

UTAH STATE BULLETIN

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

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

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

Inquiries concerning the substance or applicability of an administrative rule that appears in the *Bulletin* should be addressed to the contact person for the rule. Questions about the *Bulletin* or the rulemaking process may be addressed to: Office of Administrative Rules, PO Box 141007, Salt Lake City, Utah 84114-1007, telephone 801-538-3003. 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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SPECIAL NOTICES

Environmental Quality Air Quality

Public Comment Period for SIP Section XX. Regional Haze, Parts A and D

On March 6, 2019, the Utah Air Quality Board proposed for a 30-day public comment period, amendments to SIP Section XX. Regional Haze, Parts A and D. More information on the proposed SIP amendment is available for review at: <https://deq.utah.gov/air-quality/air-quality-rule-plan-changes-open-public-comment>

To receive oral comment on the record, the Division of Air Quality will hold a public hearing at 1:30 p.m. on April 17, 2019, in the Department of Environmental Quality Board Room, Rm. 1015, at 195 North 1950 West in Salt Lake City, Utah. In compliance with the Americans with Disabilities Act, individuals with special needs (including auxiliary communicative aids and services) should contact the Office of Human Resources, at 801-536-4412 (TDD 536-4414).

The comment period closes at 5:00 p.m. on May 1, 2019. Comments postmarked on or before that date will be accepted. Comments may be submitted by electronic mail to thomasgunter@utah.gov or may be mailed to:

*ATTN: SIP Section XX, Regional Haze
Bryce Bird, Director
Utah Division of Air Quality
PO Box 144820
Salt Lake City, UT 84114-4820*

Health Health Care Financing, Coverage and Reimbursement Policy Patient Life Enhancement Incentive

The Division of Medicaid and Health Financing (DMHF) will submit changes to the Medicaid State Plan to update the patient life enhancement quality improvement incentive for qualifying nursing facility providers.

These changes update the per-bed limit to allow providers to receive the QII2 limit amount of each Medicaid-certified bed. The changes also include a water management program and fall-reduction beds as additional covered items in the incentive program.

This State Plan Amendment (SPA 19-0003-UT) does not impact total annual expenditures for the Medicaid program.

This amendment is pending approval from the Centers for Medicare & Medicaid Services, and the proposed effective date is July 1, 2019.

A copy of these changes may be obtained from Craig Devashrayee (801-538-6641), or by writing the Technical Writing Unit, Utah Department of Health, PO Box 143102, Salt Lake City, UT 84114-3102. Comments are welcome at the same address. Copies of these changes are also available at local county health department offices.

End of the Special Notices 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 March 02, 2019, 12:00 a.m., and March 15, 2019, 11:59 p.m. are included in this, the April 01, 2019, 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 May 1, 2019. 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 July 30, 2019, 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 OF 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

Environmental Quality, Air Quality
R307-110-28
 Regional Haze

FOURTH FLOOR
 195 N 1950 W
 SALT LAKE CITY, UT 84116-3085
 or at the Office of Administrative Rules.

NOTICE OF PROPOSED RULE

(Amendment)
 DAR FILE NO.: 43587
 FILED: 03/15/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This section is being amended to change the effective date to match the anticipated Air Quality Board approval date of amendments to Section XX, Parts A and D, of the Utah State Implementation Plan (SIP).

SUMMARY OF THE RULE OR CHANGE: This amendment changes the amendment date from 12/02/2015 to 06/05/2019.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 19-2-104(1)(a)

MATERIALS INCORPORATED BY REFERENCE:
 ♦ Updates Utah State Implementation Plan, Regional Haze, Section XX, Parts A and D, published by Division of Air Quality, 2019

ANTICIPATED COST OR SAVINGS TO:
 ♦ **THE STATE BUDGET:** This rule change is not expected to have any fiscal impact on the state budget.
 ♦ **LOCAL GOVERNMENTS:** This rule change is not expected to have any fiscal impact on local governments.
 ♦ **SMALL BUSINESSES:** This rule change is not expected to have any fiscal impact on small businesses.
 ♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule change is not expected to have any fiscal impact on persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule change will not have a compliance cost for affected persons. This proposed change does not alter previously existing requirements.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: After conducting a thorough analysis, it was determined that this proposed rule amendment will not result in a fiscal impact to businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 ENVIRONMENTAL QUALITY
 AIR QUALITY

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Thomas Gunter by phone at 801-536-4419, or by Internet E-mail at thomasgunter@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/01/2019

THIS RULE MAY BECOME EFFECTIVE ON: 06/05/2019

AUTHORIZED BY: Bryce Bird, Director

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2019	FY 2020	FY 2021
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Person	\$0	\$0	\$0
Total Fiscal Costs:	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Government	\$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

*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 for State Government, Local Government, Small Businesses and Other Persons are described in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.

Appendix 2: Regulatory Impact to Non-Small Businesses

No non-small businesses are expected to be impacted by this rulemaking. Large industrial businesses are already required to maintain and utilize the controls that this rule would require.

The Executive Director of the Department of Environmental Quality, Alan Matheson, has reviewed and approved this fiscal analysis.

R307. Environmental Quality, Air Quality.

R307-110. General Requirements: State Implementation Plan.

R307-110-28. Regional Haze.

The Utah State Implementation Plan, Section XX, Regional Haze, as most recently amended by the Utah Air Quality Board on [December 2] June 5, 201[5]9, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

KEY: air pollution, PM10, PM2.5, ozone

Date of Enactment or Last Substantive Amendment: [January 3,] 2019

Notice of Continuation: January 27, 2017

Authorizing, and Implemented or Interpreted Law: 19-2-104

**Environmental Quality, Air Quality
R307-150-3
Applicability**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 43588

FILED: 03/15/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Utah's Regional Haze State Implementation Plan (SIP) contains sulfur dioxide (SO₂) milestones that are based on 2006 SO₂ emissions from power plants. To ensure that SO₂ emission reductions are occurring, Rule R307-150 requires power plants to report their annual SO₂ emissions. In 2015, the Air Quality Board approved a SIP revision with an alternative to Basic Available Retrofit Technology (BART) for NO_x. Part of the alternative included the closure of the Carbon Power Plant. Emission reductions of SO₂ from the closure were included in the demonstration that the alternative was better than BART. Because the SO₂ reductions are part of the BART alternative for NO_x, they should not be counted towards reductions in the SO₂ milestone program.

SUMMARY OF THE RULE OR CHANGE: This amendment renumbers the existing Subsections R307-150-3(1)(b) to R307-150-3(1)(c). Additionally, language is added to Subsection R307-150-3(1)(b) that establishes a reporting requirement of 8,005 tons/yr of SO₂ for the Carbon Power Plant to be reported in the annual regional SO₂ under milestone report.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 19-2-104(1)(a)

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** These rule changes are not expected to have any fiscal impact on the state budget.
- ◆ **LOCAL GOVERNMENTS:** These rule changes are not expected to have any fiscal impact on local governments.
- ◆ **SMALL BUSINESSES:** These rule changes are not expected to have any fiscal impact on small businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** These rule changes are not expected to have any fiscal impact on persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: These rule changes will not have a compliance cost for affected persons. The proposed amendments do not alter previously existing requirements.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: After conduction a thorough analysis, it was determined that these proposed rule amendments will not result in a fiscal impact to businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 ENVIRONMENTAL QUALITY
 AIR QUALITY
 FOURTH FLOOR
 195 N 1950 W
 SALT LAKE CITY, UT 84116-3085
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Thomas Gunter by phone at 801-536-4419, or by Internet E-mail at thomasgunter@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/01/2019

THIS RULE MAY BECOME EFFECTIVE ON: 06/05/2019

AUTHORIZED BY: Bryce Bird, Director

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State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Person	\$0	\$0	\$0
Total Fiscal Costs:	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Government	\$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

*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 for State Government, Local Government, Small Businesses and Other Persons are described in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.

Appendix 2: Regulatory Impact to Non-Small Businesses

No non-small businesses are expected to be impacted by this rulemaking. This rule strictly applies to reporting requirements and are not anticipated to increase costs or benefits.

The Executive Director of the Department of Environmental Quality, Alan Matheson, has reviewed and approved this fiscal analysis.

**R307. Environmental Quality, Air Quality.
R307-150. Emission Inventories.
R307-150-3. Applicability.**

(1) R307-150-4 applies to all stationary sources with actual emissions of 100 tons or more per year of sulfur dioxide in calendar

year 2000 or any subsequent year unless exempted in R307-150-3(1)(a) [below]. Sources subject to R307-150-4 may be subject to other sections of R307-150.

(a) A stationary source that meets the requirements of R307-150-3(1) that has permanently ceased operation is exempt from the requirements of R307-150-4 for all years during which the source did not operate at any time during the year.

(b) Notwithstanding R307-150-3(a), beginning with 2016 emissions, the Division of Air Quality will include emissions of 8,005 tons/yr of sulfur dioxide for the Carbon Power Plant in the annual regional sulfur dioxide milestone report required as part of the Regional Haze State Implementation Plan.

([b]c) Except as provided in R307-150-3(1)(a), any source that meets the criteria of R307-150-3(1) and that emits less than 100 tons per year of sulfur dioxide in any subsequent year shall remain subject to the requirements of R307-150-4 until 2018 or until the first control period under the Western Backstop Sulfur Dioxide Trading Program as established in R307-250-12(1)(a), whichever is earlier.

(2) R307-150-5 applies to large major sources.

(3) R307-150-6 applies to:

(a) each major source that is not a large major source;

(b) each source with the potential to emit 5 tons or more per year of lead; and

(c) each source not included in R307-150-3(2), R307-150-3(3)(a), or R307-150-3(3)(b) that is located in Davis, Salt Lake, Utah, or Weber Counties and that has the potential to emit 25 tons or more per year of any combination of oxides of nitrogen, oxides of sulfur and PM₁₀, or the potential to emit 10 tons or more per year of volatile organic compounds.

(4) R307-150-7 applies to Part 70 sources not included in R307-150-3(2) or R307-150-3(3).

(5) R307-150-9 applies to sources with Standard Industrial Classification codes in the major group 13 that have uncontrolled actual emissions greater than one ton per year for a single pollutant of PM₁₀, PM_{2.5}, oxides of nitrogen, oxides of sulfur, carbon monoxide or volatile organic compounds. These sources include, but are not limited to, industries involved in oil and natural gas exploration, production, and transmission operations; well production facilities; natural gas compressor stations; and natural gas processing plants and commercial oil and gas disposal wells, and ponds.

(a) Sources that require inventory submittals under R307-150-3(1) through R307-150-3(4) are excluded from the requirements of R307-150-9.

KEY: air pollution, reports, inventories

Date of Enactment or Last Substantive Amendment: [~~March 5, 2018~~]**2019**

Notice of Continuation: **November 13, 2018**

Authorizing, and Implemented or Interpreted Law: **19-2-104(1)**

(c)

**Environmental Quality, Air Quality
R307-401-10
Source Category Exemptions**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 43589

FILED: 03/15/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment is necessary to include gasoline dispensing facilities (GDF), as defined in 40 CFR 63.11132 that are not major sources, as an exempt source category from the requirement to obtain an approval order under Sections R307-401-5 through R307-401-8. GDF's already in compliance with federal regulations would already exceed any requirements necessary under Rule R307-328 and 40 CFR 63, Subpart 6C.

SUMMARY OF THE RULE OR CHANGE: This amendment adds subsection R307-401-10(6), providing language that includes gasoline dispensing facilities as an exempt source category.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 19-2-104(1)(a)

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: This rule change is not expected to have any fiscal impact on the state budget.
- ◆ LOCAL GOVERNMENTS: This rule change is not expected to have any fiscal impact on local governments.
- ◆ SMALL BUSINESSES: This rule change is not expected to have any fiscal impact on small businesses.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This rule change is not expected to have any fiscal impact on persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule change will not have a compliance cost for affected persons. This proposed change does not alter previously existing requirements.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: After conducting a thorough analysis, it was determined that this proposed rule amendment will not result in a fiscal impact to businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

ENVIRONMENTAL QUALITY
 AIR QUALITY
 FOURTH FLOOR
 195 N 1950 W
 SALT LAKE CITY, UT 84116-3085
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Thomas Gunter by phone at 801-536-4419, or by Internet E-mail at thomasgunter@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/01/2019

THIS RULE MAY BECOME EFFECTIVE ON: 06/05/2019

AUTHORIZED BY: Bryce Bird, Director

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State Government	\$0	\$0	\$0
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Small Businesses	\$0	\$0	\$0
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Non-Small Businesses	\$0	\$0	\$0
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Total Fiscal Benefits:	\$0	\$0	\$0
Net Fiscal Benefits:	\$0	\$0	\$0

*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 for State Government, Local Government, Small Businesses and Other Persons are described in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.

Appendix 2: Regulatory Impact to Non-Small Businesses

No non-small businesses are expected to be impacted by this rulemaking. This rule exempts gasoline dispensing facilities from the permitting process, as they are already regulated under an existing rule. There are no anticipated costs or benefits due to this rule.

The Executive Director of the Department of Environmental Quality, Alan Matheson, has reviewed and approved this fiscal analysis.

R307. Environmental Quality, Air Quality.**R307-401. Permit: New and Modified Sources.****R307-401-10. Source Category Exemptions.**

The source categories described in R307-401-10 are exempt from the requirement to obtain an approval order found in R307-401-5 through R307-401-8. The general provisions in R307-401-4 shall apply to these sources.

(1) Fuel-burning equipment in which combustion takes place at no greater pressure than one inch of mercury above ambient pressure with a rated capacity of less than five million BTU per hour using no other fuel than natural gas or LPG or other mixed gas that meets the standards of gas distributed by a utility in accordance with the rules of the Public Service Commission of the State of Utah, unless there are emissions other than combustion products.

(2) Comfort heating equipment such as boilers, water heaters, air heaters and steam generators with a rated capacity of less than one million BTU per hour if fueled only by fuel oil numbers 1 - 6,

(3) Emergency heating equipment, using coal or wood for fuel, with a rated capacity less than 50,000 BTU per hour.

(4) Exhaust systems for controlling steam and heat that do not contain combustion products.

(5) A well site as defined in 40 CFR 60.5430a, including centralized tank batteries, that is not a major source as defined in R307-101-2, and is registered with the Division as required by R307-505.

(6) A gasoline dispensing facility as defined in 40 CFR 63.11132 that is not a major source as defined in R307-101-2. These sources shall comply with the applicable requirements of R307-328 and 40 CFR 63 Subpart CCCCCC: National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Dispensing Facilities.

KEY: air pollution, permits, approval orders, greenhouse gases

Date of Enactment or Last Substantive Amendment: [~~March 5, 2018~~2019]

Notice of Continuation: May 15, 2017

Authorizing, and Implemented or Interpreted Law: 19-2-104(3)(q); 19-2-108

Environmental Quality, Water Quality

R317-1-1

Definitions

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 43585

FILED: 03/15/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Definitions are proposed for Ecosystem Respiration, Filamentous Algae Cover, and Gross Primary Production. These terms are only used in Section R317-2-14, proposed Tables 2.14.7 and 2.14.8.

SUMMARY OF THE RULE OR CHANGE: Definitions are added for key terms that are proposed in another filing for Section R317-2-14. Amendments are proposed to Section R317-2-14, Tables 2.14.7 and 2.14.8. (EDITOR'S NOTE: The proposed amendment to Rule R317-2 is under Filing No. 43586 in this issue, April 1, 2019, of the Bulletin.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: 40 CFR Part 131 and Title 19, Chapter 5

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The purpose of the proposed definitions is to provide clarity. The definitions have no cost impact on state agencies.

◆ **LOCAL GOVERNMENTS:** The purpose of the proposed definitions is to provide clarity. The definitions have no cost impact on local governments.

◆ **SMALL BUSINESSES:** The purpose of the proposed definitions is to provide clarity. The definitions have no cost impact on small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The purpose of the proposed definitions is to provide clarity. The definitions have no cost impact on other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no estimable additional compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed definitions will provide clarity for businesses and fiscal impacts will be neutral.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

ENVIRONMENTAL QUALITY

WATER QUALITY

DEQ, THIRD FLOOR

195 N 1950 W

SALT LAKE CITY, UT 84116

or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Judy Etherington by phone at 801-536-4344, by FAX at 801-536-4301, or by Internet E-mail at jetherington@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/03/2019

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
 ♦ 05/01/2019 06:00 PM, MASOB, 195 N 1950 W, DEQ Board Room, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 05/22/2019

AUTHORIZED BY: Erica Gaddis, Director

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2019	FY 2020	FY 2021
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Person	\$0	\$0	\$0
Total Fiscal Costs:	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Government	\$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
	\$0	\$0	\$0
Net Fiscal Benefits:	\$0	\$0	\$0

*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 for State Government, Local Government, Small Businesses and Other Persons are described above. Inestimable impacts for Non-Small Businesses are described below.

Appendix 2: Regulatory Impact to Non-Small Businesses
 The purpose of the proposed definitions is to provide clarity. The definitions have no cost impact on non-small businesses.

R317. Environmental Quality, Water Quality.
R317-1. Definitions and General Requirements.
R317-1-1. Definitions.

Note that some definitions are repeated from statute to provide clarity to readers.

"Assimilative Capacity" means the difference between the numeric criteria and the concentration in the waterbody of interest where the concentration is less than the criterion.

"Biological assessment" means an evaluation of the biological condition of a water body using biological surveys and other direct measurements of composition or condition of the resident living organisms.

"Biological criteria" means numeric values or narrative descriptions that are established to protect the biological condition of the aquatic life inhabiting waters that have been given a certain designated aquatic life use.

"Board" means the Utah Water Quality Board.

"BOD" means 5-day, 20 degrees C. biochemical oxygen demand.

"Body Politic" means the State or its agencies or any political subdivision of the State to include a county, city, town, improvement district, taxing district or any other governmental subdivision or public corporation of the State.

"Building sewer" means the pipe which carries wastewater from the building drain to a public sewer, a wastewater disposal system or other point of disposal. It is synonymous with "house sewer".

"CBOD" means 5-day, 20 degrees C., carbonaceous biochemical oxygen demand.

"Challenging Party" means a Person who has or is seeking a permit in accordance with Title 19, Chapter 5, the Utah Water Quality Act and chooses to use the independent peer review process to challenge a Proposal as defined in Subsection 19-5-105.3(1)(a).

"COD" means chemical oxygen demand.

"Conflict of Interest" means a Person who has any financial or other interest which has the potential to negatively affect services to the Division or Challenging Party because it could impair the individual's objectivity or it could create an unfair competitive advantage for any Person or organization.

"Deep well" means a drinking water supply source which complies with all the applicable provisions of the State of Utah Public Drinking Water rules.

"Digested sludge" means sludge in which the volatile solids content has been reduced by at least 38% using a suitable biological treatment process.

"Director" means the Director of the Division of Water Quality.

"Division" means the Utah State Division of Water Quality.

"Domestic wastewater" means a combination of the liquid or water-carried wastes from residences, business buildings, institutions, and other establishments with installed plumbing facilities, together with those from industrial establishments, and with such ground water, surface water, and storm water as may be present. It is synonymous with the term "sewage".

"Ecosystem respiration (ER)" means the spatially explicit rate of organic degradation derived from open channel, diel stream oxygen models.

"Effluent" means the liquid discharge from any unit of a wastewater treatment works, including a septic tank.

"Existing Uses" means those uses actually attained in a water body on or after November 28, 1975, whether or not they are included in the water quality standards.

"Expert" means a person with technical expertise, knowledge, or skills in a subject matter of relevance to a specific water quality investigation, HISA, or Proposal including persons from other regulatory agencies, academia, or the private sector.

"Filamentous Algae Cover" means patches of filamentous algae greater than 1 cm in length or mats greater than 1 mm thick, expressed as the proportion of visible stream bed where it is observed and where it is not.

"Gross primary production" means the spatially explicit rate of autotrophic biomass formation derived from open channel, diel stream oxygen models.

"Human-induced stressor" means perturbations directly or indirectly caused by humans that alter the components, patterns, and/or processes of an ecosystem.

"Human pathogens" means specific causative agents of disease in humans such as bacteria or viruses.

"Highly Influential Scientific Assessment (HISA)" means a Scientific Assessment developed by the Division or an external Person, that has material relevance to a decision by the Division, and the Director determines could have a significant financial impact on either the public or private sector or is novel, controversial, or precedent-setting, and is not a new or renewed permit issued to a Person.

"Independent Peer Review" means scientific review conducted on request from a Challenging Party in accordance with Section 19-5-105.3 and is a subcategory of Independent Scientific Review.

"Independent Scientific Review" means any technical or scientific review conducted by Experts in an area related to the material being reviewed who were not directly or indirectly involved with the development of the material to be reviewed and who do not have a real or perceived conflict of interest. When an Independent Peer Review is conducted, the conditions in Subsection 19-5-105.3(5) shall apply.

"Industrial wastes" means the liquid wastes from industrial processes as distinct from wastes derived principally from dwellings, business buildings, institutions and the like. It is synonymous with the term "industrial wastewater".

"Influent" means the total wastewater flow entering a wastewater treatment works.

"Great Salt Lake impounded wetland" means wetland ponds which have been formed by dikes or berms to control and retain the flow of freshwater sources in the immediate proximity of Great Salt Lake.

"Large underground wastewater disposal system" means the same type of device as an onsite wastewater system except that it is designed to handle more than 5,000 gallons per day of domestic wastewater, or wastewater that originates in multiple dwellings, commercial establishments, recreational facilities, schools, or any other underground wastewater disposal system not covered under the definition of an onsite wastewater system. The Division controls the installation of such systems.

"Onsite wastewater system" means an underground wastewater disposal system for domestic wastewater which is designed for a capacity of 5,000 gallons per day or less and is not designed to serve multiple dwelling units which are owned by separate owners

except condominiums and twin homes. It usually consists of a building sewer, a septic tank and an absorption system.

"Operating Permit" is a State issued permit issued to any wastewater treatment works covered under Rules R317-3 or R317-5 with the following exceptions:

A. Any wastewater treatment permitted under Ground Water Quality Protection Rule R317-6.

B. Any wastewater treatment permitted under Underground Injection Control (UIC) Program Rule R317-7.

C. Any wastewater treatment permitted under Utah Pollutant Discharge Elimination System (UPDES) Rule R317-8.

D. Any wastewater treatment permitted under Approvals and Permits for a Water Reuse Project Rule R317-13.

E. Any wastewater treatment permitted by a Local Health Department under Onsite Wastewater Systems Rule R317-4.

"Person" means any individual, trust, firm, estate, company, corporation, partnership, association, state, state or federal agency or entity, municipality, commission, or political subdivision of a state.

"Point source" means any discernible, confined and discrete conveyance including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, concentrated animal feeding operation, or vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flow from irrigated agriculture.

"Pollution" means such contamination, or other alteration of the physical, chemical, or biological properties of any waters of the state, or such discharge of any liquid, gaseous or solid substance into any waters of the state as will create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life.

"Proposal" means any science-based initiative proposed by the division on or after January 1, 2016, that would financially impact a Challenging Party and that would:

A. change water quality standards;

B. develop or modify total maximum daily load requirements;

C. modify wasteloads or other regulatory requirements for permits; or

D. change rules or other regulatory guidance. A Proposal is not an individual permit issued to a Person, nor is it a technology based limit applied in accordance with Effluent limitations, 33 U.S.C. Sec. 1311, National pollutant discharge elimination system, 33 U.S.C. Sec. 1342, and Information and guidelines, 33 U.S.C. Sec. 1314.

"Regulatory requirements" for permits means the methods or policies used by the Division to derive permit limits such as wasteload analyses, reasonable potential determinations, whole effluent toxicity policy, interim permitting guidance, antidegradation reviews, or Technology Based Nutrient Effluent Limit requirements.

"Scientific Assessment" means an evaluation of a body of credible scientific or technical knowledge that synthesizes scientific literature, data analysis and interpretation, and models, and includes any assumptions used to bridge uncertainties in the available information.

"Scientific basis" means empirical data or other scientific findings, conclusions, or assumptions used as the justification for a rule, regulatory guidance, or a regulatory tool.

