benefit plans described in Section 9b.A.(4) of this rule, Redesignated Plan G High Deductible, may be offered to any individual who was eligible for Medicare prior to January 1, 2020.~~

~~(8) Standardized Medicare supplement benefit Plan K is mandated by The Medicare Prescription Drug, Improvement and Modernization Act of 2003, and shall include only the following:~~

~~(a) Part A Hospital Coinsurance 61st through 90th days: Coverage of 100% of the Part A hospital coinsurance amount for each day used from the 61st through the 90th day in any Medicare benefit period:~~

~~(b) Part A Hospital Coinsurance, 91st through 150th days: Coverage of 100% of the Part A hospital coinsurance amount for each Medicare lifetime inpatient reserve day used from the 91st through the 150th day in any Medicare benefit period:~~

~~(c) Part A Hospitalization After 150 Days: Upon exhaustion of the Medicare hospital inpatient coverage, including the lifetime reserve days, coverage of 100% of the Medicare Part A eligible expenses for hospitalization paid at the applicable prospective payment system, PPS, rate, or other appropriate Medicare standard of payment, subject to a lifetime maximum benefit of an additional 365 days. The provider shall accept the issuer's payment as payment in full and may not bill the insured for any balance:~~

~~(d) Medicare Part A Deductible: Coverage for 50% of the Medicare Part A inpatient hospital deductible amount per benefit period until the out-of-pocket limitation is met as described in Subsection (j):~~

~~(e) Skilled Nursing Facility Care: Coverage for 50% of the coinsurance amount for each day used from the 21st day through the 100th day in a Medicare benefit period for post-hospital skilled nursing facility care eligible under Medicare Part A until the out-of-pocket limitation is met as described in Subsection (j):~~

~~(f) Hospice Care: Coverage for 50% of cost sharing for all Part A Medicare eligible expenses and respite care until the out-of-pocket limitation is met as described in Subsection(j):~~

~~(g) Blood: Coverage for 50%, under Medicare Part A or B, of the reasonable cost of the first 3 pints of blood, or equivalent quantities of packed red blood cells, as defined under federal regulations, unless replaced in accordance with federal regulations until the out-of-pocket limitation is met as described in Subsection (j):~~

~~(h) Part B Cost Sharing: Except for coverage provided in Subsection (i), coverage of 50% of the cost sharing otherwise applicable under Medicare Part B after the policyholder pays the Part B deductible until the out-of-pocket limitation is met as described in Subsection (j):~~

~~(i) Part B Preventive Services: Coverage of 100% of the cost sharing for Medicare Part B preventive services after the policyholder pays the Part B deductible; and~~

~~(j) Cost Sharing After Out-of-Pocket Limits: Coverage of 100% of all cost sharing under Medicare Parts A and B for the balance of the calendar year after the individual has reached the out-of-pocket limitation on annual expenditures under Medicare Parts A and B of $4000 in 2006, indexed each year by the appropriate inflation adjustment specified by the Secretary of the U.S. Department of Health and Human Services.~~

~~(9) Standardized Medicare supplement benefit Plan L is mandated by The Medicare Prescription Drug Improvement and Modernization Act of 2003, and shall include only the following:~~

~~(a) The benefits described in Subsections (8)(a), (b), (c) and (i);~~

~~(b) The benefit described in Subsections (8)(d), (e), (f), (g) and (h), but substituting 75% for 50%; and~~

~~(c) The benefit described in Subsection (8)(j), but substituting $2000 for $4000.~~

~~(10) Standardized Medicare supplement benefit Plan M shall include only the following:~~

~~The basic core benefit as defined in Subsection 8a.B. of this rule, plus 50% of the Medicare Part A deductible, skilled nursing facility care, and medically necessary emergency care in a foreign county as defined in Subsections 8a.C.(2), (3) and (6) of this rule, respectively.~~

~~(11) Standardized Medicare supplement benefit Plan N shall include only the following: The basic core benefit as defined in Subsection 8a.B. of this rule, plus 100% of the Medicare Part A deductible, skilled nursing facility care, and medically necessary emergency care in a foreign country as defined in Subsections 8a.C.(1), (3) and (6) of this rule, respectively, with copayments in the following amounts;~~

~~(a) the lesser of $20 or the Medicare Part B coinsurance or copayment for each covered health care provider office visit, including visits to medical specialists; and~~

~~(b) the lesser of $50 or the Medicare Part B coinsurance or copayment for each covered emergency room visit, however, this copayment shall be waived if the insured is admitted to any hospital and the emergency visit is subsequently covered as a Medicare Part A expense.~~

~~F. New or Innovative Benefits. An issuer may, with the prior approval of the commissioner, offer policies or certificates with new or innovative benefits, in addition to the standardized benefits provided in a policy or certificate that otherwise complies with the applicable standards. The new or innovative benefits shall include only benefits that are appropriate to Medicare supplement insurance, are new or innovative, are not otherwise available, and are cost effective. Approval of new or innovative benefits shall not adversely impact the goal of Medicare supplement simplification. New or innovative benefits shall not include an outpatient prescription drug benefit. New or innovative benefits shall not be used to change or reduce benefits, including a change of any cost-sharing provision, in any standardized plan.~~

~~R590-146-9b. Standard Medicare Supplement Benefit Plans for 2020 Standardized Medicare Supplement Benefit Plan Policies or Certificates Issued for Delivery to Individuals Newly Eligible for Medicare on or After January 1, 2020.~~

~~The Medicare Access and CHIP Reauthorization Act of 2015, MACRA, requires the following standards are applicable to all Medicare supplement policies or certificates delivered or issued for delivery in this state to individuals newly eligible for Medicare with an effective date of coverage on or after January 1, 2020. No policy or certificate that provides coverage of the Medicare Part B deductible may be advertised, solicited, delivered or issued for delivery in this state as a Medicare supplement policy or certificate to individuals newly eligible for Medicare on or after January 1, 2020. All policies must comply with the following benefit standards. Benefit plan standards applicable to Medicare supplement policies and certificates issued to individuals eligible for Medicare before January 1, 2020, remain subject to the~~

requirements of Section 9 for policies issued after July 30, 1992 and prior to June 1, 2010; or 9a for policies issued after May 31, 2010 and prior to January 1, 2020.

A. Benefit Requirements. The standards and requirements of Section 9a shall apply to all Medicare supplement policies or certificates delivered or issued for delivery to individuals newly eligible for Medicare on or after January 1, 2020, with the following exceptions:

(1) Standardized Medicare supplement benefit Plan C is redesignated as Plan D and shall provide the benefits contained in Section 9a.E.(3) of this rule but shall not provide coverage for 100% or any portion of the Medicare Part B deductible.

(2) Standardized Medicare supplement benefit Plan F is redesignated as Plan G and shall provide the benefits contained in Section 9a.E.(5)of this rule but shall not provide coverage for 100% or any portion of the Medicare Part B deductible.

(3) Standardized Medicare supplement benefit plans C, F, and F With High Deductible may not be offered to individuals newly eligible for Medicare on or after January 1, 2020.

(4) Standardized Medicare supplement benefit Plan F With High Deductible is redesignated as Plan G With High Deductible and shall provide the benefits contained in Section 9a.E(6) of this regulation but shall not provide coverage for 100% or any portion of the Medicare Part B deductible; provided further that, the Medicare Part B deductible paid by the beneficiary shall be considered an out-of-pocket expense in meeting the annual high deductible.

(5) The reference to Plans C or F contained in Section 9a.A.(2) is deemed a reference to Plans D or G for purposes of this section.

B. Applicability to Certain Individuals. This Section 9b, applies to only individuals that are newly eligible for Medicare on or after January 1, 2020:

(1) By reason of attaining age 65 on or after January 1, 2020; or

(2) By reason of entitlement to benefits under part A pursuant to Section 226(b) or 226A of the Social Security Act, or who is deemed to be eligible for benefits under Section 226(a) of the Social Security Act on or after January 1, 2020.

C. Guaranteed Issue for Eligible Persons. For purposes of Section 12.E, in the case of any individual newly eligible for Medicare on or after January 1, 2020, any reference to a Medicare supplement policy C or F, including F With High Deductible, shall be deemed to be a reference to Medicare supplement policy D or G, including G With High Deductible, respectively, that meet the requirements of this Section 9b.A.

D. Offer of Redesignated Plans to Individuals Other Than Newly Eligible. On or after January 1, 2020, the standardized benefit plans described in Subparagraph A(4), above may be offered to any individual who was eligible for Medicare prior to January 1, 2020, in addition to the standardized plans described in Section 9a.E of this rule.

R590-146-10. Medicare Select Policies and Certificates.

A.(1) This section shall apply to Medicare Select policies and certificates, as defined in this section.

(2) No policy or certificate may be advertised as a Medicare Select policy or certificate unless it meets the requirements of this section.

B. For the purposes of this section:

(1) "Complaint" means any dissatisfaction expressed by an individual concerning a Medicare Select issuer or its network providers.

(2) "Grievance" means dissatisfaction expressed in writing by an individual insured under a Medicare Select policy or certificate with the administration, claims practices, or provision of services concerning a Medicare Select issuer or its network providers.

(3) "Medicare Select issuer" means an issuer offering, or seeking to offer, a Medicare Select policy or certificate.

(4) "Medicare Select policy" or "Medicare Select certificate" mean respectively a Medicare supplement policy or certificate that contains restricted network provisions.

(5) "Network provider" means a provider of health care, or a group of providers of health care, which has entered into a written agreement with the issuer to provide benefits insured under a Medicare Select policy.

(6) "Restricted network provision" means any provision which conditions the payment of benefits, in whole or in part, on the use of network providers.

(7) "Service area" means the geographic area approved by the commissioner within which an issuer is authorized to offer a Medicare Select policy.

C. The commissioner may authorize an issuer to offer a Medicare Select policy or certificate, pursuant to this section and Section 4358 of the Omnibus Budget Reconciliation Act, OBRA, of 1990 if the commissioner finds that the issuer has satisfied all of the requirements of this rule.

D. A Medicare Select issuer shall not issue a Medicare Select policy or certificate in this state until its plan of operation has been approved by the commissioner.

E. A Medicare Select issuer shall file a proposed plan of operation with the commissioner in a format prescribed by the commissioner. The plan of operation shall contain at least the following information:

(1) evidence that all covered services that are subject to restricted network provisions are available and accessible through network providers, including a demonstration that:

(a) services can be provided by network providers with reasonable promptness with respect to geographic location, hours of operation and after-hour care. The hours of operation and availability of after-hour care shall reflect usual practice in the local area. Geographic availability shall reflect the usual travel times within the community;

(b) the number of network providers in the service area is sufficient, with respect to current and expected policyholders, either:

(i) to deliver adequately all services that are subject to a restricted network provision; or

(ii) to make appropriate referrals;

(c) there are written agreements with network providers describing specific responsibilities;

(d) emergency care is available 24 hours per day and seven days per week; and

~~(e) in the case of covered services that are subject to a restricted network provision and are provided on a prepaid basis, there are written agreements with network providers prohibiting the providers from billing or otherwise seeking reimbursement from or recourse against any individual insured under a Medicare Select policy or certificate. This subsection shall not apply to supplemental charges or coinsurance amounts as stated in the Medicare Select policy or certificate;~~

~~(2) a statement or map providing a clear description of the service area;~~

~~(3) a description of the grievance procedure to be utilized;~~

~~(4) a description of the quality assurance program, including:~~

~~(a) the formal organizational structure;~~

~~(b) the written criteria for selection, retention and removal of network providers; and~~

~~(c) the procedures for evaluating quality of care provided by network providers, and the process to initiate corrective action when warranted;~~

~~(5) a list and description, by specialty, of the network providers;~~

~~(6) copies of the written information proposed to be used by the issuer to comply with Subsection I; and~~

~~(7) any other information requested by the commissioner.~~

~~F.(1) A Medicare Select issuer shall file any proposed changes to the plan of operation, except for changes to the list of network providers, with the commissioner prior to implementing the changes.~~

~~(2) Any changes to the list of network providers shall be filed with the commissioner within 30 days of the change. The submission must include all network providers and clearly identify the new and discontinued providers.~~

~~G. A Medicare Select policy or certificate shall not restrict payment for covered services provided by non-network providers if:~~

~~(1) the services are for symptoms requiring emergency care or are immediately required for an unforeseen illness, injury or a condition; and~~

~~(2) it is not reasonable to obtain services through a network provider.~~

~~H. A Medicare Select policy or certificate shall provide payment for full coverage under the policy for covered services that are not available through network providers.~~

~~I. A Medicare Select issuer shall make full and fair disclosure in writing of the provisions, restrictions and limitations of the Medicare Select policy or certificate to each applicant. This disclosure shall include at least the following:~~

~~(1) an outline of coverage sufficient to permit the applicant to compare the coverage and premiums of the Medicare Select policy or certificate with:~~

~~(a) other Medicare supplement policies or certificates offered by the issuer; and~~

~~(b) other Medicare Select policies or certificates;~~

~~(2) a description, including address, phone number and hours of operation, of the network providers, including primary care physicians, specialty physicians, hospitals and other providers;~~

~~(3) a description of the restricted network provisions, including payments for coinsurance and deductibles when providers other than network providers are utilized. Except to the extent specified in the policy or certificate, expenses incurred when using out-of-network providers do not count toward the out-of-pocket annual limit contained in plans K and L;~~

~~(4) a description of coverage for emergency and urgently needed care and other out-of-service area coverage;~~

~~(5) a description of limitations on referrals to restricted network providers and to other providers;~~

~~(6) a description of the policyholder's rights to purchase any other Medicare supplement policy or certificate otherwise offered by the issuer; and~~

~~(7) a description of the Medicare Select issuer's quality assurance program and grievance procedure.~~

~~J. Prior to the sale of a Medicare Select policy or certificate, a Medicare Select issuer shall obtain from the applicant a signed and dated form stating that the applicant has received the information provided pursuant to Subsection I of this section and that the applicant understands the restrictions of the Medicare Select policy or certificate.~~

~~K. A Medicare Select issuer shall have and use procedures for hearing complaints and resolving written grievances from the subscribers. The procedures shall be aimed at mutual agreement for settlement and may include arbitration procedures.~~

~~(1) The grievance procedure shall be described in the policy and certificates and in the outline of coverage.~~

~~(2) At the time the policy or certificate is issued, the issuer shall provide detailed information to the policyholder describing how a grievance may be registered with the issuer.~~

~~(3) Grievances shall be considered in a timely manner and shall be transmitted to appropriate decision-makers who have authority to fully investigate the issue and take corrective action.~~

~~(4) If a grievance is found to be valid, corrective action shall be taken promptly.~~

~~(5) All concerned parties shall be notified about the results of a grievance.~~

~~(6) The issuer shall report no later than March 31 of each calendar year to the commissioner regarding its grievance procedure. The report shall be in a format prescribed by the commissioner and shall contain the number of grievances filed in the past year and a summary of the subject, nature and resolution of such grievances.~~

~~L. At the time of initial purchase, a Medicare Select issuer shall make available to each applicant for a Medicare Select policy or certificate the opportunity to purchase any Medicare supplement policy or certificate otherwise offered by the issuer.~~

~~M.(1) At the request of an individual insured under a Medicare Select policy or certificate, a Medicare Select issuer shall make available to the individual insured the opportunity to purchase a Medicare supplement policy or certificate offered by the issuer which has comparable or lesser benefits and which does not contain a restricted network provision. The issuer shall make the policies or certificates available without requiring evidence of insurability after the Medicare Select policy or certificate has been in force for six months.~~

(2) For the purposes of this subsection, a Medicare supplement policy or certificate will be considered to have comparable or lesser benefits unless it contains one or more significant benefits not included in the Medicare Select policy or certificate being replaced. For the purposes of this subsection, a significant benefit means coverage for the Medicare Part A deductible, coverage for at-home recovery services or coverage for Part B excess charges.

N. Medicare Select policies and certificates shall provide for continuation of coverage in the event the Secretary of Health and Human Services determines that Medicare Select policies and certificates issued pursuant to this section should be discontinued due to either the failure of the Medicare Select Program to be reauthorized under law or its substantial amendment.

(1) Each Medicare Select issuer shall make available to each individual insured under a Medicare Select policy or certificate the opportunity to purchase any Medicare supplement policy or certificate offered by the issuer which has comparable or lesser benefits and which does not contain a restricted network provision. The issuer shall make the policies and certificates available without requiring evidence of insurability.

(2) For the purposes of this subsection, a Medicare supplement policy or certificate will be considered to have comparable or lesser benefits unless it contains one or more significant benefits not included in the Medicare Select policy or certificate being replaced. For the purposes of this subsection, a significant benefit means coverage for the Medicare Part A deductible, coverage for at-home recovery services or coverage for Part B excess charges.

O. A Medicare Select issuer shall comply with reasonable requests for data made by state or federal agencies, including the United States Department of Health and Human Services, for the purpose of evaluating the Medicare Select Program.

R590-146-11. Open Enrollment.

A. An issuer shall not deny or condition the issuance or effectiveness of any Medicare supplement policy or certificate available for sale in this state, nor discriminate in the pricing of a policy or certificate because of the health status, claims experience, receipt of health care, or medical condition of an applicant in the case of an application for a policy or certificate that is submitted prior to or during the six-month period beginning with the first day of the first month in which an individual is both 65 years of age or older and is enrolled for benefits under Medicare Part B. Each Medicare supplement policy and certificate currently available from an insurer shall be made available to all applicants who qualify under this section without regard to age.

B.(1) If an applicant qualifies under Subsection A and submits an application during the time period referenced in Subsection A and, as of the date of application, has had a continuous period of creditable coverage of at least six months, the issuer shall not exclude benefits based on a preexisting condition.

(2) If the applicant qualifies under Subsection A and submits an application during the time period referenced in Subsection A and, as of the date of application, has had a continuous period of creditable coverage that is less than six months, the issuer shall reduce the period of any preexisting condition exclusion by the aggregate of the period of creditable coverage applicable to the applicant as of the enrollment date. The Secretary shall specify the manner of the reduction under this subsection.

C. Except as provided in Subsection B and Sections 12 and 23, Subsection A shall not be construed as preventing the exclusion of benefits under a policy, during the first six months, based on a preexisting condition for which the policyholder or certificateholder received treatment or was otherwise diagnosed during the six months before the coverage became effective.

R590-146-12. Guaranteed Issue for Eligible Persons.

A. Guaranteed Issue.

(1) Eligible persons are those individuals described in Subsection B who seek to enroll under the policy during the period specified in Subsection C, and who submit evidence of the date of termination, disenrollment, or Medicare Part D enrollment with the application for a Medicare supplement policy.

(2) With respect to eligible persons, an issuer shall not deny or condition the issuance or effectiveness of a Medicare supplement policy described in Subsection E that is offered and is available for issuance to new enrollees by the issuer, shall not discriminate in the pricing of such a Medicare supplement policy because of health status, claims experience, receipt of health care, or medical condition, and shall not impose an exclusion of benefits based on a preexisting condition under such a Medicare supplement policy.

B. Eligible Persons.

An eligible person is an individual described in any of the following subsections:

(1) The individual is enrolled under an employee welfare benefit plan that provides health benefits that supplement the benefits under Medicare; and the plan terminates, or the plan ceases to provide all such supplemental health benefits to the individual.

(2) The individual is enrolled with a Medicare Advantage organization under a Medicare Advantage plan under part C of Medicare, and any of the following circumstances apply, or the individual is 65 years of age or older and is enrolled with a program of All-Inclusive Care for the Elderly, PACE, provider under Section 1894 of the Social Security Act, and there are circumstances similar to those described below that would permit discontinuance of the individual's enrollment with such provider if such individual were enrolled in a Medicare Advantage plan:

(a) the certification of the organization or plan has been terminated;

(b) the organization has terminated or otherwise discontinued providing the plan in the area in which the individual resides;

(c) the individual is no longer eligible to elect the plan because of a change in the individual's place of residence or other change in circumstances specified by the Secretary, but not including termination of the individual's enrollment on the basis described in Section 1851(g)(3)(B) of the federal Social Security Act, where the individual has not paid premiums on a timely basis or has engaged in disruptive behavior as specified in standards under Section 1856, or the plan is terminated for all individuals within a residence area;

(d) the individual demonstrates, in accordance with guidelines established by the Secretary, that:

(i) the organization offering the plan substantially violated a material provision of the organization's contract under this part in relation to the individual, including the failure to provide an enrollee on a timely basis medically necessary care for which benefits are available under the plan or the failure to provide such covered care in accordance with applicable quality standards; or

(ii) the organization, or producer or other entity acting on the organization's behalf, materially misrepresented the plan's provisions in marketing the plan to the individual; or

(c) the individual meets such other exceptional conditions as the Secretary may provide.

(3)(a) The individual is enrolled with:

(i) an eligible organization under a contract under Section 1876 of the Social Security Act, Medicare cost;

(ii) a similar organization operating under demonstration project authority, effective for periods before April 1, 1999;

(iii) an organization under an agreement under Section 1833(a)(1)(A) of the Social Security Act, health care prepayment plan; or

(iv) an organization under a Medicare Select policy; and

(b) The enrollment ceases under the same circumstances that would permit discontinuance of an individual's election of coverage in Subsection 12B(2).

(4) The individual is enrolled under a Medicare supplement policy and the enrollment ceases because:

(a)(i) of the insolvency of the issuer or bankruptcy of the nonissuer organization; or

(ii) of other involuntary termination of coverage or enrollment under the policy;

(b) the issuer of the policy substantially violated a material provision of the policy; or

(c) the issuer, or a producer or other entity acting on the issuer's behalf, materially misrepresented the policy's provisions in marketing the policy to the individual;

(5)(a) The individual was enrolled under a Medicare supplement policy and terminates enrollment and subsequently enrolls, for the first time, with any Medicare Advantage organization under a Medicare Advantage plan under part C of Medicare, any eligible organization under a contract under Section 1876 of the Social Security Act, Medicare cost, any similar organization operating under demonstration project authority, any PACE provider under Section 1894 of the Social Security Act or a Medicare Select policy; and

(b) The subsequent enrollment under Subsection (a) is terminated by the enrollee during any period within the first 12 months of such subsequent enrollment, during which the enrollee is permitted to terminate such subsequent enrollment under Section 1851(e) of the federal Social Security Act; or

(6) The individual, upon first becoming eligible for benefits under part A of Medicare, enrolls in a Medicare Advantage plan under part C of Medicare, or in a PACE provider under Section 1894 of the Social Security Act, and disenrolls from the plan or program by not later than 12 months after the effective date of enrollment.

(7) The individual enrolls in a Medicare Part D plan during the initial enrollment period and, at the time of enrollment in Part D, was enrolled under a Medicare supplement policy that covers outpatient prescription drugs and the individual terminates enrollment in the Medicare supplement policy and submits evidence of enrollment in Medicare Part D along with the application for a policy described in Subsection E(4).

(8) The individual is enrolled under medical assistance under Title XIX of the Social Security Act, Medicaid, and is involuntarily terminated outside of requirements of Subsections 8.A.(7)(a) and (b).

C. Guaranteed Issue Time Periods.

(1) In the case of an individual described in Subsection B(1), the guaranteed issue period begins on the later of:

(a) the date the individual receives a notice of termination or cessation of all supplemental health benefits or, if a noticed is not received, noticed that a claim has been denied because of a termination or cessation; or

(b) the date that the applicable coverage terminates or ceases; and ends sixty-three days thereafter;

(2) In case of an individual described in Subsections B(2), (3), (5) or (6), whose enrollment is terminated involuntarily, the guaranteed issue period begins on the date that the individual receives a notice of termination and ends sixty-three days after the date applicable coverage is terminated;

(3) In the case of an individual described in Subsection B(4)(a), the guaranteed issue period begins on the earlier of:

(a) the date that the individual receives a notice of termination, a notice of the issuer's bankruptcy or insolvency, or other such similar notice if any; and

(b) the date that the applicable coverage is terminated, and ends on the date that is sixty-three days after the date the coverage is terminated;

(4) In case of an individual described in Subsections B(2), (4)(b) and (c), (5) or (6) who disenrolls voluntarily, the guaranteed issue period begins on the date that is sixty days before the effective date of the disenrollment and ends on the day that is sixty-three days after the effective date;

(5) In the case of an individual described in Subsection B(7), the guaranteed issue period begins on the date the individual receives notice pursuant to Section 1882(v)(2)(B) of the Social Security Act from the Medicare supplement issuer during the sixty-day period immediately preceding the initial Part D enrollment period ends on the date that is sixty-three days after the effective date of the individual's coverage under Medicare Part D; and

(6) In case of an individual described in Subsection B but not described in the preceding provisions of this subsection, the guaranteed issue period begins on the effective date of disenrollment and ends on that date that is sixty-three days after the effective date.

D. Extended Medigap Access for Interrupted Trial Periods

(1) In the case of an individual described in Subsection B(5), or deemed to be so described, pursuant to this subsection, whose enrollment with an organization or provider described in Subsection B(5)(a) is involuntarily terminated within the first twelve-months of enrollment, and who, without an intervening enrollment, enrolls with another such organization or provider, the subsequent enrollment shall be deemed to be an initial enrollment described in Subsection B(5);

(2) In the case of an individual described in Subsection B(6), or deemed to be so described, pursuant to this subsection, whose enrollment with a plan or in a program described in Subsection B(6) is involuntarily terminated within the first twelve months of enrollment, and who, without an intervening enrollments, enrolls in another such plan or program, the subsequent enrollment shall be deemed to be an initial enrollment described in Subsection B(6).