"Scientifically necessary to protect the designated beneficial uses of a waterbody" as referenced in Subsection 19-5-105.3(8) means a Technology Based Nutrient Effluent Limit that under current and future growth projections, will:

A. prevent circumstances that would cause or contribute to an impairment of any designated or existing use in the receiving water or downstream water bodies based on Utah's water quality standards, Section R317-2-7; or

B. improve water quality conditions that are causing or contributing to any existing impairment in the receiving water or downstream water bodies, as defined by Utah's water quality standards, Section R317-2-7.

"Sewage" is synonymous with the term "domestic wastewater".

"Shallow well" means a well providing a source of drinking water which does not meet the requirements of a "deep well".

"Sludge" means the accumulation of solids which have settled from wastewater. As initially accumulated, and prior to treatment, it is known as "raw sludge".

"SS" means suspended solids.

"Technology Based Nutrient Effluent Limit" means maximum nutrient limitations based on the availability of technology to achieve the limitations, rather than based on a water quality standard or a total maximum daily load.

Total Maximum Daily Load (TMDL) means the maximum amount of a particular pollutant that a waterbody can receive and still meet state water quality standards, and an allocation of that amount to the pollutant's sources.

"Treatment works" means any plant, disposal field, lagoon, dam, pumping station, incinerator, or other works used for the purpose of treating, stabilizing or holding wastes. (Section 19-5-102).

"TSS" means total suspended solids.

"Underground Wastewater Disposal System" means a system for underground disposal of domestic wastewater. It includes onsite wastewater systems and large underground wastewater disposal systems.

"Use Attainability Analysis" means a structured Scientific Assessment of the factors affecting the attainment of the uses specified in Section R317-2-6. The factors to be considered in such an analysis include the physical, chemical, biological, and economic use removal criteria as described in 40 CFR 131.10(g) (1-6).

"Wastes" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water. (Section 19-5-102).

"Wastewater" means sewage, industrial waste or other liquid substances which might cause pollution of waters of the state. Intercepted ground water which is uncontaminated by wastes is not included.

"Waters of the state" means all streams, lakes, ponds, marshes, water-courses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon this state or any portion thereof, except that bodies of water confined to and retained within the limits of private property, and which do not develop into or constitute a nuisance, or a public health hazard, or a menace to fish and

wildlife, shall not be considered to be "waters of the state" under this definition (Section 19-5-102).

"Water Quality Based Effluent Limit (WQBEL)" means an effluent limitation that has been determined necessary to ensure that water quality standards in a receiving body of water will not be violated.

KEY: TMDL, water pollution

Date of Enactment or Last Substantive Amendment: [~~May 24, 2018~~]**2019**

Notice of Continuation: August 30, 2017

Authorizing, and Implemented or Interpreted Law: 19-5

Environmental Quality, Water Quality R317-2 Standards of Quality for Waters of the State

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 43586

FILED: 03/15/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being changed to update formatting; correct errors; add a potable water designated use to Sheep Creek requested by a homeowners association; revise the total dissolved solids criterion for Silver Creek to resolve the existing water quality impairment; update the aquatic life ammonia criteria for a section of the Jordan River to be less stringent; provide flexibility for field methods in Section R317-2-10; and apply nutrient criteria to specific Category 1 and Category 2 waters to protect the recreational and aquatic life uses.

SUMMARY OF THE RULE OR CHANGE: LABORATORY AND FIELD ANALYSES: In Section R317-2-10, a clause was added to provide flexibility of field methods that are different than Division of Water Quality standard procedures. **SHEEP CREEK USE CHANGE:** The Class 1C designated use (drinking water source) was applied to Sheep Creek, Cache County based on a request from a homeowners association and the Utah Division of Drinking Water. **SILVER CREEK TDS CRITERION:** The total dissolved solids (TDS) criterion was revised for upper Silver Creek in Summit County from 1,200 mg/L to 1,900 mg/L in Table 2.14.1. **JORDAN RIVER AMMONIA CRITERIA:** The aquatic life criteria for ammonia for segments of the Jordan River, Surplus Canal, and Mill Creek, Salt Lake County were changed based on updated information regarding the toxicity of ammonia and studies characterizing the aquatic life in these segments in Table 2.14.2. **NUTRIENT CRITERIA:** In Section R317-2-14 (Numeric Criteria), new Table 2.14.7 was added for nutrient

criteria applicable to Antidegradation Category 1 and 2 waters statewide. These criteria are needed to ensure that Utah's headwaters continue to deliver high quality water to, for instance, drinking water. Nitrogen and phosphorus (nutrients) criteria were developed and applied to Category 1 and Category 2 waters in new Tables 2.14.7 and 2.14.8. UPDATES AND CORRECTIONS: In Section R317-2-14, Tables 2.14.1 and 2.14.6, several corrections were made to the statewide human health criteria. The aquatic life cadmium chronic criterion formula was corrected. The corrections to Tables 2.14.1, 2.14.2 and 2.14.6 were because the 2018 revisions (Utah State Bulletin, No. 2018-7, April 1, 2018, Filing No. 42691) were not implemented as intended.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: 40 CFR Part 131 and Title 19, Chapter 5

MATERIALS INCORPORATED BY REFERENCE:

- ◆ Adds Table 8, Decision Matrix That Will Be Used to Assess Support of Headwater Aquatic Life Uses for Nutrient-related Water Quality Problems, "Proposed Nutrient Criteria: Utah Headwater Streams", published by Utah Division of Water Quality, 03/01/2019

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET: SUMMARY:** No direct costs will be incurred by state agencies because no state agency is a constrained party. The Utah Division of Water Quality will incur indirect costs that are estimated to be a one-time cost of \$6,400 and aggregate annual costs of \$4,500 over the next 3 years (\$8,000/year of increased costs associated with nutrient criteria monitoring offset by \$6,500/year of cost savings associated with reduced monitoring on Silver Creek). These costs will be absorbed through agency process efficiencies. **LABORATORY AND FIELD ANALYSES:** The proposed revision to Section R317-2-10 Laboratory and Field Analyses is cost neutral or will cause indirect costs for state agencies. The indirect costs would be to the Division of Water Quality for the staff time required to review the alternative methods allowed by the proposed revision. The indirect costs are inestimable because no data is available regarding how many alternative methods may be proposed by entities external to the Division of Water Quality. Currently, this type of request is infrequent but is estimated to require 120 hours of staff time at \$100/hr for review should any methods be submitted for approval. No requests are anticipated over the next three years. **SHEEP CREEK USE CHANGE:** The addition of the Class 1C use to Sheep Creek is cost neutral because no additional resources are required for its implementation. **SILVER CREEK TDS CRITERION:** The proposed TDS criterion for upper Silver Creek will result in ongoing indirect benefits of \$6,500 annually for the Utah Division of Water Quality, which is deducted from annual costs for purposes of overall evaluation of these proposed changes to this rule. These savings are based on the resolution of the existing TDS water quality impairment and an elimination of 8 sampling trips per year, 8 hours per trip specifically for TDS measurements, at \$100/hr. **JORDAN**

RIVER AMMONIA CRITERIA: The proposed ammonia criteria for segments of the Jordan River, Surplus Canal, and Mill Creek are cost neutral because no additional resources will be required for their implementation. **NUTRIENT CRITERIA:** The proposed nutrient criteria in Section R317-2-14 will result in net one-time and ongoing indirect costs to the Division of Water Quality. The one-time costs will be to update the use classifications and criteria in various internal systems. The one-time indirect fiscal impacts will be \$1,400 assuming four hours to update each of the four databases at \$100/hr and \$5,000 for 5 new probes to measure ecosystem respiration and gross primary production. Anticipated ongoing indirect costs are for the implementation of new sampling and analysis methods to support assessment of the proposed nutrient criteria and are estimated to be \$24,000 over the next 3 years (\$8,000/year). The nutrient criteria require new measures of gross primary production, ecosystem respiration and filamentous algae. Costs are dependent on the number of sites sampled which depends on the available existing resources. Additional labor costs associated with the collection of requisite data is estimated based on an average of 40 site visits and an additional 0.5 hourS for a field crew of 2 on each visitation; and 4 hours for one staff for calculating and processing the gross primary production and ecosystem respiration data for approximately 10 sites annually, resulting in an annual expense of approximately \$8,000. If water quality impairments are identified by the nutrient criteria, the Division of Water Quality will incur inestimable indirect costs to further investigate and if appropriate, restore the impaired water quality. Long term costs to the Division of Water Quality to address nutrient-related impairments are also inestimable because actions taken are situational and often deferred by state or federal grants. The proposed nutrient criteria in Section R317-2-14 may result in indirect inestimable costs to state of Utah land management agencies. These agencies are not constrained parties, but water quality nutrient impairments could potentially result in increased costs associated with nutrient management. However, these impacts are unlikely to be significant because the affected activities have to occur in an area co-located with an impaired stream and have been demonstrated to be contributing to the impairment as a source of nitrogen or phosphorus to the stream. Further, implementation measures to address nonpoint sources of pollution are voluntary and are often offset by state and federal nonpoint source grants. New impairments resulting from the proposed nutrient criteria are not anticipated over the next three years, because the Division of Water Quality has a biannual reporting cycle for making impairment determinations, with the first report relevant to these criteria planned for 2022. Plans to restore impairments cannot be developed or implemented until impaired waters are identified. As a result, immediate costs associated with new impairments are anticipated to be neutral, exceptions being inestimable. Once impairment decisions are ultimately made, additional indirect costs are inestimable, but likely to be relatively small in size and scope. Based on currently available data, approximately 10-15% of the affected streams may ultimately be classified as impaired, meaning water

quality does not meet the proposed nutrient criteria, but these estimates are statistical and additional indirect expense increases, if any, are expected to vary considerably on a case-by-case basis. Even for potentially affected activities that are co-located on an impaired stream, increased indirect costs are not inevitable. Impairment determinations trigger additional investigations that are conducted by the Utah Division of Water Quality or other interested parties. Only after the additional investigations, is a final determination made regarding impairment and sources of nutrient pollution. For those activities ultimately found to be contributing to a nutrient-related impairment as a source of nitrogen and phosphorus, costs are inestimable because there are generally many ways that their contribution to the impairment can be resolved, some of which may be revenue neutral. Given the relatively small number of anticipated impairments and the voluntary nature of implementation measures, the proposed nutrient criteria will be revenue neutral. **UPDATES AND CORRECTIONS:** There are no costs or benefits associated with the remaining updates and corrections to Section R317-2-14.

◆ **LOCAL GOVERNMENTS: SUMMARY:** The impact of these proposed changes on local governments are inestimable benefits. **LABORATORY AND FIELD ANALYSES:** Local governments are not constrained parties for the proposed revision to Section R317-2-10 because local governments are not required to conduct field analyses. For indirect effects to local governments, the proposed revision is cost neutral or will have inestimable benefits. The proposed revision provides optional flexibility on acceptable analytical methods that the Division of Water Quality is willing to use to interpret water quality regulations. Presumably, local governments will only exercise this option to submit alternative methods for agency approval if it is cost neutral or a benefit. No data is available to estimate the frequency or specifics of these potential requests. **SHEEP CREEK USE CHANGE:** The impacts are neutral for the addition of the Class 1C use to Sheep Creek in Section R317-2-13 because no local governments are constrained or affected. **SILVER CREEK TDS CRITERION:** The Snyderville Basin Water Reclamation District (District) and Park City are the constrained parties for the proposed site-specific TDS criterion. The proposed TDS criterion is less stringent than the existing criterion and will result in benefits that are inestimable. Under the existing TDS criterion, additional treatment to comply was estimated by the District to be \$120,873,000 in capital costs and \$2,710,000 for annual operating costs using 2013 dollars. The estimates did not include disposal of the brine waste that would be generated by the treatment process which is expected to be a significant additional cost. These treatment cost estimates are expected to meet the threshold that would cause widespread social and economic harm for compliance. Treatment is not required above this social and economic harm threshold under either federal or Utah requirements. The actual realized benefits are inestimable because the economic analyses are unavailable to calculate an accurate cost savings; that is, based on avoiding economic harm, how much the District would have had to spend for compliance; but the proposed

changes would result in considerable savings to the District. The impacts to the other constrained party, Park City, are neutral because their permitted discharges are below the existing TDS criterion and are unaffected by the change in rule. **JORDAN RIVER AMMONIA CRITERIA:** The Central Valley Water Reclamation Facility (CVWRF) is the only constrained local government affected by the Jordan River, Surplus Canal, and Mill Creek ammonia criteria in Section R317-2-14. The proposed ammonia criteria are less stringent than the existing criteria and will result in inestimable compliance benefits. Less stringent criteria will result in less stringent effluent limits but ammonia effluent limits are also dependent on quantity of water available for dilution, ambient ammonia concentrations in the receiving waters, pH of the receiving waters, and temperature of the receiving waters. These other factors may result in higher or lower effluent limits but in all cases, the effluent limits will be less stringent than they would be under the existing ammonia criteria and under newly promulgated federal ammonia criteria. Over the next three years, the indirect cost impacts are anticipated to be neutral. However, under the less stringent proposed ammonia criteria, CVWRF anticipates delaying or avoiding significant future capital and operational costs that could be required for the treatment of ammonia compared to the existing ammonia criteria. For instance, capital costs for aeration tank and blower capacity expansion required to meet a lower ammonia criteria are estimated to be \$10,000,000 to \$15,000,000. **NUTRIENT CRITERIA:** Local governments are not constrained parties for the proposed nutrient criteria in Tables 2.14.7 and 2.14.8 because this rule does not apply to any stream that receives a municipal discharge. All 29 of Utah's counties include some Category 1 or Category 2 waters. Indirect impacts will be neutral or inestimable benefits. The inestimable indirect benefits are based on the potential future avoidance of additional treatment costs for drinking water or obtaining alternative sources of drinking water because of adverse nutrient-related impacts. Many nutrient-related effects have been demonstrated to have adverse impacts to recreation, so municipalities with economies that are heavily dependent on outdoor recreation may experience inestimable benefits if these rules prevent or diminish these problems. **UPDATES AND CORRECTIONS:** The proposed revisions to Table 2.14.6 are statewide, therefore publicly-owned treatment works are constrained parties. Local governments that operate sewer collection systems only, having no treatment works, may be indirectly affected. The impacts for both direct and indirect impacts are neutral because no local government currently has limits for these specific pollutants and this status is not expected to change.

◆ **SMALL BUSINESSES: SUMMARY:** The impact of these proposed changes on small businesses are neutral or will result in inestimable costs. **LABORATORY AND FIELD ANALYSES:** Small businesses are not constrained parties for the proposed revision to Section R317-2-10 Laboratory and Field Analyses because small businesses are not required to conduct field analyses. For indirect effects to small businesses, the proposed revision is cost neutral or will have inestimable benefits. The proposed revision provides optional

flexibility. Presumably, small businesses will only exercise these options if they are cost neutral or a benefit. No data is available to estimate the frequency or specifics of these potential requests. SHEEP CREEK USE CHANGE: The impacts are neutral for the addition of the Class 1C use to Sheep Creek in Section R317-2-13 because no small businesses are constrained or affected. SILVER CREEK TDS CRITERION: No small businesses are constrained by the proposed Silver Creek TDS criteria in Section R317-2-14 and direct effects are neutral because no small businesses have TDS effluent limits for the affected waters. Small businesses discharging to publically-owned treatment works may be affected indirectly if they discharge high levels of TDS. These indirect costs are inestimable because no small businesses currently have pretreatment limits for TDS. JORDAN RIVER AMMONIA CRITERIA: No small businesses are constrained by the proposed Jordan River ammonia criteria in Section R317-2-14 and direct effects are neutral because no small businesses have ammonia effluent limits for the affected waters. Small businesses discharging to CVWRF may be affected indirectly if they discharge high levels of ammonia. These indirect costs are inestimable because no small businesses currently discharging to CVWRF have pretreatment limits for ammonia. NUTRIENT CRITERIA: Small businesses are not constrained parties by the proposed nutrient criteria in Section R317-2-14. Small businesses could be impacted by indirect costs due to actions by federal or state land management agencies. These agencies grant leases and permits (hereafter in this section, permits refers to both) for small businesses to conduct activities such as recreation, oil and gas exploration and production, mining, timber harvesting, and grazing on state or federal lands. The land management agencies may elect to modify their leasing or permitting programs to implement best management practices (BMPs) if the activity is determined to cause or contribute to a nutrient impairment and these modifications may result in neutral impacts or increased indirect costs to the permittees. However, these impacts are unlikely to be significant because the affected permitted activities would have to occur in an area co-located with an impaired stream and have been demonstrated to be contributing to the impairment as a source of nitrogen or phosphorus to the stream. Further, implementation measures to address nonpoint sources of pollution are voluntary and are often offset by state and federal nonpoint source grants. New impairments resulting from the proposed nutrient criteria are not anticipated over the next three years, because the Division of Water Quality has a biannual reporting cycle for making impairment determinations, with the first report relevant to these criteria planned for 2022. Plans to restore impairments cannot be developed or implemented until impaired waters are identified. As a result, immediate costs associated with new impairments are anticipated to be neutral, exceptions being inestimable. Once impairment decisions are ultimately made, additional indirect costs to permittees are inestimable, but likely to be relatively small in size and scope. Based on currently available data, approximately 10-15% of the affected streams may ultimately be classified as impaired, defined as water quality not

meeting the proposed nutrient criteria, but these estimates are statistical and additional indirect expense increases, if any, are expected to vary considerably on a case-by-case basis. Even for potentially affected permittees that are co-located on an impaired stream, increased indirect costs are not inevitable. Impairment determinations trigger additional investigations that are conducted by the Utah Division of Water Quality or other interested parties. Only after the additional investigations, is a final determination made regarding impairment and sources of nutrient pollution. For those permittees ultimately found to be contributing to a nutrient-related impairment as a source of nitrogen and phosphorus, costs are inestimable because there are generally many ways that their contribution to the impairment can be resolved, some of which may be revenue neutral. Costs for other remediation options are often offset through state and federal grants. Interested parties will generally evaluate all possible solutions when crafting restoration plans, and will attempt to select the most cost-effective solutions that are likely to lead to desired water quality improvements. Given the relatively small number of anticipated impairments and the voluntary nature of implementation measures, the proposed nutrient criteria are most likely to be revenue neutral. UPDATES AND CORRECTIONS: There are no costs or benefits associated with the remaining updates and corrections to Section R317-2-14.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: SUMMARY: The impact of these proposed changes are neutral or will result in inestimable indirect costs for other persons. LABORATORY AND FIELD ANALYSES: Other persons are not constrained parties for the proposed revision to Section R317-2-10 Laboratory and Field Analyses because they are not required to conduct field analyses. SHEEP CREEK USE CHANGE: Indirect impacts are neutral or positive for the addition of the Class 1C use to Sheep Creek in Section R317-2-13 because no persons are constrained. The residents comprising the homeowners association that requested change may have indirect savings because of costs avoided for water treatment or for health care costs from ingesting contaminated drinking water. These indirect savings are inestimable because these are potential future savings since the affected waters currently meet the drinking water requirements. The indirect cost impacts will be neutral for the affected homeowners association that requested the change because the creek currently is meeting the Class 1C requirements. SILVER CREEK TDS CRITERION: The proposed TDS criterion for Silver Creek in Section R317-2-14 does not affect any other persons. JORDAN RIVER AMMONIA CRITERIA: The proposed ammonia criteria for the Jordan River in Section R317-2-14 do not affect any other persons. NUTRIENT CRITERIA: No constrained other persons are affected by the proposed nutrient criteria in Section R317-2-14. Other persons could be impacted by indirect costs due to actions by state or federal land management agencies. These agencies grant leases and permits (hereafter in this section, permits refers to both) for other persons to conduct activities such as recreation, oil and

gas exploration and production, mining, timber harvesting, and grazing on state or federal lands. The land management agency may elect to modify their leasing or permitting programs to implement BMPs if the activity is determined to cause or contribute to a nutrient impairment and these modifications may result in neutral impacts or increased indirect costs to the permittees. However, these impacts are unlikely to be significant because the affected permitted activities would have to occur in an area co-located with an impaired stream and have been demonstrated to be contributing to the impairment as a source of nitrogen or phosphorus to the stream. Further, implementation measures to address nonpoint sources of pollution are voluntary and are often offset by state and federal nonpoint source grants. New impairments resulting from the proposed nutrient criteria are not anticipated over the next three years, because the Division of Water Quality has a biannual reporting cycle for making impairment determinations, with the first report relevant to these criteria planned for 2022. Plans to restore impairments cannot be developed or implemented until impaired waters are identified. As a result, immediate costs associated with new impairments are anticipated to be neutral, exceptions being inestimable. Once impairment decisions are ultimately made, additional indirect costs to permitted other persons are inestimable, but likely to be relatively small in size and scope. Based on currently available data, approximately 10-15% of the affected streams may ultimately be classified as impaired, meaning water quality is not meeting the proposed nutrient criteria, but these estimates are statistical and additional indirect expense increases, if any, are expected to vary considerably on a case-by-case basis. Even for potentially affected permitted persons that are co-located on an impaired stream, increased indirect costs are not inevitable. Impairment determinations trigger additional investigations that are conducted by the Utah Division of Water Quality or other interested parties. Only after the additional investigations, is a final determination made regarding impairment and sources of nutrient pollution. For those persons ultimately found to be contributing to a nutrient-related impairment as a source of nitrogen and phosphorus, costs are inestimable because there are generally many ways that their contribution to the impairment can be resolved, some of which may be revenue neutral. Costs of other remediation options with the potential to increase indirect costs are often offset through state and federal grants. Interested parties will generally evaluate all possible solutions when crafting restoration plans, and will attempt to select the most cost-effective solutions that are likely to lead to desired water quality improvements. Given the relatively small number of anticipated impairments and the voluntary nature of implementation measures, the proposed nutrient criteria are most likely to be revenue neutral. **UPDATES AND CORRECTIONS:** No other affected persons are identified for the remaining proposed changes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No estimable additional compliance costs are expected for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: For most of these proposed revisions, the fiscal impacts are revenue neutral or will result in modest cost savings for businesses. The proposed nutrient criteria have the potential to increase indirect costs for a small percentage of permittees on state or federal lands, although the amount cannot be estimated at this time. The Department is aware of these potential cost increases and is committed to working with interested parties to develop implementation approaches that minimize increases in indirect costs to the greatest extent possible.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 ENVIRONMENTAL QUALITY
 WATER QUALITY
 DEQ, THIRD FLOOR
 195 N 1950 W
 SALT LAKE CITY, UT 84116
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Judy Etherington by phone at 801-536-4344, by FAX at 801-536-4301, or by Internet E-mail at jetherington@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/03/2019

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
 ♦ 05/01/2019 06:00 PM, MASOB, 195 N 1950 W, DEQ Board Room, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 05/22/2019

AUTHORIZED BY: Erica Gaddis, Director

Appendix 1: Regulatory Impact Summary Table*

Nutrient Criteria			
Fiscal Costs	FY 2019	FY 2020	FY 2021
State Government	\$8,000	\$14,400	\$8,000
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Person	\$0	\$0	\$0
Total Fiscal Costs:	\$8,000	\$14,400	\$8,000

Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Government	\$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:	(\$8,000)	(\$14,400)	(\$8,000)

Total Benefits:	Fiscal	\$6,500	\$6,500	\$6,500
Net Fiscal Benefits:		\$6,500	\$6,500	\$6,500

*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 for State Government, Local Government, Small Businesses and Other Persons are described above. Inestimable impacts for Non-Small Businesses are described below.

Appendix 2: Regulatory Impact to Non-Small Businesses

The impact of these proposed changes are neutral or will result in inestimable indirect costs for non-small businesses. LABORATORY AND FIELD ANALYSES: Non-small businesses are not constrained parties for the proposed revision to Section R317-2-10 because non-small businesses are not required to conduct field analyses. For indirect effects to non-small businesses, the proposed revision is cost neutral or will have inestimable benefits. The proposed revision provides optional flexibility. Presumably, non-small businesses will only exercise these options if they are cost neutral or a benefit. No data is available to estimate the frequency or specifics of these potential requests. SHEEP CREEK USE CHANGE: The impacts are neutral for the addition of the Class 1C use to Sheep Creek in Section R317-2-13 because no non-small businesses are constrained or affected. SILVER CREEK TDS CRITERIA: The proposed revisions to Table 2.14.6 are neutral because no non-small businesses have effluent limits for TDS discharges to Silver Creek. Non-small businesses discharging to publically-owned treatment works may be affected indirectly if they discharge high levels of TDS. These indirect costs are inestimable because no non-small businesses discharging to the Silver Creek Water Reclamation Facility currently have pretreatment limits for TDS. JORDAN RIVER AMMONIA CRITERIA: No non-small businesses are constrained by the proposed Jordan River ammonia criteria in Section R317-2-14 and direct effects are neutral because no non-small businesses have ammonia effluent limits for the affected waters. Non-small businesses discharging to Central Valley Water Reclamation Facility may be affected indirectly if they discharge high levels of ammonia. These indirect costs are inestimable because no non-small businesses currently discharging to CVWRF have pretreatment limits for ammonia. NUTRIENT CRITERIA: State and Federal land management agencies are not constrained parties for the proposed nutrient criteria in Section R317-2-14, nor are other non-small businesses. Non-small businesses could be impacted by indirect costs due to actions by federal or state land management agencies. These agencies grant leases and permits (hereafter in this section, permits refers to both) for non-small businesses to conduct activities such as recreation, oil and gas exploration and production, mining, timber harvesting and grazing on state or federal lands. The land management agencies may elect to modify their leasing or permitting programs to implement best management practices (BMPs) if the activity is determined to cause or contribute to a nutrient impairment. These modifications may result in neutral impacts or increased indirect costs to the permittees. However, these impacts are unlikely to be significant because the affected permitted activities would have to occur in an area co-located with an impaired stream and have been demonstrated to be contributing to the impairment as a source of nitrogen or phosphorus to the stream. Further, implementation measures to address nonpoint sources of pollution are voluntary and are often offset by state and federal nonpoint source grants. New impairments resulting from the proposed nutrient criteria are not anticipated over the next three years, because the Division of Water Quality has a biannual reporting cycle for making impairment determinations, with the first report relevant to these criteria planned for 2022. Plans to restore impairments cannot be developed or implemented until impaired waters are identified. As a result, immediate costs associated with new impairments are anticipated to be neutral, exceptions being inestimable. Once impairment decisions are ultimately made, additional indirect costs to non-small business permittees are inestimable, but likely to be relatively small in size

Proposed rule changes excluding nutrient criteria			
Fiscal Costs	FY 2019	FY 2020	FY 2021
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Person	\$0	\$0	\$0
Total Fiscal Costs:	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$6,500	\$6,500	\$6,500
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0

and scope. Based on currently available data, approximately 10-15% of the affected streams may ultimately be classified as impaired (water quality not meeting the proposed nutrient criteria), but these estimates are statistical and additional indirect expense increases, if any, are expected to vary considerably on a case-by-case basis. Even for potentially affected non-small business permittees that are co-located on an impaired stream, increased indirect costs are not inevitable. Impairment determinations trigger additional investigations that are conducted by the Utah Division of Water Quality or other interested parties. Only after the additional investigations, is a final determination made regarding impairment and sources of nutrient pollution. For those non-small businesses ultimately found to be contributing to a nutrient-related impairment as a source of nitrogen and phosphorus, costs are inestimable because there are generally many ways that their contribution to the impairment can be resolved, some of which may be revenue neutral. Costs for other remediation options are often offset through state and federal grants. Interested parties will generally evaluate all possible solutions when crafting restoration plans, and will attempt to select the most cost-effective solutions that are likely to lead to desired water quality improvements. Given the relatively small number of anticipated impairments and the voluntary nature of implementation measures, the proposed nutrient criteria are most likely to be revenue neutral. UPDATES AND CORRECTIONS: There are no costs associated with the remaining updates and corrections to Section R317-2-14.

R317. Environmental Quality, Water Quality.
R317-2. Standards of Quality for Waters of the State.
R317-2-10. Laboratory and Field Analyses.

10.1 Laboratory Analyses

All laboratory examinations of samples collected to determine compliance with these regulations shall be performed in accordance with standard procedures as approved by the Director by the Utah Office of State Health Laboratory, or by a laboratory certified by the Utah Department of Health.

10.2 Field Analyses

All field analyses to determine compliance with these rules shall be conducted in accordance with standard procedures specified by the Utah Division of Water Quality or with methods approved by the Director.

R317-2-13. Classification of Waters of the State (see R317-2-6).

- ~~_____ a. Colorado River Drainage~~
- ~~_____ 13.1 Upper Colorado River Basin~~
- _____ 13.1 Upper Colorado River Basin
- _____ a. Colorado River Drainage

TABLE

Paria River and tributaries, from state line to headwaters	2B	3C	4
All tributaries to Lake Powell except as listed below:	2B	3B	4
Tributaries to Escalante River from confluence with Boulder Creek to headwaters, including Boulder Creek	2B	3A	4
Dirty Devil River and tributaries, from Lake Powell to Fremont River	2B	3C	4
Deer Creek and tributaries, from confluence with Boulder Creek to headwaters	2B	3A	4

Freemont River and tributaries from confluence with Muddy Creek to Capitol Reef National Park, except as listed below:	1C	2B	3C	4
Pleasant Creek and tributaries, from confluence with Fremont River to East boundary of Capitol Reef National Park		2B	3C	4
Pleasant Creek and tributaries, from East boundary of Capitol Reef National Park to headwaters	1C	2B	3A	
Fremont River and tributaries, through Capitol Reef National Park to headwaters	1C	2A	3A	4
Muddy Creek and tributaries, from Confluence with Fremont River to Highway U-10 crossing, except as listed below		2B	3C	4
Muddy Creek from confluence with Fremont River to confluence with Ivie Creek		2B	3C	4*
Muddy Creek and tributaries from the confluence with Ivie Creek to U-10		2B	3C	4*
Ivie Creek and its tributaries from the confluence with Muddy Creek to the confluence with Quitchapah Creek		2B	3C	4*
Ivie Creek and its tributaries from the confluence with Quitchapah Creek to U-10, except as listed below:		2B	3C	4*
Quitchapah Creek from the confluence with Ivie Creek to U-10		2B	3C	4*
Quitchapah Creek and tributaries, from Highway U-10 crossing to headwaters		2B	3A	4
Ivie Creek and tributaries, from Highway U-10 to headwaters		2B	3A	4
Muddy Creek and tributaries, from Highway U-10 crossing to headwaters	1C	2B	3A	4
San Juan River and tributaries from Lake Powell to state line except as listed below:	1C	2A	3B	4
Johnson Creek and tributaries, from confluence with Recapture Creek to headwaters	1C	2B	3A	4
Verdure Creek and tributaries, from Highway US-191 crossing to headwaters		2B	3A	4
North Creek and tributaries, from confluence with Montezuma Creek to headwaters	1C	2B	3A	4
South Creek and tributaries, from confluence with Montezuma Creek to headwaters	1C	2B	3A	4

Spring Creek and tributaries, from confluence with Vega Creek to headwaters		2B	3A	4	Box Elder Creek from confluence with Black Slough to Brigham City Reservoir (Mayor's Pond)	2B	3C	4
Montezuma Creek and tributaries, from U.S. Highway 191 to headwaters	1C	2B	3A	4	Box Elder Creek, from Brigham City Reservoir (Mayor's Pond) to headwaters	2B	3A	4
Colorado River and tributaries, from Lake Powell to state line except as listed below:	1C	2A	3B	4	Salt Creek from confluence with Bear River to Crystal Hot Springs	2B	3B	3D
Indian Creek and tributaries, through Newspaper Rock State Park to headwaters	1C	2B	3A	4	Malad River and tributaries, from confluence with Bear River to state line	2B	3C	
Kane Canyon Creek and tributaries, from confluence with Colorado River to headwaters		2B	3C	4	Little Bear River and tributaries, from Cutler Reservoir to headwaters, except as listed below:	2B	3A	3D 4
Mill Creek and tributaries, from confluence with Colorado River to headwaters	1C	2A	3A	4	South Fork Spring Creek from confluence with Pelican Pond Slough Stream to U.S. Highway 89	2B	3A	3D 4*
Castle Creek from confluence with the Colorado River to Seventh Day Adventist Diversion	1C	2A	3B	4*	Logan River and tributaries, from Cutler Reservoir to headwaters	2B	3A	3D 4
Onion Creek from the confluence with Colorado River to road crossing above Stinking Springs	1C	2A	3B	4*	Blacksmith Fork and tributaries, from confluence with Logan River to headwaters, <u>except as listed below</u>	2B	3A	4
Dolores River and tributaries, from confluence with Colorado River to state line		2B	3C	4	<u>Sheep Creek and tributaries from Confluence with Blacksmith Fork River to headwaters</u>	1C	2B	3A 4
Roc Creek and tributaries, from confluence with Dolores River to headwaters		2B	3A	4	Newton Creek and tributaries, from Cutler Reservoir to Newton Reservoir	2B	3A	4
LaSal Creek and tributaries from state line to headwaters		2B	3A	4	Clarkston Creek and tributaries, from Newton Reservoir to headwaters	2B	3A	4
Lion Canyon Creek and tributaries, from state line to headwaters		2B	3A	4	Birch Creek and tributaries, from confluence with Clarkston Creek to headwaters	2B	3A	4
Little Dolores River and tributaries, from confluence with Colorado River to state line		2B	3C	4	Summit Creek and tributaries, from confluence with Bear River to headwaters	2B	3A	4
Bitter Creek and tributaries, from confluence with Colorado River to headwaters		2B	3C	4	Cub River and tributaries, from confluence with Bear River to state line, except as listed below:	2B	3B	4

(*) Site-specific criteria are associated with this use.

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13.3 Bear River Basin
a. Bear River Drainage

TABLE

Bear River and tributaries, from Great Salt Lake to Utah-Idaho border, except as listed below:	2B	3B	3D	4	All tributaries to Bear Lake from Bear Lake to headwaters, except as listed below	2B	3A	4
Perry Canyon Creek from U.S. Forest boundary to headwaters	2B	3A		4	Swan Springs tributary to Swan Creek	1C	2B	3A
					Bear River and tributaries in Rich County	2B	3A	4
					Bear River and tributaries, from Utah-Wyoming state line to headwaters (Summit County)	2B	3A	4

Mill Creek and tributaries, from state line to headwaters (Summit County) 2B 3A 4

(*) Site-specific criteria are associated with this use.

13.4 Weber River Basin
a. Weber River Drainage

TABLE

Willard Creek, from Willard Bay Reservoir to headwaters	2B 3A	4
Weber River, from Great Salt Lake to Slaterville diversion, except as listed below:	2B	3C 3D 4
Four Mile Creek from Interstate 15 to headwaters	2B 3A	4
Weber River and tributaries, from Slaterville diversion to Stoddard diversion, except as listed below	2B 3A	4
Ogden River and tributaries, from confluence with Weber River to Pineview Dam, except as listed below:	2A 3A	4
Wheeler Creek from confluence with Ogden River to headwaters	1C 2B 3A	4
All tributaries to Pineview Reservoir	1C 2B 3A	4
Strongs Canyon Creek and tributaries, from U.S. National Forest boundary to headwaters	1C 2B 3A	4
Burch Creek and tributaries, from Harrison Boulevard in Ogden to Headwaters	1C 2B 3A	4
Spring Creek and tributaries, from U.S. National Forest boundary to headwaters	1C 2B 3A	4
Weber River and tributaries, from Stoddard diversion to headwaters, except as listed below	1C 2B 3A	4
<u>Silver Creek and tributaries, from the confluence with Weber River to below the confluence with Tollgate Creek</u>	1C 2B 3A	4
<u>Silver Creek and tributaries, from confluence with Tollgate Creek to headwaters</u>	1C 2B 3A	4*

Jordan River, from North Temple Street in Salt Lake City to confluence with Little Cottonwood Creek 2B 3B* 4

Surplus Canal from Great Salt Lake to the diversion from the Jordan River 2B 3B* 3D 4

Jordan River from confluence with Little Cottonwood Creek to Narrows Diversion 2B 3A 4

Jordan River, from Narrows Diversion to Utah Lake 1C 2B 3B 4

City Creek, from Memory Park in Salt Lake City to City Creek Water Treatment Plant 2B 3A

City Creek, from City Creek Water Treatment Plant to headwaters 1C 2B 3A

Red Butte Creek and tributaries, from Liberty Park pond inlet to Red Butte Reservoir 2B 3A 4

Red Butte Creek and tributaries, from Red Butte Reservoir to headwaters 1C 2B 3A

Emigration Creek and tributaries, from 1100 East in Salt Lake City to headwaters 2B 3A 4

Parleys Creek and tributaries, from 1300 East in Salt Lake City to Mountain Dell Reservoir 1C 2B 3A

Parleys Creek and tributaries, from Mountain Dell Reservoir to headwaters 1C 2B 3A

Mill Creek (Salt Lake County) from confluence with Jordan River to Interstate 15 2B 3C* 4

Mill Creek (Salt Lake County) and tributaries, from Interstate 15 to headwaters 2B 3A 4

Big Cottonwood Creek and tributaries, from confluence with Jordan River to Big Cottonwood Water Treatment Plant 2B 3A 4

Big Cottonwood Creek and tributaries from Big Cottonwood Water Treatment Plant to headwaters 1C 2B 3A

Deaf Smith Canyon Creek and tributaries 1C 2B 3A 4

Little Cottonwood Creek and tributaries, from confluence with Jordan River to Metropolitan Water Treatment Plant 2B 3A 4

Little Cottonwood Creek and tributaries, from Metropolitan Water Treatment Plant to headwaters 1C 2B 3A

Bells Canyon Creek and tributaries, from Lower Bells Canyon Reservoir to headwaters 1C 2B 3A

Little Willow Creek and tributaries, from Draper Irrigation Company diversion to headwaters 1C 2B 3A

13.5 Utah Lake-Jordan River Basin
a. Jordan River Drainage

TABLE

Jordan River, from Farmington Bay to North Temple Street, Salt Lake City 2B 3B* 3D 4

State Canal, from Farmington Bay to confluence with the Jordan River 2B 3B* 3D 4

Big Willow Creek and tributaries, from Draper Irrigation Company diversion to headwaters	1C	2B	3A	
South Fork of Dry Creek and tributaries, from Draper Irrigation Company diversion to headwaters	1C	2B	3A	
All permanent streams on east slope of Oquirrh Mountains (Coon, Barneys, Bingham, Butterfield, and Rose Creeks)		2B		3D 4
Kersey Creek from confluence of C-7 Ditch to headwaters		2B		3D

(*) Site-specific criteria are associated with this use.

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R317-2-14. Numeric Criteria.

TABLE 2.14.1
NUMERIC CRITERIA FOR DOMESTIC, RECREATION, AND AGRICULTURAL USES

Parameter	Domestic Source 1C(1)	Recreation and Aesthetics 2A 2B	Agri- culture 4
BACTERIOLOGICAL			
(30-DAY GEOMETRIC MEAN) (NO.)/100 ML) (7)			
E. coli	206	126 206	
MAXIMUM			
(NO.)/100 ML) (7)			
E. coli	668	409 668	
PHYSICAL			
pH (RANGE)	6.5-9.0	6.5-9.0	6.5-9.0
Turbidity Increase (NTU)		10 10	
METALS (DISSOLVED, MAXIMUM MG/L) (2)			
Arsenic	0.01		0.1
Barium	1.0		
Beryllium	<0.004		
Cadmium	0.01		0.01
Chromium	0.05		0.10
Copper			0.2
Lead	0.015		0.1
Mercury	0.002		
Selenium	0.05		0.05
Silver	0.05		
INORGANICS (MAXIMUM MG/L)			
Bromate	0.01		
Boron			0.75
Chlorite	<1.0		
Fluoride	4.0		
Nitrates as N	10		
Total Dissolved Solids (4)			1200
RADIOLOGICAL			
(MAXIMUM pCi/L)			
Gross Alpha	15		15
Gross Beta (Combined)	4 mrem/yr 5	Radium 226, 228	

Strontium 90	8
Tritium	20000
Uranium	30
ORGANICS (MAXIMUM UG/L)	
2,4-D 94-75-7	70
2,4,5-TP 93-72-1	10
Alachlor 15972-60-8	2
Atrazine 1912-24-9	3
Carbofuran 1563-66-2	40
Dichloroethylene (cis-1,2) 156-59-2	70
Dalapon 75-99-0	200
Di(2ethylhexyl)adipate 103-23-1	400
Dibromochloropropane 96-12-8	0.2
Dinoseb 88-85-7	7
Diquat 85-00-7	20
Endothall 145-73-3	100
Ethylene Dibromide 106-93-4	0.05
Glyphosate 1071-83-6	700
Xylenes 1330-20-7	10,000

POLLUTION INDICATORS (5)			
BOD (MG/L)	5	5	5
Nitrate as N (MG/L)	4	4	
Total Phosphorus as P (MG/L) (6)	0.05	0.05	

- FOOTNOTES:
 (1) See also numeric criteria for water and organism in Table 2.14.6.
 (2) The dissolved metals method involves filtration of the sample in the field, acidification of the sample in the field, no digestion process in the laboratory, and analysis by approved laboratory methods for the required detection levels.
 (3) Reserved
 (4) SITE SPECIFIC STANDARDS FOR TOTAL DISSOLVED SOLIDS (TDS)

Blue Creek and tributaries, Box Elder County, from Bear River Bay, Great Salt Lake to Blue Creek Reservoir: March through October daily maximum 4,900 mg/l and an average of 3,800 mg/l; November through February daily maximum 6,300 mg/l and an average of 4,700 mg/l. Assessments will be based on TDS concentrations measured at the location of STORET 4960740.

Blue Creek Reservoir and tributaries, Box Elder County, daily maximum 2,100 mg/l;

Castle Creek from confluence with the Colorado River to Seventh Day Adventist Diversion: 1,800 mg/l;

Cottonwood Creek from the confluence with Huntington Creek to Highway U-57: 3,500 mg/l;

Ferron Creek from the confluence with San Rafael River to Highway U-10: 3,500 mg/l;

Huntington Creek and tributaries from the confluence with Cottonwood Creek to Highway U-10: 4,800 mg/l;

Ivie Creek and its tributaries from the confluence with Muddy Creek to the confluence with Quitchupah Creek: 3,800 mg/l provided that total sulfate not exceed 2,000 mg/l to protect the livestock watering agricultural existing use;

Ivie Creek and its tributaries from the confluence with Quitchupah Creek to Highway U-10: 2,600 mg/l;

Lost Creek from the confluence with Sevier River to U.S. National Forest boundary: 4,600 mg/l;

Muddy Creek and tributaries from the confluence with Ivie Creek to Highway U-10: 2,600 mg/l;

Muddy Creek from confluence with Fremont River to confluence with Ivie Creek: 5,800 mg/l;

North Creek from the confluence with Virgin River to headwaters: 2,035 mg/l;

Onion Creek from the confluence with Colorado River to road crossing above Stinking Springs: 3000 mg/l;

Brine Creek-Petersen Creek, from the confluence with the Sevier River to Highway U-119 Crossing: 9,700 mg/l;

Price River and tributaries from confluence with Green River to confluence with Soldier Creek: 3,000 mg/l;

Price River and tributaries from the confluence with Soldier Creek to Carbon Canal Diversion: 1,700 mg/l;

Quitcupah Creek and tributaries from the confluence with Ivie Creek to Highway U-10: 3,800 mg/l provided that total sulfate not exceed 2,000 mg/l to protect the livestock watering agricultural existing use;

Rock Canyon Creek from the confluence with Cottonwood Creek to headwaters: 3,500 mg/l;

San Pitch River from below Gunnison Reservoir to the Sevier River: 2,400 mg/l;

San Rafael River from the confluence with the Green River to Buckhorn Crossing: 4,100 mg/l;

San Rafael River from the Buckhorn Crossing to the confluence with Huntington Creek and Cottonwood Creek: 3,500 mg/l;

Sevier River between Gunnison Bend Reservoir and DMAD Reservoir: 1,725 mg/l;

Sevier River from Gunnison Bend Reservoir to Crafts Lake: 3,370 mg/l;

Silver Creek and tributaries, Summit County, from confluence with Tollgate Creek to headwaters: maximum 1,900 mg/L.

South Fork Spring Creek from confluence with Pelican Pond Slough Stream to U.S. Highway 89 1,450 mg/l (Apr.-Sept.)
1,950 mg/l (Oct.-March)

Virgin River from the Utah/Arizona border to Pah Tempe Springs: 2,360 mg/l

(5) Investigations should be conducted to develop more information where these pollution indicator levels are exceeded. These indicators are superseded by numeric criteria in waters where promulgated.

(6) Total Phosphorus as P (mg/l) indicator for lakes and reservoirs shall be 0.025.

(7) Where the criteria are exceeded and there is a reasonable basis for concluding that the indicator bacteria E. coli are primarily from natural sources (wildlife), e.g., in National Wildlife Refuges and State Waterfowl Management Areas, the criteria may be considered attained provided the density attributable to non-wildlife sources is less than the criteria. Exceedences of E. coli from nonhuman nonpoint sources will generally be addressed through appropriate Federal, State, and local nonpoint source programs.

Measurement of E. coli using the "Quanti-Tray 2000" procedure is approved as a field analysis. Other EPA approved methods may also be used.

For water quality assessment purposes, up to 10% of representative samples may exceed the 668 per 100 ml criterion (for 1C and 2B waters) and 409 per 100 ml (for 2A waters). For small datasets, where exceedences of these criteria are observed, follow-up ambient monitoring should be conducted to better characterize water quality.