(3) For the purposes of Subsections B(5) and (6), no enrollment of an individual with an organization or provider described in Subsection B(5)(a), or with a plan or in a program described in Subsection B(6), may be deemed to be an initial enrollment under this subsection after the two-year period beginning on the date on which the individual first enrolled with such an organization, provider, plan or program.

E. Products to Which Eligible Persons are Entitled

The Medicare supplement policy to which eligible persons are entitled under:

(1) Subsections B(1), (2), (3), (4), and (8) is a Medicare supplement policy which has a benefit package classified as Plan A, B, C, F, including F with a high deductible, K or L offered by any issuer.

(2)(a) Subject to Subsection (b), Subsection B(5) is the same Medicare supplement policy in which the individual was most recently previously enrolled, if available from the same issuer, or, if not so available, a policy described in Subsection (1);

(b) After December 31, 2005, if the individual was most recently enrolled in a Medicare supplement policy with a outpatient prescription drug benefit, a Medicare supplement policy described in this subsection is:

(i) the policy available from the same issuer but modified to remove outpatient prescription drug coverage; or

(ii) at the election of the policyholder, an A, B, C, F, including F with a high deductible, K or L policy that is offered by any issuer;

(3) Subsection B(6) shall include any Medicare supplement policy offered by any issuer;

(4) Subsection B(7) is a Medicare supplement policy that has a benefit package classified as Plan A, B, C, F, including F with a high deductible, K, or L, and that is offered and is available for issuance to new enrollees by the same issuer that issued the individual's Medicare supplement policy with outpatient prescription drug coverage.

F. Notification provisions.

(1) At the time of an event described in Subsection B because of which an individual loses coverage or benefits due to the termination of a contract or agreement, policy, or plan, the organization that terminates the contract or agreement, the issuer terminating the policy, or the administrator of the plan being terminated, respectively, shall notify the individual of his or her rights under this section, and of the obligations of issuers of Medicare supplement policies under Subsection A. Such notice shall be communicated contemporaneously with the notification of termination.

(2) At the time of an event described in Subsection B because of which an individual ceases enrollment under a contract or agreement, policy, or plan, the organization that offers the contract or agreement, regardless of the basis for the cessation of enrollment, the issuer offering the policy, or the administrator of the plan, respectively, shall notify the individual of his or her rights under this section, and of the obligations of issuers of Medicare supplement policies under Subsection A. Such notice shall be communicated within ten working days of the issuer receiving notification of disenrollment.

R590-146-13. Standards for Claims Payment.

A. An issuer shall comply with Section 1882(c)(3) of the Social Security Act, as enacted by Section 4081(b)(2)(C) of the Omnibus Budget Reconciliation Act of 1987, OBRA, 1987, Pub. L. No. 100-203, by:

(1) accepting a notice from a Medicare carrier on dually assigned claims submitted by participating physicians and suppliers as a claim for benefits in place of any other claim form otherwise required and making a payment determination on the basis of the information contained in that notice;

(2) notifying the participating physician or supplier and the beneficiary of the payment determination;

(3) paying the participating physician or supplier directly;

(4) furnishing, at the time of enrollment, each enrollee with a card listing the policy name, number and a central mailing address to which notices from a Medicare carrier may be sent;

(5) paying user fees for claim notices that are transmitted electronically or otherwise; and

(6) providing to the Secretary of Health and Human Services, at least annually, a central mailing address to which all claims may be sent by Medicare carriers.

B. Compliance with the requirements set forth in Subsection A above shall be certified on the Medicare supplement insurance experience reporting form.

R590-146-14. Loss Ratio Standards and Filing Requirements.

A. Loss Ratio Standards.

(1)(a) A Medicare supplement policy form or certificate form shall not be delivered or issued for delivery unless the policy form or certificate form can be expected, as estimated for the entire period for which rates are computed to provide coverage, to return to policyholders and certificateholders in the form of aggregate benefits, not including anticipated refunds or credits, provided under the policy form or certificate form:

(i) at least 75% of the aggregate amount of premiums earned in the case of group policies; or

(ii) at least 65% of the aggregate amount of premiums earned in the case of individual policies.

(b) The loss ratio shall be calculated on the basis of incurred claims experience or incurred health care expenses where coverage is provided by a health maintenance organization on a service rather than reimbursement basis and earned premiums for the period and in accordance with accepted actuarial principles and practices. Incurred health care expenses where coverage is provided by a health maintenance organization shall not include:

(i) home office and overhead costs;

~~(ii) advertising costs;~~
~~(iii) commissions and other acquisition costs;~~
~~(iv) taxes;~~
~~(v) capital costs;~~
~~(vi) administration costs; and~~
~~(vii) claims processing costs.~~
~~(2) All filings of rates and rating schedules shall demonstrate that expected claims in relation to premiums comply with the requirements of this section when combined with actual experience to date. Filings of rate revisions shall also demonstrate that the anticipated loss ratio over the entire future period for which the revised rates are computed to provide coverage can be expected to meet the appropriate loss ratio standards, and comply with the requirements of R590-85.~~
~~(3) For purposes of applying Subsections (1) and 15.D.(3) only, policies issued as a result of solicitations of individuals through the mails or by mass media advertising, including both print and broadcast advertising, shall be deemed to be individual policies.~~
~~(4) For policies issued prior to July 30, 1992, expected claims in relation to premiums shall meet:~~
~~(a) the originally filed anticipated loss ratio when combined with the actual experience since inception;~~
~~(b) the appropriate loss ratio requirement from Subsections A(1)(a)(i) and (ii) when combined with actual experience beginning with the effective date of October 31, 1994 as set forth in Bulletin 94-8; and~~
~~(c) the appropriate loss ratio requirement from Subsections A(1)(a)(i) and (ii) over the entire future period for which the rates are computed to provide coverage.~~
~~B. Refund or Credit Calculation.~~
~~(1) An issuer shall collect and file with the commissioner by May 31 of each year each applicable form;~~
~~(a) Medicare Supplement Refund Calculation;~~
~~(b) Calculation of Benchmark Ratio Since Inception for Group Policies; and~~
~~(c) Calculation of the Benchmark Ratio Since Inception For Individual Policies.~~
~~(2) If on the basis of the experience as reported the benchmark ratio since inception, ratio 1, exceeds the adjusted experience ratio since inception, ratio 3, then a refund or credit calculation, is required. The refund calculation shall be done on a statewide basis for each type in a standard Medicare supplement benefit plan. For purposes of the refund or credit calculation, experience on policies issued within the reporting year shall be excluded.~~
~~(3) For the purposes of this section, policies or certificates issued prior to July 30, 1992, the issuer shall make the refund or credit calculation separately for all individual policies, including all group policies subject to an individual loss ratio standard when issued, combined and all other group policies combined for experience after the effective date of this rule. The first report shall be due by May 31 each year.~~
~~(4) A refund or credit shall be made only when the benchmark loss ratio exceeds the adjusted experience loss ratio and the amount to be refunded or credited exceeds a de minimis level. The refund shall include interest from the end of the calendar year to the date of the refund or credit at a rate specified by the Secretary of Health and Human Services, but in no event shall it be less than the average rate of interest for 13-week Treasury notes. A refund or credit against premiums due shall be made by September 30 following the experience year upon which the refund or credit is based.~~
~~C. Filing of Premium Rates.~~
~~(1) Annual Filing of Premium Rates Report.~~
~~(a) An issuer of Medicare supplement policies and certificates issued before or after the effective date of July 30, 1992 in this state shall file annually its rates, rating schedule and supporting documentation including ratios of incurred losses to earned premiums by policy duration in accordance with the filing requirements and procedures prescribed by the commissioner. The supporting documentation shall also demonstrate in accordance with actuarial standards of practice using reasonable assumptions that the appropriate loss ratio standards can be expected to be met over the entire period for which rates are computed. The demonstration shall exclude active life reserves. An expected third year loss ratio, which is greater than or equal to the applicable percentage, shall be demonstrated for policies or certificates in force less than three years.~~
~~(b) The Annual Filing of Premium Rates Report shall be filed no later than May 31 each year, and in compliance with R590-220.~~
~~(2) 2010 Medicare Supplement Rate and Enrollment Data.~~
~~(a) An issuer shall annually file by May 31 the Utah rate and enrollment information for 2010 Medicare Supplement plans as specified in the "2010MedSuppRateDataUT_v1.0.xlsx"spreadsheet.~~
~~(b) The Annual Filing of Rate and Enrollment Data shall be filed no later than May 31 each year, and in compliance with R590-220.~~
~~(3)(a) As soon as practicable, but prior to the effective date of enhancements in Medicare benefits, every issuer of Medicare supplement policies or certificates in this state shall file with the commissioner, in accordance with the applicable filing procedures of this state, appropriate premium adjustments necessary to produce loss ratios as anticipated for the current premium for the applicable policies or certificates. The supporting documents necessary to justify the adjustment shall accompany the filing.~~
~~(b) An issuer shall make premium adjustments necessary to produce an expected loss ratio under the policy or certificate to conform to minimum loss ratio standards for Medicare supplement policies and which are expected to result in a loss ratio at least as great as that originally anticipated in the rates used to produce current premiums by the issuer for the Medicare supplement policies or certificates. No premium adjustment which would modify the loss ratio experience under the policy other than the adjustments described herein shall be made with respect to a policy at any time other than upon its renewal date or anniversary date.~~
~~(c) If an issuer fails to make premium adjustments acceptable to the commissioner, the commissioner may order premium adjustments, refunds or premium credits deemed necessary to achieve the loss ratio required by this section.~~

(4) Any appropriate riders, endorsements or policy forms needed to accomplish the Medicare supplement policy or certificate modifications necessary to eliminate benefit duplications with Medicare. The riders, endorsements or policy forms shall provide a clear description of the Medicare supplement benefits provided by the policy or certificate.

D. Public Hearings.

The commissioner may conduct a public hearing to gather information concerning a request by an issuer for an increase in a rate for a policy form or certificate form if the experience of the form for the previous reporting period is not in compliance with the applicable loss ratio standard. The determination of compliance is made without consideration of any refund or credit for the reporting period. Public notice of the hearing shall be furnished in a manner deemed appropriate by the commissioner.

R590-146-15. Filing of Policies, Certificates, and Premium Rates.

A. An issuer shall not deliver or issue for delivery a policy or certificate to a resident of this state unless the policy form or certificate form has been filed for use in accordance with filing requirements and procedures prescribed by the commissioner.

B. An issuer shall file any riders or amendments to policy or certificate forms to delete outpatient prescription drug benefits as required by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 only with the commissioner in the state in which the policy or certificate was issued.

C.(1) An issuer shall not use or change premium rates for a Medicare supplement policy or certificate unless the rates, rating schedule and supporting documentation have been filed for acceptance in accordance with the filing requirements and procedures prescribed by the commissioner, and Rule R590-85.

(2) During an applicant's open enrollment period described in Section 11, an issuer shall offer the lowest rate available to any applicant without regard to health or smoker status.

(3) A policy form issued under Section 9b is not considered a new policy form, and is not a permissible separate rating class.

D.(1) Except as provided in Subsection (2) an issuer shall not file more than one form of a policy or certificate of each type for each standard Medicare supplement benefit plan.

(2) An issuer may offer, with the approval of the commissioner, up to four additional policy forms or certificate forms of the same type for the same standard Medicare supplement benefit plan, one for each of the following cases:

(a) the inclusion of new or innovative benefits;

(b) the addition of either direct response or producer marketing methods;

(c) the addition of either guaranteed issue or underwritten coverage;

(d) the offering of coverage to individuals eligible for Medicare by reason of disability.

(3) For the purposes of this section, a "type" means an individual policy, a group policy, an individual Medicare Select policy, or a group Medicare Select policy.

E.(1) Except as provided in Subsection (1)(a), an issuer shall continue to make available for purchase any policy form or certificate form issued after the effective date of this rule that has been approved by the commissioner. A policy form or certificate form shall not be considered to be available for purchase unless the issuer has actively offered it for sale in the previous 12 months.

(a) An issuer may discontinue the availability of a policy form or certificate form if the issuer provides to the commissioner in writing its decision at least 30 days prior to discontinuing the availability of the form of the policy or certificate. After receipt of the notice by the commissioner, the issuer may no longer offer for sale the policy form or certificate form in this state.

(b) An issuer that discontinues the availability of a policy form or certificate form pursuant to Subsection (a) shall not file a new policy form or certificate form of the same type for the same standard Medicare supplement benefit plan as the discontinued form for a period of five years after the issuer provides notice to the commissioner of the discontinuance. The period of discontinuance may be reduced if the commissioner determines that a shorter period is appropriate.

(2) The sale or other transfer of Medicare supplement business to another issuer shall be considered a discontinuance for the purposes of this subsection.

(3) A change in the rating structure or methodology shall be considered a discontinuance under Subsection (1) unless the issuer complies with the following requirements:

(a) The issuer provides an actuarial memorandum, in a form and manner prescribed by the commissioner, describing the manner in which the revised rating methodology and resultant rates differ from the existing rating methodology and existing rates.

(b) The issuer does not subsequently put into effect a change of rates or rating factors that would cause the percentage differential between the discontinued and subsequent rates as described in the actuarial memorandum to change. The commissioner may approve a change to the differential, which is in the public interest.

F.(1) Except as provided in Subsection (2), the experience of all policy forms or certificate forms of the same type in a standard Medicare supplement benefit plan shall be combined for purposes of the refund or credit calculation prescribed in Rule R590-146-14.

(2) Forms assumed under an assumption reinsurance agreement shall not be combined with the experience of other forms for purposes of the refund or credit calculation.

R590-146-16. Permitted Compensation Arrangements.

A. An issuer or other entity may provide commission or other compensation to a producer or other representative for the sale of a Medicare supplement policy or certificate only if the first year commission or other first year compensation is no more than 200% of the commission or other compensation paid for selling or servicing the policy or certificate in the second year or period.

B. The commission or other compensation provided in subsequent renewal years shall be the same as that provided in the second year or period and shall be provided for no fewer than five renewal years.

~~C. No issuer or other entity may provide compensation to its producers and no producer may receive compensation greater than the renewal compensation payable by the replacing issuer on renewal policies or certificates if an existing policy or certificate is replaced.~~

~~D. For purposes of this section, compensation includes pecuniary or non-pecuniary remuneration of any kind relating to the sale or renewal of the policy or certificate including but not limited to bonuses, gifts, prizes, awards and finder's fees.~~

~~R590-146-17. Required Disclosure Provisions.~~

~~A. General Rules.~~

~~(1) Medicare supplement policies and certificates shall include a renewal or continuation provision. The language or specifications of the provision shall be consistent with the type of contract issued. The provision shall be appropriately captioned and shall appear on the first page of the policy, and shall include any reservation by the issuer of the right to change premiums and any automatic renewal premium increases based on the policyholder's age.~~

~~(2) Except for riders or endorsements by which the issuer effectuates a request made in writing by the insured, exercises a specifically reserved right under a Medicare supplement policy, or is required to reduce or eliminate benefits to avoid duplication of Medicare benefits, all riders or endorsements added to a Medicare supplement policy after date of issue or at reinstatement or renewal which reduce or eliminate benefits or coverage in the policy shall require a signed acceptance by the insured. After the date of policy or certificate issue, any rider or endorsement which increases benefits or coverage with a concomitant increase in premium during the policy term shall be agreed to in writing signed by the insured, unless the benefits are required by the minimum standards for Medicare supplement policies, or if the increased benefits or coverage is required by law. Where a separate additional premium is charged for benefits provided in connection with riders or endorsements, the premium charge shall be set forth in the policy.~~

~~(3) Medicare supplement policies or certificates shall not provide for the payment of benefits based on standards described as "usual and customary," "reasonable and customary" or words of similar import.~~

~~(4) If a Medicare supplement policy or certificate contains any limitations with respect to preexisting conditions, such limitations shall appear as a separate section of the policy and be labeled as "Preexisting Condition Limitations."~~

~~(5) Medicare supplement policies and certificates shall have a notice prominently printed on the first page of the policy or certificate or attached thereto stating in substance that the policyholder or certificateholder shall have the right to return the policy or certificate within 30 days of its delivery and to have the premium refunded if, after examination of the policy or certificate, the insured person is not satisfied for any reason.~~

~~(6)(a) Issuers of accident and sickness policies or certificates which provide hospital or medical expense coverage on an expense incurred or indemnity basis to persons eligible for Medicare shall provide to those applicants a Guide to Health Insurance for People with Medicare in the form developed jointly by the National Association of Insurance Commissioners and the Centers for Medicare and Medicaid Services, CMS, in a type size no smaller than 12 point type. Delivery of the Guide shall be made whether or not the policies or certificates are advertised, solicited or issued as Medicare supplement policies or certificates as defined in this rule. Except in the case of direct response issuers, delivery of the Guide shall be made to the applicant at the time of application and acknowledgment of receipt of the Guide shall be obtained by the issuer. Direct response issuers shall deliver the Guide to the applicant upon request but not later than at the time the policy is delivered.~~

~~(b) For the purposes of this section, "form" means the language, format, type size, type proportional spacing, bold character, and line spacing.~~

~~B. Notice Requirements.~~

~~(1) As soon as practicable, but no later than 30 days prior to the annual effective date of any Medicare benefit changes, an issuer shall notify its policyholders and certificateholders of modifications it has made to Medicare supplement insurance policies or certificates in a format acceptable to the commissioner. The notice shall:~~

~~(a) include a description of revisions to the Medicare program and a description of each modification made to the coverage provided under the Medicare supplement policy or certificate; and~~

~~(b) inform each policyholder or certificateholder as to when any premium adjustment is to be made due to changes in Medicare.~~

~~(2) The notice of benefit modifications and any premium adjustments shall be in outline form and in clear and simple terms so as to facilitate comprehension.~~

~~(3) The notices shall not contain or be accompanied by any solicitation.~~

~~C. MMA Notice Requirements.~~

~~Issuers shall comply with any notice requirements of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003.~~

~~D. Outline of Coverage Requirements for Medicare Supplement Policies.~~

~~(1) Issuers shall provide an outline of coverage to all applicants at the time application is presented to the prospective applicant and, except for direct response policies, shall obtain an acknowledgment of receipt of the outline from the applicant.~~

~~(2) If an outline of coverage is provided at the time of application and the Medicare supplement policy or certificate is issued on a basis which would require revision of the outline, a substitute outline of coverage properly describing the policy or certificate shall accompany the policy or certificate when it is delivered and contain the following statement, in no less than 12 point type, immediately above the company name:~~

~~"NOTICE: Read this outline of coverage carefully. It is not identical to the outline of coverage provided upon application and the coverage originally applied for has not been issued."~~

~~(3) The outline of coverage provided to applicants pursuant to this section consists of four parts: a cover page, premium information, disclosure pages, and charts displaying the features of each benefit plan offered by the issuer. The outline of coverage shall be in the language and format prescribed below in no less than 12 point type. All plans shall be shown on the cover page, and the plans that are offered by the issuer shall be prominently identified. Premium information for plans that are offered shall be shown on the cover page or immediately~~

following the cover page and shall be prominently displayed. The premium and mode shall be stated for all plans that are offered to the prospective applicant. All possible premiums for the prospective applicant shall be illustrated.

(4) The Outline of Medicare Supplement Coverage, from the National Association of Insurance Commissioners, dated 1998, or the Benefit Chart of Medicare Supplement Plans Sold on or After June 1, 2020, adopted August 2016, as incorporated by reference herein, is available for public inspection at the Insurance Department.

E. Notice Regarding Policies or Certificates Which Are Not Medicare Supplement Policies.

(1) Any accident and sickness insurance policy or certificate, other than a Medicare supplement policy; a policy issued pursuant to a contract under Section 1876 of the Federal Social Security Act, 42 U.S.C. 1395 et seq.; a disability income policy; or other policy identified in Subsection 3B of this rule; issued for delivery in this state to persons eligible for Medicare, shall notify insureds under the policy that the policy is not a Medicare supplement policy or certificate. The notice shall either be printed or attached to the first page of the outline of coverage delivered to insureds under the policy, or if no outline of coverage is delivered, to the first page of the policy, or certificate delivered to insureds. The notice shall be in no less than 12-point type and shall contain the following language:

"THIS (POLICY OR CERTIFICATE) IS NOT A MEDICARE SUPPLEMENT (POLICY OR CONTRACT). If you are eligible for Medicare, review the Guide to Health Insurance for People with Medicare available from the company."

(2) Applications provided to persons eligible for Medicare for the health insurance policies or certificates described in Subsection D(1) shall disclose, using the applicable statement in Subsection 25.E., the extent to which the policy duplicates Medicare. The disclosure statement shall be provided as a part of, or together with, the application for the policy or certificate.

R590-146-18. Requirements for Application Forms and Replacement Coverage.

A. Application forms shall include the following questions designed to elicit information as to whether, as of the date of the application, the applicant currently has Medicare supplement Medicare Advantage, Medicaid coverage, or another health insurance policy or certificate in force or whether a Medicare supplement policy or certificate is intended to replace any other accident and sickness policy or certificate presently in force. A supplementary application or other form to be signed by the applicant and producer containing such questions and statements may be used.

TABLE I

(Statements) (Boldface Type)
(1) You do not need more than one Medicare supplement policy.
(2) If you purchase this policy, you may want to evaluate your existing health coverage and decide if you need multiple coverages.
(3) You may be eligible for benefits under Medicaid and may not need a Medicare supplement policy.
(4) If, after purchasing this policy, you become eligible for Medicaid, the benefits and premiums under your Medicare supplement policy can be suspended, if requested, during your entitlement to benefits under Medicaid for 24 months. You must request this suspension within 90 days of becoming eligible for Medicaid. If you are no longer entitled to Medicaid, your suspended Medicare supplement policy or, if that is no longer available, a substantially equivalent policy, will be reinstituted if requested within 90 days of losing Medicaid eligibility. If the Medicare supplement policy provided coverage for outpatient prescription drugs and you enrolled in Medicare Part D while your policy was suspended, the reinstituted policy will not have outpatient prescription drug coverage, but will otherwise be substantially equivalent to your coverage before the date of the suspension.
(5) If you are eligible for, and have enrolled in a Medicare supplement policy by reason of disability and you later become covered by an employer or union based group health plan, the benefits and premiums under your Medicare supplement policy can be suspended, if requested, while you are covered under the employer or union based group health plan. If you suspend your Medicare supplement policy under these circumstances, and later lose your employer or union based group health plan, your suspended Medicare supplement policy or, if that is no longer available, a substantially equivalent policy, will be reinstituted if requested within 90 days of losing your employer or union based group health plan. If the Medicare supplement policy provided coverage for outpatient prescription drugs and you enrolled in Medicare Part D while your policy was suspended, the reinstituted policy will not have outpatient prescription drug coverage, but will otherwise be substantially equivalent to your coverage before the date of the suspension.
(6) Counseling services may be available in your state to provide advice concerning your purchase of Medicare supplement insurance and concerning medical assistance through the state Medicaid program, including benefits as a Qualified Medicare Beneficiary (QMB) and a Specified Low-Income Medicare

~~Beneficiary(SLMB).~~

~~Questions~~
~~(Boldface Type)~~

~~If you lost or are losing other health insurance coverage and received a notice from your prior insurer saying you were eligible for guaranteed issue of a Medicare supplement insurance policy, or that you had certain rights to buy such a policy, you may be guaranteed acceptance in one or more of our Medicare supplement plans. Please include a copy of the notice from your prior insurer with the application. PLEASE ANSWER ALL QUESTIONS.~~
~~(Please mark Yes or No below with an "X")~~
~~To the best of your knowledge,~~
~~(1)(a) Did you turn age 65 in the last 6 months?~~
~~Yes No~~
~~(b) Did you enroll in Medicare Part B in the last 6 months?~~
~~Yes No(c) If yes, what is the effective date?~~
~~(2) Are you covered for medical assistance through the state Medicaid program?~~
~~(NOTE TO APPLICANT: If you are participating in a "Spend Down Program" and have not met your "Share of Cost", please answer NO to this question.)~~
~~YES NO~~
~~(a) If yes, will Medicaid pay your premiums for this Medicare supplement policy?~~
~~YES NO~~
~~(b) Do you receive any benefits from Medicaid OTHER THAN payments toward your Medicare Part B premium?~~
~~YES NO~~
~~(3)(a) If you had coverage from any Medicare plan other than original Medicare within the past 63 days, for example, a Medicare Advantage plan, or a Medicare HMO or PPO, fill in your start and end dates below. If you are still covered under this plan, leave "END" blank.~~
~~START / / END / /~~
~~(b) If you are still covered under the Medicare plan, do you intend to replace your current coverage with this new Medicare supplement policy?~~
~~YES NO~~
~~(c) Was this your first time in this type of Medicare plan?~~
~~YES NO~~
~~(d) Did you drop a Medicare supplement policy to enroll in the Medicare plan?~~
~~YES NO~~
~~(4)(a) Do you have another Medicare supplement policy in force?~~
~~YES NO~~
~~(b) If so, with what company, and what plan do you have (optional for Direct Mailers)?~~
~~.....~~
~~(c) If so, do you intend to replace your current Medicare supplement policy with this policy?~~
~~YES NO~~
~~(5) Have you had coverage under any other health insurance within the past 63 days? (For example, an employer, union, or individual plan)~~
~~YES NO~~
~~(a) If so, with what company and what kind of policy?~~
~~.....~~
~~.....~~
~~.....~~
~~.....~~
~~(b) What are your dates of coverage under the other policy? If you are still covered under the other policy, leave "END" blank.~~
~~START / / END / /~~

~~B. Producers shall list any other health insurance policies they have sold to the applicant.~~
~~(1) List policies sold which are still in force.~~
~~(2) List policies sold in the past five years, which are no longer in force.~~
~~C. In the case of a direct response issuer, a copy of the application or supplemental form, signed by the applicant, and acknowledged by the insurer, shall be returned to the applicant by the insurer upon delivery of the policy.~~
~~D. Upon determining that a sale will involve replacement of Medicare supplement coverage, any issuer, other than a direct response issuer, or its producer, shall furnish the applicant, prior to issuance or delivery of the Medicare supplement policy or certificate, a notice regarding replacement of Medicare supplement coverage. One copy of the notice signed by the applicant and the producer, except where the coverage is sold without a producer, shall be provided to the applicant and an additional signed copy shall be retained by the issuer. A direct~~

response issuer shall deliver to the applicant at the time of the issuance of the policy the notice regarding replacement of Medicare supplement coverage.