TABLE 2.14.2
NUMERIC CRITERIA FOR AQUATIC WILDLIFE(8)

Parameter	Aquatic Wildlife				5
	3A	3B	3C	3D	
PHYSICAL					
Total Dissolved Gases	(1)	(1)			
Minimum Dissolved Oxygen (MG/L) (2) (2a)					
30 Day Average	6.5	5.5	5.0	5.0	
7 Day Average	9.5/5.0	6.0/4.0			
Minimum	8.0/4.0	5.0/3.0	3.0	3.0	
Max. Temperature(C) (3)	20	27	27		
Max. Temperature Change (C) (3)	2	4	4		
pH (Range) (2a)	6.5-9.0	6.5-9.0	6.5-9.0	6.5-9.0	
Turbidity Increase (NTU)	10	10	15	15	
METALS (4) (DISSOLVED, UG/L) (5)					
Aluminum					
4 Day Average (6)	87	87	87	87	
1 Hour Average	750	750	750	750	
Arsenic (Trivalent)					
4 Day Average	150	150	150	150	
1 Hour Average	340	340	340	340	
Cadmium (7)					
4 Day Average	0.72	0.72	0.72	0.72	
1 Hour Average	1.8	1.8	1.8	1.8	
Chromium (Hexavalent)					
4 Day Average	11	11	11	11	
1 Hour Average	16	16	16	16	
Chromium (Trivalent) (7)					
4 Day Average	74	74	74	74	
1 Hour Average	570	570	570	570	
Copper (7)					
4 Day Average	9	9	9	9	
1 Hour Average	13	13	13	13	
Cyanide (Free)					
4 Day Average	5.2	5.2	5.2		
1 Hour Average	22	22	22	22	
Iron (Maximum)	1000	1000	1000	1000	
Lead (7)					
4 Day Average	2.5	2.5	2.5	2.5	
1 Hour Average	65	65	65	65	
Mercury					
4 Day Average	0.012	0.012	0.012	0.012	
Nickel (7)					

4 Day Average	52	52	52	52
1 Hour Average	468	468	468	468
Selenium				
4 Day Average	4.6	4.6	4.6	4.6
1 Hour Average	18.4	18.4	18.4	18.4
Selenium (14) Gilbert Bay (Class 5A) Great Salt Lake Geometric Mean over Nesting Season (mg/kg dry wt)				
				12.5
Silver				
1 Hour Average (7)	3.2	3.2	3.2	3.2
Tributyltin				
4 Day Average	0.072	0.072	0.072	0.072
1 Hour Average	0.46	0.46	0.46	0.46
Zinc (7)				
4 Day Average	120	120	120	120
1 Hour Average	120	120	120	120
INORGANICS (MG/L) (4)				
Total Ammonia as N (9)				
30 Day Average	(9a)	(9a)	(9a)	(9a)
1 Hour Average	(9b)	(9b)	(9b)	(9b)
Chlorine (Total Residual)				
4 Day Average	0.011	0.011	0.011	0.011
1 Hour Average	0.019	0.019	0.019	0.019
Hydrogen Sulfide (Undissociated, Max. UG/L)				
	2.0	2.0	2.0	2.0
Phenol (Maximum)				
	0.01	0.01	0.01	0.01
RADIOLOGICAL (MAXIMUM pCi/L)				
ORGANICS (UG/L) (4)				
Acrolein				
4 Day Average	3.0	3.0	3.0	3.0
1 Hour Average	3.0	3.0	3.0	3.0
Aldrin				
1 Hour Average	1.5	1.5	1.5	1.5
Carbaryl				
4 Day Average	2.1	2.1	2.1	2.1
1 Hour Average	2.1	2.1	2.1	2.1
Chlordane				
4 Day Average	0.0043	0.0043	0.0043	0.0043
1 Hour Average	1.2	1.2	1.2	1.2
Chlorpyrifos				
4 Day Average	0.041	0.041	0.041	0.041
1 Hour Average	0.083	0.083	0.083	0.083
4,4' -DDT				
4 Day Average	0.0010	0.0010	0.0010	0.0010
1 Hour Average	0.55	0.55	0.55	0.55
Diazinon				
4 Day Average	0.17	0.17	0.17	0.17
1 Hour Average	0.17	0.17	0.17	0.17
Dieldrin				
4 Day Average	0.056	0.056	0.056	0.056
1 Hour Average	0.24	0.24	0.24	0.24

Alpha-Endosulfan				
4 Day Average	0.056	0.056	0.056	0.056
1 Hour Average	0.11	0.11	0.11	0.11
beta-Endosulfan				
4 Day Average	0.056	0.056	0.056	0.056
1 Day Average	0.11	0.11	0.11	0.11
Endrin				
4 Day Average	0.036	0.036	0.036	0.036
1 Hour Average	0.086	0.086	0.086	0.086
Heptachlor				
4 Day Average	0.0038	0.0038	0.0038	0.0038
1 Hour Average	0.26	0.26	0.26	0.26
Heptachlor epoxide				
4 Day Average	0.0038	0.0038	0.0038	0.0038
1 Hour Average	0.26	0.26	0.26	0.26
Hexachlorocyclohexane (Lindane)				
4 Day Average	0.08	0.08	0.08	0.08
1 Hour Average	1.0	1.0	1.0	1.0
Methoxychlor (Maximum)				
	0.03	0.03	0.03	0.03
Mirex (Maximum)				
	0.001	0.001	0.001	0.001
Nonylphenol				
4 Day Average	6.6	6.6	6.6	6.6
1 Hour Average	28.0	28.0	28.0	28.0
Parathion				
4 Day Average	0.013	0.013	0.013	0.013
1 Hour Average	0.066	0.066	0.066	0.066
PCBs				
4 Day Average	0.014	0.014	0.014	0.014
Pentachlorophenol (11)				
4 Day Average	15	15	15	15
1 Hour Average	19	19	19	19
Toxaphene				
4 Day Average	0.0002	0.0002	0.0002	0.0002
1 Hour Average	0.73	0.73	0.73	0.73
POLLUTION INDICATORS (10)				
Gross Alpha (pCi/L)	15	15	15	15
Gross Beta (pCi/L)	50	50	50	50
BOD (MG/L)	5	5	5	5
Nitrate as N (MG/L)	4	4	4	4
Total Phosphorus as P (MG/L) (12)	0.05	0.05		

FOOTNOTES:

- (1) Not to exceed 110% of saturation.
- (2) These limits are not applicable to lower water levels in deep impoundments. First number in column is for when early life stages are present, second number is for when all other life stages present.
- (2a) These criteria are not applicable to Great Salt Lake impounded wetlands. Surface water in these wetlands shall be protected from changes in pH and dissolved oxygen that create significant adverse impacts to the existing beneficial uses. To ensure protection of uses, the Director shall develop reasonable protocols and guidelines that quantify the physical, chemical, and biological integrity of these waters. These protocols and guidelines will include input from local governments, the regulated community, and the general public. The Director will inform the Water Quality Board of any protocols or guidelines that are developed.
- (3) Site Specific Standards for Temperature
Kens Lake: From June 1st - September 20th, 27 degrees C.

(4) Where criteria are listed as 4-day average and 1-hour average concentrations, these concentrations should not be exceeded more often than once every three years on the average.

(5) The dissolved metals method involves filtration of the sample in the field, acidification of the sample in the field, no digestion process in the laboratory, and analysis by EPA approved laboratory methods for the required detection levels.

(6) The criterion for aluminum will be implemented as follows:

Where the pH is equal to or greater than 7.0 and the hardness is equal to or greater than 50 ppm as CaCO3 in the receiving water after mixing, the 87 ug/l chronic criterion (expressed as total recoverable) will not apply, and aluminum will be regulated based on compliance with the 750 ug/l acute aluminum criterion (expressed as total recoverable).

(7) Hardness dependent criteria. 100 mg/l used. Conversion factors for ratio of total recoverable metals to dissolved metals must also be applied. In waters with a hardness greater than 400 mg/l as CaCO3, calculations will assume a hardness of 400 mg/l as CaCO3. See Table 2.14.3 for complete equations for hardness and conversion factors.

(8) See also numeric criteria for organism only in Table 2.14.6.

(9) The following equations are used to calculate Ammonia criteria concentrations:

(9a) The thirty-day average concentration of total ammonia nitrogen (in mg/l as N) does not exceed, more than once every three years on the average, the chronic criterion calculated using the following equations.

Fish Early Life Stages are Present:

$$\text{mg/l as N (Chronic)} = ((0.0577/(1+10^{7.688-\text{pH}})) + (2.487/(1+10^{\text{pH}-7.688}))) * \text{MIN}(2.85, 1.45*10^{0.028*(25-\text{T})})$$

Fish Early Life Stages are Absent:

$$\text{mg/l as N (Chronic)} = ((0.0577/(1+10^{7.688-\text{pH}})) + (2.487/(1+10^{\text{pH}-7.688}))) * 1.45*10^{0.028*(25-\text{MAX}(1, \text{T}))}$$

Mill Creek (Salt Lake County) from confluence with Jordan River to Interstate 15, Jordan River from 900 South Street to confluence with Mill Creek, Surplus Canal from 900 South Street to diversion from the Jordan River, Fish Early Life Stages are Present:

$$\text{mg/l as N (Chronic)} = 0.9405 * ((0.0278/(1+10^{7.688-\text{pH}})) + ((1.1994/(1+10^{\text{pH}-7.688}))) * \text{MIN}(6.920, (7.547*10^{0.028*(20-\text{T})}))$$

Mill Creek (Salt Lake County) from confluence with Jordan River to Interstate 15, Jordan River from 900 South Street to confluence with Mill Creek, Surplus Canal from 900 South Street to diversion from the Jordan River, Fish Early Life Stages are Absent:

$$\text{mg/L as N (chronic)} = 0.9405 * (((0.0278/(1+10^{7.688-\text{pH}})) + (1.1994/(1+10^{\text{pH}-7.688}))) * (7.547*10^{0.028*(20-\text{MAX}(1, \text{T}))})$$

(9b) The one-hour average concentration of total ammonia nitrogen (in mg/l as N) does not exceed, more than once every three years on the average the acute criterion calculated using the following equations.

Class 3A:

$$\text{mg/l as N (Acute)} = (0.275/(1+10^{7.204-\text{pH}})) + (39.0/1+10^{\text{pH}-7.204})$$

Class 3B, 3C, 3D:

$$\text{mg/l as N (Acute)} = 0.411/(1+10^{7.204-\text{pH}}) + (58.4/(1+10^{\text{pH}-7.204})$$

Mill Creek (Salt Lake County) from confluence with Jordan River to Interstate 15, Jordan River from 900 South Street to confluence with Mill Creek, Surplus Canal from 900 South Street to diversion from the Jordan River:

$$\text{mg/l as N (Acute)} = 0.729 * (((0.0114/(1+10^{7.204-\text{pH}})) + (1.6181/(1+10^{\text{pH}-7.204}))) * \text{MIN}(51.93, (62.15*10^{0.036*(20-\text{T})}))$$

In addition, the highest four-day average within the 30-day period should not exceed 2.5 times the chronic criterion. The "Fish Early Life Stages are Present" 30-day average total ammonia criterion will be applied by default unless it is determined by the Director, on a site-specific basis, that it is appropriate to apply the "Fish Early Life Stages are Absent" 30-day average criterion for all or some portion of the year. At a minimum, the "Fish Early Life Stages are Present" criterion will apply from the beginning of spawning through the end of the early life stages. Early life stages

include the pre-hatch embryonic stage, the post-hatch free embryo or yolk-sac fry stage, and the larval stage for the species of fish expected to occur at the site. The Director will consult with the Division of Wildlife Resources in making such determinations. The Division will maintain information regarding the waterbodies and time periods where application of the "Early Life Stages are Absent" criterion is determined to be appropriate.

(10) Investigation should be conducted to develop more information where these levels are exceeded.

(11) pH dependent criteria. pH 7.8 used in table. See Table 2.14.4 for equation.

(12) Total Phosphorus as P (mg/l) as a pollution indicator for lakes and reservoirs shall be 0.025. These indicators are superseded by numeric criteria in waters where promulgated.

(13) Reserved

(14) The selenium water quality standard of 12.5 (mg/kg dry weight) for Gilbert Bay is a tissue based standard using the complete egg/embryo of aquatic dependent birds using Gilbert Bay based upon a minimum of five samples over the nesting season. Assessment procedures are incorporated as a part of this standard as follows:

Egg Concentration Triggers: DWQ Responses

Below 5.0 mg/kg: Routine monitoring with sufficient intensity to determine if selenium concentrations within the Great Salt Lake ecosystem are increasing.

5.0 mg/kg: Increased monitoring to address data gaps, loadings, and areas of uncertainty identified from initial Great Salt Lake selenium studies.

6.4 mg/kg: Initiation of a Level II Antidegradation review by the State for all discharge permit renewals or new discharge permits to Great Salt Lake. The Level II Antidegradation review may include an analysis of loading reductions.

9.8 mg/kg: Initiation of preliminary TMDL studies to evaluate selenium loading sources.

12.5 mg/kg and above: Declare impairment. Formalize and implement TMDL.

Antidegradation Level II Review procedures associated with this standard are referenced at R317-2-3.5.C.

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TABLE 2.14.6
LIST OF HUMAN HEALTH CRITERIA (CONSUMPTION)

Chemical Parameter and CAS #	Water and Organism (ug/L)	Organism Only (ug/L)
	Class 1C	Class 3A,3B,3C,3D
Antimony 7440-36-0	5.6	640
Arsenic 7440-38-2	A	A
Beryllium 7440-41-7	C	C
Chromium III 16065-83-1	C	C
Chromium VI 18540-29-9	C	C
Copper 7440-50-8	1,300	
Mercury 7439-97-6	A	A
Nickel 7440-02-0	610	4,600
Selenium 7782-49-2	170	4,200
Thallium 7440-28-0	0.24	0.47
Zinc 7440-66-6	7,400	26,000
Free Cyanide 57-12-5	[140]4	[140]400
Asbestos 1332-21-4	7 million Fibers/L	

2,3,7,8-TCDD Dioxin 1746-01-6	5.0 E -9 B	5.1 E-9 B	Chrysene 218-01-9	[0-0038]0.12 B	[0-018]0.13 B
Acrolein 107-02-8	3[-0]	400	Dibenzo[a,h]Anthracene 53-70-3	[0-0038]0.00012 B	
Acrylonitrile 107-13-1	0.061	7.0	[0-018]0.00013 B		
Atrazine 1912-24-9	3.0		1,2-Dichlorobenzene 95-50-1	1,000	3,000
]Benzene 71-43-2	2.1 B	51 B	1,3-Dichlorobenzene 541-73-1	7	10
Bromoform 75-25-2	7.0 B	120 B	1,4-Dichlorobenzene 106-46-7	300	900
Carbon Tetrachloride 56-23-5	0.4 B	5 B	3,3-Dichlorobenzidine		
Chlorobenzene [57-12-5]108-90-7	100 MCL	[1,600]800	91-94-1	[0-04]0.049 B	0.15 B
Chlorodibromomethane 124-48-1	[0-40]0.80 B	[13]21 B	Diethyl Phthalate 84[64]-66-2	600	600
Chloroform 67-66-3	[5-7]60 B	[470]2,000 B	Dimethyl Phthalate 131-11-3	2,000	2,000
Dalapon 75-99-0	200		Di-n-Butyl Phthalate 84-74-2	20	30
]Dichlorobromomethane 75-27-4	[0-55]0.95 B	[17]27 B	2,4-Dinitrotoluene 121-14-2	[0-49]0.049 B	1.7 B
1,2-Dichloroethane 107-06-2	9.9 B	[650]2,000 B	Dinitrophenols 25550-58-7	10	1,000
1,1-Dichloroethylene 75-35-4	300 MCL	20,000	1,2-Diphenylhydrazine		
Dichloroethylene (cis-1,2)	156-59-2		122-66-7	[0-036]0.03 B	[0-20]0.2 B
Diquat 231-36-7	20		Fluoranthene 206-44-0	20	20
]1,2-Dichloropropane 78-87-5	0.90 B	31 B	Fluorene 86-73-7	50	70
1,3-Dichloropropene 542-75-6	0.27	12	Hexachlorobenzene 118-74-1	0.000079 B	0.000079 B
Ethylbenzene 100-41-4	68	130	Hexachlorobutadiene 87-68-3	0.01 B	0.01 B
Glyphosate 1071-83-6	700		Hexachloroethane 67-72-1	[1-4]0.1 B	[3-3]0.1 B
]Methyl Bromide 74-83-9	[47100]100	10,000	Hexachlorocyclopentadiene		
Methylene Chloride 75-09-2	20 B	1,000 B	77-47-4	4	4
1,1,2,2-Tetrachloroethane			Ieno 1,2,3-cdPyrene		
79-34-5	0.2 B	3 B	193-39-5	0.0012 B	0.0013 B
Tetrachloroethylene 127-18-4	10 B	29 B	Isophorone 78-59-1	34 B	1,800 B
Toluene 108-88-3	57	520	Nitrobenzene 98-95-3	10	600
1,2 -Trans-Dichloroethylene			N-Nitrosodiethylamine 55-18-5	0.0008 B	1.24 B
156-60-5	100 MCL	4,000	N-Nitrosodimethylamine		
1,1,1-Trichloroethane 71-55-6	10,000 MCL	200,000	62-75-9	0.00069 B	3.0 B
1,1,2-Trichloroethane 79-00-5	0.55 B	8.9 B	N-Nitrosodi-n-Propylamine		
Trichloroethylene 79-01-6	0.6 B	7 B	621-64-7	0.0050 B	0.51 B
Vinyl Chloride 75-01-4	0.022	1.6	N-Nitrosodiphenylamine		
Xylenes 1330-20-7	10,000		86-30-6	3.3 B	6.0 B
]2-Chlorophenol 95-57-8	30	800	[N-Nitrosopyrrolidine]N-Nitrosopyrrolidine 930-55-2	0.016 B	
2,4-Dichlorophenol 120-83-2	10	60	34 B		
2,4-Dimethylphenol 105-67-9	100	3,000	Pentachlorobenzene 608-93-5	0.1	0.1
2-Methyl-4,6-Dinitrophenol			Pyrene 129-00-0	20	30
534-52-1	2	30	1,2,4-Trichlorobenzene		
2,4-Dinitrophenol 51-28-5	10	300	120-82-1	[0-07]0.071 MCL	0.076
3-Methyl-4-Chlorophenol			Aldrin 309-00-2	0.0000077 B	0.0000077 B
59-50-7	500	2,000	alpha-BHC 319-84-6	0.00036 B	[0-000050]0.00039 B
Pentachlorophenol 87-86-5	0.03 B	0.04 B	beta-BHC 319-85-7	[0-008]0.0080 B	0.014 B
Phenol 108-95-2	4,000	300,000	gamma-BHC (Lindane) 58-89-9	4.2 MCL	4.4
2,4,5-Trichlorophenol 95-95-4	300	600	Hexachlorocyclohexane (HCH)		
2,4,6-Trichlorophenol 88-06-2	1.5 B	2.8 B	Technical 608-73-1	0.0066	0.010
Acenaphthene 83-32-9	70	90	Chlordane 57-74-9	[0-00030]0.00031 B	0.00032 B
Anthracene 120-12-7	300	400	4,4-DDT 50-29-3	[0-000032]0.000030 B	0.000030
Benzidine 92-87-5	0.00014 B	0.011 B	B		
Benzo[a]Anthracene 56-55-3	0.0012 B	0.0013 B	4,4-DDE 72-55-9	0.000018 B	0.000018 B
Benzo[a]Pyrene 50-32-8	0.00012 B	0.00013 B	4,4-DDD 72-54-8	0.00012 B	0.00012 B
Benzobfluoranthene 205-99-2	0.0012 B	[0-018]0.0013 B	Dieldrin 60-57-1	0.0000012 B	0.0000012 B
Benzokfluoranthene 207-08-9	0.012 B	0.013 B	alpha-Endosulfan 959-98-8	20	30
Bis2-Chloromethylether			beta-Endosulfan 33213-65-9	20	40
542-88-1	0.00015	0.017	Endosulfan Sulfate 1031-07-8	20	40
Bis2-Chloromethylethylether			Endrin 72-20-8	0.03	[0-060]0.03
108-60-1	200 B	4000	Endrin Aldehyde 7421-93-4	1	1
Bis2-ChloroethylEther			Heptachlor 76-44-8	0.0000059 B	0.0000059 B
111-44-4[0]	0.030 B	2.2 B	Heptachlor Epoxide 1024-57-3	0.000032 B	0.000032 B
Bis2-Chloromethylether	0.00015	0.017	Methoxychlor 72-43-5	0.02 [MCL]	0.02
Bis2-Chloromethylethylether	200 B	4000	Polychlorinated Biphenyls		
108-60-1			(PCBs) 1336-36-3	0.000064 B,D	0.000064 B,D
]Bis2-ChloroisopropylEther			Toxaphene 8001-35-2	[0-0007]0.00070 B	0.00071 B
39638-32-9	1,400	65,000	[Footnotes] FOOTNOTES:		
Bis2-EthylhexylPhthalate			A. See Table 2.14.2		
117-81-7	0.32 B	[0-037]0.37 B	B. Based on carcinogenicity of 10-6 risk.		
Butylbenzyl Phthalate			C. EPA has not calculated a human criterion for this		
85-68-7	[0-1]0.10	[0-1]0.10	contaminant. However, permit authorities should address		
2-Chloronaphthalene 91-58-7	800	1,000	this contaminant in NPDES permit actions using the State's existing		
			narrative criteria for toxics		
			D. This standard applies to total PCBs.		

TABLE 2.14.7
NUTRIENT CRITERIA FOR CLASSES 2A and 2B (1)

Nutrient Parameters	Criteria
Periphyton	125 mg/m ² chlorophyll-a or 49 g/m ² ash free dry mass

FOOTNOTES:

(1)Applicable to all Category 1 and Category 2 streams with the following exceptions: Quitcupah Creek through Convulsion Canyon from U. S. Forest Service boundary upstream to East Spring Canyon headwaters; North Fork of Quitcupah Creek from the U. S. Forest Service boundary upstream to its confluence with South Fork; Huntington Creek from U. S. Forest Service boundary to confluence with Crandall Creek and Crandall Creek to headwaters.

TABLE 2.14.8
NUTRIENT CRITERIA FOR CLASSES 3A, 3B, 3C, and 3D(1)

Nutrient Parameters	Criteria(2)
Total Phosphorus	0.035 mg/L(3), and
Total Nitrogen	0.40 mg/L(3), or
Total Phosphorus	0.080 mg/L(3), and
Total Nitrogen	0.80 mg/L(3), and
Filamentous Algae	33% cover(4), or
Gross Primary Production	6 g O ₂ /m ² -day(5), or
Ecosystem Respiration	5 g O ₂ /m ² -day(5)

FOOTNOTES:

(1)Applicable to all Category 1 and Category 2 streams with the following exceptions: Quitcupah Creek through Convulsion Canyon from U. S. Forest Service boundary upstream to East Spring Canyon headwaters; North Fork of Quitcupah Creek from the U. S. Forest Service boundary upstream to its confluence with South Fork; Huntington Creek from U. S. Forest Service boundary to confluence with Crandall Creek and Crandall Creek to headwaters.

(2)For water quality assessments, Table 8, Decision Matrix That Will Be Used to Assess Support of Headwater Aquatic Life Uses for Nutrient-related Water Quality Problems, "Proposed Nutrient Criteria: Utah Headwater Streams", Utah Division of Water Quality, March, 2019 is incorporated by reference.

(3)Not to be exceeded seasonal average for the index period of algal growth through senescence.

(4)Not to be exceeded average based on at least 3 transects perpendicular to stream flow and spatially dispersed along a reach of at least 50 meters

(5) Not to be exceeded during the index period of algal growth through senescence.

KEY: water pollution, water quality standards
Date of Enactment or Last Substantive Amendment: ~~July 2, 2018~~ **2019**
Notice of Continuation: September 26, 2017[-1317,1329]
Authorizing, and Implemented or Interpreted Law: 19-5; FWPCA 33 USC 1251, 1311-1317, 1329

Health, Disease Control and
Prevention, Health Promotion
R384-203
Prescription Drug Database Access

NOTICE OF PROPOSED RULE
(Amendment)

DAR FILE NO.: 43562
FILED: 03/04/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is required in Subsection 58-37f-301(2)(f) and there have been amendments to this code since the rule was established. In addition, clarifications have been made to the application process.

SUMMARY OF THE RULE OR CHANGE: This rule is required in Subsection 58-37f-301(2)(f) and there have been amendments to this code since the rule was established. The code has changed from Subsection 58-37f-301(2)(f) to Subsection 58-37f-301(2)(e), the definition of "research facility" has expanded, and clarifications related to the application process are being made.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 58-37f-301(2)(e)

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** These rule changes are administrative and do not impact the current state budget.
- ◆ **LOCAL GOVERNMENTS:** These rule changes are administrative and do not impact local governments.
- ◆ **SMALL BUSINESSES:** These rule changes are administrative and do not impact small businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** These rule changes are administrative and do not impact other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs associated with these rule changes. These rule changes are administrative.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no fiscal impact to businesses because the changes are administrative rather than substantive.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

HEALTH
DISEASE CONTROL AND PREVENTION,
HEALTH PROMOTION
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY, UT 84116-3231
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Anna Fondario by phone at 801-538-6201, or by Internet E-mail at afondario@utah.gov or mail PO Box 142107, Salt Lake City, UT 84114-2107

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/01/2019

THIS RULE MAY BECOME EFFECTIVE ON: 05/08/2019

AUTHORIZED BY: Joseph Miner, MD, Executive Director

clarifications to the process between the Utah Department of Health and the Division of Occupational and Professional Licensing.

The executive director of the Utah Department of Health, Joseph Miner, MD, has reviewed and approved this fiscal analysis.

R384. Health, Disease Control and Prevention; Health Promotion. R384-203. Prescription Drug Database Access.

R384-203-1. Authority and Purpose.

This rule establishes procedures and application processes pursuant to Title 58-37f-301(2)(d) for Utah Department of Health Executive Director to allow access to the Prescription Drug database by a designated and assigned person to conduct scientific studies regarding the use or abuse of controlled substances, who is not an employee of the Department of Health.

R384-203-2. Definitions.

The following definitions apply to this rule:

- (1) "Department" means the Utah Department of Health.
- (2) "Director" means the Utah Department of Health Executive Director.
- (3) "Prescription Drug Database" means the Utah Controlled Substance Database.
- (4) "Research facility" means a research facility associated with a university or college in the state accredited by [the Northwest Commission on Colleges and Universities]one or more regional or national accrediting agencies recognized by the United States Department of Education.

(5) "Institutional Review Board" means a board that is approved for human subject research by the United States Department of Health and Human Services.

(6) "Designee" means a person designated and assigned by the Director to have access to data from the Prescription Drug database in order to conduct scientific studies regarding the use or abuse of controlled substances, who is not an employee of the Department.

(7) "Business associate" means a business associate as defined under the HIPAA privacy, security, and breach notification rules in 45 CFR 164.502(a), 164.504(e), and 164.532(d) and (e).

(8) "De-identified" means information as defined in 45 CFR 164.502(d) and 164.514(a), (b), and (c).

R384-203-3. Criteria for Application to Access Prescription Drug Database.