E. The notice required by Subsection D above for an issuer shall be provided in substantially the following form in no less than 12-point type:

TABLE II
NOTICE TO APPLICANT REGARDING REPLACEMENT
OF MEDICARE SUPPLEMENT INSURANCE
OR MEDICARE ADVANTAGE

(Boldface Type)
(Insurance company's name and address)

SAVE THIS NOTICE! IT MAY BE IMPORTANT TO YOU IN THE FUTURE.
(Boldface Type)

According to (your application) (information you have furnished), you intend to terminate existing Medicare supplement insurance or Medicare Advantage and replace it with a policy to be issued by (Company Name) Insurance Company. Your new policy will provide 30 days within which you may decide without cost whether you desire to keep the policy.

You should review this new coverage carefully. Compare it with all accident and sickness coverage you now have. If, after due consideration, you find that purchase of this Medicare supplement or Medicare Advantage coverage is a wise decision, you should terminate your present Medicare supplement or Medicare Advantage coverage.

You should evaluate the need for other accident and sickness coverage you have that may duplicate this policy.
STATEMENT TO APPLICANT BY ISSUER, PRODUCER (BROKER OR OTHER REPRESENTATIVE):

I have reviewed your current medical or health insurance coverage. To the best of my knowledge, this Medicare supplement policy will not duplicate your existing Medicare supplement or, if applicable, Medicare Advantage coverage because you intend to terminate your existing Medicare supplement coverage or leave your Medicare Advantage plan. The replacement policy is being purchased for the following reason(s) (check one):
..... Additional benefits.
..... No change in benefits, but lower premiums.
..... Fewer benefits and lower premiums.
..... My plan has outpatient prescription drug coverage and I am enrolling in Part D.
..... Disenrollment from a Medicare Advantage plan. Please explain reason for disenrollment. (optional only for Direct Mailer.)
..... Other. (please specify)

1. Note: If the issuer of the Medicare supplement policy being applied for does not, or is otherwise prohibited from imposing pre-existing condition limitations, please skip to statement 2 below. Health conditions that you may presently have (preexisting conditions) may not be immediately or fullycovered under the new policy. This could result in denial or delay of a claim for benefits under the new policy, whereas a similar claim might have been payable under your present policy.

2. State law provides that your replacement policy or certificate may not contain new preexisting conditions, waiting periods, elimination periods or probationary periods. The insurer will waive any time periods applicable to preexisting conditions, waiting periods, elimination periods, or probationary periods in the new policy (or coverage) for similar benefits to the extent such time was spent (depleted) under the original policy.

3. If, you still wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concerning your medical and health history. Failure to include all material medical information on an application may provide a basis for the company to deny any future

~~claims and to refund your premium as though your policy had never been in force. After the application has been completed and before you sign it, review it carefully to be certain that all information has been properly recorded. (If the policy or certificate is guaranteed issue, this paragraph need not appear.)~~

~~Do not cancel your present policy until you have received your new policy and are sure that you want to keep it.~~

~~.....~~
~~(Signature of Producer, Broker or Other Representative)~~

~~(Typed Name and Address of Issuer, Producer or Broker)~~

~~.....~~
~~(Applicant's Signature)~~
~~.....~~
~~(Date)~~

~~Signature not required for direct response sales.~~

~~F. Subsections 1 and 2 of the replacement notice, applicable to preexisting conditions, may be deleted by an issuer if the replacement does not involve application of a new preexisting condition limitation.~~

~~R590-146-19. Filing Requirements for Advertising.~~

~~An issuer shall, upon specific request from the commissioner, file for use a copy of any Medicare supplement advertisement intended for use in this state whether through written, radio, electronic, or television medium.~~

~~R590-146-20. Standards for Marketing.~~

~~A. An issuer, directly or through its producers, shall:~~

~~(1) establish marketing procedures to assure that any comparison of policies by its producers will be fair and accurate;~~

~~(2) establish marketing procedures to assure excessive insurance is not sold or issued.~~

~~(3) display prominently by type, in bold font, stamp or other appropriate means, on the first page of the policy the following:~~

~~"Notice to buyer: This policy may not cover all of your medical expenses."~~

~~(4) inquire and otherwise make every reasonable effort to identify whether a prospective applicant or enrollee for Medicare supplement insurance already has accident and sickness insurance and the types and amounts of any such insurance; and~~

~~(5) establish auditable procedures for verifying compliance with this Subsection A.~~

~~B. In addition to the practices prohibited in Section 31A-23a, Part 4, the following acts and practices are prohibited:~~

~~(1) Twisting. Knowingly making any misleading representation or incomplete or fraudulent comparison of any insurance policies or insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on, or convert an insurance policy or to take out a policy of insurance with another insurer.~~

~~(2) High pressure tactics. Employing any method of marketing having the effect of or tending to induce the purchase of insurance through force, fright, threat, whether explicit or implied, or undue pressure to purchase or recommend the purchase of insurance.~~

~~(3) Cold lead advertising. Making use directly or indirectly of any method of marketing which fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance producer or insurance company.~~

~~C. The terms "Medicare Supplement," "Medigap," "Medicare Wrap-Around" and words of similar import shall not be used unless the policy is issued in compliance with this rule.~~

~~R590-146-21. Appropriateness of Recommended Purchase and Excessive Insurance.~~

~~A. In recommending the purchase or replacement of any Medicare supplement policy or certificate a producer shall make reasonable efforts to determine the appropriateness of a recommended purchase or replacement.~~

~~B. Any sale of Medicare supplement policy or certificate that will provide an individual more than one Medicare supplement policy or certificate is prohibited.~~

~~C. An issuer shall not issue a Medicare supplement policy or certificate to an individual enrolled in Medicare Part C unless the effective date of the coverage is after the termination date of the individual's Part C coverage.~~

~~R590-146-22. Reporting of Multiple Policies.~~

~~A. On or before May 31 of each year, an issuer shall file the report form under Subsection 25.D. for every individual resident of this state for which the issuer has in force more than one Medicare supplement policy or certificate:~~

~~(1) policy and certificate number; and~~

~~(2) date of issuance.~~

~~B. The items set forth above shall be grouped by individual policyholder.~~

~~R590-146-23. Prohibition Against Preexisting Conditions, Waiting Periods, Elimination Periods and Probationary Periods in Replacement Policies or Certificates.~~

A. If a Medicare supplement policy or certificate replaces another Medicare supplement policy or certificate, the replacing issuer shall waive any time periods applicable to preexisting conditions, waiting periods, elimination periods and probationary periods in the new Medicare supplement policy or certificate to the extent such time was spent under the original policy.

B. If a Medicare supplement policy or certificate replaces another Medicare supplement policy or certificate which has been in effect for at least six months, the replacing policy shall not provide any time period applicable to preexisting conditions, waiting periods, elimination periods and probationary periods for benefits similar to those contained in the original policy or certificate.

R590-146-24. Prohibition Against Use of Genetic Information and Requests for Genetic Testing.

A. An issuer of a Medicare supplement policy or certificate:

(1) shall not deny or condition the issuance or effectiveness of the policy or certificate (including the imposition of any exclusion of benefits under the policy based on a pre-existing condition) on the basis of the genetic information with respect to such individual; and

(2) shall not discriminate in the pricing of the policy or certificate (including the adjustment of premium rates)of an individual on the basis of the genetic information with respect to such individual.

B. Nothing in Subsection A shall be construed to limit the ability of an issuer, to the extent otherwise permitted by law, from

(1) Denying or conditioning the issuance or effectiveness of the policy or certificate or increasing the premium for a group based on the manifestation of a disease or disorder of an insured or applicant; or

(2) Increasing the premium for any policy issued to an individual based on the manifestation of a disease or disorder of an individual who is covered under the policy (in such case, the manifestation of a disease or disorder in one individual cannot also be used as genetic information about other group members and to further increase the premium for the group.

C. An issuer of a Medicare supplement policy or certificate shall not request or require an individual or a family member of such individual to undergo a genetic test.

D. Subsection C shall not be construed to preclude an issuer of a Medicare supplement policy or certificate from obtaining and using the results of a genetic test in making a determination regarding payment (as defined for the purposes of applying the regulations promulgated under part C of title XI and section 264 of the Health Insurance Portability and Accountability Act of 1996 as may be revised from time to time) and consistent with Subsection A.

E. For purposes of carrying out Subsection D, an issuer of a Medicare supplement policy or certificate may request only the minimum amount of information necessary to accomplish the intended purpose.

F. Notwithstanding Subsection C, an issuer of a Medicare supplement policy may request, but not require, that an individual or a family member of such individual undergo a genetic test if each of the following conditions is met:

(1) The request is made pursuant to research that complies with part 46 of title 45, Code of Federal Regulations, or equivalent Federal regulations, and any applicable State or local law or regulations for the protection of human subjects in research.

(2) The issuer clearly indicates to each individual, or in the case of a minor child, to the legal guardian of such child, to whom the request is made that:

(a) compliance with the request is voluntary; and

(b) non-compliance will have no effect on enrollment status or premium or contribution amounts.

(3) No genetic information collected or acquired under this subsection shall be used for underwriting, determination of eligibility to enroll or maintain enrollment status, premium rates, or the issuance, renewal, or replacement of a policy or certificate.

(4) The issuer notifies the Secretary in writing that the issuer is conducting activities pursuant to the exception provided for under this subsection, including a description of the activities conducted.

(5) The issuer complies with such other conditions as the Secretary may by regulation require for activities conducted under this subsection.

G. An issuer of a Medicare supplement policy or certificate shall not request, require, or purchase genetic information for underwriting purposes.

H. An issuer of a Medicare supplement policy or certificate shall not request, require, or purchase genetic information with respect to any individual prior to such individual's enrollment under the policy in connection with such enrollment.

I. If an issuer of a Medicare supplement policy or certificate obtains genetic information incidental to requesting, requiring, or purchasing of other information concerning any individual, such request, requirement, or purchase shall not be considered a violation of Subsection H if such request, requirement, or purchase is not in violation of Subsection G.

J. For the purposes of this section only:

(1) "Issuer of a Medicare supplement policy or certificate" includes third-party administrator, or other person acting for or on behalf of such issuer.

(2) "Family member" means, with respect to an individual, any other individual who is a first-degree, second-degree, third-degree, or fourth-degree relative of such individual.

(3) "Genetic information" means, with respect to any individual, information about such individual's genetic tests, the genetic tests of family members of such individual, and the manifestation of a disease or disorder in family members of such individual. Such term includes, with respect to any individual, any request for, or receipt of, genetic services, or participation in clinical research which includes genetic services, by such individual or any family member of such individual. Any reference to genetic information concerning an individual or family member of an individual, who is a pregnant woman, includes genetic information of any fetus carried by such pregnant woman, or with respect to an individual or family member utilizing reproductive technology, includes genetic information of any embryo legally held by an individual or family member. The term "genetic information" does not include information about the sex or age of any individual.

(4) "Genetic services" means a genetic test, genetic counseling (including obtaining, interpreting, or assessing genetic information), or genetic education.

~~(5) "Genetic test" means an analysis of human DNA, RNA, chromosomes, proteins, or metabolites that detect genotypes, mutations, or chromosomal changes. The term "genetic test" does not mean an analysis of proteins or metabolites that does not detect genotypes, mutations, or chromosomal changes; or an analysis of proteins or metabolites that is directly related to a manifested disease, disorder, or pathological condition that could reasonably be detected by a health care professional with appropriate training and expertise in the field of medicine involved.~~

~~(6) "Underwriting purposes" means,~~

~~(a) rules for, or determination of, eligibility (including enrollment and continued eligibility) for benefits under the policy;~~

~~(b) the computation of premium or contribution amounts under the policy;~~

~~(c) the application of any pre-existing condition exclusion under the policy; and~~

~~(d) other activities related to the creation, renewal, or replacement of a contract of health insurance or health benefits.~~

~~R590-146-25. Documents Incorporated by Reference.~~

~~The following filing documents are hereby incorporated by reference within this rule and are available for public inspection at the Insurance Department or at www.insurance.utah.gov. These forms were adopted by the National Association of Insurance Commissioners' Model Regulation number 651, as approved August 2016:~~

~~A. "MEDICARE SUPPLEMENT REFUND CALCULATION FORM;"~~

~~B. "REPORTING FORM FOR THE CALCULATION OF BENCHMARK RATIO SINCE INCEPTION FOR GROUP POLICIES;"~~

~~C. "REPORTING FORM FOR THE CALCULATION OF BENCHMARK RATIO SINCE INCEPTION FOR INDIVIDUAL POLICIES;"~~

~~D. "FORM FOR REPORTING MEDICARE SUPPLEMENT POLICIES;" and~~

~~E. "DISCLOSURE STATEMENTS.~~

~~R590-146-26. Penalties.~~

~~A person found to be in violation of this rule shall be subject to penalties as provided under 31A-2-308.~~

~~R590-146-27. Severability.~~

~~If any provision or clause of this rule or its application to any person or situation is held to be invalid, that invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.~~]

R590-146-1 Authority.

This rule is promulgated by the commissioner under Sections 31A-2-201, 31A-2-201.1, 31A-22-620, and 31A-23a-402.

R590-146-2. Purpose and Scope.

(1) The purpose of this rule is to:

(a) standardize coverage and simplify the terms and benefits of a Medicare supplement insurance policy;

(b) facilitate public understanding and comparison of Medicare supplement insurance coverage;

(c) eliminate provisions in a Medicare supplement insurance policy that are misleading or confusing in connection with the purchase of such policies or with the settlement of claims;

(d) provide disclosure requirements when issuing accident and health insurance coverage to a person eligible for Medicare; and

(e) establish rating and reporting requirements.

(2) This rule applies to a Medicare supplement insurance policy or certificate subject to Section 31A-22-620.

R590-146-3. Incorporation by Reference.

The following documents are hereby incorporated by reference and are available in NAIC Medicare Supplement Insurance Minimum Standards Model Act, number 651, as approved by the NAIC in August 2016, and on the department's website, https://insurance.utah.gov:

(1) Application Supplementary Statements and Questions;

(2) Benefit Chart of Medicare Supplement Plans Sold on or after January 1, 2020;

(3) Disclosure Statements;

(4) Form for Reporting Medicare Supplement Policies;

(5) Medicare Supplement Refund Calculation Form;

(6) Notice to Applicant Regarding Replacement of Medicare Supplement Insurance or Medicare Advantage;

(7) Outline of Coverage Disclosures;

(8) Reporting Form for the Calculation of Benchmark Ratio Since Inception for Group Policies;

(9) Reporting Form for the Calculation of Benchmark Ratio Since Inception for Individual Policies; and

(10) Standardized Plan Descriptions.

R590-146-4. Definitions.

Terms used in this rule are defined in Sections 31A-1-301 and 31A-22-620. Additional terms are defined as follows:

(1) "1990 standardized plan" or "1990 plan" means group or individual Medicare supplement insurance issued on or after July 30, 1992, with an effective date of coverage before June 1, 2010, and includes Medicare supplement insurance renewed on or after that date that is not replaced by the issuer at the request of the insured.

(2) "2020 standardized plan" or "2020 plan" means group or individual Medicare supplement insurance issued with an effective date of coverage on or after June 1, 2010.

(3) "Activities of daily living" means:

(a) bathing;

(b) dressing;

(c) personal hygiene;

(d) transferring;

(e) eating;

(f) ambulating;

(g) assistance with drugs that are normally self-administered;

(h) changing bandages or other dressings; or

(i) similar activities.

(4)(a) "At-home recovery benefit" means coverage for services to provide short-term, at-home assistance with activities of daily living for those recovering from an illness, injury, or surgery, if:

(i) the insured's attending physician certifies that the specific type and frequency of at-home recovery services are necessary because of a condition for which a home care plan of treatment was approved by Medicare; and

(ii) benefits are limited to:

(A) no more than the number and type of at-home recovery visits certified as necessary by the insured's attending physician;

(B) the total number of at-home recovery visits do not exceed the number of Medicare-approved home health care visits under a Medicare-approved home care plan of treatment;

(C) the actual charges for each visit up to a maximum reimbursement of $40 per visit;

(D) $1,600 per calendar year;

(E) seven visits in any one week;

(F) care furnished on a visiting basis in the insured's home;

(G) services provided by a care provider;

(H) at-home recovery visits not otherwise excluded; and

(I) at-home recovery visits received during the period the insured is receiving Medicare-approved home care services or no more than eight weeks after the service date of the last Medicare-approved home health care visit.

(b) "At-home recovery benefit" does not include:

(i) home care visits paid for by Medicare or other government programs; or

(ii) care provided by family members, unpaid volunteers, or providers who are not care providers.

(5) "At-home recovery visit" means the period of a visit required to provide at-home recovery care, without limit on the duration of the visit, except each consecutive four hours in a 24-hour period of services provided by a care provider is one visit.

(6) "Bankruptcy" means when a Medicare Advantage organization that is not an issuer files, or has had filed against it, a petition for declaration of bankruptcy and has stopped doing business in this state.

(7) "Basic core benefits" means:

(a) coverage of Medicare Part A eligible expenses for hospitalization, to the extent not covered by Medicare, from the 61st day through the 90th day in any Medicare benefit period;

(b) coverage of Medicare Part A eligible expenses incurred for hospitalization, to the extent not covered by Medicare, for each Medicare lifetime inpatient reserve day used;

(c) upon exhaustion of the Medicare Part A hospital inpatient coverage, including the lifetime reserve days, coverage of 100% of the Medicare Part A eligible expenses for hospitalization paid at the applicable prospective payment system rate or other appropriate Medicare standard of payment, subject to a lifetime maximum benefit of an additional 365 days, which the provider shall accept the issuer's payment as payment in full and may not bill the insured for any balance;

(d) coverage under Medicare Part A and B for the reasonable cost of the first three pints of blood, or equivalent quantities of packed red blood cells, as defined under federal regulations, unless replaced in accordance with federal regulations; and

(e) coverage for the coinsurance amount, or in the case of hospital outpatient department services paid under a prospective payment system, the copayment amount, of Medicare eligible expenses under Medicaid Part B regardless of hospital confinement, subject to the Medicare Part B deductible.

(8)(a) "Basic outpatient prescription drug benefit" means coverage for 50% of outpatient prescription drug charges, after a $250 calendar year deductible, to a maximum of $1,250 in benefits received by the insured per calendar year, to the extent not covered by Medicare.

(b) The outpatient prescription drug benefit may be included for sale or issuance in a policy until January 1, 2006.

(9) "Certificate" means a group Medicare supplement insurance certificate.

(10) "Cold lead advertising" means using, directly or indirectly, any method of marketing that fails to disclose in a conspicuous manner that the method of marketing is a solicitation of insurance and that contact will be made by a producer or an issuer.

(11) "Continuous period of creditable coverage" means the period during which an individual was covered by creditable coverage, if during the period of coverage the individual had no breaks in coverage greater than 63 days.

(12) "Employee welfare benefit plan" means a plan, fund, or program of employee benefits as defined in 29 U.S.C. Section 1002, Employee Retirement Income Security Act.

(13)(a) "Extended outpatient prescription drug benefit" means coverage for 50% of outpatient prescription drug charges, after a $250 calendar year deductible to a maximum of $3,000 in benefits received by the insured per calendar year, to the extent not covered by Medicare.

(b) The outpatient prescription drug benefit may be included for sale or issuance in a policy until January 1, 2006.

(14) "High pressure tactics" means using a method of marketing to induce, or tend to induce, the purchase of insurance through force, fright, threat, whether explicit or implied, or undue pressure to purchase or recommend the purchase of insurance.

(15)(a) "Home" means any place used by the insured as a place of residence, provided that the place would qualify as a residence for home health care services covered by Medicare.

(b) "Home" does not mean a hospital or skilled nursing facility.

(16) "Insolvency" means when an issuer licensed to transact the business of insurance in this state has a final order of liquidation entered against it with a finding of insolvency by a court of competent jurisdiction in the issuer's state of domicile.

(17)(a) "Medically necessary emergency care in a foreign country" means:

(i) coverage that, to the extent not covered by Medicare for 80% of the billed charges for Medicare-eligible expenses for medically necessary emergency hospital, physician, and medical care received in a foreign country:

(A) would have been covered by Medicare if provided in the United States; and

(B) began during the first 60 consecutive days of a trip outside the United States; and

(ii) coverage that is subject to a calendar year deductible of $250 and a lifetime maximum benefit of $50,000.

(b) For the purposes of "medically necessary emergency are in a foreign country," "emergency care" means care needed immediately because of an injury or an illness of sudden and unexpected onset.

(18) "Medicare Advantage plan" means a plan of coverage for health benefits under Medicare Part C as defined in 42 U.S.C. 1395w-28(b)(1), and includes:

(a) coordinated care plans that provide health care services, including health maintenance organization plans, with or without a point-of-service option, plans offered by provider-sponsored organizations, and preferred provider organization plans;

(b) medical savings account plans coupled with a contribution into a Medicare Advantage plan medical savings account; and

(c) Medicare Advantage private fee-for-service plans.

(19) "Medicare Part A deductible" means coverage for a Medicare Part A inpatient hospital deductible amount per benefit period.

(20) "Medicare Part B deductible" means coverage for a Medicare Part B deductible amount per calendar year regardless of hospital confinement.

(21) "Medicare Part B excess charges" means coverage for the difference between the actual Medicare Part B charge as billed, not to exceed any charge limitation established by the Medicare program or state law, and the Medicare-approved Part B charge.

(22) "Newly eligible" means an individual who became eligible for Medicare due to age, disability, or end-stage renal disease on or after January 1, 2020.

(23) "Policy" means a Medicare supplement insurance policy.

(24) "Pre-standardized plan" means group or individual Medicare supplement insurance issued before December 12, 1994.

(25)(a) "Preventive medical care benefit" means coverage for preventive health services not covered by Medicare as follows:

(i) an annual clinical preventive medical history and physical examination that may include tests, services, and patient education to address preventive health care measures; and

(ii) preventive screening tests or preventive services determined to be medically appropriate by the attending physician.

(b) "Preventive medical care benefit":

(i) is limited to reimbursement for actual charges, up to 100% of the Medicare-approved amount for each service, as if Medicare were to cover the service as identified in American Medical Association Current Procedural Terminology codes, to a maximum of $120 annually; and

(ii) may not include payment or a procedure covered by Medicare.

(26) "Secretary" means the Secretary of the United States Department of Health and Human Services.

(27) "Skilled nursing facility care" means coverage for the actual billed charges up to the coinsurance amount from the 21st day through the 100th day in a Medicare benefit period for post-hospital skilled nursing facility care eligible under Medicare Part A.

(28) "Standardized plan" means Medicare supplement:

(a) Plan A;

(b) Plan B;

(c) Plan C;

(d) Plan D;

(e) Plan E;

(f) Plan F;

(g) Plan High Deductible F;

(h) Plan G;

(i) Plan High Deductible G;

(j) Plan H;

(k) Plan I;

(l) Plan J;

(m) Plan High Deductible J;

(n) Plan K;

(o) Plan L;

(p) Plan M; or

(q) Plan N.

(28) "Twisting" means knowingly making any misleading representation or incomplete or fraudulent comparison of any insurance policy or issuer to induce, or tend to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on, or convert any insurance policy or to take out an insurance policy with another issuer.

R590-146-5. Policy Definitions and Terms.

A policy or certificate may not be advertised, solicited, or issued for delivery in this state unless the policy or certificate contains definitions or terms that conform to Section R590-146-4 and this section.

(1) "Accident," "accidental injury," or "accidental means" shall be defined to use result language and may not include words that establish an accidental means test or use words such as external, violent, visible wounds, or similar words of description or characterization.

(a) The definition may not be more restrictive than "'injury or injuries for which benefits are provided' means accidental bodily injury sustained by the insured person which is the direct result of an accident, independent of disease or bodily infirmity or any other cause, and occurs while insurance coverage is in force."

(b) The definition may exclude injuries for which benefits are provided or available under any workers' compensation, employer's liability or similar law, or motor vehicle no-fault plan, unless prohibited by law.

(2) "Benefit period" or "Medicare benefit period" may not be defined more restrictively than as defined in the Medicare program.

(3) "Care provider" means a qualified or licensed home health aide or homemaker, personal care aide or nurse provided through a licensed home health care agency or referred by a licensed referral agency or licensed nurse registry.

(4) "Convalescent nursing home," "extended care facility," or "skilled nursing facility" may not be defined more restrictively than as defined in the Medicare program.

(5) "Health care expenses" means, for purposes of Section R590-146-14, expenses of health maintenance organizations associated with the delivery of health care services, which expenses are analogous to incurred losses of an issuer.

(6) "Hospital" may be defined in relation to its status, facilities, and available services, or to reflect its accreditation by the Joint Commission on Accreditation of Hospitals, but not more restrictively than as defined in the Medicare program.