- (1) The study must fit within the responsibilities of the Department for health and welfare.
- (2) De-identified prescriber, patient and pharmacy data will meet the research needs.
- (3) The research facility designee must provide:
 - (a) written assurances that the studies are not conducted for and will not be used for profit or commercial gain;
 - (b) written assurances that the designee shall protect the information as a business associate of the Department of Health; and
 - (c) documentation of an Institutional Review Board approval.

R384-203-4. Research Application Process.

(1) The research facility designee will prepare and submit for Department approval an application as designated by the Department detailing explicit information regarding the scientific studies to be conducted including the:

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2019	FY 2020	FY 2021
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Person	\$0	\$0	\$0
Total Fiscal Costs:	\$0	\$0	\$0
Fiscal Benefits	FY 2019	FY 2020	FY 2021
State Government	\$0	\$0	\$0
Local Government	\$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

*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 for State Government, Local Government, Small Businesses and Other Persons are described in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.

Appendix 2: Regulatory Impact to Non-Small Businesses

This rule change is not expected to have any fiscal impacts on non-small businesses' revenues or expenditures, because the changes only expand the institutions eligible to request data and makes

- (a) purpose of the study;
 - (b) research protocol for the project;
 - (c) description of the data needed from the database to conduct that research;
 - (d) plan that demonstrates all database information will be maintained securely, with access being strictly restricted to the designee and research study staff; and
 - (e) provisions for electronic data to be stored on a secure database computer system with access being strictly restricted to the designee and research study staff.
- (2) Application will be reviewed by the Department's Institutional Review Board and recommendation made to the director for or against approval.
- (3) Director will determine approval status of the application.
- ~~(4) Designee will sign the Department's data sharing agreement if application is approved by the Director.~~

R384-203-5. Data Provision and Fees.

- (1) Department will send signed copy of application and Institutional Review Board approval to the Division of Occupational and Professional Licensing (DOPL).
- ~~(1) DOPL [Department] will [obtain,] de-identify and provide the data set requested in the application, unless a written agreement is signed by DOPL requesting the Department to provide the data set.~~
- (2) Research facility and designee shall pay all relevant expenses for data transfer, ~~and~~ manipulation, and analysis.

R384-203-6. Audit Provisions.

Research facility and designee shall submit, upon request, to a Department audit of the recipients' compliance with the terms of the data sharing agreement.

KEY: prescription drug database, controlled substances, substance abuse database
Date of Enactment or Last Substantive Amendment: [March 1, 2014] 2019
Authorizing, and Implemented or Interpreted Law: 58-37f-301(2) (d)(f)

**Human Services, Substance Abuse
 and Mental Health
 R523-12-4
 Provider Responsibilities**

NOTICE OF PROPOSED RULE

(Amendment)
 DAR FILE NO.: 43575
 FILED: 03/12/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Department of Public Safety, State Bureau of

Investigations (SBI) has requested this change to be able to match the Division of Substance Abuse and Mental Health (DSMAH) training records for SBI citations and violations. The collection of the date of birth has been added to allow for more accurate matching of participants information with their citation and violation information. DSAMH has entered into a memorandum of understanding (MOU) with the Department of Public Safety and SBI to require this new data field.

SUMMARY OF THE RULE OR CHANGE: Training providers will be required to collect and electronically submit the date of birth of the training participants.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 32B-7-305(2)(a)

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There are costs to the Department of Human Services/DSAMH budget for programming the EASY online database at approximately \$81 per hour. This project should take up to 40 hours for a total of \$3,240.
- ◆ **LOCAL GOVERNMENTS:** No local governments offer this training, so no cost will be incurred.
- ◆ **SMALL BUSINESSES:** Training providers may incur a cost with this rule change, depending on the type of information they already collect in their information database and their ability to submit dates of birth. If their information systems need to be updated or replaced, the cost is inestimable because of the various programs and options available to collect this data, and the individual businesses desired course of action.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** It is possible that software costs will be passed on the participants by the small businesses, but this cost is inestimable.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are compliance costs associated with this amendment, but DSMAH is not able to estimate those cost because there is not a process in place for DSMAH to ascertain the readiness of each agency to be compliant with adding the date of birth to their data collection software.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: After conducting a thorough analysis, it was determined that this proposed rule change will result in a fiscal impact to businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 HUMAN SERVICES
 SUBSTANCE ABUSE AND MENTAL HEALTH
 195 N 1950 W
 SALT LAKE CITY, UT 84116
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Jonah Shaw by phone at 801-538-4219, by FAX at 801-538-3942, or by Internet E-mail at jshaw@utah.gov
- ◆ Thomas Dunford by phone at 801-538-4181, by FAX at 801-538-4696, or by Internet E-mail at tdunford@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/01/2019

THIS RULE MAY BECOME EFFECTIVE ON: 05/08/2019

AUTHORIZED BY: Doug Thomas, Director

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2019	FY 2020	FY 2021
State Government	\$3,240	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Person	\$0	\$0	\$0
Total Fiscal Costs:	\$3,240	\$0	\$0
Fiscal Benefits	\$0	\$0	\$0
State Government	\$0	\$0	\$0
Local Government	\$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:	(\$3,240)	\$0	\$0

*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 for State Government, Local Government, Small Businesses and Other Persons are described in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.

Appendix 2: Regulatory Impact to Non-Small Businesses

No non-small businesses offer this training; therefore, no estimable or inestimable costs or benefits are associate with non-small businesses in this rule.

R523. Human Services, Substance Abuse and Mental Health.

R523-12. On-Premise Alcohol Training and Education Seminar Rules of Administration.

R523-12-4. Provider Responsibilities.

(1) For each person completing the seminar, the provider shall electronically submit to the Division the name, date of birth, last four digits of the person's social security number, the date the person completed the training, and the required fee, within 30 days of the completion of the seminar.

(2) Each person who has completed the seminar and passed the provider-administered and Division-approved examination shall be approved as a server for a period which begins at the completion of the seminar and expires three years from this date. Recertification requires the server to complete a new seminar every three years.

(3) The provider shall issue a certification card to the server. The card shall contain at least the name of the server and the expiration date. The provider shall be responsible for issuing any duplicates or lost cards.

(4) The Provider shall implement at least three of the following measures to prevent fraud:

(a) Authentication that accurately identifies the individual taking the online course or test;

(b) Measures to ensure that an individual taking the online course or test is focused on training material throughout the entire training period;

(c) Measures to track the actual time an individual taking the online course or test is actively engaged online;

(d) A seminar provider to provide technical support, such as requiring a telephone number, email, or other method of communication that allows an individual taking the online course or test to receive assistance if the individual is unable to participate online because of technical difficulties;

(e) A test to meet quality standards, including randomization of test questions and maximum time limits to take a test;

(f) A seminar provider to have a system to reduce fraud as to who completes an online course or test, such as requiring a distinct online certificate with information printed on the certificate that identifies the person taking the online course or test, or requiring measures to inhibit duplication of a certificate;

(g) Measures to allow an individual taking an online course or test to provide an evaluation of the online course or test;

(h) A seminar provider to track the Internet protocol address or similar electronic location of an individual who takes an online course or test;

(i) An individual who takes an online course or test to use an e-signature; or

(j) A seminar provider to invalidate a certificate if the seminar provider learns that the certificate does not accurately reflect the individual who took the online course or test.

KEY: substance abuse, server training, on-premise

Date of Enactment or Last Substantive Amendment: [~~December 22, 2015~~]2019

Authorizing, and Implemented or Interpreted Law: 62A-15-401; 63G-4-203

Human Services, Substance Abuse and Mental Health **R523-13-4** Provider Responsibilities

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 43576
FILED: 03/12/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Department of Public Safety, State Bureau of Investigations (SBI) has requested this change to be able to match the Division of Substance Abuse and Mental Health (DSMAH) training records for SBI citations and violations. The collection of the date of birth has been added to allow for more accurate matching of participants information with their citation and violation information. DSAMH has entered into a memorandum of understanding (MOU) with the Department of Public Safety and SBI to require this data field.

SUMMARY OF THE RULE OR CHANGE: Training providers will be required to collect and electronically submit the date of birth of the training participants.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 32B-7-305(2)(a)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There are costs to the Department of Human Service/DSAMH budget for programming the EASY online database at approximately \$81 per hour. This project should take up to 40 hours for a total of \$3,240.

◆ **LOCAL GOVERNMENTS:** Hurricane Police Department currently offers this training, and Southwest Public Health Department has an application to offer this training, both will need to become compliant. The Hurricane Police Department currently uses the DHS/DSAMH website to enter information and maintain documentation so no costs will be incurred. It is assumed that Southwest Public Health Department will do the same.

◆ **SMALL BUSINESSES:** Training providers may incur a cost with this rule change, depending on the type of information they already collect in their information database, and their ability to submit dates of birth. If their information systems need to be updated or replaced, the cost is inestimable because of the various programs and options available to collect this data, and the individual businesses desired course of action.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** It is possible that software costs will be passed on to the participants by the small businesses, but this cost is inestimable.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are compliance costs associated with this amendment, but DSAMH is not able to estimate those cost because there is not a process in place for DSMAH to ascertain the readiness of each agency to be compliant with adding the date of birth to their data collection software.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: After conducting a thorough analysis, it was determined that this proposed rule change will result in a fiscal impact to businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

HUMAN SERVICES
SUBSTANCE ABUSE AND MENTAL HEALTH
195 N 1950 W
SALT LAKE CITY, UT 84116
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Jonah Shaw by phone at 801-538-4219, by FAX at 801-538-3942, or by Internet E-mail at jshaw@utah.gov
- ◆ Thomas Dunford by phone at 801-538-4181, by FAX at 801-538-4696, or by Internet E-mail at tdunford@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/01/2019

THIS RULE MAY BECOME EFFECTIVE ON: 05/08/2019

AUTHORIZED BY: Doug Thomas, Director

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2019	FY 2020	FY 2021
State Government	\$3,240	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Person	\$0	\$0	\$0
Total Fiscal Costs:	\$0	\$0	\$0
Fiscal Benefits	\$0	\$0	\$0
State Government	\$0	\$0	\$0
Local Government	\$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:	(\$3,240)	\$0	\$0

*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 for State Government, Local Government, Small Businesses and Other Persons are described in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.

Appendix 2: Regulatory Impact to Non-Small Businesses

No non-small businesses offer this training; therefore, no estimable or inestimable costs or benefits are associate with non-small businesses in this rule.

**R523. Human Services, Substance Abuse and Mental Health.
R523-13. Off-Premise Retailer (Clerk, Licensee and Manager)
Alcohol Training and Education Seminar Rules of Administration.
R523-13-4. Provider Responsibilities.**

(1) For each person completing the seminar, the provider shall electronically submit to the Division the name, date of birth, last four digits of the person's social security number, the date the person completed the training and the required fee, within 30 days of the completion of the seminar.

(2) Each person who has completed the seminar and passed the provider-administered and Division-approved examination shall be approved as a retail employee for a period which begins at the completion of the seminar and expires five years from that date.

(3) The provider shall issue a certification card to the retail employee. The card shall contain at least the name of the retail employee and the expiration date. The provider shall be responsible for issuing any duplicates for lost cards.

(4) The Provider shall implement at least three of the following measures to prevent fraud:

(a) Authentication that accurately identifies the individual taking the online course or test;

(b) Measures to ensure that an individual taking the online course or test is focused on training material throughout the entire training period;

(c) Measures to track the actual time an individual taking the online course or test is actively engaged online;

(d) Provide technical support, such as a telephone number, email, or other method of communication that allows an individual taking the online course or test to receive assistance if the individual is unable to participate online because of technical difficulties;

(e) A test to meet quality standards, including randomization of test questions and maximum time limits to take a test;

(f) Issue a distinct online certificate with information printed on the certificate that identifies the person taking the online course or test, or requiring measures to inhibit duplication of a certificate;

(g) Measures to allow an individual taking an online course or test to provide an evaluation of the online course or test;

(h) Track the internet protocol address or similar electronic location of an individual who takes an online course or test;

(i) Provide an individual who takes an online course or test the opportunity to use an e-signature; or

**KEY: off-premises, training, seminars, alcohol
Date of Enactment or Last Substantive Amendment: [December 22, 2015]2019
Authorizing, and Implemented or Interpreted Law: 62A-15-401; 63G-4-203**

**Labor Commission, Adjudication
R602-2-1
Pleadings and Discovery**

**NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 43574
FILED: 03/11/2019**

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of these rule changes is to provide a mechanism by which a petitioner may seek relief from an unreasonable demand by a respondent related to a medical examination.

SUMMARY OF THE RULE OR CHANGE: After taking several preliminary steps, a petitioner can seek relief from an unreasonable demand related to a respondent-requested medical examination, and an administrative law can provide such relief.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 34A-1-301 et seq. and Section 63G-4-102 et seq.

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There is no aggregate anticipated cost or savings to the state budget.

◆ **LOCAL GOVERNMENTS:** There is no aggregate anticipated cost or savings to local governments.

◆ **SMALL BUSINESSES:** There is no aggregate anticipated cost or savings to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no aggregate anticipated cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Costs would most likely be borne by the party requesting relief and would be minimal. There will be no associated costs with these changes. Any unforeseen costs would be minimal.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:

No associated cost with this change on businesses. Any unforeseen costs would be minimal.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

LABOR COMMISSION
 ADJUDICATION
 HEBER M WELLS BLDG
 160 E 300 S
 SALT LAKE CITY, UT 84111-2316
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Brian Stewart by phone at 801-530-6818, by FAX at 801-530-6333, or by Internet E-mail at brstewart@utah.gov
- ◆ Christopher Hill by phone at 801-530-6113, by FAX at 801-530-6390, or by Internet E-mail at chill@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/01/2019

THIS RULE MAY BECOME EFFECTIVE ON: 05/08/2019

AUTHORIZED BY: Jaceson Maughan, Commissioner

Net Fiscal Benefits:	\$0	\$0	\$0

*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 for State Government, Local Government, Small Businesses and Other Persons are described above. Inestimable impacts for Non-Small Businesses are described below.

Appendix 2: Regulatory Impact to Non-Small Businesses

These rule changes provide a mechanism by which a petitioner may seek relief from an unreasonable demand by a respondent related to a medical examination. The only anticipated cost will be in the amount of time that Administrative Law Judges will spend in deciding the question. This anticipated cost should be minimal and be able to be absorbed by the Division.

R602. Labor Commission, Adjudication.

R602-2. Adjudication of Workers' Compensation and Occupational Disease Claims.

R602-2-1. Pleadings and Discovery.

A. Definitions.

1. "Commission" means the Labor Commission.
2. "Division" means the Division of Adjudication within the Labor Commission.

3. "Application for Hearing" means Adjudication Form 001 Application for Hearing Industrial Accident Claim, Adjudication Form 026 Application for Hearing Occupational Disease Claim, Adjudication Form 025 Application for Dependent's Benefits and/or Burial Benefits Industrial Accident, Adjudication Form 027 Application for Dependent's Benefits Occupational Disease, or other request for agency action complying with the Utah Administrative Procedures Act Utah Code Section 63G-4-102 et seq. filed by an employer of insurance carrier regarding a workers' compensation claim.

4. "Supporting medical documentation" means Adjudication Form 113 Summary of Medical Record or other medical report or treatment note completed by a physician that indicates the presence or absence of a medical causal connection between benefits sought and the alleged industrial injury or occupational disease.

5. "Authorization to Release Medical Records" is Adjudication Form 308 Authorization to Disclose, Release and Use Protected Health Information authorizing the injured workers' medical providers to provide medical records and other medical information to the commission or a party.

6. "Supporting documents" means supporting medical documentation, Adjudication Form 307 Medical Treatment Provider List, Adjudication Form 308 Authorization to Disclose, Release and Use Protected Health Information and, when applicable, Adjudication Form 152 Appointment of Counsel.

7. "Petitioner" means the person or entity who has filed an Application for Hearing.

8. "Respondent" means the person or entity against whom the Application for Hearing was filed.

9. "Discovery motion" includes a motion to compel or a motion for protective order.

10. "Designated agent" is the agent authorized to receive all notices and orders in workers' compensation adjudications pursuant to Utah Code Section 34A-2-113. All designated agents shall provide the

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2020	FY 2021	FY 2022
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Person	\$0	\$0	\$0
Total Fiscal Costs:	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Government	\$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

Adjudication Division an electronic address to receive delivery of documents from the Adjudication Division.

B. Application for Hearing.

1. Whenever a claim for compensation benefits is denied by an employer or insurance carrier, the burden rests with the injured worker, authorized representative of a deceased worker's estate, dependent of a deceased worker or medical provider, to initiate agency action by filing an appropriate Application for Hearing with the Division. Applications for hearing shall include an original, Adjudication Form 308 Authorization to Disclose, Release and Use Protected Health Information.

2. An employer, insurance carrier, or any other party with standing under the Workers' Compensation Act may obtain a hearing before the Adjudication Division by filing a request for agency action with the Division complying with the Utah Administrative Procedures Act Utah Code Section 63G-4-102 et seq.

3. All Applications for Hearing shall include supporting medical documentation of the claim where there is a dispute over medical issues. Applications for Hearing without supporting documentation and a properly completed Adjudication Form 308 Authorization to Disclose, Release and Use Protected Health Information may not be mailed to the employer or insurance carrier for answer until the appropriate documents have been provided. In addition to respondent's answer, a respondent may file a motion to dismiss the Application for Hearing where there is no supporting medical documentation filed to demonstrate medical causation when such is at issue between the parties.

4. When an Application for Hearing with appropriate supporting documentation is filed with the Division, the Division shall mail to the respondents a copy of the Application for Hearing, supporting documents and Notice of Formal Adjudication and Order for Answer.

5. In cases where the injured worker is represented by an attorney, a completed and signed Adjudication Form 152 Appointment of Counsel form shall be filed with the Application for Hearing or upon retention of the attorney.

C. Answer.

1. The respondent(s) shall have 30 days from the date of mailing the Order for Answer to file a written answer to the Application for Hearing.

2. The answer shall admit or deny liability for the claim and shall state the reasons liability is denied. The answer shall state all affirmative defenses with sufficient accuracy and detail that the petitioner and the Division may be fully informed of the nature and substance of the defenses asserted.

3. All answers shall include a summary of benefits which have been paid to date on the claim, designating such payments by category, i.e. medical expenses, temporary total disability, permanent partial disability, etc.

4. When liability is denied based upon medical issues, copies of reasonably available, admissible medical reports sufficient to support the denial of liability shall be filed with the answer.

5. If the answer filed by the respondents fails to sufficiently explain the basis of the denial, fails to include medical reports or records to support the denial, or contains affirmative defenses without sufficient factual detail to support the affirmative defense, the Division may strike the answer filed and order the respondent to file within 20 days a new answer which conforms with the requirements of this rule.

6. All answers must state whether the respondent is willing to mediate the claim.

7. Petitioners are allowed to timely amend the Application for Hearing, and respondents are allowed to timely amend the answer, as newly discovered information becomes available that would warrant the amendment. The parties shall not amend their pleadings later than 45 days prior to the scheduled hearing without leave of the Administrative Law Judge.

8. Responses and answers to amended pleadings shall be filed within ten days of service of the amended pleading without further order of the Labor Commission.

D. Default.

1. If a respondent fails to file an answer as provided in Subsection C above, the Division may enter a default against the respondent.

2. If default is entered against a respondent, the Division may conduct any further proceedings necessary to take evidence and determine the issues raised by the Application for Hearing without the participation of the party in default pursuant to Section 63G-4-209(4), Utah Code.

3. A default of a respondent shall not be construed to deprive the Employer's Reinsurance Fund or Uninsured Employers' Fund of any appropriate defenses.

4. The defaulted party may file a motion to set aside the default under the procedures set forth in Section 63G-4-209(3), Utah Code. The Adjudication Division shall set aside defaults upon written and signed stipulation of all parties to the action.

E. Waiver of Hearing.

1. The parties may, with the approval of the administrative law judge, waive their right to a hearing and enter into a stipulated set of facts, which may be submitted to the administrative law judge. The administrative law judge may use the stipulated facts, medical records and evidence in the record to make a final determination of liability or refer the matter to a Medical Panel for consideration of the medical issues pursuant to R602-2-2.

2. Stipulated facts shall include sufficient facts to address all the issues raised in the Application for Hearing and answer.

3. In cases where Medical Panel review is required, the administrative law judge may forward the evidence in the record, including but not limited to, medical records, fact stipulations, radiographs and deposition transcripts, to a medical panel for assistance in resolving the medical issues.

F. Discovery.

1. Upon filing the answer, the respondent and the petitioner may commence discovery. Discovery documents may be delivered by electronic transmittal. Discovery allowed under this rule may include interrogatories, requests for production of documents, depositions, and medical examinations. Discovery shall not include requests for admissions. Appropriate discovery under this rule shall focus on matters relevant to the claims and defenses at issue in the case. All discovery requests are deemed continuing and shall be promptly supplemented by the responding party as information comes available.

2. Without leave of the administrative law judge, or written stipulation, any party may serve upon any other party written interrogatories, not exceeding 25 in number, including all discrete subparts, to be answered by the party served. The frequency or extent of use of interrogatories, requests for production of documents, medical examinations and/or depositions shall be limited by the administrative law judge if it is determined that:

a. The discovery sought is unreasonably cumulative or duplicative, or is obtainable from another source that is more convenient, less burdensome, or less expensive;

b. The party seeking discovery has had ample opportunity by discovery in the action to obtain the discovery sought; or

c. The discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the adjudication.

3. Upon reasonable notice, the respondent may require the petitioner to submit to a medical examination by a physician of the respondent's choice.

a. Petitioner may seek relief from the medical examination detailed above in subsection 3., and the administrative law judge may provide such relief, upon the showing by the petitioner of an unreasonable demand by respondent related to such medical examination.

b. Respondent shall send any questionnaire, consent or release forms requested by the examining physician or insurance carrier to petitioner at least 14 days prior to the scheduled medical examination.

c. After a reasonable attempt between the parties to resolve any issues which may arise due to the forms in subpart b. above, petitioner shall file any objections to any questionnaire, consent or release forms requested by the examining physician or insurance carrier, with the administrative law judge at least seven days prior to the scheduled medical examination.

4. All parties may conduct depositions pursuant to the Utah Rules of Civil Procedure and Section 34A-1-308, Utah Code.

5. Requests for production of documents are allowed, but limited to matters relevant to the claims and defenses at issue in the case, and shall not include requests for documents provided with the petitioner's Application for Hearing, nor the respondents' answer.

6. Parties shall diligently pursue discovery so as not to delay the adjudication of the claim. If a hearing has been scheduled, discovery motions shall be filed no later than 45 days prior to the hearing unless leave of the administrative law judge is obtained.

7. Discovery motions shall contain copies of all relevant documents pertaining to the discovery at issue, such as mailing certificates and follow up requests for discovery. The responding party shall have 10 days from the date the discovery motion is mailed to file a response to the discovery motion.

8. Parties conducting discovery under this rule shall maintain mailing certificates and follow up letters regarding discovery to submit in the event Division intervention is necessary to complete discovery. Discovery documents shall not be filed with the Division at the time they are forwarded to opposing parties.

9. Any party who fails to obey an administrative law judge's discovery order shall be subject to the sanctions available under Rule 37, Utah Rules of Civil Procedure.

10. Notwithstanding the disclosures required under Rule 602-2-1, parties shall remain obligated to respond timely and appropriately to discovery requests.

G. Subpoenas.

1. Commission subpoena forms shall be used in all discovery proceedings to compel the attendance of witnesses. All subpoenas shall be signed by the administrative law judge assigned to the case, or the duty judge where the assigned judge is not available. Subpoenas to compel the attendance of witnesses shall be served at

least 14 days prior to the hearing consistent with Utah Rule of Civil Procedure 45. Witness fees and mileage shall be paid by the party which subpoenas the witness.

2. A subpoena to produce records shall be served on the holder of the record at least 14 days prior to the date specified in the subpoena as provided in Utah Rule of Civil Procedure 45. All fees associated with the production of documents shall be paid by the party which subpoenas the record.

H. Medical Records Exhibit.

1. The parties are expected to exchange medical records during the discovery period.

2. Petitioner shall submit all relevant medical records contained in his/her possession to the respondent for the preparation of a joint medical records exhibit at least twenty (20) working days prior to the scheduled hearing.

3. The respondent shall prepare a joint medical record exhibit containing all relevant medical records. The medical record exhibit shall include all relevant treatment records that tend to prove or disprove a fact in issue. Hospital nurses' notes, duplicate materials, and other non-relevant materials need not be included in the medical record exhibit.

4. The medical records shall be indexed, paginated, arranged by medical care provider in chronological order and bound. The medical records may not be filed via electronic transmittal.

5. The medical record exhibit prepared by the respondent shall be delivered to the Division and the petitioner or petitioner's counsel at least ten (10) working days prior to the hearing. Late-filed medical records may or may not be admitted at the discretion of the administrative law judge by stipulation or for good cause shown.

6. The administrative law judge may require the respondent to submit an additional copy of the joint medical record exhibit in cases referred to a medical panel.

7. The petitioner is responsible to obtain radiographs and diagnostic films for review by the medical panel. The administrative law judge shall issue subpoenas where necessary to obtain radiology films.

I. Hearing.

1. Notices of hearing shall be mailed to the addresses of record of the parties. The parties shall provide current addresses to the Division for receipt of notices or risk the entry of default and loss of the opportunity to participate at the hearing.

2. Judgment may be entered without a hearing after default is entered or upon stipulation and waiver of a hearing by the parties.

3. No later than 45 days prior to the scheduled hearing, all parties shall file a signed pretrial disclosure form that identifies: (1) fact witnesses the parties actually intend to call at the hearing; (2) expert witnesses the parties actually intend to call at the hearing; (3) language translator the parties intend to use at the hearing; (4) exhibits, including reports, the parties intend to offer in evidence at the hearing; (5) the specific benefits or relief claimed by the petitioner; (6) the specific defenses that the respondent actually intends to litigate; (7) whether, or not, a party anticipates that the case will take more than two hours of hearing time; (8) the job categories or titles the respondents claim the petitioner is capable of performing if the claim is for permanent total disability, and; (9) any other issues that the parties intend to ask the administrative law judge to adjudicate. The administrative law judge may exclude witnesses, exhibits, evidence, claims, or defenses as appropriate of any party who fails to timely file a signed pre-trial disclosure form as set forth above. The parties shall

supplement the pre-trial disclosure form with information that newly becomes available after filing the original form. The pre-trial disclosure form does not replace other discovery allowed under these rules.

4. If the petitioner requires the services of language translation during the hearing, the petitioner has the obligation of providing a person who can translate between the petitioner's native language and English during the hearing. If the respondents are dissatisfied with the proposed translator identified by the petitioner, the respondents may provide a qualified translator for the hearing at the respondent's expense.

5. The petitioner shall appear at the hearing prepared to outline the benefits sought, such as the periods for which compensation and medical benefits are sought, the amounts of unpaid medical bills, and a permanent partial disability rating, if applicable. If mileage reimbursement for travel to receive medical care is sought, the petitioner shall bring documentation of mileage, including the dates, the medical provider seen and the total mileage.

6. The respondent shall appear at the hearing prepared to address the merits of the petitioner's claim and provide evidence to support any defenses timely raised.

7. Parties are expected to be prepared to present their evidence on the date the hearing is scheduled. Requests for continuances may be granted or denied at the discretion of the administrative law judge for good cause shown. Lack of diligence in preparing for the hearing shall not constitute good cause for a continuance.

8. Subject to the continuing jurisdiction of the Labor Commission, the evidentiary record shall be deemed closed at the conclusion of the hearing, and no additional evidence will be accepted without leave of the administrative law judge.

J. Motions-Time to Respond.

Responses to all motions shall be filed within 10 days from the date the motion was filed with the Division. Reply memoranda shall be filed within 5 days from the date a response was filed with the Division.

K. Motions - Length and Type

1. Without prior leave of the Administrative Law Judge, supporting memorandum shall not exceed a total of 10 pages, opposing memorandum shall not exceed 7 pages and reply memorandum shall not exceed 3 pages. All pleadings shall be double spaced.

a. The page limitations herein are inclusive of headings, table of contents, introduction and/or background, conclusion, statement of issues and facts, arguments, etc.

b. The text of motions and memoranda shall be typeset in 12-point.

c. The Administrative Law Judge shall not consider anything contained on pages which exceed the page limits.

d. If a memorandum is to exceed the page limitations set forth in this rule, leave of the Administrative Law Judge must first be obtained. A motion for leave to file a lengthy memorandum must include a statement of the reasons why additional pages are needed and specify the number required. The Administrative Law Judge will approve such requests only for good cause and a showing of exceptional circumstances that justify the need for an extension of the specified page limitations. Absent such a showing by the requesting party, such requests will not be approved. A lengthy memorandum

must not be filed with the Division prior to an entry of an order authorizing its filing.

2. Other than one supporting and one opposing and one reply memoranda, no other memoranda shall be considered by the Administrative Law Judge.

L. Orders on Continuances.

The Administrative Law Judge may rule, ex parte, on requests for continuances.

M. Notices.

1. Orders and notices mailed by the Division to the last address of record provided by a party are deemed served on that party.

2. Where an attorney appears on behalf of a party, notice of an action by the Division served on the attorney is considered notice to the party represented by the attorney.

N. Form of Decisions.

Decisions of the presiding officer in any adjudicative proceeding shall be issued in accordance with the provisions of Section 63G-4-203 or 63G-4-208, Utah Code.

O. Motions for Review.

1. Any party to an adjudicative proceeding may obtain review of an Order issued by an Administrative Law Judge by filing a written request for review with the Adjudication Division in accordance with the provisions of Section 63G-4-301 and Section 34A-1-303, Utah Code. Unless a request for review is properly filed, the Administrative Law Judge's Order is the final order of the Commission. If a request for review is filed, other parties to the adjudicative proceeding may file a response within 15 calendar days of the date the request for review was filed. If such a response is filed, the party filing the original request for review may reply within 5 calendar days of the date the response was filed. Thereafter the Administrative Law Judge shall:

a. Reopen the case and enter a Supplemental Order after holding such further hearing and receiving such further evidence as may be deemed necessary;

b. Amend or modify the prior Order by a Supplemental Order; or

c. Refer the entire case for review under Section 34A-2-801, Utah Code.

2. Motions for Review shall not exceed a total of 15 pages. Response briefs shall not exceed a total of 12 pages. Reply briefs shall not exceed a total of 5 pages. All motions and briefs shall be double spaced.

a. The page limitations herein are inclusive of headings, table of contents, introduction and/or background, conclusion, statement of issues and facts, arguments, etc.

b. The text of motions and memoranda shall be typeset in 12-point font.

c. The Commission and the Appeals Board may disregard argument or other writing contained on pages which exceed the page limits.

3. If the Administrative Law Judge enters a Supplemental Order, as provided in this subsection, it shall be final unless a request for review of the same is filed.

P. Procedural Rules.

In formal adjudicative proceedings, the Division shall generally follow the Utah Rules of Civil Procedure regarding discovery and the issuance of subpoenas, except as the Utah Rules of Civil Procedure are modified by the express provisions of Section 34A-2-802, Utah Code or as may be otherwise modified by these rules.

Q. Requests for Reconsideration and Petitions for Judicial Review.

A request for reconsideration of an Order on Motion for Review may be allowed and shall be governed by the provisions of Section 63G-4-302, Utah Code. Any petition for judicial review of final agency action shall be governed by the provisions of Section 63G-4-401, Utah Code.

KEY: workers' compensation, administrative procedures, hearings, settlements

Date of Enactment or Last Substantive Amendment: [~~November 28, 2016~~2019]

Notice of Continuation: May 9, 2017

Authorizing, and Implemented or Interpreted Law: 34A-1-301 et seq.; 63G-4-102 et seq.

**Labor Commission; Boiler, Elevator and Coal Mine Safety
R616-2-3
Safety Codes and Rules for Boilers and Pressure Vessels**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 43572

FILED: 03/11/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The reason for this change is to clarify how the Division of Boiler, Elevator and Coal Mine Safety (Division) will apply this code. The 4000,000 btu/hr restriction used to be part of the book's title but is no longer included.

SUMMARY OF THE RULE OR CHANGE: This change adds "Applicable to boilers with fuel input ratings greater than or equal to 4000,000 btu/hr" to Controls and Safety Devices for Automatically Fired Boilers ASME CSD-1-2015 for clarification as to how the Division will apply this code.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 34A-7-101 et seq.

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** There is no cost associated with this adoption as the ASME Code associated with this addition is already applied to units over 4000,000 btus/hr input. The additional wording being placed in this rule was part of the ASME Code Title previously but was removed from said title.

♦ **LOCAL GOVERNMENTS:** There is no cost associated with this adoption as the ASME Code associated with this addition is already applied to units over 4000,000 btus/hr input. The additional wording being placed in this rule was part of the ASME Code Title previously but was removed from said title.

♦ **SMALL BUSINESSES:** There is no cost associated with this adoption as the ASME Code associated with this addition is already applied to units over 4000,000 btus/hr input. The additional wording being placed in this rule was part of the ASME Code Title previously but was removed from said title.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no cost associated with this adoption as the ASME Code associated with this addition is already applied to units over 4000,000 btus/hr input. The additional wording being placed in this rule was part of the ASME Code Title previously but was removed from said title.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no cost associated with this adoption as the ASME Code associated with this addition is already applied to units over 4000,000 btus/hr input. The additional wording being placed in this rule was part of the ASME Code Title previously but was removed from said title.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no cost associated with this adoption as the ASME Code associated with this addition is already applied to units over 4000,000 btus/hr input. The additional wording being placed in this rule was part of the ASME Code Title previously but was removed from said title.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

LABOR COMMISSION
BOILER, ELEVATOR AND COAL MINE SAFETY
HEBER M WELLS BLDG
160 E 300 S
SALT LAKE CITY, UT 84111-2316
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Ami Windham by phone at 801-530-6850, by FAX at 801-530-6871, or by Internet E-mail at awindham@utah.gov
♦ Rick Sturm by phone at 801-530-7605, by FAX at 801-530-6871, or by Internet E-mail at rsturm@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/01/2019

THIS RULE MAY BECOME EFFECTIVE ON: 05/08/2019

AUTHORIZED BY: Jaceson Maughan, Commissioner

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2020	FY 2021	FY 2022
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0

Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Person	\$0	\$0	\$0
Total Fiscal Costs:	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Government	\$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

*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 for State Government, Local Government, Small Businesses and Other Persons are described above. Inestimable impacts for Non-Small Businesses are described below.

Appendix 2: Regulatory Impact to Non-Small Businesses

There is no cost associated with this adoption as the ASME Code associated with this addition is already applied to units over 4000,000 btus/hr input. The additional wording being placed in this rule was part of the ASME Code Title previously but was removed from said title.

R616. Labor Commission, Boiler, Elevator and Coal Mine Safety. R616-2. Boiler and Pressure Vessel Rules. R616-2-3. Safety Codes and Rules for Boilers and Pressure Vessels.

The following safety codes and rules shall apply to all boilers and pressure vessels in Utah, except those exempted pursuant to Section 34A-7-101, and are incorporated herein by this reference in this rule.

- A. ASME Boiler and Pressure Vessel Code -- 2017.
 - 1. Section I Rules for Construction of Power Boilers.
 - 2. Section IV Rules for Construction of Heating Boilers.
 - 3. Section VIII Rules for Construction of Pressure Vessels.
- B. Power Piping ASME B31.1 -- 2016.
- C. Controls and Safety Devices for Automatically Fired Boilers (Applicable to boilers with fuel input ratings greater than or equal to 4000,000 btu/hr) ASME CSD-1-2015. Except:
 - 1. Part CG-130(c).

- D. National Board Inspection Code ANSI/NB-23 - 2017 Part 3.
- E. NFPA 85 Boiler and Combustion Systems Hazard Code 2015.
- F. Recommended Administrative Boiler and Pressure Vessel Safety Rules and Regulations NB-132 Rev. 4.
- G. Pressure Vessel Inspection Code: Maintenance Inspection, Rating, Repair and Alteration API 510 Tenth Edition, 2014. Except:
 - 1. Section-8, and
 - 2. Appendix-A.

KEY: boilers, certification, safety

Date of Enactment or Last Substantive Amendment: [~~April 9, 2018~~]**2019**

Notice of Continuation: August 23, 2016

Authorizing, and Implemented or Interpreted Law: 34A-7-101 et seq.

Labor Commission; Boiler, Elevator and Coal Mine Safety
R616-2-8
Inspection of Boilers and Pressure Vessels

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 43573

FILED: 03/11/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of these changes is to incorporate inspection frequencies for pressure vessel inspections into rule.

SUMMARY OF THE RULE OR CHANGE: The changes add to Subsection R616-2-8(A): 1) Boiler inspection frequency shall be as per Section 34A-7-103; 2) Pressure Vessel Inspection frequency shall be as follows: a) Heat exchangers that operate from high pressure steam or high temperature water plants shall be inspected every twenty-four months; b) autoclaves that operate above 15 psi steam pressure shall be inspected every twenty-four (24) months; and c) all other pressure vessels which fall under the jurisdiction of the Division of Boiler, Elevator and Coal Mine Safety (Division) shall be inspected every forty-eight (48) months. The changes also add to Subsection R616-2-8(J): 1) Pressure vessels located above ground shall be given a certificate inspection, preferably while in operation, at least every 5 years (60 months) or at the same interval as the required internal inspection, whichever is less.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 34A-7-101 et seq.

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There is no cost associated with these changes as the inspection frequency was in the Boiler and Pressure Vessel Compliance Manual issued by the Division prior to this change. The requirement is being moved from the Compliance Manual to the Utah Administrative Code.
- ◆ **LOCAL GOVERNMENTS:** There is no cost associated with these changes as the inspection frequency was in the Boiler and Pressure Vessel Compliance Manual issued by the Division prior to this change. The requirement is being moved from the Compliance Manual to the Utah Administrative Code.
- ◆ **SMALL BUSINESSES:** There is no cost associated with these changes as the inspection frequency was in the Boiler and Pressure Vessel Compliance Manual issued by the Division prior to this change. The requirement is being moved from the Compliance Manual to the Utah Administrative Code.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no cost associated with these changes as the inspection frequency was in the Boiler and Pressure Vessel Compliance Manual issued by the Division prior to this change. The requirement is being moved from the Compliance Manual to the Utah Administrative Code.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no cost associated with these changes as the inspection frequency was in the Boiler and Pressure Vessel Compliance Manual issued by the Division prior to this change. The requirement is being moved from the Compliance Manual to the Utah Administrative Code.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no cost associated with these changes as the inspection frequency was in the Boiler and Pressure Vessel Compliance Manual issued by the Division prior to this change. The requirement is being moved from the Compliance Manual to the Utah Administrative Code.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 LABOR COMMISSION
 BOILER, ELEVATOR AND COAL MINE SAFETY
 HEBER M WELLS BLDG
 160 E 300 S
 SALT LAKE CITY, UT 84111-2316
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ◆ Ami Windham by phone at 801-530-6850, by FAX at 801-530-6871, or by Internet E-mail at awindham@utah.gov
 ◆ Rick Sturm by phone at 801-530-7605, by FAX at 801-530-6871, or by Internet E-mail at rsturm@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/01/2019

THIS RULE MAY BECOME EFFECTIVE ON: 05/08/2019

AUTHORIZED BY: Jaceson Maughan, Commissioner

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2020	FY 2021	FY 2022
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Person	\$0	\$0	\$0
Total Fiscal Costs:	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Government	\$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

***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 for State Government, Local Government, Small Businesses and Other Persons are described above. Inestimable impacts for Non-Small Businesses are described below.**

Appendix 2: Regulatory Impact to Non-Small Businesses

There is no cost associated with these changes as the inspection frequency was in the Boiler and Pressure Vessel Compliance Manual issued by the Division prior to these changes. The requirement is being moved from the Compliance Manual to this rule.

R616. Labor Commission, Boiler, Elevator and Coal Mine Safety.**R616-2. Boiler and Pressure Vessel Rules.****R616-2-8. Inspection of Boilers and Pressure Vessels.**

A. It shall be the responsibility of the Division to make inspections of all boilers or pressure vessels operated within its jurisdiction, when deemed necessary or appropriate.

1. Boiler inspection frequency shall be pursuant to 34A-7-103.

2. Pressure Vessel inspection frequency shall be as follows:

a. Heat exchangers that operate from high pressure steam or high temperature water plants shall be inspected every twenty-four (24) months.

b. Autoclaves that operate above 15 psi steam pressure shall be inspected every twenty-four (24) months.

c. All other pressure vessels which fall under the jurisdiction of the Division shall be inspected every forty-eight (48) months.

B. Boiler inspectors shall examine conditions in regards to the safety of the employees, public, machinery, ventilation, drainage, and into all other matters connected with the safety of persons using each boiler or pressure vessel, and when necessary give directions providing for the safety of persons in or about the same. For boilers or pressure vessels inspected by an inspector employed by the Division, the owner or user is required to freely permit entry, inspection, examination and inquiry, and to furnish a guide when necessary. For boilers or pressure vessels inspected by a deputy inspector employed by an insurance company, the deputy inspector's right of entry on the premises where the boiler or pressure vessel is located is subject to the agreement between the insurance company and the owner or operator of the boiler or pressure vessel. In the event an internal inspection of a boiler or pressure vessel is required the owner or user shall, at a minimum, prepare the boiler or pressure vessel by meeting the requirements of 29 CFR Part 1910.146 "Permit Required Confined Spaces" and 29 CFR Part 1910.147 "Control of Hazardous Energy (Lockout/Tagout)".

C. If the Division finds a boiler or pressure vessel complies with the safety codes and rules, the owner or user shall be issued a Certificate of Inspection and Permit to Operate.

D. If the Division finds a boiler or pressure vessel is not being operated in accordance with safety codes and rules, the owner or user shall be notified in writing of all deficiencies and shall be directed to make specific improvements or changes as are necessary to bring the boiler or pressure vessel into compliance.

E. Pursuant to Sections 34A-1-104, 34A-2-301 and 34A-7-102, if the improvements or changes to the boiler or pressure vessel are not made within a reasonable time, the boiler or pressure vessel is being operated unlawfully.

F. If the owner or user refuses to allow an inspection to be made, the boiler or pressure vessels is being operated unlawfully.

G. If the owner or user refuses to pay the required fee, the boiler or pressure vessel is being operated unlawfully.

H. If the owner or user operates a boiler or pressure vessel unlawfully, the Commission may order the boiler or pressure vessel operation to cease pursuant to Sections 34A-1-104 and 34A-7-103.

I. If, in the judgment of a boiler inspector, the lives or safety of employees or public are or may be endangered should they remain in the danger area, the boiler inspector shall direct that they be immediately withdrawn from the danger area, and the boiler or pressure vessel be removed from service until repairs have been made and the boiler or pressure vessel has been brought into compliance.

J. An owner/user agency may conduct self inspection of its own unfired pressure vessels with its own employees who are owner/user agents under procedures and frequencies established by the Division.

KEY: boilers, certification, safety

Date of Enactment or Last Substantive Amendment: [~~April 9, 2018~~2019]

Notice of Continuation: August 23, 2016

Authorizing, and Implemented or Interpreted Law: 34A-7-101 et seq.

Regents (Board of), University of Utah,
Administration
R805-3
Overnight Camping and Campfires on
University of Utah Property

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 43566

FILED: 03/05/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of these amendments are to accommodate for camping and the use of campfires in areas designated by the University of Utah (University) for such use and otherwise consistent with state and local law.

SUMMARY OF THE RULE OR CHANGE: These rule changes specify that this rule does not prohibit camping or campfires on University property designated specifically for such use and otherwise consistent with state and local law.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53B-2-106 and Section 63G-4-102 and Section 65A-8-211 and Section 76-8-701 and Subsection 53B-1-104(8)

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** These rule changes are not anticipated to result in any costs or savings with respect to the state budget.

♦ **LOCAL GOVERNMENTS:** These rule changes are not anticipated to result in any costs or savings with respect to any local government.

♦ **SMALL BUSINESSES:** These rule changes are not anticipated to result in any costs or savings with respect to any small businesses.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** These rule changes are not anticipated to result in any costs or savings with respect to any other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: These rule changes are not anticipated to result in any compliance costs for any affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: These rule changes are not anticipated to result in any fiscal impact for any businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 REGENTS (BOARD OF)
 UNIVERSITY OF UTAH, ADMINISTRATION
 ROOM 309 PARK BLDG
 201 S PRESIDENTS CIR
 SALT LAKE CITY, UT 84112-9009
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Robert Payne by phone at 801-585-7002, by FAX at 801-585-7007, or by Internet E-mail at robert.payne@legal.utah.edu

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/01/2019

THIS RULE MAY BECOME EFFECTIVE ON: 05/08/2019

AUTHORIZED BY: Robert Payne, Associate General Counsel

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

*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 for State Government, Local Government, Small Businesses and Other Persons are described in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.

Appendix 2: Regulatory Impact to Non-Small Businesses
 These rule changes are not expected to have any fiscal impact on non-small businesses' revenues or expenditures, because this rule relates entirely to non-business activities on the University of Utah campus.

The head of the University of Utah, President Ruth Watkins, has reviewed and approved this fiscal analysis.

**R805. Regents (Board of), University of Utah, Administration.
 R805-3. Overnight Camping and Campfires on University of Utah Property.**

R805-3-1. Purpose.
 To set forth the regulations that govern camping and campfires on University property.

R805-3-2. Definitions.

A. "Campfire" means an outdoor fire, burned in the open or in a receptacle other than a furnace or incinerator, used for the cooking of food for providing personal warmth or for recreational purposes. "Campfire" does not mean a professionally manufactured barbecue grill operated in connection with an official University event.

B. "Camping overnight" means any of the following:

1. Sleeping, at any time between the hours of 11:00 p.m. and 8:30 a.m., outdoors, with or without bedding, sleeping bag, blanket, mattress, tent, hammock, or other similar protection, equipment or device;
2. Establishing or maintaining outdoors, at any time between the hours of 11:00 p.m. and 8:30 a.m., a temporary or permanent place for sleeping or cooking by setting up any bedding, sleeping bag, blanket, mattress, tent, hammock, or other sleeping equipment or by setting up any cooking equipment, with the intent to remain in that location overnight.

"Camping overnight" does not include the following:

1. Waiting in line for the sale of tickets to an event that will take place on University property;
2. Tail-gating activities on University property within areas designated by the University that occur the night before or the night of a sporting event.

C. "University property" means the university campus and any other property owned, operated or controlled by the University of Utah.

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2019	FY 2020	FY 2021
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Person	\$0	\$0	\$0
Total Fiscal Costs:	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0

R805-3-3. Policy.**A. Overnight Camping**

In order to protect University property, and to protect the safety and health of the University community and the public, camping overnight on University property not specifically designated for such use is prohibited without first obtaining permission from the University Scheduling Office. Permission may be withheld by the University on any reasonable basis.

B. Campfires

In order to protect University property, and to protect the safety and health of the University community and the public, lighting or maintaining campfires in/on University property not specifically designated for campfires, in an approved receptacle, and consistent with state and local law, is prohibited without first obtaining permission from the University Scheduling Office. Permission may be withheld by the University on any reasonable basis.

C. Sanctions

1. University students, university staff and university faculty who violate this rule may be subject to disciplinary action pursuant to the applicable policies and procedures of the University of Utah Regulations Library.

2. Members of the public who violate this rule may be subject to one or more of the following sanctions:

1. Issuance of a citation for setting an improper fire pursuant to Section 65 A-8-211;

2. Issuance of a citation for criminal trespass pursuant to Section 76-6-206;

3. Issuance of citation and temporary eviction from, and denial of access to University property pursuant to Sections 76-8-701 through 76-8-718; and

4. Eviction from, and denial of access to, University property after an informal adjudicative proceeding pursuant to Rule R765-134.

KEY: camp, camping, campfire, fire

Date of Enactment or Last Substantive Amendment: [September 18, 2009]2019

Notice of Continuation: March 14, 2014

Authorizing, and Implemented or Interpreted Law: 53B-1-104(8); 53B-2-106; 63G-4-102; 65A-8-211; 76-8-701 et seq.

Transportation, Program Development

R926-16

Unsolicited Proposals for Transportation Infrastructure Public- Private Partnerships

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 43584

FILED: 03/15/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule provides a procedure for submitting,

screening, evaluating, and implementing unsolicited proposals to form transportation infrastructure public-private partnerships (TIPPP); soliciting proposals to compete with an unsolicited proposal; and excluding unsolicited proposals covered specifically by other rules or that are the responsibility of other state entities.