(7) "Medicare eligible expenses" shall be defined to mean expenses of the kinds covered by Medicare Part A and B, to the extent recognized as reasonable and medically necessary by Medicare.

(8) "Physician" may not be defined more restrictively than as defined in the Medicare program.

(9) "Preexisting condition" may not be defined more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six months before the effective date of coverage.

(10)(a) "Sickness" may not be defined to be more restrictive than an illness or disease of an insured person which first manifests itself after the effective date of insurance and while insurance is in force.

(b) "Sickness" may be further modified to exclude sicknesses or diseases for which benefits are provided under any workers' compensation, occupational disease, employer's liability, or similar law.

R590-146-6. Policy Provisions.

(1) Except for a permitted preexisting condition clause, a policy or certificate may not be advertised, solicited, or issued for delivery as a Medicare supplement insurance policy if the policy or certificate contains a preexisting limitation or exclusion that is more restrictive than those of Medicare.

(2) A policy or certificate may not use waivers to exclude, limit, or reduce coverage or benefits for specifically named or described preexisting diseases or physical conditions.

(3) A policy or certificate may not contain benefits that duplicate benefits provided by Medicare.

(4)(a) Subject to Subsections R590-146-7(1)(d), R590-146-7(1)(e), R590-146-7(1)(g), R590-146-8(1)(d), and R590-146-8(1)(e), a policy with benefits for outpatient prescription drugs in existence before January 1, 2006, shall be renewed for current policyholders who do not enroll in Medicare Part D at the option of the policyholder.

(b) A policy with benefits for outpatient prescription drugs may not be issued after December 31, 2005.

(c) After December 31, 2005, a policy with benefits for outpatient prescription drugs may not be renewed after the policyholder enrolls in Medicare Part D unless:

(i) the policy is modified to eliminate outpatient prescription coverage for expenses of outpatient prescription drugs incurred after the effective date of the individual's coverage under a Medicare Part D plan; and

(ii) premiums are adjusted to reflect the elimination of outpatient prescription coverage as of Medicare Part D enrollment, accounting for any claims paid.

R590-146-7. Minimum Benefit Standards for Pre-Standardized Plans.

A policy or certificate may not be advertised, solicited, or issued for delivery in this state as a pre-standardized plan unless it meets or exceeds the minimum standards of this section. The minimum standards do not preclude the inclusion of other provisions or benefits that are consistent with these standards.

(1) General Standards. The general standards apply to a policy or certificate and are in addition to any other requirement of this rule.

(a) A policy or certificate may not exclude or limit benefits for losses incurred more than six months after the effective date of coverage for a preexisting condition.

(b) A policy or certificate may not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents.

(c) A policy or certificate shall provide that benefits designed to cover cost sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible, copayment, or coinsurance amounts. Premiums may be modified to correspond with such changes.

(d) A noncancelable, guaranteed renewable, or noncancelable and guaranteed renewable policy may not:

(i) provide for termination of coverage of a spouse solely because of an event specified for termination of coverage of the insured, other than the nonpayment of premium; or

(ii) be canceled or nonrenewed by the issuer solely on the grounds of deterioration of health.

(e)(i) Except as authorized by the commissioner, an issuer may not cancel or nonrenew a policy or certificate for any reason other than nonpayment of premium or material misrepresentation.

(ii) If a group policy is terminated by the group policyholder and not replaced as provided in Subsection (1)(e)(iv), the issuer shall offer to each certificate holder a policy with one of the choices as follows:

(A) an individual policy currently offered by the issuer having comparable benefits to those contained in the terminated group policy; or

(B) an individual policy that only provides benefits required to meet the basic core benefits under Subsection R590-146-8a(2).

(iii) If membership in a group is terminated, the issuer shall:

(A) offer the certificate holder the conversion opportunity described in Subsection (1)(e)(ii); or

(B) at the option of the group policyholder, offer the certificate holder continuation of coverage under the group policy.

(iv) If a group policy is replaced by another group policy purchased by the same policyholder, the issuer of the replacement policy shall offer coverage to each insured under the old group policy on its date of termination. Coverage under the new group policy may not result in an exclusion for a preexisting condition that would have been covered under the group policy being replaced.

(f)(i) Termination of a policy or certificate shall be without prejudice to any continuous loss that started while the policy or certificate was in force.

(ii) The extension of benefits beyond the period during which the policy was in force may be conditioned upon the continuous total disability of the insured, limited to:

(A) the duration of the policy benefit period, if any; or

(B) payment of the maximum benefits.

(iii) Receipt of Medicare Part D benefits may not be considered in determining a continuous loss.

(g) If a policy eliminates an outpatient prescription drug benefit due to requirements imposed by the Medicare Prescription Drug, Improvement and Modernization Act of 2003, the modified policy is considered to satisfy the guaranteed renewal requirements of this subsection.

(2) An issuer shall include the minimum benefits:

(a) coverage of Medicare Part A eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period;

(b) coverage for either all or none of the Medicare Part A inpatient hospital deductible amount;

(c) coverage of Medicare Part A eligible expenses incurred as daily hospital charges during use of Medicare's lifetime hospital inpatient reserve days;

(d) upon exhaustion of all Medicare hospital inpatient coverage, including the lifetime reserve days, coverage of 90% of all Medicare Part A eligible expenses for hospitalization not covered by Medicare subject to a lifetime maximum benefit of an additional 365 days;

(e) coverage under Medicare Part A for the reasonable cost of the first three pints of blood, or equivalent quantities of packed red blood cells, as defined under federal regulations, unless replaced in accordance with federal regulations or already paid for under Medicare Part B;

(f) coverage for the coinsurance amount, or in the case of hospital outpatient department services paid under a prospective payment system, the copayment amount of Medicare eligible expenses under Medicare Part B regardless of hospital confinement, subject to a maximum calendar year out-of-pocket amount equal to the Medicare Part B deductible; and

(g) effective January 1, 1990, coverage under Medicare Part B for the reasonable cost of the first three pints of blood, or equivalent quantities of packed red blood cells, as defined under federal regulations, unless replaced in accordance with federal regulations or already paid for under Medicare Part A, subject to the Medicare deductible amount.

R590-146-8. Benefit Standards for 1990 Standardized Plans Issued for Delivery on or After July 30, 1992, and with an Effective Date for Coverage Prior to June 1, 2010.

A policy or certificate may not be advertised, solicited, delivered, or issued for delivery in this state as a 1990 plan unless it complies with the standards in this section. A 1990 plan may not be offered for sale on or after June 1, 2010.

(1) General Standards. The general standards in this subsection apply to a 1990 plan, in addition to any other requirement of this rule.

(a) A policy or certificate may not exclude or limit benefits for losses incurred more than six months after the effective date of coverage for a preexisting condition.

(b) A policy or certificate may not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents.

(c) A policy or certificate shall provide that benefits designed to cover cost sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible, copayment, or coinsurance amounts. Premiums may be modified to correspond with such changes.

(d) A policy or certificate may not provide for termination of coverage of a spouse solely because of an event specified for termination of coverage of the insured, other than the nonpayment of premium.

(e) A policy shall be guaranteed renewable.

(i) An issuer may not cancel or nonrenew a policy solely on the grounds of the health status of an insured.

(ii) An issuer may not cancel or nonrenew a policy for any reason other than nonpayment of premium or material misrepresentation.

(iii) If a group policyholder terminates a policy and the policy is not replaced, the issuer shall offer each certificate holder a policy that, at the option of the certificate holder, provides for:

(A) continuation of the benefits contained in the group policy; or

(B) an individual policy with benefits that otherwise meet the requirements of this subsection.

(iv) If a certificate holder in a group terminates membership in the group, the issuer shall:

(A) offer the certificate holder a conversion opportunity; or

(B) at the option of the group policyholder, offer the certificate holder continuation of coverage under the group policy.

(v) If a group policy is replaced by another group policy purchased by the same policyholder, the issuer of the replacement policy shall offer coverage to each insured covered under the prior group policy on its date of termination. Coverage under the new group policy may not result in an exclusion for a preexisting condition that would have been covered under the prior group policy.

(vi) If a policy eliminates an outpatient prescription drug benefit due to requirements imposed by the Medicare Prescription Drug, Improvement and Modernization Act of 2003, the modified policy satisfies the guaranteed renewal requirements of this subsection.

(f)(i) Termination of a policy or certificate shall be without prejudice to any continuous loss that started while the policy or certificate was in force.

(ii) The extension of benefits beyond the period during which the policy was in force may be conditioned upon the continuous total disability of the insured, limited to:

(A) the duration of the policy benefit period, if any; or

(B) payment of the maximum benefits.

(iii) Receipt of Medicare Part D benefits may not be considered in determining a continuous loss.

(g)(i)(A) A policy or certificate shall provide that benefits and premiums be suspended at the request of the policyholder or certificate holder for a period, not to exceed 24 months, in which the policyholder or certificate holder has applied for and is determined to be entitled to medical assistance under Title XIX of the Social Security Act, if the policyholder or certificate holder notifies the issuer of the policy or certificate within 90 days after the date the insured becomes entitled to assistance.

(B) If the policy or certificate is suspended and the policyholder or certificate holder loses entitlement to medical assistance, the policy or certificate shall be automatically reinstated, effective on the date medical assistance terminated if the policyholder or certificate holder provides notice of loss of entitlement within 90 days after the date of loss and pays the required premium.

(ii)(A) A policy shall provide that benefits and premiums under a policy be suspended, for the period provided by federal regulation, at the request of the policyholder if the policyholder is entitled to benefits under Section 226(b) of the Social Security Act and is covered under a group health plan, as defined in Section 1862(b)(1)(A)(v) of the Social Security Act.

(B) If suspension occurs and if the policyholder or certificate holder loses coverage under the group health plan, the policy or certificate shall be automatically reinstated, effective on the date of loss of coverage, if the policyholder or certificate holder provides notice of loss of coverage within 90 days of the loss.

(iii) Reinstated coverage:

(A) may not include a preexisting condition waiting period;

(B)(I) shall provide for resumption of coverage substantially equivalent to the coverage in effect before the date of suspension; and

(II) if the suspended policy or certificate provided coverage for outpatient prescription drugs, the reinstated policy for Medicare Part D enrollees may not include coverage for outpatient prescription drugs and shall otherwise provide substantially equivalent coverage to the coverage in effect before the date of suspension; and

(C) shall classify premiums on terms at least as favorable to the policyholder or certificate holder as the premium classification terms that applied had the coverage not been suspended.

(h) If an issuer makes a written offer to a policyholder or certificate holder to exchange a policy or certificate during a specified period from their 1990 plan to a 2010 plan, the offer and subsequent exchange shall comply with the requirements of this subsection:

(i) an issuer is not required to provide justification to the commissioner if an insured replaces a 1990 plan with an issue age rated 2010 plan at the insured's original issue age and duration;

(ii) if an insured's policy or certificate to be replaced is priced on an issue age rate schedule at the time of such offer, the rate charged to the insured for the new exchanged policy shall recognize the policy reserve buildup, due to the pre-funding inherent in the use of an issue age rate basis, for the benefit of the insured;

(iii) the rating class of the new policy or certificate shall be the class closest to the insured's class of the replaced coverage;

(iv) an issuer may not apply a new preexisting condition limitation or a new incontestability period to the new policy for those benefits contained in the exchanged 1990 plan, but may apply a preexisting condition limitation of no more than six months to any added benefits not contained in the exchanged policy; and

(v) the new policy or certificate shall be offered to each policyholder or certificate holder within a given plan, except when the offer or issue would be in violation of state or federal law.

(2) Standards for 1990 Plans A through J.

(a) An issuer shall offer to an applicant a policy or certificate that only includes the basic core benefits, Plan A. An issuer may offer any other 1990 plan, but not in lieu of Plan A.

(b) In addition to the basic core benefits, the benefits in this subsection shall be included in Plans B through J, only as provided in Section R590-146-9:

(i) 100% of the Medicare Part A deductible;

(ii) skilled nursing facility care;

(iii) 100% of the Medicare Part B deductible;

(iv) 80% of the Medicare Part B excess charges;
(v) 100% of the Medicare Part B excess charges;
(vi) basic outpatient prescription drug benefit;
(vii) extended outpatient prescription drug benefit;
(viii) medically necessary emergency care in a foreign country benefit;
(ix) preventive medical care benefit; and
(x) at-home recovery benefit.
(3) Standardized Plan K shall only include coverage for:
(a) 100% of the Medicare Part A hospital coinsurance amount for each day used from the 61st through the 90th day in any Medicare benefit period;
(b) 100% of the Medicare Part A hospital coinsurance amount for each Medicare lifetime inpatient reserve day used from the 91st through the 150th day in any Medicare benefit period;
(c) upon exhaustion of the Medicare hospital inpatient coverage, including the lifetime reserve days, 100% of the Medicare Part A eligible expenses for hospitalization paid at the applicable prospective payment system rate, or other appropriate Medicare standard of payment, subject to a lifetime maximum benefit of an additional 365 days, which the provider shall accept the issuer's payment as payment in full and may not bill the insured for any balance;
(d) 50% of the Medicare Part A deductible until the out-of-pocket limitation is met;
(e) 50% of the skilled nursing facility care of the coinsurance amount until the out-of-pocket limitation is met;
(f) 50% of the hospice care coverage cost sharing for all Medicare Part A eligible expenses and respite care until the out-of-pocket limitation is met;
(g) 50%, under Medicare Part A or B, of the reasonable cost of the first three pints of blood, or equivalent quantities of packed red blood cells, as defined under federal regulations, unless replaced in accordance with federal regulations until the out-of-pocket limitation is met;
(h) except for coverage provided in Subsection (3)(i), 50% of the cost sharing otherwise applicable under Medicare Part B after the insured pays the Medicare Part B deductible until the out-of-pocket limitation is met;
(i) 100% of the cost sharing for Medicare Part B preventive services after the insured pays the Medicare Part B deductible; and
(j) 100% of all cost sharing under Medicare Part A and B for the balance of the calendar year after the insured has reached the out-of-pocket limitation on annual expenditures under Medicare Part A and B of $4,000 in 2006, as specified by the Secretary.
(4) Standardized Plan L shall only consist of:
(a) the benefits under Subsections (3)(a), (3)(b), (3)(c), and (3)(i);
(b) the benefits under Subsections (3)(d), (3)(e), (3)(f), (3)(g), and (3)(h), substituting 75% for 50%; and
(c) the benefit under Subsection (3)(j), substituting $2,000 for $4,000.

R590-146-8a. Benefit Standards for 2010 Standardized Plans Issued for Delivery with an Effective Date for Coverage on or After June 1, 2010.

A policy or certificate may not be advertised, solicited, delivered, or issued for delivery in this state as a 2010 plan unless it complies with the standards in this section.
(1) General Standards. The general standards in this subsection apply to a 2010 plan, in addition to any other requirement of this rule.
(a) A policy or certificate may not exclude or limit benefits for losses incurred more than six months after the effective date of coverage for a preexisting condition.
(b) A policy or certificate may not indemnify against losses resulting from a sickness on a different basis than losses resulting from accidents.
(c) A policy or certificate shall provide that benefits designed to cover cost sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible, copayment, or coinsurance amounts. Premiums may be modified to correspond with such changes.
(d) A policy or certificate may not provide for termination of coverage of a spouse solely because of an event specified for termination of coverage of the insured, other than the nonpayment of premium.
(e) A policy shall be guaranteed renewable.
(i) An issuer may not cancel or nonrenew a policy solely on the grounds of the health status of an insured.
(ii) An issuer may not cancel or nonrenew a policy for any reason other than nonpayment of premium or material misrepresentation.
(iii) If a group policyholder terminates a policy and the policy is not replaced as provided under Subsection (1)(e)(v), the issuer shall offer each certificate holder a policy that, at the option of the certificate holder, provides for:
(A) continuation of the benefits contained in the group policy; or
(B) an individual policy with benefits that otherwise meet the requirements of this subsection.
(iv) If a certificate holder in a group terminates membership in the group, the issuer shall:
(A) offer the certificate holder a conversion opportunity; or
(B) at the option of the group policyholder, offer the certificate holder continuation of coverage under the group policy.
(v) If a group policy is replaced by another group policy purchased by the same policyholder, the issuer of the replacement policy shall offer coverage to each insured covered under the prior group policy on its date of termination. Coverage under the new group policy may not result in an exclusion for a preexisting condition that would have been covered under the prior group policy.

(f)(i) Termination of a policy or certificate shall be without prejudice to any continuous loss that started while the policy or certificate was in force.

(ii) The extension of benefits beyond the period during which the policy was in force may be conditioned upon the continuous total disability of the insured, limited to:

(A) the duration of the policy benefit period, if any; or

(B) payment of the maximum benefits.

(iii) Receipt of Medicare Part D benefits may not be considered in determining a continuous loss.

(g)(i) A policy or certificate shall provide that benefits and premiums be suspended at the request of the policyholder or certificate holder for a period, not to exceed 24 months, in which the policyholder or certificate holder has applied for and is determined to be entitled to medical assistance under Title XIX of the Social Security Act, if the policyholder or certificate holder notifies the issuer of the policy or certificate within 90 days after the date the insured becomes entitled to assistance.

(ii) If the policy or certificate is suspended and the policyholder or certificate holder loses entitlement to medical assistance, the policy or certificate shall be automatically reinstated, effective on the date medical assistance terminated if the policyholder or certificate holder provides notice of loss of entitlement within 90 days after the date of loss and pays the required premium.

(iii)(A) A policy shall provide that benefits and premiums under the policy be suspended, for any period that may be provided by federal regulation, at the request of the policyholder if the policyholder is entitled to benefits under Section 226(b) of the Social Security Act and is covered under a group health plan, as defined in Section 1862(b)(1)(A)(v) of the Social Security Act.

(B) If suspension occurs and if the policyholder or certificate holder loses coverage under the group health plan, the policy or certificate shall be automatically reinstated, effective on the date of loss of coverage if the policyholder or certificate holder provides notice of loss of coverage within 90 days of the loss.

(C) Reinstated coverage:

(I) may not include a preexisting condition waiting period;

(II) shall provide for resumption of coverage substantially equivalent to the coverage in effect before the date of suspension; and

(III) shall classify premiums on terms at least as favorable to the policyholder or certificate holder as the premium classification terms that applied had the coverage not been suspended.

(2) Standards for 2010 Plans A, B, C, D, F, High Deductible F, G, M, and N.

(a) An issuer shall offer to an applicant a policy or certificate that only includes the basic core benefits, Plan A. An issuer may offer any other 2010 plan, but not in lieu of Plan A.

(b) In addition to the basic core benefits, the benefits in this subsection shall be included in Plans B, C, D, F, High Deductible F, G, M, and N, only as provided in Subsection R590-146-9a:

(i) 100% of the Medicare Part A deductible;

(ii) 50% of the Medicare Part A deductible;

(iii) skilled nursing facility care;

(iv) 100% of the Medicare Part B deductible;

(v) 100% of the Medicare Part B excess charges; and

(vi) medically necessary emergency care in a foreign country.

R590-146-9. Standard Plans for 1990 Standardized Plans Issued for Delivery After July 30, 1992, and with an Effective Date for Coverage Prior to June 1, 2010.

(1) An issuer offering a 1990 plan shall offer to an applicant a policy or certificate that only contains the basic core benefits.

(2) A group, package, or combinations of Medicare supplement insurance benefits, other than those listed in this section, may not be offered for sale, except as permitted in Subsection (6) and Section R590-146-10.

(3) A 1990 plan shall be:

(a) uniform in structure, language, designation, and format; and

(b) structured according to the format provided in Subsection R590-146-8(2), R590-146-8(3), or R590-146-8(4) and list the benefits in the order shown in Subsection (5) of this section.

(4) An issuer may use, in addition to the plan designations required in Subsection (3), other designations to the extent permitted by law.

(5) A 1990 plan shall include the benefits listed in this subsection.

(a) Standardized Plan A shall only include the basic core benefits.

(b) Standardized Plan B shall only include:

(i) basic core benefits; and

(ii) 100% of the Medicare Part A deductible.

(c) Standardized Plan C shall only include:

(i) basic core benefits;

(ii) 100% of the Medicare Part A deductible;

(iii) skilled nursing facility care;

(iv) 100% of the Medicare Part B deductible; and

(v) medically necessary emergency care in a foreign country.

(d) Standardized Plan D shall only include:

(i) basic core benefits;

(ii) 100% of the Medicare Part A deductible;

(iii) skilled nursing facility care;
(iv) medically necessary emergency care in a foreign country; and
(v) at-home recovery benefit.
(e) Standardized Plan E shall only include:
(i) basic core benefits;
(ii) 100% of the Medicare Part A deductible;
(iii) skilled nursing facility care;
(iv) medically necessary emergency care in a foreign country; and
(v) preventive medical care.
(f) Standardized Plan F shall only include:
(i) basic core benefits;
(ii) 100% of the Medicare Part A deductible;
(iii) skilled nursing facility care;
(iv) 100% of the Medicare Part B deductible;
(v) 100% of the Medicare Part B excess charges; and
(vi) medically necessary emergency care in a foreign country.
(g)(i) Standardized Plan High Deductible F shall only include 100% of covered expenses following the payment of the annual Plan High Deductible F deductible. The covered expenses after payment of the deductible include:
(A) basic core benefits;
(B) 100% of the Medicare Part A deductible;
(C) skilled nursing facility care;
(D) 100% of the Medicare Part B deductible;
(E) 100% of the Medicare Part B excess charges; and
(F) medically necessary emergency care in a foreign country.
(ii) The annual Plan High Deductible F deductible shall:
(A) consist of out-of-pocket expenses, other than premiums, for services covered by Plan F; and
(B) be in addition to any other specific benefit deductibles.
(iii) The annual Plan High Deductible F deductible shall be based on the calendar year as adjusted annually by the Secretary.
(h) Standardized Plan G shall only include:
(i) basic core benefits;
(ii) 100% of the Medicare Part A deductible;
(iii) skilled nursing facility care;
(iv) 80% of the Medicare Part B excess charges;
(v) medically necessary emergency care in a foreign country; and
(vi) at-home recovery benefit.
(i) Standardized Plan H shall only include:
(i) basic core benefits;
(ii) 100% of the Medicare Part A deductible;
(iii) skilled nursing facility care;
(iv) for a policy issued before January 1, 2006, basic prescription drug benefit; and
(v) medically necessary emergency care in a foreign country.
(j) Standardized Plan I shall only include:
(i) basic core benefits;
(ii) 100% of the Medicare Part A deductible;
(iii) skilled nursing facility care;
(iv) 100% of the Medicare Part B excess charges;
(v) for a policy issued before January 1, 2006, basic prescription drug benefit;
(vi) medically necessary emergency care in a foreign country; and
(vii) at-home recovery benefit.
(k) Standardized Plan J shall only include:
(i) basic core benefits;
(ii) 100% of the Medicare Part A deductible;
(iii) skilled nursing facility care;
(iv) 100% of the Medicare Part B deductible;
(v) 100% of the Medicare Part B excess charges;
(vi) for a policy issued before January 1, 2006, extended prescription drug benefit;
(vii) medically necessary emergency care in a foreign country;
(viii) preventive medical care; and
(ix) at-home recovery benefit.
(l)(i) Standardized Plan High Deductible J shall only include 100% of covered expenses following the payment of the annual Plan High Deductible J deductible. The covered expenses after payment of the deductible include:
(A) basic core benefits;

(B) 100% of the Medicare Part A deductible;
(C) skilled nursing facility care;
(D) 100% of the Medicare Part B deductible;
(E) 100% of the Medicare Part B excess charges;
(F) for a policy issued before January 1, 2006, extended outpatient prescription drug benefit;
(G) medically necessary emergency care in a foreign country;
(H) preventive medical care benefit; and
(I) at-home recovery benefit.
(ii) The annual Plan High Deductible J deductible shall:
(A) consist of out-of-pocket expenses, other than premiums, for services covered by Plan J;
(B) be in addition to any other specific benefit deductibles; and
(C) be based on the calendar year, as adjusted annually by the Secretary.
(m) Standardized Plan K shall only consist of those benefits under Subsection R590-146-8(3).
(n) Standardized Plan L shall only consist of those benefits under Subsection R590-146-8(4).
(6)(a) An issuer may, with the prior approval of the commissioner, offer a policy or certificate with a new or innovative benefit in addition to the standardized benefits provided in a policy or certificate.
(b)(i) A new or innovative benefit may include a benefit that is appropriate to Medicare supplement insurance, new or innovative, not otherwise available, cost effective, and offered in a manner that is consistent with the goal of simplification of a policy.
(ii) After December 31, 2005, an innovative benefit may not include an outpatient prescription drug benefit.

R590-146-9a. Standard Plans for 2010 Standardized Plans Issued for Delivery with an Effective Date for Coverage on or After June 1, 2010.