SUMMARY OF THE RULE OR CHANGE: This rule provides a procedure for submitting, screening, evaluating, and implementing unsolicited proposals to form public-private partnerships; soliciting proposals to compete with an unsolicited proposal; and excluding unsolicited proposals covered specifically by other rules or that are the responsibility of other state entities. It is authorized by Section 63G-6a-712.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 63G-6a-712(8) and Subsection 72-1-201(1)(h)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** This rule does not impose any requirement that involves a cost on any person in any industry without the consent of the person. A person must prepare and submit a proposal to form a TIPPP with the Department of Transportation (Department) for this rule to affect the person. The Department estimates that this new rule will impact the state's budget. If the fees assessed do not cover the cost of taking an unsolicited proposal through the evaluation process and the proposal is not adopted, the impact will be negative. If the fees cover the costs of the evaluation process, the Department adopts the proposal and it leads to a new structure, facility, or becomes a part of the way the Department does business, the impact may be positive. It is not possible to determine what these costs or possible benefits may be presently.

◆ **LOCAL GOVERNMENTS:** The Department does not believe this new rule will have any impact on local governments because it does not apply to local governments in any way.

◆ **SMALL BUSINESSES:** This rule does not impose any requirement that involves a cost on any person in any industry without the consent of the person. A person must prepare and submit a proposal to form a TIPPP with the Department for this rule to affect the person. Fees are assessed on all persons that submit unsolicited proposals that the Department moves through screening and evaluation processes irrespective of firm size. This rule may have a fiscal impact on small firms and non-small firms. The fiscal impact will not necessarily be negative. Should the Department adopt a person's unsolicited proposal and form a partnership with the person, the impact will be positive if the partnership becomes a successful part of fulfilling the Department's mission.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule does not impose any requirement that involves a cost on any person in any industry without the consent of the person. A person must prepare and submit a proposal to

form a TIPPP with the Department for this rule to affect the person. Fees are assessed on all persons that submit unsolicited proposals that the Department moves through screening and evaluation processes irrespective of firm size. This rule may have a fiscal impact on small firms and non-small firms. The fiscal impact will not necessarily be negative. Should the Department adopt a person's unsolicited proposal and form a partnership with the person, the impact will be positive if the partnership becomes a successful part of fulfilling the Department's mission.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule does not impose any requirement that involves a cost on any person in any industry without the consent of the person. A person must prepare and submit a proposal to form a TIPPP with the Department for this rule to affect the person. Fees are assessed on all persons that submit unsolicited proposals that the Department moves through screening and evaluation processes irrespective of firm size. This rule may have a fiscal impact on small firms and non-small firms. The fiscal impact will not necessarily be negative. Should the Department adopt a person's unsolicited proposal and form a partnership with the person, the impact will be positive if the partnership becomes a successful part of fulfilling the Department's mission.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This new administrative rule may have a fiscal impact on businesses that choose to submit unsolicited proposals to the Department for consideration.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 TRANSPORTATION
 PROGRAM DEVELOPMENT
 CALVIN L RAMPTON COMPLEX
 4501 S 2700 W
 SALT LAKE CITY, UT 84119-5998
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Christine Newman by phone at 801-965-4026, by FAX at 801-965-4338, or by Internet E-mail at cwnewman@utah.gov
 ♦ Eileen McCown by phone at 801-965-4030, or by Internet E-mail at emccown@utah.gov
 ♦ James Palmer by phone at 801-965-4000, by FAX at 801-965-4338, or by Internet E-mail at jimpalmer@utah.gov
 ♦ Josh Dangel by phone at 269-217-7091, or by Internet E-mail at jdangel@utah.gov
 ♦ Linda Hull by phone at 801-965-4253, or by Internet E-mail at lhull@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/01/2019

THIS RULE MAY BECOME EFFECTIVE ON: 05/08/2019

AUTHORIZED BY: Carlos Braceras, Executive Director

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2019	FY 2020	FY 2021
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Person	\$0	\$0	\$0
Total Fiscal Costs:	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Government	\$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:	Undeterminable	\$0	\$0

*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 for State Government, Local Government, Small Businesses and Other Persons are described in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.

Appendix 2: Regulatory Impact to Non-Small Businesses

- 1) This rule provides a procedure for submitting, screening, evaluating, and implementing unsolicited proposals to form transportation infrastructure public-private partnerships (TIPPP); soliciting proposals to compete with an unsolicited proposal; and excluding unsolicited proposals covered specifically by other rules or that are the responsibility of other state entities. It does not limit the industries or firms that may seek to form a TIPPP with the Department. However, it is reasonable to expect the kinds of firms that may be affected by this rule operate within road design, construction, and maintenance related industries.
- 2) This rule does not impose any requirement on any person in any industry without the consent of the person. A person must prepare and submit a proposal to form a TIPPP with the Department for this rule to affect the person.
- 3) This new rule allows the Department to assess fees to cover the actual costs of processing, considering, and evaluating unsolicited proposals pursuant to authority granted by Subsection 63G-6a-712(5). It authorizes a screening fee for every unsolicited proposal that passes a threshold review and enters the screening phase, and an evaluation fee for every unsolicited proposal that is subject to the detailed evaluation phase. A fee of \$20,000 is assessed for the initial screening. This fee will be returned to the submitter if the unsolicited proposal does not pass the initial threshold review. If the Department decides to proceed with a detailed evaluation and issues a request for more detailed information in accordance with Subsection R926-16-4(5)(b), a check for the evaluation fee equal to the sum of \$20,000 plus 0.01% of the total estimated cost of design and construction of the project.

4) The fees are assessed on all persons that submit unsolicited proposals that the Department moves through screening and evaluation processes irrespective of firm size. This rule may have a fiscal impact on small firms and non-small firms. The fiscal impact will not necessarily be negative. Should the Department adopt a person's unsolicited proposal and form a partnership with the person, the impact will be positive if the partnership becomes a successful part of fulfilling the Department's mission.

5) The Department estimates this new rule will impact the state's budget. If the fees assessed do not cover the cost of taking an unsolicited proposal through the evaluation process and the proposal is not be adopted, the impact will be negative. If the fees cover the costs of the evaluation process, the Department adopts the proposal and it leads to a new structure, facility, or becomes a part of the way the Department does business, the impact may be positive.

6) The Department does not believe this new rule will have any impact on local governments because it does not apply to local governments in any way.

7) Discussion of the fees allowed by the rule and fiscal impact the rule may cause is speculation. The Department does not have a way to estimate with any degree of certainty anything that may result from this new rule, especially fiscal impact to third parties caused by its implementation.

8) The Department's Executive Director, Carlos Braceras, has reviewed and approved this fiscal analysis.

R926. Program Development.

R926-16. Unsolicited Proposals for Transportation Infrastructure Public-Private Partnerships.

R926-16-1. Purpose and Authority.

(1) Purpose. This rule provides a procedure for submitting, screening, evaluating, and implementing unsolicited proposals to form Transportation Infrastructure public-private partnerships (TIPPPs); soliciting proposals to compete with an unsolicited proposal based on concepts within the unsolicited proposal; and excluding unsolicited proposals covered specifically by other rules or that are the responsibility of other state entities.

(2) Authority. The provisions of this rule are authorized by Utah Code Sections 72-1-201(1)(h) and 63G-6a-712.

R926-16-2. Definitions.

Except as otherwise stated in this rule, terms used in this rule are as defined in the applicable Statutes. The following additional terms are defined for this rule:

(1) "Days" means calendar days.

(2) The "Department" means the Department of Transportation.

(3) "Proposer" means private entities that submit letters of interest, qualifications, or proposals under a solicitation for the purposes of entering into a public-private partnership agreement with the Department, and may include a person or persons, firms, partnerships or companies or any legal combination or consortium thereof.

(4) "Submitter" means a private entity that submits an unsolicited proposal that complies with the requirements of Utah Code Section 63G-6a-712.

(5) "Transportation Infrastructure" means any infrastructure element that is associated with the state transportation system and is the responsibility of the Department.

R926-16-3. Unsolicited Proposal Requirements.

(1) The Department is not required to accept, review, or evaluate an unsolicited proposal.

(2) Should the Department accept delivery of an unsolicited proposal it will provide an acknowledgement of receipt to the submitter, but has no obligation to consider, evaluate, or advance an unsolicited proposal.

(3) Unsolicited Proposals for TIPPPs must be submitted to the Department using the system the Department has established to accept solicited proposals. An unsolicited proposal submittal must, at a minimum, include:

(a) a statement establishing the period during which the unsolicited proposal will remain valid, which may be not less than 12 months following initial delivery. A renewal statement may be required as determined solely by the Department;

(b) information required for unsolicited proposals set forth in Utah Code Section 63G-6a-712;

(c) a map indicating the location of the proposed facility, when applicable;

(d) a description of the organizations representing the submitter and the organizations who would develop, finance, construct, operate and maintain the facility;

(e) a description of the submitter's plan for developing, financing, constructing, operating, maintaining, or any combination of these elements, including identification of any revenue needed to support the project and proposed debt or equity investment proposed by the submitter;

(f) a description of how the unsolicited proposal is consistent with the goals of the Department and addresses a demonstrated need for the State;

(g) an estimate of the amount of funding, if any, to be provided by the State;

(h) a list of the major permits and approvals required by local, state, and federal agencies to develop or operate a project or facility resulting from an unsolicited proposal along with a projected schedule for obtaining the permits and approvals;

(i) a statement acknowledging that the Department has no obligation to advance or compensate a submitter for any environmental studies needed, including but not limited to NEPA, and other work associated with an unsolicited proposal;

(j) a description of the types of public utility facilities, if any, that may be impacted by a project originating from the unsolicited proposal and a statement of the plans to accommodate the impact;

(k) identification of any elements that are being claimed as trade secrets or confidential that meet the requirements of Utah Code Section 63G-2-309(1)(a)(i), together with justification of the same; and

(l) any additional information the Department determines is necessary to evaluate an unsolicited proposal. The submitter will be notified by the Department of any such additional information needed.

R926-16-4. Unsolicited Proposal Initial Threshold Review, Stage One – Screening, and Stage Two – Detailed Evaluation.

(1) Evaluation. The Department may appoint an individual or an evaluation committee, as it deems appropriate and after any required fee is paid, to conduct reviews of unsolicited proposals to determine whether to request competing proposals and qualifications, request additional information to facilitate further evaluation, or reject the unsolicited proposal.

(2)(a) Review Procedure. The review procedure for unsolicited proposals includes the initial threshold review followed by two additional stages of evaluation, Stage One -- Screening, and Stage Two -- Detailed Evaluation.

(b) The Department will make the decision to review or reject an unsolicited proposal and decisions regarding proceeding through the review procedure unilaterally, however, the Department will consult with the submitter prior to deciding to reject a proposal or move to the next stage in the review procedure.

(c) The Department will decide to reject a proposal or continue to the next stage in the review procedure within a reasonable time, but not more than 60 days after the date the proposal is received or the day an evaluation stage begins.

(d) The Department and the submitter may agree to extend a review period beyond 60 days after a consultation.

(e) The Department and the submitter must cooperate and proceed through the review procedure as expeditiously as practicable.

(3) Initial Threshold Review. The initial threshold review will consider whether the unsolicited proposal meets the minimum statutory and regulatory requirements, includes the required minimum content, and satisfies the definition of an unsolicited proposal. If the Department determines it will consider the unsolicited proposal further following the initial threshold review, the further review will be conducted in two stages, Stage One -- Screening, and Stage Two -- Detailed Evaluation.

(4) Stage One -- Screening. The Stage One -- Screening will be a summary review to determine whether the unsolicited proposal merits proceeding to Stage Two -- Detailed Evaluation.

(a) The Stage One -- Screening shall determine if the unsolicited proposal sufficiently addresses the following criteria:

(i) the proposal offers direct or anticipated benefits to the State;

(ii) is consistent with the Department's objectives and goals;

(iii) satisfies a need for the State that can be reasonably accommodated in annual long-term capital and operating budgets without displacing other planned expenditures, and without placing other committed projects at risk;

(iv) is not substantially duplicative of other projects that have been fully funded by the State, the Department, or any other public entity as of the date of the unsolicited proposal;

(v) would materially advance or accelerate the implementation of projects identified on the Statewide Transportation Improvement Program, Statewide Long-Range Transportation Plan or other strategic plan maintained by the Department;

(vi) is a project that advances the goals or objectives of a project identified in the Statewide Long-Range Transportation Plan;

(vii) offers goods or services that the Department may not have intended to procure or provide through the normal contract process;

(viii) is within the Department's jurisdiction and authority; and

(ix) has other benefits specific to the unsolicited proposal.

(b) The Department may reject proposals that do not meet the Stage One -- Screening criteria or generally fail to meet the minimum requirements established under statute and this rule or that the Department otherwise determines do not merit further review.

(c) The Department will complete the Stage One -- Screening and notify the submitter of its conclusions as follows:

(i) the unsolicited proposal fails to meet Stage One screening requirements, and in the sole discretion of the Department, it cannot be revised so that compliance is possible, or

(ii) further information is needed before the Department can determine whether to proceed with Stage Two -- Detailed Evaluation, or

(iii) the unsolicited proposal will be subject to Stage Two -- Detailed Evaluation, subject to the satisfactory receipt by the Department of additional information and receipt of the evaluation fee described in R926-16-7.

(5) Stage Two -- Detailed Evaluation. The purpose of the Stage Two -- Detailed Evaluation of the unsolicited proposal is to allow the Department to determine whether to issue a request for competing proposals and qualifications related to the unsolicited proposal.

(a) The Department will begin the Stage Two -- Detailed Evaluation upon the later of (i) the date of the receipt of any additional detailed information requested to supplement the unsolicited proposal, or (ii) the date of receipt of the evaluation fee described in R926-16-7.

(b) Where an unsolicited proposal is selected to proceed to Stage Two -- Detailed Evaluation, the Department may request from the submitter more detailed information regarding the unsolicited proposal. Additional detailed information requested for the unsolicited proposal may include:

(i) the types of support required from the State including facilities, equipment, property and personnel;

(ii) a sufficiently detailed description of the scope of work and commercial terms the submitter anticipates in the public-private partnership to allow the Department to assess the value provided;

(iii) a cashflow analysis showing capital, maintenance and operating costs and revenues;

(iv) conceptual finance plan; and

(v) form of a TIPPP (e.g., availability payment) and a schedule for implementation showing the dates for property or services to be provided by the State.

(c) The submitter must provide information to assist the Department to incorporate any concepts the submitter considers to be proprietary, confidential, or trade secret within the solicited procurement in a manner that will be acceptable to the submitter.

(d) The Stage Two -- Detailed Evaluation will consider the overall costs for delivery of the project over the term of the proposed agreement described in the unsolicited proposal and the proposed approach to financing and funding the project described in the unsolicited proposal, including potential revenue streams. Additionally, the Stage Two -- Detailed Evaluation will consider the potential risks and reasonableness of assumptions associated with implementing the proposal and modifications to project scope, risk allocation and commercial terms that would need to be incorporated within a solicited proposal.

(e) The Department will complete the Stage Two -- Detailed Evaluation, make its decision, and notify the submitter as follows:

(i) the unsolicited proposal (or certain concepts therein) is suitable to form the basis of a competitive solicitation. The Department intends to provide the submitter with the opportunity to discuss a potential solicitation. Subject to satisfactory conclusion of this discussion, the submitter will be waived from certain fees and requirements with respect to its response to a forthcoming competitive solicitation; or

(ii) the unsolicited proposal is not suitable to form the basis of a competitive solicitation. The Department does not intend to issue a competitive solicitation at this time. The submitter will not be excluded from participating in any future solicitation, and the Department will not waive any fees or requirements in response to a future solicitation.

(6) The Department may, in its sole discretion, adopt or reject concepts contained within an unsolicited proposal.

(7) The Department may, in its sole discretion, make significant modifications to the concepts in an original or updated unsolicited proposal.

(8) The Department will notify the submitter of the original or updated unsolicited proposal of the concepts it intends to adopt within a solicitation and will provide the submitter with a reasonable opportunity to object to the way such concepts are incorporated and to suggest modifications to avoid disclosure of content that the submitter considers proprietary, confidential or trade secret.

R926-16-5. Solicitation of Competing Proposals.

(1) The Department may, at any time, rather than rejecting the unsolicited proposal and terminating the process, elect to issue a request for competing proposals based on the unsolicited proposal, including modifications made consistent with subsection R926-16-4. If the Department issues a request for competing proposals, the submitter will be offered the opportunity to participate in the competition provided the submitter agrees in writing to continue participating throughout the entirety of the competition process. The process for soliciting competing proposals and qualifications must meet all requirements of applicable Utah law, including Utah Code Section 63G-6a-1402 and Sections 63G-6a-701-712.

(2) If the Department elects to move forward and issue a request for competing proposals, the Department will provide public notice of the proposed project according to subsection R926-16-6.

R926-16-6. Public Notice.

(1) Public notice regarding solicitations originating from R926-16-5 must be posted on the Department's website and must also be published in accordance with the requirements of Utah Code Section 63G-6a-112.

(2) Notice of a solicitation will indicate where, when, and how to obtain the solicitation documents, when responses are due and will generally describe the project scope or service desired and may contain other information such as the desired schedule or financial model.

(3) Where the executive director or a deputy director determines appropriate, the Department may require payment of a fee or a deposit for the supplying of the solicitation package.

(4) A copy of the solicitation documents will be made available for public inspection at the Department's primary offices in the Calvin Rampton Building.

R926-16-7. Fees Related to Unsolicited Proposals.

(1) As authorized by 63G-6a-712(5), the Department will assess fees to cover the actual costs of processing, considering, and evaluating unsolicited proposals as follows:

(a) a screening fee for every unsolicited proposal that passes the initial threshold review and enters the Stage One -- Screening process, and

(b) an evaluation fee for every unsolicited proposal that is subject to the Stage Two -- Detailed Evaluation.

(2)(a) The unsolicited proposal must be accompanied by a check for the screening fee, which must be a cashier's, certified, or official check drawn by a federally insured financial institution in the amount of \$20,000 for the screening fee associated with the Stage One -- Screening. This check will be returned to the submitter if the unsolicited proposal does not pass the initial threshold review and will be drawn upon no earlier than 30 days after the Department responds to the submitter that it intends to proceed with the Stage One -- Screening.

(b) The Department will assess an evaluation fee for every unsolicited proposal that is subject to the Stage Two -- Detailed Evaluation. Evaluation fees must be paid by a cashier's, certified, or official check drawn by a federally insured financial institution in an initial amount of \$20,000 plus .01% of the total estimated cost of design and construction of the project.

(c) The Department will provide the submitter with periodic updates of expenses and will request additional funds to cover the actual costs of processing, considering, and evaluating the unsolicited proposal if additional funds are needed.

(d) The submitter may elect to discontinue its pursuit of the unsolicited proposal at any time and avoid paying the additional funds. No refund will be issued for expenses already incurred.

(3) The executive director or a deputy director may waive or modify the fee structure for an unsolicited proposal, in whole or in part, if he or she determines that the Department's costs have been substantially covered by a portion of the fee or if it is otherwise determined a waiver or modification is reasonable and in the best interests of the State.

(4) When the Department solicits competing proposals, the Department may require each proposer that submits a competing proposal to submit a fee with the competing proposal. The amount of the fee will be identified in the solicitation documents and will not exceed the amount of the evaluation fee for the original unsolicited proposal stated in R926-16-7(2).

(5) The submitter that submitted the original unsolicited proposal triggering the solicitation will be exempt from this fee provided that, in the sole discretion of the Department, the requirements of the solicitation are sufficiently similar to the content of the original unsolicited proposal.

R926-16-8. Predevelopment Agreements.

(1) An unsolicited proposal may be used to establish a predevelopment agreement that may become a TIPPP. The first phase of a predevelopment agreement will result in a determination of feasibility and ultimately result in a project development plan and financing plan.

(2) An unsolicited proposal for the first phase of a predevelopment agreement shall include applicable elements from R926-16-3 and all of the following:

(a) overall approach to the predevelopment agreement process and a demonstration of how the project can be effectively and efficiently developed, financed and completed;

(b) proposed initial scope of work to advance and define a feasible project that can be ultimately scoped, priced and financing secured;

(c) relative responsibilities between the Department and the Proposer during the predevelopment agreement phase;

(d) the payment structure, terms and conditions under which the Proposer will be compensated for undertaking the predevelopment agreement scope of work; and

(e) schedule and milestones applicable to the predevelopment agreement scope activities.

(3) The subsequent phase or phases may be for all or a portion of the remaining services necessary to deliver the proposed project and may include, design services, construction services, operation or maintenance services, traffic, ridership and revenue estimates, financing and toll or user fee collection services, or any other requirement the Department deems necessary. Each subsequent phase will commence after the preceding phase has been completed.

(4) Award of the first phase will be based on the Department's competitive solicitation in accordance with R926-16-5, subject to R926-16-7.

(5) The entity awarded the first phase may have the first opportunity to submit a proposal for the subsequent phase or phases, as set forth in the predevelopment agreement. The entity awarded the first phase must provide all supporting documentation used to determine the scope, schedule, and cost in its proposal for each subsequent phase to the Department for review, along with any other information and requirements set forth in the predevelopment agreement.

(6) The Department may accept or reject the proposal. If the Department rejects the proposal, the Department may provide a counteroffer and/or negotiate with the entity awarded the first or prior phase, or in lieu of providing a counteroffer or if the negotiations are unsuccessful, choose to solicit competitive proposals for the subsequent phase or phases.

R926-16-9. Rights Related to Proposals; Release of Rights and Indemnification.

(1) A submitter of an unsolicited proposal will not obtain any claim or have any right or expectation to use any route, corridor, rights of way, public property or public facility by virtue of having submitted a proposal that proposes to use such route, corridor, rights of way, public property or public facility or otherwise, involves or affects

such. By submitting an unsolicited proposal, a submitter thereby waives and relinquishes any claim, right, or expectation to occupy, use, profit from, or otherwise exercise any prerogative with respect to any route, corridor, rights of way, public property or public facility identified in the proposal as being necessary for or part of the proposed project.

(2) By submitting such a proposal, a submitter thereby waives and relinquishes any right, claim, copyright, proprietary interest or other right in any proposed location, site, route, corridor, rights of way, alignment, or transportation mode or configuration identified in the proposal as being involved in or related to the proposed project, and submitter must include in the proposal an indemnity that holds the state harmless against any such claim made by any entity that is a member of the proposer's proposal team, including their agents, employees and assigns.

(3) The waiver and release of rights in this section do not apply to a submitter's rights in any documents, designs and other information and records that are otherwise classified as protected records under Utah Code Section 63G-2-305 or 63G-2-309.

R926-16-10. Participation of Public Entities.

In order to ensure that the procurement process for TIPPPs originating from an unsolicited proposal remains fair and competitive, public entities will not be permitted to submit proposals or to participate as a member of proposer teams with respect to solicitations issued by the Department under this rule R926-16. Furthermore, so long as an active solicitation is outstanding for a transportation infrastructure public-private partnership agreement, the Department will not separately negotiate with a public entity for the project that is the subject of that solicitation.

KEY: transportation, highways, public-private partnerships, unsolicited proposals

Date of Enactment or Last Substantive Amendment: 2019

Authorizing, and Implemented or Interpreted Law: 72-1-201; 63G-6a-712

End of the Notices of Proposed Rules Section

NOTICES OF CHANGES IN PROPOSED RULES

After an agency has published a **PROPOSED RULE** in the *Utah State Bulletin*, it may receive comment that requires the **PROPOSED RULE** to be altered before it goes into effect. A **CHANGE IN PROPOSED RULE** allows an agency to respond to comments it receives.

As with a **PROPOSED RULE**, a **CHANGE IN PROPOSED RULE** is preceded by a **RULE ANALYSIS**. This analysis provides summary information about the **CHANGE IN PROPOSED RULE** including the name of a contact person, anticipated cost impact of the rule, and legal cross-references.

While the law does not designate a comment period for a **CHANGE IN PROPOSED RULE**, it does provide for a 30-day waiting period. An agency may accept additional comments during this period and, at its option, may designate a comment period or may hold a public hearing. The 30-day waiting period for **CHANGES IN PROPOSED RULES** published in this issue of the *Utah State Bulletin* ends May 1, 2019.