The standards in this section are applicable to any 2010 plan delivered or issued for delivery in this state with an effective date for coverage on or after June 1, 2010. A policy or certificate may not be advertised, solicited, delivered, or issued for delivery unless it complies with the standards in this section.
(1)(a) An issuer offering a 2010 plan shall offer to an applicant a policy or certificate that only contains the basic core benefits.
(b) If an issuer offers any of the additional benefits under Subsection R590-146-8a(2)(b), or offers Plans K or L under Subsection (5)(h) or (5)(i) of this section, the issuer shall also offer to an applicant either Plan C, under Subsection (5)(c) of this section, or Plan F, under Subsection (5)(e) of this section.
(2) A group, package, or combination of Medicare supplement insurance benefits, other than those listed in this section, may not be offered for sale except as permitted in Subsection (6) and in Section R590-146-10.
(3) A 2010 plan shall be:
(a) uniform in structure, language, designation, and format; and
(b) structured according to the format provided in Subsection R590-146-8a(2), or in the case of Plan K or L in Subsection (5)(h) or (5)(i) of this section, and list the benefits in the order shown.
(4) An issuer may use, in addition to the plan designations required under Subsection (3), other designations to the extent permitted by law.
(5) A 2010 plan shall only include the benefits listed in this subsection.
(a) Standardized Plan A shall only include the basic core benefits.
(b) Standardized Plan B shall only include:
(i) basic core benefits; and
(ii) 100% of the Medicare Part A deductible.
(c) Standardized Plan C shall only include:
(i) basic core benefits;
(ii) 100% of the Medicare Part A deductible;
(iii) skilled nursing facility care;
(iv) 100% of the Medicare Part B deductible; and
(v) medically necessary emergency care in a foreign country.
(d) Standardized Plan D shall only include:
(i) basic core benefits;
(ii) 100% of the Medicare Part A deductible;
(iii) skilled nursing facility care; and
(iv) medically necessary emergency care in a foreign country.
(e) Standardized Plan F shall only include:
(i) basic core benefits;
(ii) 100% of the Medicare Part A deductible;
(iii) skilled nursing facility care;
(iv) 100% of the Medicare Part B deductible;
(v) 100% of the Medicare Part B excess charges; and
(vi) medically necessary emergency care in a foreign country.
(f)(i) Standardized Plan High Deductible F shall only include 100% of covered expenses following the payment of the annual Plan High Deductible F deductible. The covered expenses after payment of the deductible include:

(A) basic core benefits;
(B) 100% of the Medicare Part A deductible;
(C) skilled nursing facility care;
(D) 100% of the Medicare Part B deductible;
(E) 100% of the Medicare Part B excess charges; and
(F) medically necessary emergency care in a foreign country.
(ii) The annual Plan High Deductible F deductible shall:
(A) consist of out-of-pocket expenses, other than premiums, for services covered by Plan F; and
(B) be in addition to any other specific benefit deductibles.
(iii) The annual Plan High Deductible F deductible shall be based on the calendar year as adjusted annually by the Secretary.
(g)(i) Standardized Plan G shall only include:
(A) basic core benefits;
(B) 100% of the Medicare Part A deductible;
(C) skilled nursing facility care;
(D) 100% of the Medicare Part B excess charges; and
(E) medically necessary emergency care in a foreign country.
(ii) Effective January 1, 2020, Plan High Deductible F under Subsection R590-146-9b(1)(d) is redesignated as Plan High Deductible G and may be offered to an individual eligible for Medicare before January 1, 2020.
(h) Standardized Plan K shall only include:
(i) 100% of the Medicare Part A hospital coinsurance amount for each day used from the 61st through the 90th day in any Medicare benefit period;
(ii) 100% of the Medicare Part A hospital coinsurance amount for each Medicare lifetime inpatient reserve day used from the 91st through the 150th day in any Medicare benefit period;
(iii) upon exhaustion of the Medicare hospital inpatient coverage, including the lifetime reserve days, coverage of 100% of the Medicare Part A eligible expenses for hospitalization paid at the applicable prospective payment system rate, or other appropriate Medicare standard of payment, subject to a lifetime maximum benefit of an additional 365 days, which the provider shall accept the issuer's payment as payment in full and may not bill the insured for any balance;
(iv) 50% of the Medicare Part A deductible until the out-of-pocket limitation is met;
(v) 50% of the skilled nursing facility care coinsurance amount until the out-of-pocket limitation in Subsection (3)(h)(x) is met;
(vi) 50% of the hospice care cost sharing for all Medicare Part A eligible expenses and respite care until the out-of-pocket limitation is met;
(vii) 50%, under Medicare Part A or B, of the reasonable cost of the first 3 pints of blood, or equivalent quantities of packed red blood cells, as defined under federal regulations, unless replaced in accordance with federal regulations until the out-of-pocket limitation is met;
(viii) except for coverage provided in Subsection (5)(h)(ix), 50% of the cost-sharing otherwise applicable under Medicare Part B after the insured pays the Medicare Part B deductible until the out-of-pocket limitation is met;
(ix) 100% of the cost-sharing for Medicare Part B preventive services after the insured pays the Part B deductible; and
(x) 100% of all cost sharing under Medicare Part A and B for the balance of the calendar year after the insured has reached the out-of-pocket limitation on annual expenditures under Medicare Part A and B of $4,000 in 2006, indexed each year by the Secretary.
(i) Standardized Plan L shall only include:
(i) the benefits under Subsections (5)(h)(i), (5)(h)(ii), (5)(h)(iii), and (5)(h)(ix);
(ii) the benefits under Subsections (5)(h)(iv), (5)(h)(v), (5)(h)(vi), (5)(h)(vii), and (5)(h)(viii), but substituting 75% for 50%; and
(iii) the benefits under Subsection (5)(h)(x), substituting $2,000 for $4,000.
(j) Standardized Plan M shall only include:
(i) basic core benefits;
(ii) 50% of the Medicare Part A deductible;
(iii) skilled nursing facility care; and
(iv) medically necessary emergency care in a foreign country.
(k)(i) Standardized Plan N shall only include:
(A) basic core benefits;
(B) 100% of the Medicare Part A deductible;
(C) skilled nursing facility care; and
(D) medically necessary care in a foreign country.
(ii) The copayments for the benefits in Subsection (5)(k)(i) are the lesser of:
(A) $20 or the Medicare Part B coinsurance or copayment for each covered health care provider office visit, including visits to medical specialists; and
(B) $50 or the Medicare Part B coinsurance or copayment for each covered emergency room visit, however, this copayment shall be waived if the insured is admitted to a hospital and the emergency visit is subsequently covered as a Medicare Part A expense.
(6)(a) An issuer may, with the prior approval of the commissioner, offer a policy or certificate with a new or innovative benefit in addition to the standardized benefits provided in a policy or certificate.
(b) A new or innovative benefit shall only include a benefit that is appropriate to Medicare supplement insurance, new or innovative, not otherwise available, and cost effective.

(c) A new or innovative benefit may not:
(i) adversely impact the goal of Medicare supplement simplification;
(ii) include an outpatient prescription drug benefit; or
(iii) be used to change or reduce benefits, including a change of any cost sharing provision, in any standardized plan.

R590-146-9b. Standard Plans for 2020 Standardized Plans Issued for Delivery to Individuals Newly Eligible for Medicare on or After January 1, 2020.

The standards in this section are applicable to any 2020 plan delivered or issued for delivery in this state to an individual newly eligible for Medicare with an effective date of coverage on or after January 1, 2020. A policy or certificate that provides coverage of the Medicare Part B deductible may not be advertised, solicited, delivered, or issued for delivery in this state as a Medicare supplement insurance policy or certificate to an individual newly eligible for Medicare on or after January 1, 2020. A policy or certificate may not be advertised, solicited, delivered, or issued for delivery unless it complies with the standards in this section.

(1) The standards and requirements of Section R590-146-9a apply to a 2020 plan except:
(a) Plan C is redesignated as Plan D and shall provide the benefits in Subsection R590-146-9a(5)(c) but may not provide coverage for any portion of the Medicare Part B deductible;
(b) Plan F is redesignated as Plan G and shall provide the benefits in Subsection R590-146-9a(5)(e) but may not provide coverage for any portion of the Medicare Part B deductible;
(c) Plan C, F, or High Deductible F may not be offered to an individual newly eligible for Medicare on or after January 1, 2020;
(d) Plan High Deductible F is redesignated as Plan High Deductible G and shall provide the benefits in Subsection R590-146-9a(5)(f) but may not provide coverage for any portion of the Medicare Part B deductible, provided that the Medicare Part B deductible paid by the insured is considered an out-of-pocket expense in meeting the annual high deductible; and
(e) the reference to Plan C or F under Subsection R590-146-9a(1)(b) is considered a reference to Plan D or G for purposes of this section.
(2) This section applies to an individual who is newly eligible for Medicare on or after January 1, 2020:
(a) by reason of attaining age 65 on or after January 1, 2020; or
(b) by reason of entitlement to benefits under Medicare Part A pursuant to Section 226(b) or 226A of the Social Security Act, or who is considered to be eligible for benefits under Section 226(a) of the Social Security Act on or after January 1, 2020.
(3) For purposes of Subsection R590-146-12(5), in the case of an individual who is newly eligible for Medicare on or after January 1, 2020, a reference to Plan C or F, including High Deductible F, shall be deemed to be a reference to Plan D or G, including High Deductible G, respectively, that meet the requirements of this section.
(4) On or after January 1, 2020, the plans under Subsection (1)(d) may be offered to an individual who was eligible for Medicare prior to January 1, 2020, in addition to the standardized plans under Subsection R590-146-9a(5).

R590-146-10. Medicare Select Policies and Certificates.

(1)(a) This section applies to a Medicare Select policy and certificate.
(b) A policy or certificate may not be advertised as a Medicare Select policy or Medicare Select certificate unless it meets the requirements of this section.
(2) The definitions in this subsection apply to this section.
(a) "Complaint" means a dissatisfaction expressed by an insured concerning a Medicare Select issuer or its network providers.
(b) "Grievance" means dissatisfaction expressed in writing by an insured under a Medicare Select policy or Medicare Select certificate with the administration, claims practices, or provision of services concerning a Medicare Select issuer or its network providers.
(c) "Medicare Select issuer" means an issuer offering, or seeking to offer, a Medicare Select policy or certificate.
(d) "Medicare Select policy" or "Medicare Select certificate" mean respectively a Medicare supplement policy or certificate that contains restricted network provisions.
(e) "Network provider" means a healthcare provider, or a group of healthcare providers, that enters into a written agreement with an issuer to provide benefits under a Medicare Select policy.
(f) "Restricted network provision" means a provision that conditions the payment of benefits, in whole or in part, on the use of network providers.
(g) "Service area" means a geographic area approved by the commissioner where a Medicare Select issuer is authorized to offer a Medicare Select policy.
(3) The commissioner may authorize an issuer to offer a Medicare Select policy or Medicare Select certificate under this section if the commissioner finds that the issuer has satisfied the requirements of this rule.
(4) A Medicare Select issuer may not issue a Medicare Select policy or Medicare Select certificate in this state until its plan of operation has been approved by the commissioner.
(5) A Medicare Select issuer shall file a proposed plan of operation with the commissioner that includes:
(a) evidence that each covered service that is subject to a restricted network provision is available and accessible through network providers, including a demonstration that:
(i) services may be provided by network providers with reasonable promptness for geographic location, hours of operation, and after-hours care based on the usual practice in the local area and the usual travel times within the community;
(ii) the number of network providers in the service area is sufficient, with respect to current and expected policyholders or certificate holders, either:
(A) to deliver adequate services subject to a restricted network provision; or

(B) to make appropriate referrals;

(iii) there are written agreements with network providers describing specific responsibilities;

(iv) emergency care is available 24 hours per day and seven days per week; and

(v) in the case of covered services that are subject to a restricted network provision and are provided on a prepaid basis, there are written agreements with network providers prohibiting the providers from billing or otherwise seeking reimbursement from, or recourse against, an insured under a Medicare Select policy or Medicare Select certificate, except that this subsection may not apply to supplemental charges or coinsurance amounts as stated in the Medicare Select policy or Medicare Select certificate;

(b) a statement or map providing a clear description of the service area;

(c) a description of the grievance procedure to be used;

(d) a description of the quality assurance program, including:

(i) the formal organizational structure;

(ii) the written criteria for selection, retention, and removal of a network provider; and

(iii) the procedures for evaluating quality of care provided by a network provider and the process to initiate corrective action when warranted;

(e) a list and description, by specialty, of each network provider;

(f) written information proposed to be used by the issuer to comply with Subsection (9); and

(g) any other information requested by the commissioner.

(6)(a) A Medicare Select issuer shall file with the commissioner any proposed change to the plan of operation, except for a change to the list of network providers, prior to implementing the changes.

(b) A change to the list of network providers shall be filed with the commissioner within 30 days of the change. The submission shall include each network provider and clearly identify new and discontinued providers.

(7) A Medicare Select policy or Medicare Select certificate may not restrict payment for covered services provided by a non-network provider if:

(a) the services are for symptoms requiring emergency care or are immediately required for an unforeseen illness, injury, or condition; and

(b) it is unreasonable to obtain services through a network provider.

(8) A Medicare Select policy or Medicare Select certificate shall provide payment for full coverage under the policy for a covered service that is not available through a network provider.

(9) A Medicare Select issuer shall make full and fair disclosures in writing of each provision, restriction, and limitation of a Medicare Select policy or Medicare Select certificate to an applicant. The disclosure shall include:

(a) an outline of coverage sufficient to permit an applicant to compare the coverage and premiums of the Medicare Select policy or Medicare Select certificate with:

(i) other Medicare supplement insurance policies or certificates offered by the issuer; and

(ii) other Medicare Select policies or Medicare Select certificates;

(b) a description, including address, phone number, and hours of operation, of each network provider, including primary care physicians, specialty physicians, hospitals, and other providers;

(c) a description of the restricted network provisions, including payments for coinsurance and deductibles, when providers other than network providers are utilized, except to the extent specified in the Medicare Select policy or Medicare Select certificate, expenses incurred when using out-of-network providers do not count toward the out-of-pocket annual limit contained in a Plan K or L;

(d) a description of coverage for emergency and urgent care and other out-of-service area coverage;

(e) a description of any limitation on a referral to a restricted network provider or other provider;

(f) a description of the Medicare Select policyholder's rights to purchase another Medicare supplement insurance policy or certificate offered by the issuer; and

(g) a description of the Medicare Select issuer's quality assurance program and grievance procedure.

(10) Prior to the sale of a Medicare Select policy or Medicare Select certificate, a Medicare Select issuer shall obtain from the applicant a signed and dated form stating that the applicant has received the information required under Subsection (9) and that the applicant understands the restrictions of the Medicare Select policy or Medicare Select certificate.

(11) A Medicare Select issuer shall have and use procedures for hearing complaints and resolving written grievances from insureds. The procedures shall be aimed at mutual agreement for settlement and may include arbitration procedures.

(a) A grievance procedure shall be described in the Medicare Select policy, Medicare Select certificate, and outline of coverage.

(b) At the time a Medicare Select policy or Medicare Select certificate is issued, a Medicare Select issuer shall provide detailed information to the policyholder or certificate holder describing how a grievance may be registered with the issuer.

(c) An issuer shall consider a grievance in a timely manner and transmit it to an appropriate decision maker who has the authority to fully investigate the issuer and take corrective action.

(d) If a grievance is found to be valid, corrective action shall be promptly taken.

(e) Each concerned party shall be notified about the results of a grievance.

(f) A Medicare Select issuer shall report to the commissioner no lather than March 31 of each year the number of grievances filed in the past year and a summary of the subject, nature, and resolution of the grievances.

(12)(a) At the request of an insured, a Medicare Select issuer shall provide the insured the opportunity to purchase a Medicare supplement insurance policy or certificate offered by the issuer which has comparable or lesser benefits that does not contain a restricted network provision. The issuer shall make the Medicare supplement insurance policy or certificate available without requiring evidence of insurability after the Medicare Select policy or Medicare Select certificate has been in force for six months.

(b) For the purposes of this subsection, a Medicare supplement policy or certificate is considered to have comparable or lesser benefits unless it contains one or more significant benefits not included in the Medicare Select policy or Medicare Select certificate being replaced. A significant benefit includes coverage for the Medicare Part A deductible, at-home recovery services, or the Medicare Part B excess charges.

(13)(a) A Medicare Select policy or Medicare Select certificate shall provide for continuation of coverage in the event the Secretary determines that Medicare Select policies and Medicare Select certificates should be discontinued due to either failure of the Medicare Select Program to be reauthorized under law or its substantial amendment.

(b) A Medicare Select issuer shall provide an insured under a Medicare Select policy or Medicare Select certificate the opportunity to purchase a Medicare supplement insurance policy or certificate offered by the issuer that has comparable or lesser benefits that does not contain a restricted network provision. The issuer shall make the Medicare supplement insurance policy or certificate available without requiring evidence of insurability.

(c) For the purposes of this subsection, a Medicare supplement insurance policy or certificate is considered to have comparable or lesser benefits unless it contains one or more significant benefits not included in the Medicare Select policy or Medicare Select certificate being replaced. For this subsection, a significant benefit includes coverage for the Medicare Part A deductible, at-home recovery services, or the Medicare Part B excess charges.

(14) A Medicare Select issuer shall comply with reasonable requests for data to evaluate the Medicare Select Program.

R590-146-11. Open Enrollment.

(1)(a) An issuer may not deny or condition the issuance or effectiveness of a policy or certificate available for sale in this state, nor discriminate in the pricing of a policy or certificate because of the health status, claims experience, receipt of health care, or medical condition of an applicant in the case of an application for a policy or certificate that is submitted prior to or during the six month period beginning with the first day of the first month in which an individual is both 65 years of age or older and is enrolled for benefits under Medicare Part B.

(b) Each policy or certificate currently available from an issuer shall be available to an applicant who qualifies under this section regardless of age.

(c) During an applicant's open enrollment period, an issuer shall offer the lowest rate available to an applicant without regard to health or smoker status.

(2)(a) An issuer may not exclude benefits based on a preexisting condition if an applicant described in Subsection (1) has had a continuous period of creditable coverage of at least six months.

(b) An issuer shall reduce the period of a preexisting condition exclusion by the aggregate of the period of creditable coverage if an applicant, described in Subsection (1), as of the date of application, has had a continuous period of creditable coverage that is less than six months. The Secretary shall specify the manner of the reduction under this subsection.

(3) Except as provided in Subsection (2) and Sections R590-146-12 and R590-146-13, Subsection (1) may not be construed as preventing the exclusion of benefits under a policy, during the first six months, for a preexisting condition.

R590-146-12. Guaranteed Issue for Eligible Persons.

(1)(a) An eligible person is an individual described in Subsection (2) who seeks to enroll under a policy or certificate during the period specified in Subsection (3), and who submits evidence of the date of termination, disenrollment, or Medicare Part D enrollment with an application for a policy or certificate.

(b) With respect to an eligible person, an issuer may not:

(i) deny or condition the issuance or effectiveness of a policy or certificate described in Subsection (5) that is offered and is available for issuance to new enrollees by the issuer;

(ii) discriminate in the pricing of a policy because of health status, claims experience, receipt of health care, or medical condition; or

(iii) impose a benefit exclusion based on a preexisting condition.

(2) An eligible person is an individual:

(a) enrolled under an employee welfare benefit plan that provides health benefits that supplement the benefits under Medicare, and the plan terminates or the plan no longer provides all supplemental health benefits to the individual;

(b) enrolled with a Medicare Advantage organization under a Medicare Advantage plan, and one or more of the circumstances in this subsection apply, or the individual is 65 years of age or older and is enrolled with a Program of All-Inclusive Care for the Elderly, PACE, provider under Section 1894 of the Social Security Act, and there are circumstances similar to those described in this subsection that would permit discontinuance of the individual's enrollment with such provider if such individual were enrolled in a Medicare Advantage plan:

(i) the certification of the organization or plan has been terminated;

(ii) the organization has terminated or otherwise discontinued providing the plan in the area the individual resides;

(iii) the individual is no longer eligible to elect the plan because of a change in the individual's place of residence or other change in circumstances specified by the Secretary, but not including termination of the individual's enrollment on the basis described in Section 1851(g)(3)(B) of the Social Security Act, when the individual has not paid premiums on a timely basis or has engaged in disruptive behavior as specified in standards under Section 1856, or the plan is terminated for each individual within a residence area;

(iv) the individual demonstrates, in accordance with guidelines established by the Secretary, that:

(A) the organization offering the plan substantially violated a material provision of the organization's contract under this part in relation to the individual, including the failure to provide an enrollee on a timely basis medically necessary care for which benefits are available under the plan or the failure to provide such covered care in accordance with applicable quality standards; or

(B) the organization, or producer or other entity acting on the organization's behalf, materially misrepresented the plan's provisions in marketing the plan to the individual; or

(v) the individual meets such other exceptional conditions the Secretary may provide;

(c)(i) enrolled with:

(A) an eligible organization under a contract under Section 1876 of the Social Security Act;

(B) a similar organization operating under demonstration project authority, effective before April 1, 1999;

(C) an organization under an agreement under Section 1833(a)(1)(A) of the Social Security Act; or

(D) an organization under a Medicare Select policy; and

(ii) enrollment ends under circumstances that would permit discontinuance of an individual's election of coverage under Subsection (2)(b);

(d) enrolled under a policy and the enrollment ends because of:

(i)(A) the insolvency of the issuer or bankruptcy of the non-issuer organization; or

(B) other involuntary termination of coverage or enrollment under the policy;

(ii) the issuer of the policy substantially violated a material provision of the policy; or

(iii) the issuer, or a producer or other entity acting on the issuer's behalf, materially misrepresented the policy's provisions in marketing the policy to the individual;

(e)(i) enrolled under a policy and terminates enrollment and subsequently enrolls, for the first time, with any Medicare Advantage organization under a Medicare Advantage plan, any eligible organization under a contract under Section 1876 of the Social Security Act, any similar organization operating under demonstration project authority, any PACE provider under Section 1894 of the Social Security Act, or a Medicare Select policy; and

(ii) subsequent enrollment under Subsection (2)(e)(i) is terminated by the enrollee during any period within the first 12 months of such subsequent enrollment, during which the enrollee is permitted to terminate such subsequent enrollment under Section 1851(e) of the Social Security Act;

(f) upon first becoming eligible for benefits under Medicare Part A at age 65, enrolls in a Medicare Advantage plan, or with a PACE provider under Section 1894 of the Social Security Act, and disenrolls from the plan or program within 12 months after the effective date of enrollment;

(g) enrolled in a Medicare Part D plan during the initial enrollment period and was enrolled under a policy that covers outpatient prescription drugs and the individual terminates enrollment in the policy and submits evidence of enrollment in Medicare Part D along with the application for a policy described in Subsection (5)(d); or

(h) enrolled under medical assistance under Title XIX of the Social Security Act, Medicaid, and is involuntarily terminated outside of requirements of Subsection R590-146-8(1)(g)(i) or R590-146-8a(1)(g)(i) and R590-146-8a(1)(g)(ii).

(3)(a) For an eligible person described in Subsection (2)(a), the guaranteed issue period extends for 63 days beginning on the later of:

(i) the date the individual receives a notice of termination or cessation of all supplemental health benefits or, if a notice is not received, notice that a claim has been denied because of a termination or cessation; or

(ii) the date that the applicable coverage terminates or ends.

(b) For an eligible person described in Subsection (2)(b), (2)(c), (2)(e), or (2)(f), whose enrollment is terminated involuntarily, the guaranteed issue period begins on the date that the individual receives a notice of termination and ends 63 days after the date applicable coverage is terminated.

(c) For an eligible person described in Subsection (2)(d)(i), the guaranteed issue period extends for 63 days beginning on the later of:

(i) the date that the individual receives a notice of termination, a notice of the issuer's bankruptcy or insolvency, or other such similar notice, if any; or

(ii) the date that the applicable coverage is terminated.

(d) For an eligible person described in Subsection (2)(b), (2)(d)(ii), (2)(d)(iii), (2)(e), or (2)(f) who disenrolls voluntarily, the guaranteed issue period begins on the date that is 60 days before the effective date of the disenrollment and ends on the date that is 63 days after the effective date.

(e) For an eligible person described in Subsection (2)(g), the guaranteed issue period begins on the date the individual receives notice under Section 1882(v)(2)(B) of the Social Security Act from the issuer during the 60-day period immediately preceding the initial Medicare Part D enrollment period and ends on the date that is 63 days after the effective date of the individual's coverage under Medicare Part D.

(f) For an eligible person described in Subsection (2) but not described in Subsections (3)(a) through (e), the guaranteed issue period begins on the effective date of disenrollment and ends on the date that is 63 days after the effective date.

(4)(a) An eligible person described in Subsection (2)(e), or who is considered to be an eligible person under this subsection, whose enrollment with an organization or provider described in Subsection (2)(e)(i) is involuntarily terminated within the first 12 months of enrollment, and who, without an intervening enrollment, enrolls with another such organization or provider, the subsequent enrollment is considered to be an initial enrollment.

(b) An eligible person described in Subsection (2)(f), or who is considered to be an eligible person under this subsection, whose enrollment with a plan or in a program described in Subsection (2)(f) is involuntarily terminated within the first 12 months of enrollment, and who, without an intervening enrollment, enrolls in another such plan or program, the subsequent enrollment is considered to be an initial enrollment.

(c) For the purposes of Subsections (2)(e) and (2)(f), enrollment of an individual with an organization or provider described in Subsection (2)(e)(i) or with a plan or in a program described in Subsection (2)(f), may not be considered to be an initial enrollment under this subsection after the two-year period beginning on the date on which the individual first enrolled with the organization, provider, plan, or program.

(5)(a) An eligible person who is entitled to an open enrollment period under Subsection (2)(a), (2)(b), (2)(c), or (2)(d) may select Plan A, B, C, F, High Deductible F, K, or L if offered by any insurer.

(b)(i) Subject to Subsection (5)(b)(ii), the policy an eligible person is entitled to under Subsection (2)(e) is the same policy in which the individual was most recently previously enrolled, if available from the same issuer, or, if not available, a policy described in Subsection (5)(a).

(ii) After December 31, 2005, if the individual was most recently enrolled in a policy with an outpatient prescription drug benefit, a policy described in this subsection is:

(A) the policy available from the same issuer but modified to remove outpatient prescription drug coverage; or

(B) at the election of the policyholder, Plan A, B, C, F, High Deductible F, K, or L that is offered by any issuer.

(c) The policy an eligible person is entitled to under Subsection (2)(f) includes any policy offered by any issuer.

(d) The policy an eligible person is entitled to under Subsection (2)(g) is Plan A, B, C, F, High Deductible F, K, or L, and is offered and available for issuance to new enrollees by the same issuer that issued the individual's policy with outpatient prescription drug coverage.

(6)(a) At the time of an event described in Subsection (2) because an individual loses coverage or benefits due to the termination of a contract or agreement, policy, or plan, the organization, issuer, or administrator terminating the contract, agreement, policy, or plan, shall notify the individual of their rights under this section, and of the obligations of issuers of Medicare supplement insurance policies under Subsection (1). The notice shall be communicated with the notification of termination.

(b) At the time of an event described in Subsection (2) because an individual ends enrollment under a contract, agreement, policy, or plan, the organization, issuer, or administrator offering the contract, agreement, policy, or plan, regardless of the basis for ending enrollment, shall notify the individual of their rights under this section, and of the obligations of issuers of Medicare supplement insurance policies under Subsection (1). The notice shall be provided within ten working days of the issuer receiving notification of disenrollment.

R590-146-13. Standards for Claims Payment.

(1) An issuer shall comply with Section 1882(c)(3) of the Social Security Act, as enacted by Section 4081(b)(2)(c) of the Omnibus Budget Reconciliation Action of 1987, OBRA, 1987, Pub. L. No. 100-203, by:

(a) accepting a notice from a Medicare issuer on dually assigned claims submitted by a participating physician and supplier as a claim for benefits in place of any other claim form otherwise required and making a payment determination based on the information contained in that notice;

(b) notifying the participating physician or supplier and the beneficiary of the payment determination;

(c) paying the participating physician or supplier directly;

(d) furnishing, at enrollment, each enrollee with a card listing the policy name, number, and a central mailing address to which notices from an issuer may be sent;

(e) paying user fees for claim notices that are transmitted electronically or otherwise; and

(f) providing to the Secretary, at least annually, a central mailing address where each claim may be sent by an issuer.

(2) Compliance with the requirements in this section shall be certified on the Medicare supplement insurance experience reporting form.

R590-146-14. Loss Ratio Standards and Filing Requirements.

(1)(a)(i) A policy or certificate may not be delivered or issued for delivery unless the policy form or certificate form can be expected, as estimated for the entire period for which rates are computed to provide coverage, to return to policyholders and certificate holders in the form of aggregate benefits, not including anticipated refunds or credits, provided under the policy form or certificate form:

(A) at least 75% of the aggregate amount of premiums earned, in the case of group policies; or

(B) at least 65% of the aggregate amount of premiums earned, in the case of individual policies.

(ii) The loss ratio shall be calculated based on incurred claims experience or incurred health care expenses when coverage is provided by a health maintenance organization on a service, rather than reimbursement, basis and earned premiums for the period and in accordance with accepted actuarial principles and practices. Incurred health care expenses when coverage is provided by a health maintenance organization may not include:

(A) home office and overhead costs;

(B) advertising costs;

(C) commissions and other acquisition costs;

(D) taxes;

(E) capital costs;

(F) administration costs; and

(G) claims processing costs.

(b) Rate filings and rating schedules shall demonstrate that expected claims in relation to premiums comply with the requirements of this section when combined with actual experience to date. Rate revision filings shall also demonstrate that the anticipated loss ratio over the entire future period for which the revised rates are computed to provide coverage can be expected to meet the appropriate loss ratio standards, and comply with the requirements of Rule R590-85.

(c) For purposes of this subsection, policies issued through the mail or by mass media advertising, including both print and broadcast advertising, are considered to be individual policies.

(d) For policies issued before July 30, 1992, expected claims in relation to premiums shall meet:

(i) the originally filed anticipated loss ratio when combined with the actual experience since inception;

(ii) the appropriate loss ratio requirement from Subsection (1)(a)(i) when combined with actual experience beginning with the effective date of October 31, 1994; and

(iii) the appropriate loss ratio requirement from Subsection (1)(a)(i) over the entire future period for which the rates are computed to provide coverage.

(2)(a) An issuer shall collect, complete, and file with the commissioner by May 31 of each year:

(i) the Medicare Supplement Refund Calculation report;

(ii) the Calculation of Benchmark Ratio Since Inception for Group Policies report; and

(iii) the Calculation of Benchmark Ratio Since Inception for Individual Policies report.

(b) If, based on the experience as reported, the benchmark ratio since inception, ratio 1, exceeds the adjusted experience ratio since inception, ratio 3, then a refund or credit calculation is required. The refund calculation shall be done on a statewide basis for each standardized plan type in a standardized plan. For purposes of the refund or credit calculation, experience on policies issued within the reporting year shall be excluded.

(c) For this section and for policies or certificates issued before July 30, 1992, the issuer shall make the refund or credit calculation separately for all individual policies, including all group policies subject to an individual loss ratio standard when issued, combined, and all other group policies combined for experience after the effective date of this rule.

(d) A refund or credit shall be made when the benchmark loss ratio exceeds the adjusted experience loss ratio and the amount to be refunded or credited exceeds a de minimis level. The refund shall include interest from the end of the calendar year to the date of the refund or credit at a rate specified by the Secretary, but in no event shall it be less than the average rate of interest for 13-week Treasury notes. A refund or credit against premiums due shall be made by September 30 following the experience year upon which the refund or credit is based.

(3)(a) An issuer shall annually file a report with the commissioner that includes the rates, rating schedule, and supporting documentation, including ratios of incurred losses to earned premiums by policy duration in accordance with the filing requirements and procedures prescribed by the commissioner.

(b) The supporting documentation shall demonstrate, in accordance with actuarial standards of practice using reasonable assumptions, that the appropriate loss ratio standards can be expected to be met over the entire period for which rates are computed. The demonstration shall exclude active life reserves. An expected third-year loss ratio, which is greater than or equal to the applicable percentage, shall be demonstrated for policies or certificates in force less than three years.

(c) The report shall be filed no later than May 31 each year, and in compliance with Rule R590-220.

(4)(a) An issuer shall file with the commissioner, in accordance with the applicable filing procedures, appropriate premium adjustments necessary to produce loss ratios as anticipated for the current premium for the applicable policies or certificates. The supporting documents necessary to justify the adjustment shall accompany the filing. The filing:

(i) shall include premium adjustments necessary to produce an expected loss ratio under the policy or certificate to conform to minimum loss ratio standards and are expected to result in a loss ratio at least as great as that originally anticipated in the rates used to produce current premiums by the issuer for the policies or certificates; and

(ii) may not include a premium adjustment that:

(A) modifies the loss ratio experience under the policy other than the adjustments described in this subsection; and

(B) is made at any time other than the renewal date or anniversary date.

(b) If an issuer fails to make premium adjustments acceptable to the commissioner, the commissioner may order premium adjustments, refunds, or premium credits deemed necessary to achieve the loss ratio required by this section.

(5)(a) An issuer shall annually file by May 31 the Utah rate and enrollment information for standardized Medicare supplement insurance plans as specified in the Medicare Supplement Rate Data Template spreadsheet, available on the department's website, https://insurance.utah.gov

(b) The report shall be filed at https://medigap.utah.gov/provider/upload no later than May 31 each year and in compliance with Rule R590-220.

(6) The commissioner may conduct a public hearing to gather information concerning a request by an issuer for an increase in a rate if the experience of the policy form for the previous reporting period is not in compliance with the applicable loss ratio standard. The determination of compliance is made without consideration of any refund or credit for the reporting period. Public notice of the hearing shall be furnished in a manner prescribed by the commissioner.

R590-146-15. Filing Policies, Certificates, and Premium Rates.

(1) For the purpose of this subsection, "type" means:

(a) an individual policy;

(b) a group policy;

(c) an individual Medicare Select policy; or

(d) a group Medicare Select policy.

(2) An issuer may not deliver or issue for delivery a policy or certificate to a resident of this state unless the policy form or certificate form has been filed in accordance with filing requirements and procedures prescribed by the commissioner.

(3) An issuer may not use or change premium rates unless the rates, rating schedule, and supporting documentation have been filed in accordance with the filing requirements and procedures prescribed by the commissioner.

(4)(a) Except as provided in Subsection (4)(b), an issuer may not file more than one policy form or certificate form of each standardized plan type for each standardized plan.

(b) An issuer may offer, with the approval of the commissioner, up to four additional policy forms or certificate forms of the same standardized plan type, one for:

(i) the inclusion of new or innovative benefits;
(ii) the addition of either direct response or producer marketing methods;
(iii) the addition of either guaranteed issue or underwritten coverage; and
(iv) the offering of coverage to individuals eligible for Medicare by reason of disability.
(c) A policy form issued under Section R590-146-9b is not considered a new policy form, and is not a permissible separate rating class.
(5)(a) Except as provided in Subsection (5)(b), an issuer shall continue to make available for purchase each policy form or certificate form that has been filed with the commissioner. A policy form or certificate form is not considered available for purchase unless the issuer has actively offered it for sale in the previous 12 months.
(b) An issuer may discontinue the availability of a policy form or certificate form if the issuer provides to the commissioner, in writing, its decision at least 30 days before discontinuing the availability of the policy form or certificate form. After receipt of the notice by the commissioner, the issuer may no longer offer for sale the policy form or certificate form in this state.
(i) An issuer that discontinues the availability of a policy form or certificate form under this subsection may not file a new policy form or certificate form of the same standardized plan type for the same standardized plan as the discontinued form for a period of five years after the issuer provides notice to the commissioner of the discontinuance. The period of discontinuance may be reduced if the commissioner determines that a shorter period is appropriate.
(ii) The sale or other transfer of Medicare supplement insurance business to another issuer is considered a discontinuance.
(iii)(A) A change in the rating structure or methodology shall be considered a discontinuance unless the issuer:
(I) provides an actuarial memorandum, in a form and manner prescribed by the commissioner, describing the manner in which the revised rating methodology and resultant rates differ from the existing rating methodology and existing rates; and
(II) does not subsequently put into effect a change of rates or rating factors that causes the percentage differential between the discontinued and subsequent rates as described in the actuarial memorandum to change.
(B) The commissioner may approve a change to the differential that is in the public interest.
(C) A revised rating methodology may only apply to a policy or certificate issued after the effective date of the revision.
(6)(a) Except as provided in Subsection (6)(b), the experience of all policy forms or certificate forms of the same type in a standardized plan shall be combined for purposes of the refund or credit calculation prescribed in Section R590-146-14.
(b) Policy forms assumed under an assumption reinsurance agreement may not be combined with the experience of other forms for purposes of the refund or credit calculation.

R590-146-16. Permitted Compensation Arrangements.
(1) An issuer or other entity may provide commission or other compensation to a producer or other representative for the sale of a policy or certificate only if the first-year commission or other first-year compensation is no more than 200% of the commission or other compensation paid for selling or servicing the policy or certificate in the second year.
(2) The commission or other compensation provided in subsequent renewal years shall be the same as that provided in the second year and shall be provided for at least five renewal years.
(3) An issuer or other entity may not provide compensation to its producers, and a producer may not receive, compensation greater than the renewal compensation payable by the replacing issuer on a renewal policy or certificate if an existing policy or certificate is replaced.
(4) An issuer may not create a disincentive to sell a policy during the open enrollment period by establishing compensation arrangements that result in a producer receiving substantially lower or no compensation for policies sold during open enrollment.
(5) For purposes of this section, compensation includes pecuniary or non-pecuniary remuneration of any kind relating to the sale or renewal of a policy or certificate including a bonus, gift, prize, award, or finder's fee.

R590-146-17. Required Disclosure Provisions.
(1)(a) A policy or certificate shall include a renewal or continuation provision. The language or specifications of the provision shall be consistent with the type of policy issued. The provision shall be appropriately captioned, appear on the first page of the policy or certificate, and include any reservation by the issuer of the right to change premiums and any automatic renewal premium increases based on the insured's age.
(b)(i) A rider or endorsement added to a policy after the date of issue or at reinstatement or renewal that reduces or eliminates a benefit or coverage in the policy shall require a signed acceptance by the insured, unless the issuer:
(A) is effectuating a request made in writing by the insured;
(B) is exercising a specifically reserved right under a policy; or
(C) is required to reduce or eliminate benefits to avoid duplication of Medicare benefits.
(ii) After the issue date of a policy or certificate, a rider or endorsement that increases benefits or coverage with an associated increase in premium during the policy term shall be agreed to in writing signed by the insured, unless:
(A) the benefits are required by the minimum standards for Medicare supplement insurance policies; or
(B) the increased benefit or coverage is required by law.
(iii) When a separate additional premium is charged for benefits provided in connection with a rider or endorsement, the premium charge shall be stated in the policy.
(c) A policy or certificate may not provide for the payment of benefits based on standards described as "usual and customary," "reasonable and customary," or similar words.
(d) If a policy or certificate contains a limitation regarding a preexisting condition, the limitation shall appear as a separate section of the policy and be labeled as "Preexisting Condition Limitations."

(e) A policy and certificate shall have a notice prominently printed on the first page of the policy or certificate or attached thereto stating that the policyholder or certificate holder has the right to return the policy or certificate within 30 days of its delivery and to have the premium refunded if, after examination of the policy or certificate, the insured is not satisfied for any reason.

(f)(i) An issuer of an accident and health insurance policy or certificate that provides hospital or medical expense coverage on an expense incurred or indemnity basis to an individual eligible for Medicare shall provide to the applicant the Guide to Health Insurance for People with Medicare in the form developed jointly by the NAIC and the Centers for Medicare and Medicaid Services in a font no smaller than 12-point.

(ii) Delivery of the guide shall be made whether or not the policy or certificate is advertised, solicited, or issued as a Medicare supplement insurance policy or certificate

(A) Except in the case of a direct response issuer, delivery of the guide shall be made to the applicant at application and acknowledgement of receipt of the guide shall be obtained by the issuer.

(B) A direct response issuer shall deliver the guide to the applicant upon request but not later than when the policy is delivered.

(2)(a) As soon as practicable, but no later than 30 days before the annual effective date of any Medicare benefit change, an issuer shall notify each policyholder and certificate holder of a modification it has made to a policy or certificate in a format acceptable to the commissioner. The notice shall:

(i) include a description of the revisions to the Medicare program and a description of each modification made to the coverage provided under the policy or certificate; and

(ii) inform each policyholder or certificate holder when a premium adjustment is made due to changes in Medicare.

(b) The notice of a benefit modification and any premium adjustment shall be in outline form and in clear and simple terms.

(c) A notice may not contain or be accompanied by any solicitation.

(3)(a) An issuer shall provide an outline of coverage to an applicant when the application is presented to the prospective applicant and, except for direct response policies, shall obtain an acknowledgement of receipt of the outline of coverage from the applicant.

(b) If an outline of coverage is provided at the time of application and a policy or certificate is issued on a basis that requires a revision to the outline of coverage, a substitute outline of coverage describing the policy or certificate shall accompany the policy or certificate when it is delivered, and shall state, in no less than 12-point bold font, immediately above the company name, "NOTICE: Read this outline of coverage carefully. It is not identical to the outline of coverage provided upon application and the coverage originally applied for has not been issued."

(c)(i) The outline of coverage shall be in no less than 12-point font and include five parts, in the following order:

(A) a cover page;

(B) premium information;

(C) Benefit Chart of Medicare Supplement Plans Sold on or After January 1, 2020;

(D) Outline of Coverage Disclosures; and

(E) Standardized Plan Description for each standardized plan offered by the issuer.

(ii) Each standardized plan shall be shown on the cover page, and the plans offered by the issuer shall be prominently identified.

(iii)(A) Premium information for the offered plans shall be shown on the cover page or immediately following the cover page, and shall be prominently displayed.

(B) The premium and payment mode shall be stated for each plan that is offered to the applicant.

(C) Each possible premium for the applicant shall be illustrated.

(4)(a) An accident and health insurance policy or certificate, other than a Medicare supplement insurance policy, or other policy identified in Subsection 31A-22-620(2)(b), issued for delivery in this state to an individual eligible for Medicare, shall notify an insured that the policy is not a Medicare supplement insurance policy or certificate. The notice shall either be printed or attached to the first page of the outline of coverage delivered to an insured, or if no outline of coverage is delivered, to the first page of the accident and health insurance policy or certificate delivered to an insured. The notice shall be in no less than 12-point font and shall state, "THIS (POLICY OR CERTIFICATE) IS NOT A MEDICARE SUPPLEMENT (POLICY OR CERTIFICATE). If you are eligible for Medicare, review the Guide to Health Insurance for People with Medicare available from the company."

(b) An application for an accident and health insurance policy or certificate provided to an individual eligible for Medicare described in Subsection (3)(a) shall disclose, using the applicable statement in Subsection R590-146-3(3), the extent to which the policy duplicates Medicare. The disclosure statement shall be provided as a part of, or together with, the application for the policy or certificate.

R590-146-18. Requirements for Application Forms and Replacement Coverage.

(1)(a) An application form shall include questions designed to elicit information as to whether, as of the date of the application, the applicant:

(i) has Medicare supplement insurance, Medicare Advantage coverage, Medicaid coverage, or other accident and health insurance currently in force; or

(ii) intends to replace any other accident and health insurance policy or certificate currently in force.

(b) A supplementary application or other form to be signed by the applicant and producer containing the questions and statements in the Application Supplementary Statements and Questions may be used.

(2) A producer shall list all other health insurance policies they have sold to the applicant, including a list of each policy sold:

(a) that is still in force; and

(b) in the past five years, that is no longer in force.

(3) In the case of a direct response issuer, a copy of the application or supplemental form, signed by the applicant and acknowledged by the issuer, shall be returned to the applicant by the issuer at policy delivery.

(4)(a) Upon determining a sale will involve Medicare supplement insurance coverage replacement, an issuer, other than a direct response issuer or its producer, shall provide to the applicant, prior to issuance or delivery of the policy or certificate, the Notice to Applicant Regarding Replacement of Medicare Supplement Insurance or Medicare Advantage.

(b) One copy of the notice signed by the applicant and the producer, except when the coverage is sold without a producer, shall be provided to the applicant and an additional signed copy shall be retained by the issuer.

(c) A direct response issuer shall deliver to the applicant when issuing the policy the Notice to Applicant Regarding Replacement of Medicare Supplement Insurance or Medicare Advantage.

(d) The notice shall be provided in substantially the same format in no less than 12-point font.

(5) Paragraphs one and two of the notice may be deleted by an issuer if the replacement does not involve application of a new preexisting condition limitation.

R590-146-19. Filing Requirements for Advertising.

An issuer shall, upon request from the commissioner, file a copy of any Medicare supplement insurance advertisement intended for use in this state whether through printed, audio, or visual medium.

R590-146-20. Marketing Standards.

(1) An issuer, directly or through its producers, shall:

(a) establish marketing procedures to assure that any comparison of policies by its producers will be fair and accurate;

(b) establish marketing procedures to assure excessive insurance is not sold or issued;

(c) display prominently by type, in bold font, stamp, or other appropriate means on the first page of the policy: "Notice to buyer: This policy may not cover all of your medical expenses.";

(d) inquire and otherwise make a reasonable effort to identify whether an applicant already has accident and health insurance and the types and amounts of any such insurance; and

(e) establish auditable procedures for verifying compliance.

(2) In addition to the practices prohibited in Title 31A, Chapter 23a, Part 4, Marketing Practices, the following acts and practices are prohibited:

(a) cold lead advertising;

(b) high pressure tactics; or

(c) twisting.

(3) The terms "Medicare Supplement," "Medigap," "Medicare wrap-around," or similar words may not be used unless the policy is issued in compliance with this rule.

R590-146-21. Appropriateness of Recommended Purchase and Excessive Insurance.

(1) A producer shall make a reasonable effort to determine the appropriateness of a recommended purchase or replacement of a Medicare supplement insurance policy or certificate.

(2) The sale of a Medicare supplement insurance policy or certificate that provides an individual more than one Medicare supplement insurance policy or certificate is prohibited.

(3) An issuer may not issue a Medicare supplement insurance policy or certificate to an individual enrolled in a Medicare Advantage plan unless the effective date of the new policy or certificate is after the termination date of the individual's Medicare Advantage plan coverage.

R590-146-22. Multiple Policies Report.

(1) On or before May 31 of each year, an issuer shall file the Form for Reporting Medicare Supplement Policies report for each individual resident of this state for which the issuer has in force more than one Medicare supplement insurance policy or certificate.

(2) The information shall be grouped by individual policyholder.

R590-146-23. Prohibition Against Preexisting Conditions, Waiting Periods, Elimination Periods, and Probationary Periods in Replacement Policies or Certificates.

(1) If a Medicare supplement insurance policy or certificate replaces another Medicare supplement insurance policy or certificate, the replacing issuer shall waive any time periods applicable to a preexisting condition, a waiting period, an elimination period, or a probationary period in the new Medicare supplement policy or certificate to the extent the time was spent under the original policy.

(2) If a Medicare supplement insurance policy or certificate replaces another Medicare supplement insurance policy or certificate that is in effect for at least six months, the replacing policy may not provide any time period applicable to a preexisting condition, a waiting period, an elimination period, or a probationary period for a benefit similar to those contained in the original policy or certificate.

R590-146-24. Prohibition Against Use of Genetic Information and Requests for Genetic Testing.

(1) An issuer may not:

(a) deny or condition the issuance or effectiveness of a policy or certificate, including the imposition of an exclusion of benefits under the policy based on a preexisting condition, based on the genetic information of the individual; or

(b) discriminate in the pricing of the policy or certificate, including the adjustment of premium rates, of an individual based on the genetic information of the individual.

(2) Nothing in this section shall be construed to limit the ability of an issuer, to the extent otherwise permitted by law, from:

(a) denying or conditioning the issuance or effectiveness of a policy or certificate or increasing the premium for a group based on the manifestation of a disease or disorder of an insured or applicant; or

(b) increasing the premium for a policy issued to an individual based on the manifestation of a disease or disorder of an individual who is covered under the policy.

(3) An issuer may not request or require an individual or a family member of an individual to undergo a genetic test.

(4) Subsection (3) does not preclude an issuer from obtaining and using the results of a genetic test in making a determination regarding payment if it is consistent with Subsection (1).

(5) For purposes of Subsection (4), an issuer may only request the minimum amount of information necessary to accomplish the intended purpose.

(6) Notwithstanding Subsection (3), an issuer may request, but not require, that an individual or a family member of an individual undergo a genetic test if each condition in this subsection is met:

(a) a request is made for research that complies with Part 46 of Title 45, Code of Federal Regulations, or equivalent federal regulations, and any applicable state or local law or regulations for the protection of human subjects in research;

(b) an issuer clearly indicates to each individual, or in the case of a minor child, to the legal guardian of such child, to whom the request is made that:

(i) compliance with the request is voluntary; and

(ii) non-compliance will have no effect on enrollment status, premium, or contribution amounts;

(c) genetic information collected or acquired is not used for underwriting, determination of eligibility to enroll or maintain enrollment status, premium rates, or the issuance, renewal, or replacement of a policy or certificate;

(d) an issuer notifies the Secretary in writing that the issuer is conducting activities under this exception, including a description of the activities conducted; and

(e) an issuer complies with other conditions as the Secretary may, by regulation, require for activities conducted under this subsection.

(7) An issuer may not request, require, or purchase genetic information for underwriting purposes.

(8) An issuer may not request, require, or purchase genetic information with respect to an individual prior to the individual's enrollment under a policy.

(9) If an issuer obtains genetic information incidental to requesting, requiring, or purchasing of other information concerning an individual, such request, requirement, or purchase may not be considered a violation of Subsection (8) if such request, requirement, or purchase is not in violation of Subsection (7).

(10) For the purposes of this section:

(a) "Family member" means an individual who is a first-degree, second-degree, third-degree, or fourth-degree relative of an individual.

(b) "Genetic information" means information about an individual's genetic tests, the genetic tests of family members of an individual, and the manifestation of a disease or disorder in family members of an individual.

(i) "Genetic information" includes a request for, or receipt of, genetic services, or participation in clinical research that includes genetic services, by an individual or a family member of an individual. Any reference to genetic information concerning an individual or family member of an individual who is a pregnant woman includes genetic information of any fetus carried by a pregnant woman, or with respect to an individual or family member utilizing reproductive technology, includes genetic information of an embryo legally held by an individual or family member.

(ii) "Genetic information" does not include information about the sex or age of an individual.

(c) "Genetic services" means a genetic test, genetic counseling, including obtaining, interpreting, or assessing genetic information, or genetic education.

(d)(i) "Genetic test" means an analysis of human DNA, RNA, chromosomes, proteins, or metabolites that detect genotypes, mutations, or chromosomal changes.

(ii) "Genetic test" does not include an analysis of proteins or metabolites that does not detect genotypes, mutations, or chromosomal changes, or an analysis of proteins or metabolites that is directly related to a manifested disease, disorder, or pathological condition that could reasonably be detected by a health care professional with appropriate training and expertise in the field of medicine involved.

(e) "Issuer" includes a third-party administrator or other person acting for or on behalf of the issuer.

(f) "Underwriting purposes" means:

(i) rules for, or determination of, eligibility, including enrollment and continued eligibility, for benefits;

(ii) computation of premium or contribution amounts;

(iii) application of a preexisting condition exclusion; and

(iv) any other activity related to the creation, renewal, or replacement of health benefits or an accident and health insurance policy.

R590-146-25. Severability.

If any provision of this rule, Rule R590-146, or its application to any person or situation is held invalid, such invalidity does not affect any other provision or application of this rule that can be given effect without the invalid provision or application. The remainder of this rule shall be given effect without the invalid provision or application.

KEY: insurance
Date of Last Change: 2024[~~March 4, 2022~~]
Notice of Continuation: April 1, 2022
Authorizing, and Implemented or Interpreted Law: 31A-22-620

NOTICE OF SUBSTANTIVE CHANGE		
TYPE OF FILING: Amendment		
Rule or Section Number:	**R884-24P-16**	**Filing ID: 56561**

Agency Information

1. Title catchline:	Tax Commission, Property Tax	
Building:	Utah State Tax Commission	
Street address:	210 N 1950 W	
City, state:	Salt Lake City, UT	
Contact persons:		
Name:	**Phone:**	**Email:**
Chantay Asper	801-297-3901	casper@utah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule or section catchline:

R884-24P-16. Assessment of Interlocal Cooperation Act Project Entity Properties Pursuant to Utah Code Ann. Section 11-13-302

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

The purpose of this filing is to conform this section to statutory changes made in S.B. 20 passed during the 2022 General Session of the Legislature.

4. Summary of the new rule or change:

The proposed amendments include: modifying the definition of "sold" for purposes of assessing the property of an interlocal cooperation project entity; and clarifying that the Utah fair market value of the property is not reduced by the value of any capacity, service, or other benefit that is ultimately sold, resold, or laid off to an energy supplier whose tangible personal property is not exempt from the Utah ad valorem property tax under the Utah Constitution.

The amendment to this section also removes outdated language.

Fiscal Information

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

A) State budget:

This amendment is not expected to impact the state budget because the amendments are merely conforming outdated language in this section to the current statute.

B) Local governments:

This amendment is not expected to impact local governments because the amendments are merely conforming outdated language in this section to the current statute.

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

This amendment is not expected to impact small businesses because the amendments are merely conforming outdated language in this section to the current statute.

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

This amendment is not expected to impact non-small businesses because the amendments are merely conforming outdated language in this section to the current statute.

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 is not expected to impact persons other than small businesses, non-small businesses, state, or local governments because the amendments are merely conforming outdated language in this section to the current statute.

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

This amendment is not expected to impose compliance costs on affected persons because the amendments are merely conforming outdated language in this section to the current statute.

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

Regulatory Impact Table

Fiscal Cost	**FY2025**	**FY2026**	**FY2027**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits	**FY2025**	**FY2026**	**FY2027**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
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:

Commissioner Rebecca L. Rockwell of the Utah State Tax Commission 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 11-13-302

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:	07/31/2024

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

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

Agency Authorization Information

Agency head or designee and title:	Rebecca L Rockwell, Commissioner	**Date:**	06/13/2024

R884. Tax Commission, Property Tax.
R884-24P. Property Tax.
R884-24P-16. Assessment of Interlocal Cooperation Act Project Entity Properties Pursuant to Utah Code Ann. Section 11-13-302.

(1) Definitions:

(a) "Utah fair market value" means the fair market value of that portion of the property of a project entity located within Utah upon which the fee in lieu of ad valorem property tax may be calculated.

(b) "Fee" means the annual fee in lieu of ad valorem property tax payable by a project entity pursuant to Section 11-13-302.

(c) "Energy supplier" means an entity that purchases any capacity, service or other benefit of a project to provide electrical service.

(d) "Exempt energy supplier" means an energy supplier whose tangible property is exempted by Article XIII, Sec. 3 of the Constitution of Utah from the payment of ad valorem property tax.

(e) "Optimum operating capacity" means the capacity at which a project is capable of operating on a sustained basis taking into account its design, actual operating history, maintenance requirements, and similar information from comparable projects, if any. The determination of the projected and actual optimum operating capacities of a project shall recognize that projects are not normally operated on a sustained basis at [~~100 percent~~]100% of their designed or actual capacities and that the optimum level for operating a project on a sustained basis may vary from project to project.

(f) "Property" means any electric generating facilities, transmission facilities, distribution facilities, fuel facilities, fuel transportation facilities, water facilities, land, water or other existing facilities or tangible property owned by a project entity and required for the project which, if owned by an entity required to pay ad valorem property taxes, would be subject to assessment for ad valorem tax purposes.

(g) "Sold," [~~for the purpose of interpreting Subsection (4),~~]means the [~~first~~]sale of [~~the~~]capacity, service, or other benefit produced by the project.[~~without regard to any subsequent sale, resale, or lay-off of that capacity, service, or other benefit.~~]

(h) "Taxing jurisdiction" means a political subdivision of this state in which any portion of the project is located.

(i) [~~All definitions~~]Definitions contained in Section 11-13-103 apply to this rule.

(2) The Tax Commission shall determine the fair market value of the property of each project entity. Fair market value shall be based upon standard appraisal theory and shall be determined by correlating estimates derived from the income and cost approaches to value[~~described below~~].

(a) The income approach to value requires the imputation of an income stream and a capitalization rate. The income stream may be based on recognized indicators such as average income, weighted income, trended income, present value of future income streams, performance ratios, and discounted cash flows. The imputation of income stream and capitalization rate shall be derived from the data of other similarly situated companies. Similarity shall be based on factors such as location, fuel mix, customer mix, size and bond ratings. Estimates may also be imputed from industry data generally. Income data from similarly situated companies will be adjusted to reflect differences in governmental regulatory and tax policies.

(b) The cost approach to value shall consist of the total of the property's net book value of the project's property. This total shall then be adjusted for obsolescence if any.

(c) In addition to, and not in lieu of, any adjustments for obsolescence made pursuant to Subsection (2)(b), a phase-in adjustment shall be made to the assessed valuation of any new project or expansion of an existing project on which construction commenced by a project entity after January 1, 1989 as follows:

(i) During the period the new project or expansion is valued as construction work in process, its assessed valuation shall be multiplied by the percentage calculated by dividing its projected production as of the projected date of completion of construction by its projected optimum operating capacity as of that date.

(ii) Once the new project or expansion ceases to be valued as construction work in progress, its assessed valuation shall be multiplied by the percentage calculated by dividing its actual production by its actual optimum operating capacity. After the new project or expansion has sustained actual production at its optimum operating capacity during any tax year, this percentage shall be deemed to be [~~100 percent~~]100% for the remainder of its useful life.

(3) If portions of the property of the project entity are located in states in addition to Utah and those states do not apply a unit valuation approach to that property, the fair market value of the property allocable to Utah shall be determined by computing the cost approach to value on the basis of the net book value of the property located in Utah and imputing an estimated income stream based solely on the value of the Utah property as computed under the cost approach. The correlated value so determined shall be the Utah fair market value of the property.

(4)(a) Before fixing and apportioning the Utah fair market value of the property to the respective taxing jurisdictions in which the property, or a portion thereof is located, the Utah fair market value of the property shall be reduced by the percentage of the capacity, service, or other benefit sold by the project entity to exempt energy suppliers.

(b) The Utah fair market value of the property may not be reduced by any capacity, service, or other benefit sold by the project entity to an exempt energy supplier if the capacity, service, or other benefit is subsequently resold or laid off by the exempt energy supplier to an energy supplier whose tangible property is not exempted by Utah Constitution, Article XIII, Section 3, from the payment of ad valorem property tax.

(5) For purposes of calculating the amount of the fee payable under [~~Section~~]Subsection 11-13-302(3), the percentage of the project that is used to produce the capacity, service or other benefit sold shall be deemed to be [~~100 percent~~]100%, subject to adjustments provided by this rule, from the date the project is determined to be commercially operational.

(6) In computing its tax rate pursuant to the formula specified in Subsection 59-2-924(4), each taxing jurisdiction in which the project property is located shall add to the amount of its budgeted property tax revenues the amount of any credit due to the project entity that year under [~~Section~~]Subsection 11-13-302(3), and shall divide the result by the sum of the taxable value of all property taxed, including the value of the project property apportioned to the jurisdiction, and further adjusted pursuant to the requirements of Section 59-2-924.

[~~(7) Subsections (2)(a) and (2)(b) are retroactive to the lien date of January 1, 1984. Subsection (2)(c) is effective as of the lien date of January 1, 1989. The remainder of this rule is retroactive to the lien date of January 1, 1988.~~]

KEY: taxation, personal property, property tax, appraisals
Date of Last Change: 2024[~~December 22, 2023~~]
Notice of Continuation: November 9, 2021
Authorizing, and Implemented or Interpreted Law: Art. XIII, Sec 2; 9-2-201; 11-13-302; 41-1a-202; 41-1a-301; 59-1-210; 59-2-102; 59-2-103; 59-2-103.5; 59-2-104; 59-2-201; 59-2-210; 59-2-211; 59-2-301; 59-2-301.3; 59-2-302; 59-2-303; 59-2-303.1; 59-2-305; 59-2-306; 59-2-401; 59-2-402; 59-2-404; 59-2-405; 59-2-405.1; 59-2-406; 59-2-508; 59-2-514; 59-2-515; 59-2-701; 59-2-702; 59-2-703; 59-2-704; 59-2-704.5; 59-2-705; 59-2-801; 59-2-918 through 59-2-924; 59-2-1002; 59-2-1004; 59-2-1005; 59-2-1006; 59-2-1101; 59-2-1102; 59-2-1104; 59-2-1106; 59-2-1107 through 59-2-1109; 59-2-1113; 59-2-1115; 59-2-1202; 59-2-1202(5); 59-2-1302; 59-2-1303; 59-2-1308.5; 59-2-1317; 59-2-1328; 59-2-1330; 59-2-1347; 59-2-1351; 59-2-1365; 59-2-1703

End of the Notices of Proposed Rules Section

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:	**R356-8**	**Filing ID: 56548**
Effective Date:	**06/05/2024**	

Agency Information

1. Title catchline:	Governor, Criminal and Juvenile Justice (State Commission on)	
Building:	Utah State Capitol, Senate Building	
Street address:	350 N State Street	
City, state	Salt Lake City, UT	
Mailing address:	PO Box 142330	
City, state and zip:	Salt Lake City, UT 84114-2330	
Contact persons:		
Name:	**Phone:**	**Email:**
Angelo Perillo	801-538-1047	aperillo@utah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule or section catchline:
R356-8. Designation of Commission Duties

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

The purpose of this rule is to allow the Commission to designate an entity to perform a specified duty of the Commission as described in Subsection 63M-7-204(2).

4. Summary of the new rule or change:

This rule describes how entities designated by the Commission shall operate and creates the Sex Offense Management Advisory Committee.

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:

In the 2024 General Session, the Legislature eliminated the Sex Offense Management Board and gave their duties to the Commission. H.B. 72, H.B. 532, and H.B. 534 amended the Commission's statute and gave the Commission the authority to designate an entity to perform a specified duty of the Commission.

These changes went into effect on 05/01/2024. It is the Commission's intent to designate the Sex Offense Management Advisory Committee to perform the new duties that were previously performed by the Board.

This rule is necessary to effectuate those statutory provisions which are now in place.

Fiscal Information

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

A) State budget:

This new rule will not result in any cost or savings to the state budget because it does not add to nor take away any of the duties of the Commission, it merely designates the Sex Offense Management Advisory Committee to perform those duties.

B) Local governments:

This new rule will not have a fiscal impact on local governments' revenues or expenditures because it only applies to the duties that are required of the Commission.

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

This new rule will not have a fiscal impact on small businesses because it only applies to the duties that are required of the Commission.

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***)**:**

This new rule will not have a fiscal impact on persons other than small businesses, non-small businesses, state, or local government entities because it only applies to the duties that are required of the Commission.

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 affected persons and thus no compliance costs.

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):

This rule will not impact business because it only reallocates who will perform the duties that are required to be performed by the Commission. Tom Ross, Executive Director, Commission on Criminal and Juvenile Justice

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:		
Subsection 63G-7-204(2)	Subsection 63G-3-201(2)	

Agency Authorization Information

Agency head or designee and title:	Tom Ross, Executive Director	**Date:**	06/03/2024

R356. Governor, Criminal and Juvenile Justice (State Commission on).
R356-8. Designation of Commission Duties.
R356-8-1. Authority.
This rule is authorized by Subsections 63G-7-204(2) and 63G-3-201(2).

R356-8-2. Purpose.
The purpose of this rule is for the commission to designate an entity to perform a specified duty of the commission.

R356-8-3. Definitions.
Terms used in this rule are defined in Section 63M-7-101.5.

R356-8-4. Designation of an Entity.
(1)(a) The commission may designate an entity to perform the commission's duties described in Title 63M, Chapter 7, Part 2, Commission on Criminal and Juvenile Justice.
(b) An entity designated by the commission under this rule shall include representatives from relevant stakeholder groups from the parts of the justice system implicated in the policy area.
(2) The commission may designate tasks and duties to an entity in addition to those described in this rule.
(3) An entity designated by the commission may not make a final decision or take final action on a matter unless otherwise specified in this rule.

R356-8-5. Operation of Designated Entities.
(1)(a) A member appointed to a designated entity shall serve a four-year term.
(b) If a designated entity has a vacancy, the executive director of the commission may appoint a new member for the rest of the previous member's term.
(c) A member of a designated entity may be reappointed.
(d) The terms of the designated entity's members shall be staggered so that about half of the designated entity is appointed every two years.
(2)(a) A designated entity shall elect a chair and a vice-chair, or in the alternative may elect two co-chairs.
(b) A chair or vice-chair shall serve a two-year term, which may be renewed.
(c) A vacancy in the office of chair or vice-chair shall be filled for the remainder of the unexpired term by a member of the designated entity who is elected by a majority of the members of the designated entity.
(3) The commission shall provide support staff to a designated entity.
(4) In the event a member of a designated entity who does not hold an ex officio position has three unexcused absences, the member may be replaced.
(5) If an appointed member ceases to meet the qualifications of the appointment or accepts another position which creates a conflict of interest, the member's appointment will immediately end, and a replacement shall be appointed to fill the unexpired term.
(6) A designated entity shall meet as often as necessary to carry out its designated duties.

R356-8-6. Sex Offense Management Advisory Committee.
(1)(a) There is created within the commission the sex offense management advisory committee.
(b) The executive director of the commission shall appoint a director of the sex offense management advisory committee to:
(i) assist the sex offense management advisory committee perform the duties described in this rule; and
(ii) coordinate between the sex offense management advisory committee and the commission.
(2) The following may participate as members of the sex offense management advisory committee:
(a) the executive director of the Department of Corrections, or the executive director's designee;
(b) the commissioner of the Department of Public Safety, or the commissioner's designee;
(c) the attorney general, or the attorney general's designee;
(d) an officer with the Adult Probation and Parole Division of the Department of Corrections with experience supervising adults convicted of sex offenses, appointed by the executive director of the Department of Corrections;
(e) the executive director of the Department of Health and Human Services, or the executive director's designee;
(f) an individual who represents the Administrative Office of the Courts appointed by the state court administrator;
(g) the director of the Utah Office for Victims of Crime, or the director's designee;

(h) the director of the Division of Juvenile Justice and Youth Services, or the director's designee;
(i) the chair of the Board of Pardons and Parole, or the chair's designee; and
(j) nine individuals appointed by the executive director of the commission, including:
(i) the following two individuals licensed under Title 58, Chapter 60, Mental Health Professional Practice Act:
(A) an individual with experience in the treatment of adults convicted of sex offenses in the community;
(B) an individual with experience in the treatment of juveniles adjudicated of sex offenses in the community;
(ii) an individual who represents an association of criminal defense attorneys;
(iii) an individual who is a criminal defense attorney experienced in indigent criminal defense;
(iv) an individual who represents an association of prosecuting attorneys;
(v) an individual who represents law enforcement;
(vi) an individual who represents an association of criminal justice victim advocates;
(vii) an individual who is a clinical polygraph examiner experienced in providing polygraph examinations to individuals convicted of sex offenses; and
(viii) an individual who has been previously convicted of a sex offense and has successfully completed treatment and supervision for the offense.
(3) The sex offense management advisory committee is designated by the commission to perform the commission's duties described in Subsection 63M-7-204(1)(z) and shall:
(a) review research regarding treatment, risk assessment, and supervision practices for individuals on the registry or individuals ordered to complete sex offense treatment;
(b) advise and make recommendations to other councils, boards, and offices within the commission regarding evidence-based:
(i) sentencing and treatment practices for individuals on the registry or individuals ordered to complete sex offense treatment to reduce recidivism and promote public safety;
(ii) policies to promote public safety and protect victims of sex offenses; and
(iii) practices related to the registry that promote public safety, account for risk, and protect the rights of individuals on the registry or individuals ordered to complete sex offense treatment; and
(c) advise and make recommendations to the Department of Corrections and the Department of Health and Human Services regarding:
(i) evidence-based standards for supervision of individuals on the registry or individuals ordered to complete sex offense treatment;
(ii) evidence-based standards for training, certification, and evaluation of community treatment providers, polygraph examiners, evaluators, and other professionals who provide treatment and related services to individuals on the registry or individuals ordered to complete sex offense treatment; and
(iii) implementation of the treatment standards and other duties described in Section 64-13-25 related to sex offenses.

KEY: designation of duties
Date of Last Change: June 5, 2024
Authorizing, and Implemented or Interpreted Law: 63M-7-204(2)

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.

NOTICE OF FIVE-YEAR REVIEW AND STATEMENT OF CONTINUATION		
Rule Number:	**R156-79**	**Filing ID: 52950**
Effective Date:	**06/03/2024**	

Agency Information

1. Title catchline:	Commerce, Professional Licensing	
Building:	Heber M. Wells Building	
Street address:	160 E 300 S	
City, state	Salt Lake City. UT	
Mailing address:	PO Box 146741	
City, state and zip:	Salt Lake City, UT 84114-6741	
Contact persons:		
Name:	**Phone:**	**Email:**
Tracy Taylor	801-530-6628	trtaylor@utah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule catchline:

R156-79. Hunting Guides and Outfitters Registration Act Rule

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

Title 58, Chapter 79, provides for the registration of hunting guides and outfitters.

Subsection 58-1-106(1) provides that the Division of Professional Licensing (Division) may adopt and enforce rules to administer Title 58.

This rule was enacted to clarify the provisions of Title 58, Chapter 79, with respect to hunting guides and outfitters.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

Since this rule was last reviewed in July 2019, the rule was amended two times in 2020 due to legislative changes made to the governing statute, Title 58, Chapter 79. The Division has received no written comments with respect to this rule since the last five year rule review period.

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 it provides a mechanism to inform potential registrants of the requirements for registration as allowed under statutory authority provided in Title 58, Chapter 79. This rule is also necessary as it provides information to ensure applicants are adequately trained and meet minimum registration requirements, and provides registrants with information concerning unprofessional conduct, definitions, and ethical standards relating to the profession. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	Mark B. Steinagel, Division Director	**Date:**	06/03/2024

NOTICE OF FIVE-YEAR REVIEW AND STATEMENT OF CONTINUATION		
Rule Number:	**R277-322**	**Filing ID: 54486**
Effective Date:	**06/07/2024**	

Agency Information

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

General Information

2. Rule catchline:

R277-322. LEA Codes of Conduct

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

This rule is authorized by the Utah Constitution, Article X, Section 3, which vests general control and supervision over public education in the Board.

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

Section 63G-7-301 requires the Board to create a model policy that regulates behavior of a school employee toward a student.

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 requires Local Education Agencies (LEA) to create a code of conduct/appropriate behavior policy applicable to the LEA's staff. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	Angie Stallings, Deputy Superintendent of Policy	**Date:**	06/07/2024

NOTICE OF FIVE-YEAR REVIEW AND STATEMENT OF CONTINUATION		
Rule Number:	**R277-475**	**Filing ID: 53787**
Effective Date:	**06/07/2024**	

Agency Information

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

General Information

2. Rule catchline:

R277-475. Patriotic, Civic and Character Education

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

This rule is authorized by the Utah Constitution, Article X, Section 3 which vests general control and supervision of the public school system under the Board.

Subsection 53E-3-401(4) allows the Board to adopt rules in accordance with its responsibilities.

Section 53G-10-304 directs the Board to provide a rule for a program of instruction within the public schools relating to the flag of the United States.

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 direction for patriotic, civic, and character education programs in a Local Education Agency (LEA). Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	Angie Stallings, Deputy Superintendent of Policy	**Date:**	06/07/2024

NOTICE OF FIVE-YEAR REVIEW AND STATEMENT OF CONTINUATION		
Rule Number:	**R277-710**	**Filing ID: 52889**
Effective Date:	**06/07/2024**	

Agency Information

1. Title catchline:	Education, Administration
Building:	Board of Education
Street address:	250 E 500 S

City, state	Salt Lake City, UT	
Mailing address:	PO Box 144200	
City, state and zip:	Salt Lake City, UT 84114-4200	
Contact persons:		
Name:	**Phone:**	**Email:**
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule catchline:
R277-710. Intergenerational Poverty Interventions in Public Schools
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
This rule is authorized by the Utah Constitution, Article X, Section 3, which vests general control and supervision over public education in the Board. Subsection 53E-3-401(4) allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law. Subsection 53F-5-207(4) directs the Board to accept proposals and award grants under the program.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
There were no 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 distribution of funds to Local Education Agencies (LEAs); and for out-of-school educational services that assist students affected by intergenerational poverty in achieving academic success. This rule specifically provides eligibility criteria, minimum application criteria, timelines, and in addition, provides for Superintendent oversight and reporting. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	Angie Stallings, Deputy Superintendent of Policy	**Date:**	06/07/2024

NOTICE OF FIVE-YEAR REVIEW AND STATEMENT OF CONTINUATION		
Rule Number:	**R277-926**	**Filing ID: 55333**
Effective Date:	**06/07/2024**	

Agency Information

1. Title catchline:	Education, Administration
Building:	Board of Education
Street address:	250 E 500 S
City, state	Salt Lake City, UT
Mailing address:	PO Box 144200
City, state and zip:	Salt Lake City, UT 84114-4200

Contact persons:		
Name:	**Phone:**	**Email:**
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule catchline:
R277-926. Certification of Residential Treatment Center Special Education 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:
This rule is authorized by the Utah Constitution, Article X, Section 3, which vests general control and supervision of public education in the Board. Subsection 53E-3-401(4) allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and State of Utah law.
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 a certification process and procedure for residential treatment centers where Individualized Education Plan (IEP) teams place an in-state or out-of-state special education students for purposes of receiving a free and appropriate public education. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	Angie Stallings, Deputy Superintendent of Policy	**Date:**	06/07/2024

NOTICE OF FIVE-YEAR REVIEW AND STATEMENT OF CONTINUATION		
Rule Number:	**R414-36**	**Filing ID: 55976**
Effective Date:	**06/04/2024**	

Agency Information

1. Title catchline:	Health and Human Services, Integrated Healthcare	
Building:	Cannon Health Building	
Street address:	288 N 1460 W	
City, state	Salt Lake City, UT	
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 catchline:
R414-36. Rehabilitative Mental Health and Substance Use Disorder Services
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Section 26B-3-108 requires the Department of Health and Human Services (Department) to implement Medicaid through administrative rules. Section 26B-1-213 grants the Department the authority to adopt, amend, or rescind these rules.
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 written comments in support or opposition to this rule since the last five-year review.
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 for compliance with statute and requirements in the Medicaid provider manual and Medicaid State Plan to implement rehabilitative mental health and substance use disorder services. Therefore, this rule should be continued. As there have been no comments in opposition to this rule, the agency has not responded to such comments.

Agency Authorization Information

Agency head or designee and title:	Tracy S. Gruber, Executive Director	**Date:**	06/04/2024

NOTICE OF FIVE-YEAR REVIEW AND STATEMENT OF CONTINUATION		
Rule Number:	**R414-140**	**Filing ID: 50975**
Effective Date:	**06/04/2024**	

Agency Information

1. Title catchline:	Health and Human Services, Integrated Healthcare	
Building:	Cannon Health Building	
Street address:	288 N 1460 W	
City, state	Salt Lake City, UT	
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 catchline:
R414-140. Choice of Health Care Delivery 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-3-108 requires the Department of Health and Human Services (Department) to implement Medicaid through administrative rules. Section 26B-1-213 grants the Department the authority to adopt, amend, or rescind these rules.
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 written comments in support or opposition to this rule since the last five-year review.
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 for compliance with statute, as it sets forth requirements and coverage for Medicaid members under the Choice of Healthcare Delivery Program. Therefore, this rule should be continued. As there have been no comments in opposition to this rule, the agency has not responded to such comments.

Agency Authorization Information

Agency head or designee and title:	Tracy S. Gruber, Executive Director	**Date:**	06/04/2024

NOTICE OF FIVE-YEAR REVIEW AND STATEMENT OF CONTINUATION		
Rule Number:	**R414-501**	**Filing ID: 50992**
Effective Date:	**06/04/2024**	

Agency Information

1. Title catchline:	Health and Human Services, Integrated Healthcare	
Building:	Cannon Health Building	
Street address:	288 N 1460 W	
City, state	Salt Lake City, UT	
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 catchline:
R414-501. Preadmission Authorization, Retroactive Authorization, and Continued Stay Review

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-3-108 requires the Department of Health and Human Services (Department) to implement Medicaid through administrative rules. Section 26B-1-213 grants the Department the authority to adopt, amend, or rescind these rules.
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 written comments in support or opposition to this rule since the last five-year review.
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 for compliance with statute, as it implements nursing facility and utilization requirements for continued stays in nursing facilities. Therefore, this rule should be continued. As there have been no comments in opposition to this rule, the agency has not responded to such comments.

Agency Authorization Information

Agency head or designee and title:	Tracy S. Gruber, Executive Director	**Date:**	06/04/2024

NOTICE OF FIVE-YEAR REVIEW AND STATEMENT OF CONTINUATION		
Rule Number:	**R590-192**	**Filing ID: 55849**
Effective Date:	**06/10/2024**	

Agency Information

1. Title catchline:	Insurance, Administration	
Building:	Taylorsville State Office Building	
Street address:	4315 S 2700 W	
City, state	Taylorsville, UT	
Mailing address:	PO Box 146901	
City, state and zip:	Salt Lake City, UT 84114-6901	
Contact persons:		
Name:	**Phone:**	**Email:**
Steve Gooch	801-957-9322	sgooch@utah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule catchline:
R590-192. Unfair Accident and Health Insurance Claim Settlement Practice Rule
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Section 31A-2-201 authorizes the insurance commissioner to write rules to implement Title 31A, Insurance Code. Section 31A-2-216 authorizes the insurance commissioner to adopt rules to establish an Office of Consumer Health Assistance.

Section 31A-21-312 authorizes the insurance commissioner to write rules regarding notice of loss and proof of loss.

Section 31A-22-629 requires the insurance commissioner to adopt rules that establish minimum standards for the adverse benefit determination review process.

Section 31A-26-301 authorizes the insurance commissioner to write rules to ensure the timely payment of claims.

Section 31A-26-301.6 authorizes the insurance commissioner to write rules to facilitate the exchange of electronic confirmations when claims-related information has been received.

Section 31A-26-303 authorizes the insurance commissioner to define by rule acts that are considered to be unfair claim settlement practices.

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 of Insurance has received no written comments regarding this rule during the past five years.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule is a major consumer protection regulation. It sets parameters and timelines for payment of health insurance claims. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	Steve Gooch, Public Information Officer	**Date:**	06/10/2024

NOTICE OF FIVE-YEAR REVIEW AND STATEMENT OF CONTINUATION		
Rule Number:	**R590-244**	**Filing ID: 55233**
Effective Date:	**06/10/2024**	

Agency Information

1. Title catchline:	Insurance, Administration	
Building:	Taylorsville State Office Building	
Street address:	4315 S 2700 W	
City, state	Taylorsville, UT	
Mailing address:	PO Box 146901	
City, state and zip:	Salt Lake City, UT 84114-6901	
Contact persons:		
Name:	**Phone:**	**Email:**
Steve Gooch	801-957-9322	sgooch@utah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule catchline:

R590-244. Individual and Agency Licensing Requirements

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

Section 31A-2-201 authorizes the insurance commissioner to write rules to implement Title 31A, Insurance Code.

Sections 31A-23a-102 and 31A-23b-102 authorize the insurance commissioner to define by rule the term "resident."

Sections 31A-23a-111, 31A-23b-401, 31A-25-208, 31A-26-213, and 31A-35-406 authorize the insurance commissioner to adopt a rule prescribing license renewal and reinstatement requirements for individual and agency licenses under Chapters 23a, 23b, 25, 26, and 35.

Sections 31A-25-201, 31A-35-104, 31A-35-301, and 31A-35-401 authorize the insurance commissioner to prescribe the forms and manner in which an initial or renewal individual or agency license application under Chapters 25 and 35 is to be made to the insurance commissioner.

Sections 31A-23a-108, 31A-23b-205, and 31A-26-207 authorize the insurance commissioner to adopt a rule prescribing how examination and training requirements may be administered to licensees under Chapters 23a, 23b, and 26.

Section 31A-23a-115 authorizes the insurance commissioner to adopt a rule prescribing reporting requirements to be utilized by an insurer for the initial appointment or the termination of the appointment of a person authorized to act on behalf of the insurer under Chapter 23a.

Section 31A-23a-203.5 authorizes the insurance commissioner to adopt a rule prescribing the terms and conditions of any required legal liability insurance coverage to be maintained by, or on behalf of, a licensed resident individual producer.

Section 31A-23b-207 authorizes the insurance commissioner to adopt a rule prescribing the amount of any surety bond required to be maintained by a licensed navigator to cover the legal liability of a navigator as the result of an erroneous act or failure to act in the navigator's capacity as a navigator.

Sections 31A-23a-302, 31A-23b-209, and 31A-26-210 authorize the insurance commissioner to adopt a rule prescribing the reporting requirements to be used by an agency for the initial designation or the termination of designation, of a person authorized to act on behalf of the agency under Chapters 23a, 23b, and 26.

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 of Insurance (Department) has received two written comments regarding this rule during the past five years. Both came during an amendment of the rule in 2021. Both comments were opposed to a change in the proposed amendment, arguing that the rule caused a burden by requiring agencies and companies to report certain documentation when terminating an agent for cause.

The Department disagreed with these comments because the department already requests the documentation after receiving a notice of termination for cause; the rule change merely requested it at the time of notice rather than afterward.

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 important because it provides standards for the licensing of individuals and agencies and for making other amendments to a license as needed. Standardized licensing requirements are important so that everyone who wants to apply for a license will know the standards, and consumers will know that if a person is licensed they have passed the required tests and had the required background checks. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	Steve Gooch, Public Information Officer	**Date:**	06/10/2024

NOTICE OF FIVE-YEAR REVIEW AND STATEMENT OF CONTINUATION		
Rule Number:	**R590-281**	**Filing ID: 56219**
Effective Date:	**06/14/2024**	

Agency Information

1. Title catchline:	Insurance, Administration	
Building:	Taylorsville State Office Building	
Street address:	4315 S 2700 W	
City, state	Taylorsville, UT	
Mailing address:	PO Box 146901	
City, state and zip:	Salt Lake City, UT 84114-6901	
Contact persons:		
Name:	**Phone:**	**Email:**
Steve Gooch	801-957-9322	sgooch@utah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule catchline:
R590-281. License Application Submitted by an Individual Who Has a Criminal Conviction or Pending Proceeding
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 31A-2-201 authorizes the insurance commissioner to write rules to implement Title 31A, Insurance Code.
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 of Insurance (Department) has received no written comments regarding this rule during the past five years.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule offers a pathway to licensing for an applicant who has a criminal conviction. While the sale of insurance is by definition a transaction that involves trust and ethical behavior, the Department recognizes that people can change after completing their court-ordered plan of restitution and remediation. This rule sets the procedures by which such a person can apply for the commissioner's approval to work in the business of insurance, which then allows them to apply for an insurance license. Without this rule, a person with a criminal conviction would not be able to obtain a license after completing the terms of their conviction. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	Steve Gooch, Public Information Officer	**Date:**	06/14/2024

NOTICE OF FIVE-YEAR REVIEW AND STATEMENT OF CONTINUATION		
Rule Number:	**R592-6**	**Filing ID: 53655**
Effective Date:	**06/10/2024**	

Agency Information

1. Title catchline:	Insurance, Title and Escrow Commission
Building:	Taylorsville State Office Building
Street address:	4315 S 2700 W
City, state	Taylorsville, UT

Mailing address:	PO Box 146901	
City, state and zip:	Salt Lake City, UT 84114-6901	
Contact persons:		
Name:	**Phone:**	**Email:**
Steve Gooch	801-957-9322	sgooch@utah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule catchline:

R592-6. Unfair Inducements and Marketing Practices in Obtaining Title Insurance Business

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 31A-2-404(2) authorizes the Title and Escrow Commission to write rules to administer the provisions of Title 31A, Insurance Code, related to title insurance, including rules related to standards of conduct for a title insurer, agency, or producer.

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 of Insurance has received no written comments regarding this rule during the past five years.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule establishes the actions that are considered to be unfair inducements and unfair marketing practices for title insurance producers, agencies, and companies. This rule is meant to maintain fair competition among licensees and to protect insurance consumers against unfair practices used to obtain their business. Therefore, this rule should be continued.

The Title and Escrow Commission directed that this rule should be continued by a vote of 5 to 0 at its May 13, 2024, meeting.

Agency Authorization Information

Agency head or designee and title:	Steve Gooch, Public Information Officer	**Date:**	06/10/2024

NOTICE OF FIVE-YEAR REVIEW AND STATEMENT OF CONTINUATION		
Rule Number:	**R592-7**	**Filing ID: 53742**
Effective Date:	**06/10/2024**	

Agency Information

1. Title catchline:	Insurance, Title and Escrow Commission	
Building:	Taylorsville State Office Building	
Street address:	4315 S 2700 W	
City, state	Taylorsville, UT	
Mailing address:	PO Box 146901	
City, state and zip:	Salt Lake City, UT 84114-6901	
Contact persons:		
Name:	**Phone:**	**Email:**
Steve Gooch	801-957-9322	sgooch@utah.gov

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

General Information

2. Rule catchline:
R592-7. Title Insurance Continuing Education
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 31A-2-404(2)(a)(iii) authorizes the Title and Escrow Commission to write rules to administer the provisions of Title 31, Insurance Code, that are related to title insurance continuing education requirements.
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 of Insurance (Department) has received no written comments regarding this rule during the past five years.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule delegates from the Title and Escrow Commission to the Insurance Commissioner the authority to approve CE courses related to title insurance and requires that the Insurance Commissioner provide to the Title and Escrow Commission a quarterly report of the CE courses approved by the Department. This rule also specifies the CE requirements that must be met by title insurance producers. It is important that the Department continue to provide this service for the Commission to alleviate the burden from Title and Escrow Commission members who may not know all the rules and have time to delegate the process. It is important to leave this duty with the Department because they have the personnel and process in place to review, approve, and disapprove CE courses in a timely, efficient way. Therefore, this rule should be continued. The Title and Escrow Commission directed that this rule should be continued by a vote of 5 to 0 at its May 13, 2024 meeting.

Agency Authorization Information

Agency head or designee and title:	Steve Gooch, Public Information Officer	**Date:**	06/10/2024

NOTICE OF FIVE-YEAR REVIEW AND STATEMENT OF CONTINUATION		
Rule Number:	**R592-8**	**Filing ID: 53842**
Effective Date:	**06/10/2024**	

Agency Information

1. Title catchline:	Insurance, Title and Escrow Commission	
Building:	Taylorsville State Office Building	
Street address:	4315 S 2700 W	
City, state	Taylorsville, UT	
Mailing address:	PO Box 146901	
City, state and zip:	Salt Lake City, UT 84114-6901	
Contact persons:		
Name:	**Phone:**	**Email:**
Steve Gooch	801-957-9322	sgooch@utah.gov

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

General Information

2. Rule catchline:
R592-8. Application Process for an Attorney Exemption for Agency Title Insurance Producer Licensing
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 31A-2-404 authorizes the Title and Escrow Commission to make rules to administer the provisions of Title 31A, Insurance Code, that are related to title insurance. Section 31A-23a-204 authorizes the Title and Escrow Commission to exempt attorneys with real estate experience from the three-year licensing requirement to license an agency title insurance producer.
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 of Insurance has received no written comments regarding this rule during the past five years.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule delegates the preliminary process of approving or denying requests from attorneys for exemption from the licensing requirement in Subsection 31A-23a-204(1)(a) and provides a process to apply for the exemption and to appeal a denial. Without this rule, the Title and Escrow Commission would be responsible for handling attorney exemptions, which would require the Commission having a budget to hire personnel to process the exemptions. This rule is also necessary to provide attorneys with a process for filing an exemption and appealing a denial. Therefore, this rule should be continued. The Title and Escrow Commission directed that this rule should be continued by a vote of 5 to 0 at its May 13, 2024 meeting.

Agency Authorization Information

Agency head or designee and title:	Steve Gooch, Public Information Officer	**Date:**	06/10/2024

NOTICE OF FIVE-YEAR REVIEW AND STATEMENT OF CONTINUATION		
Rule Number:	**R592-9**	**Filing ID: 53845**
Effective Date:	**06/10/2024**	

Agency Information

1. Title catchline:	Insurance, Title and Escrow Commission	
Building:	Taylorsville State Office Building	
Street address:	4315 S 2700 W	
City, state	Taylorsville, UT	
Mailing address:	PO Box 146901	
City, state and zip:	Salt Lake City, UT 84114-6901	
Contact persons:		
Name:	**Phone:**	**Email:**
Steve Gooch	801-957-9322	sgooch@utah.gov

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

General Information

2. Rule catchline:
R592-9. Assessment for Title Insurance Recovery, Education, and Research Fund
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 31A-2-404 authorizes the Title and Escrow Commission to make rules to administer the provisions of Title 31A, Insurance Code, that are related to title insurance. Section 31A-41-202 requires the Title and Escrow Commission to determine the assessments required from individual title and agency title insurance producers to provide funding for the recovery, education, and research fund.
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 of Insurance has received no written comments regarding this rule during the past 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:
The Recovery, Education, and Research Fund pays for claims related to an illegal transaction by a title licensee. Money is used to investigate violations by title licensees, conduct education and research, and to examine licensees. The fund pays for the education of staff who handle title issues. The amount to be taken from the account due to fraudulent acts of licensees can only be determined by a court of law. Without this fund, an individual who has a claim against a licensee who has defrauded, misrepresented, or deceived the individual would have no other recourse for reimbursement. Therefore, this rule should be continued. The Title and Escrow Commission directed that this rule should be continued by a vote of 5 to 0 at its May 13, 2024 meeting.

Agency Authorization Information

Agency head or designee and title:	Steve Gooch, Public Information Officer	**Date:**	06/10/2024

NOTICE OF FIVE-YEAR REVIEW AND STATEMENT OF CONTINUATION		
Rule Number:	**R655-3**	**Filing ID: 51719**
Effective Date:	**06/12/2024**	

Agency Information

1. Title catchline:	Natural Resources, Water Rights	
Street address:	1594 W North Temple, Suite 200	
City, state	Salt Lake City, UT	
Mailing address:	1594 W North Temple	
City, state and zip:	Salt Lake City, UT 84116	
Contact persons:		
Name:	**Phone:**	**Email:**
Melissa Bowdren	801-538-7370	mbowdren@utah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule catchline:
R655-3. Reports of Water Rights Conveyance
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 73-1-10 and Subsection 73-2-1(4)(a) permit rulemaking authority to the state engineer to oversee reporting of water rights conveyance (ROC), construction and licensing of water well drillers, dam construction and safety, alteration of natural streams, geothermal resource conservation, enforcement orders and the imposition of fines and penalties, the duty of water, and standards for written plans of a public water supplier that may be presented as evidence of reasonable future water requirements under Subsection 73-1-4(2)(f).
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
The Division of Water Rights has not received any comments either in support or opposition of this rule since its last five-year review.
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 extremely important to the title. This rule is required by state statute and the agency will be in violation of state law if it is not in place. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	Melissa Bowdren, Water Rights Administrative Assistant	**Date:**	06/12/2024

NOTICE OF FIVE-YEAR REVIEW AND STATEMENT OF CONTINUATION		
Rule Number:	**R655-4**	**Filing ID: 54644**
Effective Date:	**06/12/2024**	

Agency Information

1. Title catchline:	Natural Resources, Water Rights	
Street address:	1594 W North Temple, Suite 200	
City, state	Salt Lake City, UT	
Mailing address:	1594 W North Temple	
City, state and zip:	Salt Lake City, UT 84116	
Contact persons:		
Name:	**Phone:**	**Email:**
Melissa Bowdren	801-538-7370	mbowdren@utah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule catchline:
R655-4. Water Wells
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

Under Subsection 73-2-1(4)(b), the state engineer, as the Director of the Utah Division of Water Rights, shall make rules regarding well construction and related regulated activities and the licensing of water well drillers and pump installers.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
The Division of Water Rights has not received any comments either in support or opposition of this rule since its last five-year review.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
The orderly development of underground water insures that minimum construction standards are followed in the drilling, construction, deepening, repairing, renovating, cleaning, development, testing disinfection, pump installation and repair and abandonment of water wells and other regulated wells; prevention of pollution in aquifers within the state, prevent waste from flowing wells, obtaining acc. records. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	Melissa Bowdren, Water Rights Administrative Assistant	**Date:**	06/18/2024

End of the Five-Year Notices of Review and Statements of Continuation Section

NOTICES OF
RULE EFFECTIVE DATES

State law provides for agencies to make their administrative rules effective and enforceable after publication in the *Utah State Bulletin*. In the case of **PROPOSED RULES** or **CHANGES IN PROPOSED RULES** with a designated comment period, the law permits an agency to make a rule effective no fewer than seven calendar days after the close of the public comment period, nor more than 120 days after the publication date. In the case of **CHANGES IN PROPOSED RULES** with no designated comment period, the law permits an agency to make a rule effective on any date including or after the thirtieth day after the rule's publication date, but not more than 120 days after the publication date. If an agency fails to file a **NOTICE OF EFFECTIVE DATE** within 120 days from the publication of a **PROPOSED RULE** or a related **CHANGE IN PROPOSED RULE** the rule lapses.

Agencies have notified the Office of Administrative Rules that the rules listed below have been made effective.

NOTICES OF EFFECTIVE DATE are governed by Subsection 63G-3-301(12), Section 63G-3-303, and Sections R15-4-5a and R15-4-5b.

Agriculture and Food
Conservation Commission
No. 56444 (New Rule) R64-6: Agriculture Voluntary Incentives Program
Published: 05/15/2024
Effective: 06/24/2024

Medical Cannabis and Industrial Hemp
No. 56433 (New Rule) R66-36: Transport of Transportable Industrial Hemp Concentrate
Published: 05/01/2024
Effective: 06/11/2024

Commerce
Consumer Protection
No. 56470 (Repeal and Reenact) R152-22: Charitable Solicitations Act Rule
Published: 05/15/2024
Effective: 06/21/2024

No. 56477 (Amendment) R152-34: Utah Postsecondary School and State Authorization Act Rule
Published: 05/15/2024
Effective: 06/21/2024

Education
Administration
No. 56422 (Amendment) R277-108: Annual Assurance of Compliance by Local School Boards
Published: 05/01/2024
Effective: 06/07/2024

No. 56423 (Amendment) R277-404: Requirements for Assessments of Student Achievement
Published: 05/01/2024
Effective: 06/07/2024

No. 56424 (Amendment) R277-406: Early Learning Program and Assessments
Published: 05/01/2024
Effective: 06/07/2024

No. 56425 (Amendment) R277-462: School Counseling Program
Published: 05/01/2024
Effective: 06/07/2024

No. 56426 (Amendment) R277-464: School Counselor Direct and Indirect Services
Published: 05/01/2024
Effective: 06/07/2024

No. 56427 (New Rule) R277-631: Student Toilet Training Requirements
Published: 05/01/2024
Effective: 06/07/2024

No. 56428 (Amendment) R277-700: The Elementary and Secondary School General Core
Published: 05/01/2024
Effective: 06/07/2024

Environmental Quality
Administration
No. 56443 (Amendment) R305-10: Local Health Department Minimum Performance Standards
Published: 05/15/2024
Effective: 06/21/2024

Drinking Water
No. 56380 (Amendment) R309-515: Facility Design and Operation: Source Development
Published: 04/01/2024
Effective: 06/26/2024

Drinking Water
No. 56379 (Repeal and Reenact) R309-540: Facility Design and Operation: Pump Stations
Published: 04/01/2024
Effective: 06/26/2024

Drinking Water
No. 56381 (Amendment) R309-600: Source Protection: Drinking Water Source Protection For Ground-Water Sources
Published: 04/01/2024
Effective: 06/26/2024

Waste Management and Radiation Control, Radiation
No. 56419 (Amendment) R313-28: Definitions
Published: 05/01/2024
Effective: 06/17/2024

Waste Management and Radiation Control, Waste Management
No. 56420 (Amendment) R315-309: Financial Assurance
Published: 05/01/2024
Effective: 06/17/2024

No. 56421 (Amendment) R315-310: Permit Requirements for Solid Waste Facilities
Published: 05/01/2024
Effective: 06/17/2024

Government Operations
Records Committee
No. 56410 (Amendment) R35-1: State Records Committee Appeal Hearing Procedures
Published: 05/01/2024
Effective: 06/18/2024

Health and Human Services
Integrated Healthcare
No. 56067 (New Rule) R414-526: Quality Standards for Inpatient and Outpatient Hospitals
Published: 11/15/2023
Effective: 06/24/2024

No. 56067 (Change in Proposed Rule) R414-526: Quality Standards for Inpatient and Outpatient Hospitals
Published: 05/01/2024
Effective: 06/24/2024

Population Health, Emergency Medical Services
No. 56460 (Repeal) R426-1: General Definitions
Published: 05/15/2024
Effective: 07/01/2024

No. 56461 (Repeal) R426-2: Emergency Medical Services Provider Designations for Pre-Hospital Providers, Critical Incident Stress Management and Quality Assurance Reviews
Published: 05/15/2024
Effective: 07/01/2024

No. 56462 (Repeal) R426-3: Licensure
Published: 05/15/2024
Effective: 07/01/2024

No. 56463 (Repeal) R426-4: Operations
Published: 05/15/2024
Effective: 07/01/2024

No. 56430 (Amendment) R426-5: Emergency Medical Services Training, Endorsement, Certification, and Licensing Standards
Published: 05/01/2024
Effective: 06/24/2024

No. 56464 (Repeal) R426-5: Emergency Medical Services Training, Endorsement, Certification, and Licensing Standards
Published: 05/15/2024
Effective: 07/01/2024

No. 56465 (Repeal) R426-6: Emergency Medical Services Per Capita Grants and Competitive Grants Program
Published: 05/15/2024
Effective: 07/01/2024

No. 56466 (Repeal) R426-7: Emergency Medical Services Prehospital Data System Rules
Published: 05/15/2024
Effective: 07/01/2024

No. 56431 (Amendment) R426-8: Emergency Medical Services Ground Ambulance Rates and Charges
Published: 05/01/2024
Effective: 07/01/2024

No. 56467 (Repeal) R426-8: Emergency Medical Services Ground Ambulance Rates and Charges
Published: 05/15/2024
Effective: 07/01/2024

No. 56468 (Repeal) R426-9: Specialty Care Systems Facility Designations
Published: 05/15/2024
Effective: 07/01/2024

No. 56397 (Repeal and Reenact) R426-10: Air Ambulance Licensure and Operations
Published: 04/15/2024
Effective: 06/24/2024

No. 56469 (Repeal) R426-10: Air Ambulance Licensure and Operations
Published: 05/15/2024
Effective: 07/01/2024

Juvenile Justice and Youth Services
No. 56432 (Amendment) R547-13: Guidelines for Admission to Secure Youth Detention Facilities
Published: 05/01/2024
Effective: 06/24/2024

Insurance
Administration
No. 56414 (Amendment) R590-190: Standards for Prompt, Fair, and Equitable Settlement for Automobile Insurance
Published: 05/01/2024
Effective: 06/07/2024

No. 56415 (Amendment) R590-200: Diabetes Treatment and Management
Published: 05/01/2024
Effective: 06/07/2024

No. 56417 (Amendment) R590-230: Producer Training
Published: 05/01/2024
Effective: 06/07/2024

Title and Escrow Commission
No. 56416 (Amendment) R592-6: Unfair Inducements and Marketing Practices in Obtaining Title Insurance Business
Published: 05/01/2024
Effective: 06/07/2024

Judicial Performance Evaluation Commission
Administration
No. 56394 (New Rule) R597-7: General Provisions
Published: 04/15/2024
Effective: 06/13/2024

Labor Commission
Occupational Safety and Health
No. 56435 (Amendment) R614-1: Incorporation of Federal Standards
Published: 05/15/2024
Effective: 06/21/2024

Lieutenant Governor
Administration
No. 56403 (New Rule) R622-3: Use of the Great Seal of the State of Utah
Published: 04/15/2024
Effective: 05/31/2024

Money Management Council
Administration
No. 56450 (New Rule) R628-23: Requirements for the Use of Investment Advisers by Public Treasurers
Published: 05/15/2024
Effective: 06/21/2024

No. 56451 (New Rule) R628-24: Foreign Deposits for Higher Education Institutions
Published: 05/15/2024
Effective: 06/21/2024

No. 56452 (New Rule) R628-25: Conditions and Procedures for the Use of Reciprocal Deposits
Published: 05/15/2024
Effective: 06/21/2024

Natural Resources
Outdoor Recreation
No. 56439 (New Rule) R650-414: Nonresident OHV User Decals and Fees
Published: 05/15/2024
Effective: 06/21/2024

State Parks
No. 56448 (Repeal and Reenact) R651-101: Adjudicative Proceedings
Published: 05/15/2024
Effective: 06/21/2024

No. 56440 (Repeal) R651-634: Nonresident OHV User Permits and Fees
Published: 05/15/2024
Effective: 06/21/2024

Forestry, Fire and State Lands
No. 56438 (Amendment) R652-122: Cooperative Agreements
Published: 05/15/2024
Effective: 06/21/2024

Water Resources
No. 56404 (Amendment) R653-11: Water Conservation Requirements and Incentives
Published: 05/15/2024
Effective: 06/21/2024

No. 56405 (New Rule) R653-15: 2024 Grant Funding for Water Infrastructure Projects
Published: 05/15/2024
Effective: 06/21/2024

Workforce Services
Housing and Community Development
No. 56283 (Amendment) R990-200: Applicant Qualifications
Published: 02/15/2024
Effective: 06/21/2024

No. 56283 (Change in Proposed Rule) R990-200: Applicant Qualifications
Published: 05/15/2024
Effective: 06/21/2024

End of the Notices of Rule Effective Dates Section