Following the **RULE ANALYSIS**, the text of the **CHANGE IN PROPOSED RULE** is usually printed. The text shows only those changes made since the **PROPOSED RULE** was published in an earlier edition of the *Utah State Bulletin*. Additions made to the rule appear underlined (example). Deletions made to the rule appear struck out with brackets surrounding them (~~example~~). A row of dots in the text between paragraphs (.) indicates that unaffected text, either whole sections or subsections, was removed to conserve space. If a **CHANGE IN PROPOSED RULE** is too long to print, the Office of Administrative Rules may include only the **RULE ANALYSIS**. A copy of rules that are too long to print is available from the agency or from the Office of Administrative Rules.

From the end of the 30-day waiting period through July 30, 2019, an agency may notify the Office of Administrative Rules that it wants to make the **CHANGE IN PROPOSED RULE** effective. When an agency submits a **NOTICE OF EFFECTIVE DATE** for a **CHANGE IN PROPOSED RULE**, the **PROPOSED RULE** as amended by the **CHANGE IN PROPOSED RULE** becomes the effective rule. The agency sets the effective date. The date may be no fewer than 30 days nor more than 120 days after the publication date of the **CHANGE IN PROPOSED RULE**. If the agency designates a public comment period, the effective date may be no fewer than seven calendar days after the close of the public comment period nor more than 120 days after the publication date. Alternatively, the agency may file another **CHANGE IN PROPOSED RULE** in response to additional comments received. If the Office of Administrative Rules does not receive a **NOTICE OF EFFECTIVE DATE** or another **CHANGE IN PROPOSED RULE** by the end of the 120-day period after publication, the **CHANGE IN PROPOSED RULE** filing, along with its associated **PROPOSED RULE**, lapses.

CHANGES IN PROPOSED RULES are governed by Section 63G-3-303, Rule R15-2, and Sections R15-4-3, R15-4-4, R15-4-5b, R15-4-7, R15-4-9, and R15-4-10.

The Changes in Proposed Rules Begin on the Following Page

**Commerce, Occupational and
Professional Licensing
R156-63a
Security Personnel Licensing Act
Contract Security Rule**

NOTICE OF CHANGE IN PROPOSED RULE

DAR FILE NO.: 43318

FILED: 03/07/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: In response to public comments received after publication of the original proposed amendments, upon which this change is based, and after further review by the Security Services Licensing Board, the Division of Occupational and Professional Licensing (Division) and the Security Services Licensing Board propose these further modifications to the continuing education requirements for security officers.

SUMMARY OF THE RULE OR CHANGE: In Section R156-63a-304, these proposed amendments modify the continuing education requirements as follows: 1) a licensee's 16 hours of "core continuing education" during each renewal cycle must cover each one of the core topics; 2) the topic "management of aggressive behavior, use of force, de-escalation techniques" is removed as an optional professional continuing education topic, and is added as a required core continuing education topic; 3) unlimited hours of core, professional, or firearm continuing education credit may be granted for courses completed in blocks of time of not less than one hour in formally established classroom courses, seminars, or conferences; 4) unlimited hours of professional continuing education credit may be granted for Internet courses (but Internet courses will not qualify for core or firearm continuing education credit); 5) professional, not core, continuing education credit may be granted for hours of service on the Contract Security Services Licensing Board, a state or national security board, or the Contract Security Education Advisory Peer Committee; 6) a licensed contract security company must ensure that the continuing education courses offered to its employees meet the requirements of this section; 7) the Division may assign monitors at no charge to attend a continuing education course to evaluate the course and instructor; 8) it is clarified that the educational and training programs required for initial licensure may not be used to satisfy any continuing education requirement, in whole or in part; and 9) formatting changes are made for clarity, and citations are updated. In Section R156-63a-502, these proposed amendments update citations and add to the definitions of unprofessional conduct failing as a contract security company to comply with Subsection R156-63a-304(6) regarding continuing education courses/providers. In Section R156-63a-603, the change adds a correct subsection numbering. (EDITOR'S NOTE: The original proposed

amendment upon which this change in proposed rule (CPR) was based was published in the November 15, 2018, issue of the Utah State Bulletin, on page 89. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike-out indicates text that has been deleted. You must view the CPR and the proposed amendment together to understand all of the changes that will be enforceable should the agency make this rule effective.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-63-101 and Subsection 58-1-106(1)(a) and Subsection 58-1-202(1)(a)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** No state government entities will be directly affected by these further amendments because the constrained parties consist only of licensed armed or unarmed private security officers and the businesses that employ them. Additionally, there are no state government entities acting as businesses that will be impacted. State government entities that employ security businesses are not expected to experience any indirect fiscal cost from these further amendments because these changes are not expected to increase costs for security businesses.

◆ **LOCAL GOVERNMENTS:** No local government entities will be directly affected by these further amendments because the constrained parties consist only of licensed armed or unarmed private security officers and the businesses that employ them. Additionally, there are no local government entities acting as businesses that will be impacted. Local government entities that employ security businesses are not expected to experience any indirect fiscal costs from these further amendments because these changes are not expected to increase costs for security businesses.

◆ **SMALL BUSINESSES:** There are a total of 68 licensed security businesses in Utah (NAICS 561612), of which approximately 48 are small businesses. These small businesses are not expected to be cost affected by these further substantive amendments. The changes to Section R156-63a-304 merely fine-tune continuing education (CE) topic requirements, and clarify the CE supervision and record-keeping requirements expected from these businesses, most of which should already be taking place in the industry. The new provision in Section R156-63a-502 which adds to the definitions of unprofessional conduct failing as a contract security company to comply with Subsection R156-63a-304(6) regarding continuing education courses/providers is similar to the other unprofessional conduct provisions of Section R156-63a-502 in that the goal is to provide a deterrent, such that there is a \$0 net impact on all parties involved. Therefore, for the typical member of the affected party, these proposed rule changes are expected to have no direct or indirect fiscal impact. However, inestimable fiscal impacts of the underlying rule include any money a contract security business adjudicated as having violated this rule might have to pay to the state budget in the form of an administrative penalty. This amount is inestimable, both

because it applies only in cases of unforeseeable violations, and because the penalty assessed may vary depending on the circumstances of the violation.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are currently 1,817 armed private security officers and 5,208 unarmed private security officers in Utah. Licensed individuals are not expected to be directly cost affected by any of these further substantive amendments. In particular, the changes to Section R156-63a-304 merely fine-tune continuing education topic requirements and clarify the expected record-keeping requirements.

COMPLIANCE COSTS FOR AFFECTED PERSONS: As outlined in the previous sections, affected persons are not expected to be impacted by these amendments.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: S.B. 197, passed during the 2018 General Session, amended the Security Personnel Licensing Act (Act) with respect to the basic education and training hours required for initial licensure as an armed or unarmed private security officer. The Act now requires "a minimum of eight" hours of classroom or online curriculum instead of 24 hours. In accordance with this legislative guidance, and pursuant to the review and recommendations of the Security Services Licensing Board to improve private security officer education and training, proposed rule amendments were prepared to modify the initial basic education and training requirements. In response to public comments received after publication of the original proposed amendments upon which these additional changes are based, and after further review by the Security Services Licensing Board, the Division and the Security Services Licensing Board propose these further modifications to the continuing education requirements for security officers. **Additional Changes:** The substantive additional changes are summarized as follows: in Section R156-63a-304, these proposed amendments modify the continuing education requirements as follows: 1) a licensee's 16 hours of "core continuing education" during each renewal cycle must cover each one of the core topics; 2) the topic "management of aggressive behavior, use of force, de-escalation techniques" is removed as an optional professional continuing education topic, and is added as a required core continuing education topic; 3) unlimited hours of core, professional, or firearm continuing education credit may be granted for courses completed in blocks of time of not less than one hour in formally established classroom courses, seminars, or conferences; 4) unlimited hours of professional continuing education credit may be granted for internet courses (but internet courses will not qualify for core or firearms continuing education credit); 5) professional, not core, continuing education credit may be granted for hours of service on the Contract Security Services Licensing Board, a state or national security board, or the Contract Security Education Advisory Peer Committee; 6) a licensed contract security company must ensure that the continuing education courses offered to its employees meet the requirements of

this section; 7) the Division may assign monitors at no charge to attend a continuing education course to evaluate the course and instructor; and 8) it is clarified that the educational and training programs required for initial licensure may not be used to satisfy any continuing education requirement, in whole or in part. In Section R156-63a-502, these proposed amendments update citations and provide an additional definition of unprofessional conduct to include failing as a contract security company to comply with Subsection R156-63a-304(6) regarding continuing education courses/providers. **FISCAL IMPACTS -- Small Businesses (less than 50 employees):** There are a total of 68 licensed security businesses in Utah (NAICS 561612), of which approximately 48 are small businesses. These small businesses are not expected to be cost affected by these additional substantive amendments. The changes to Section R156-63a-304 merely fine-tune continuing education topic requirements and clarify the continuing education supervision and record-keeping requirements expected from these businesses, most of which should already be taking place in the industry. The new provision in Section R156-63a-502 which adds to the definitions of unprofessional conduct is similar to the other unprofessional conduct provisions of Section R156-63a-502 in that the goal is to provide a deterrent, such that there is a zero net impact on all parties involved. Therefore, for the typical member of the affected group of licensees, these proposed rule changes are expected to have no direct or indirect fiscal impact. However, inestimable fiscal impacts of the underlying rule include any money a contract security business might have to pay to the state budget in the form of an administrative penalty, if adjudicated as having violated this rule. This amount is inestimable, both because it applies only in cases of unforeseeable violations, and because the penalty assessed may vary depending on the circumstances of the violation. **Non-Small Businesses (50 or more employees):** Non-small businesses are not expected to be directly cost affected by these further substantive amendments. The changes to Section R156-63a-304 merely fine-tune continuing topic requirements and clarify the continuing education supervision and record-keeping requirements expected from these businesses, most of which should already be taking place in the industry. The new provision in Section R156-63a-502 which adds to the definitions of unprofessional conduct is similar to the other unprofessional conduct provisions of Section R156-63a-502 in that the goal is to provide a deterrent, such that there is a zero net impact on all parties involved. Therefore, for the typical member of the affected group of licensees, these proposed rule changes are expected to have no direct or indirect fiscal impact. However, inestimable fiscal impacts of the underlying rule include any money a non-small contract security business might have to pay to the state budget in the form of an administrative penalty, if adjudicated as having violated this rule. This amount is inestimable, both because it applies only in cases of unforeseeable violations, and because the penalty assessed may vary depending on the circumstances of the violation. **Original Proposed Amendment:** A discussion of the fiscal impact of the original proposed amendments was published in the November 15,

2018, issue of the Utah State Bulletin, Vol. 2018, No. 22, at pages 89 - 96. Those proposed rule changes may have an ongoing fiscal cost for licensed security officers due to the additional 16 hours of continuing education per two-year renewal period that will be required for them to keep active licensure. It is estimated that average costs to course attendees, if they were required to pay for all of their training for the full additional 16 hours required by these proposed amendments, would range between \$75 (for a licensee earning 16 hours by attending a 16-hour course) and \$100 (for a licensee earning 16 hours by attending four four-block-hour courses at \$25 each). Therefore, a licensee could experience a total cost of approximately \$37.50 to \$50 per year ongoing. Based on the current total of 7,025 armed and unarmed private security officers in Utah, if it were assumed that every one of these licensees had to pay for all of their additional continuing education training, the licensees could experience a fiscal cost of approximately \$307,344 ongoing (average additional fees of \$43.75 annually x 7,025 licensees). These costs are not listed under "Other Persons" line item on the table below, but are reflected in the "Other Persons" line item in the table printed in the November 15, 2018, issue of the Utah State Bulletin referenced above.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

COMMERCE
 OCCUPATIONAL AND PROFESSIONAL
 LICENSING
 HEBER M WELLS BLDG
 160 E 300 S
 SALT LAKE CITY, UT 84111-2316
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Jana Johansen by phone at 801-530-6621, by FAX at 801-530-6511, or by Internet E-mail at janajohansen@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/01/2019

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

♦ 04/11/2019 09:00 AM, Heber Wells Bldg, 160 E 300 S, North Conference Room, first floor, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 05/08/2019

AUTHORIZED BY: Mark Steinagel, Director

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2019	FY 2020	FY 2021
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0

Other Person	\$0	\$0	\$0
Total Fiscal Costs:	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Government	\$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

*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 for State Government, Local Government, Small Businesses and Other Persons are described above. Inestimable impacts for Non-Small Businesses are described below.

Appendix 2: Regulatory Impact to Non-Small Businesses (50 or more employees)

There are a total of 68 licensed security businesses in Utah (NAICS 561612), of which approximately 20 are non-small businesses. These non-small businesses are not expected to be directly cost affected by these further substantive amendments. The changes to Section R156-63a-304 merely fine-tune CE topic requirements and clarify the CE supervision and record-keeping requirements expected from these businesses, most of which should already be taking place in the industry. The new provision in Section R156-63a-502 which adds to the definitions of unprofessional conduct failing as a contract security company to comply with Subsection R156-63a-304(6) regarding continuing education courses/providers is similar to the other unprofessional conduct provisions of Section R156-63a-502 in that the goal is to provide a deterrent, such that there is a \$0 net impact on all parties involved. Therefore, for the typical member of the affected party, the proposed rule is expected to have no direct or indirect fiscal impact. However, inestimable fiscal impacts of the underlying rule include any money a non-small contract security business adjudicated as having violated the rule might have to pay to the state budget in the form of an administrative penalty. This amount is inestimable, both because it applies only in cases of unforeseeable violations, and because the penalty assessed may vary depending on the circumstances of the violation.

The executive director of the Department of Commerce, Francine A. Gianì, has reviewed and approved this fiscal analysis.

**R156. Commerce, Occupational and Professional Licensing.
 R156-63a. Security Personnel Licensing Act Contract Security Rule.**

R156-63a-304. Continuing Education for Armed and Unarmed Private Security Officers as a Condition of Renewal.

In accordance with Subsections 58-1-203(1)(g) and 58-1-308(3)(b), the following continuing education requirements are established as a condition of renewal or reinstatement of licenses issued under Title 58, Chapter 63 in the classifications of armed private security officer and unarmed private security officer:

(1) Armed and unarmed private security officers shall complete at least 32 hours of continuing education during each two-year renewal cycle. A minimum of 16 hours shall be core

continuing education; the remaining hours may consist of professional continuing education or core continuing education.

(a) "Core continuing education" is defined as education ~~[covering one or more of]~~completed during a two-year renewal cycle, that covers each of the following topics:

- (i) company operational procedures manual;
- (ii) applicable state laws and rules;
- (iii) legal powers and limitations of private security officers;
- (iv) observation and reporting techniques;
- (v) ethics;
- (vi) management of aggressive behavior, use of force, de-escalation techniques;
- (vii) emergency techniques; and
- (viii) a recognized basic life saving course to obtain or maintain~~current~~ certification in:
 - (A) cardiopulmonary resuscitation (CPR);
 - (B) automated external defibrillator (AED);
 - (C) first aid; or
 - (D) any other recognized basic life-saving skills.

(b) "Professional continuing education" is defined as education covering one or more of the following topics:

- (i) executive protection;
- (ii) basic self-defense;
- (iii) driving techniques for the security professional;
- (iv) escort techniques;
- (v) crowd control;
- (vi) access control and the use of electronic detection devices;
- (vii) use of defensive items and objects;
- (viii) ~~[management of aggressive behavior, use of force, de-escalation techniques;~~
- ~~(ix)]homeland security involving bomb threats and anti-terrorism; [or]~~
- (ix) Americans with Disabilities Act (ADA) compliance;
- or
- (x) any other topic relevant to the education of security professionals.

(2) In addition to the 32 hours of core/professional continuing education, an armed private security officer shall complete at least 16 hours of continuing firearms education and training during each two-year renewal cycle. Continuing firearms education and training:

- (a) shall be completed in four-hour blocks every six months;
- (b) may not include any hours for the continuing education requirement in Subsection R156-63a-304(1); and
- (c) shall include at minimum:
 - (i) live classroom instruction concerning:
 - (A) the restrictions in the use of deadly force; and
 - (B) firearms safety on duty, at home, and on the range;
 - (ii) a recognized practical pistol recertification course on which the licensee achieves a minimum score of 80% using regular or low light conditions.

(3) Credit for continuing education shall be recognized as follows:

(a) unlimited hours for core, professional, and firearm continuing education completed in blocks of time of not less than one hour in formally established classroom courses, seminars, or conferences;

(b) unlimited hours for professional continuing education provided via the Internet, if the course provider verifies registration and participation in the course by means of an exam which demonstrates that the participant has learned the material presented;

(c) two hours for each hour of lecturing, training, or instructing a course, if it is the first time the material has been taught during the preceding 12 months, up to a maximum of 12 hours during each two-year renewal period; the type of credit received - whether core, professional, or firearms education and training - shall be based on the subject taught; and

(d) one ~~[core]~~professional continuing education hour for each hour of service on the Contract Security Services Licensing Board, a state or national security board, or the Contract Security Education Advisory Peer Committee, up to a maximum of six hours during each two-year renewal period.

(4) Modification of Required Continuing Education Hours.

(a) A licensee who fails to complete the required four hours of continuing firearms education and training within the appropriate six-month period shall complete one and one half times the number of hours the licensee was deficient for the reporting period ("penalty hours"). Penalty hours shall not satisfy in whole or in part any of the continuing firearms education and training hours required for subsequent renewal of the license.

(b) If a renewal period is shortened or lengthened to effect a change of renewal cycle, the continuing education hours required for that renewal period shall be increased or decreased proportionately.

(c) The Division may defer or waive continuing education requirements as provided in Section R156-1-308d.

(5) ~~[Documentation-~~

~~(a) Each]A licensee shall maintain documentation showing compliance with the requirements of this section, such as certificates of completion or course handouts and materials, for a period of three years from the end of the renewal period for which the continuing education is due.~~

~~(b) A continuing education provider shall give participants who complete the continuing education a completion certificate or form, which contains the:~~

- ~~(i) name of the participant;~~
- ~~(ii) date the course was taken;~~
- ~~(iii) location where the course was taken (or type of Internet course);~~
- ~~(iv) title of the course;~~
- ~~(v) name of the continuing education provider and instructor;~~
- ~~(vi) exam score for any exam taken; and~~
- ~~(vii) number of continuing education hours completed.]~~

(6) A contract security company licensed under this chapter shall:

(a) review continuing education courses and approve for its employees only those courses that meet the requirements of this section;

(b)(i) maintain accurate records of its approved continuing education courses and of each employee's attendance and course completion; and

(ii) make such records available for audit by representatives of the Division; and

(c) ensure that each provider of its approved continuing education courses:

(i) maintains accurate records of attendance and course completion, by individual licensee, that are available for review by the licensed company, the Division, and the licensee; and

(ii) provides individuals completing the course a certificate identifying the:

(A) name of the individual;

(B) date the course was taken;

(C) location where the course was taken or type of Internet course taken;

(D) title of the course identifying its topic(s) as outlined in Subsection R156-63a-304(1);

(E) name of the continuing education provider and instructor;

(F) exam score for any exam taken; and

(G) number of continuing education hours completed.

(7) On a random basis, the Division may assign monitors at no charge to attend a continuing education course for the purpose of evaluating the course and the instructor.

([6]8) The initial licensure education and training programs defined in Subsections R156-63a-102(1) and (2)[, which are required to obtain initial licensure as an armed or unarmed security officer,] may not be used to satisfy, in whole or in part, any of the continuing education requirements of this section.

R156-63a-502. Unprofessional Conduct.

"Unprofessional conduct" includes the following:

(1) making any statement that would reasonably cause another person to believe that a private security officer functions as a law enforcement officer or other official of this state or any of its political subdivisions or any agency of the federal government;

(2) utilizing a vehicle with markings, lighting, and/or signal devices that imply or suggest that the vehicle is an authorized emergency vehicle as defined in Subsection 41-6a-102(3) and Section 41-6a-310[~~and in Title R722, Chapter 340~~];

(3) utilizing a vehicle with an emergency lighting system that violates the requirements of Section 41-6a-1616 of the Utah Motor Vehicle Code;

(4) wearing a uniform, insignia, or badge that would lead a reasonable person to believe that the unarmed or armed private security officer is connected with a federal, state, or municipal law enforcement agency;

(5) being incompetent or negligent as an unarmed private security officer, an armed private security officer, or a contract security company, so as to cause injury to a person or create an unreasonable risk that a person might be harmed;

(6) failing as a contract security company or its officers, directors, partners, proprietors or responsible management personnel to adequately supervise employees so as to place the public health and safety at risk;

(7) failing to immediately notify the Division of the cancellation of the contract security company's insurance policy;

(8) failing as a contract security company or an armed or unarmed private security officer to report a criminal offense pursuant to Section R156-63a-613;

(9) pursuant to Subsection R156-63a-~~612(3)~~613(1), failing as a contract security company or an armed or unarmed private security officer to report to the Division a violation of:

(a) any provision set forth in 18 U.S.C. Chapter 44, 922(g)1-9;

(b) Utah Code Subsection 76-10-503(1); or

(c) Utah Code Subsections 58-63-302(1)(~~a~~h), (2)(c), or (3)(c);

(10) wearing a uniform, insignia, or badge, or displaying a license, that would lead a reasonable person to believe that an individual is connected with a contract security company, when not employed as an armed or unarmed private security officer by a contract security company;~~and~~

(11) failing as an armed or unarmed private security officer to complete required continuing education hours, in violation of Section R156-63a-304; and

(12) failing as a contract security company to comply with Subsection R156-63a-304(6) regarding continuing education courses or providers.

R156-63a-603. Content of Approved Basic Education and Training Program for Armed and Unarmed Private Security Officers.

In accordance with Subsection 58-63-302(2)(g), an approved basic education and training program for armed and unarmed private security officers shall have at least eight hours of classroom or online instruction, including:

(1) the nature and role of private security, including a private security officer's:

(a) scope and limits of authority;

(b) civil liability; and

(c) role in today's society;

(2) state laws and rules applicable to private security;

(3) the legal responsibilities of private security, including:

(a) constitutional law;

(b) search and seizure; and

(c) other such topics;

(4) situational response evaluations, including:

(a) protecting and securing crime or accident scenes;

(b) notifying internal and external agencies; and

(c) controlling information;

(5) security ethics;

(6) the use of force, emphasizing the de-escalation of force and alternatives to using force;

(7) documentation and report writing, including:

(a) preparing witness statements;

(b) performing log maintenance;

(c) exercising control of information;

(d) taking field notes;

(e) organizing information into a report; and

(f) performing basic writing;

(8) patrol techniques, including:

(a) mobile patrol versus fixed post;

(b) accident prevention;

(c) responding to calls and alarms;

- (d) security breaches;
- (e) monitoring potential safety hazards; and
- (f) police and community relations, including fundamental duties and personal appearance of security officers;
- (9) sexual harassment in the workplace; and
- (10) a final examination that:
 - (a) competently examines the student on the subjects included in the eight hours of basic instruction; and
 - (b) mandates a minimum pass score of 80%.

KEY: licensing, security guards, private security officers
Date of Enactment or Last Substantive Amendment: 2019
Notice of Continuation: May 15, 2018
Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-202(1)(a); 58-63-101

Commerce, Occupational and Professional Licensing
R156-63b
Security Personnel Licensing Act
Armored Car Rule

NOTICE OF CHANGE IN PROPOSED RULE
 DAR FILE NO.: 43319
 FILED: 03/07/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: In response to public comments received after publication of the original proposed amendments upon which this change is based, and after further review by the Security Services Licensing Board, the Division of Occupational and Professional Licensing (Division) and the Security Services Licensing Board propose these further modifications to the continuing education requirements for licensed armored car security officers.

SUMMARY OF THE RULE OR CHANGE: In Sections R156-63b-102, these proposed amendments update citations. In Section R156-63b-304, these proposed amendments modify the continuing education requirements as follows: 1) a licensee's 16 hours of "core continuing education" during each renewal cycle must cover each one of the core topics; 2) the topic "management of aggressive behavior, use of force, de-escalation techniques" is removed as an optional professional continuing education topic, and is added as a required core continuing education topic; 3) unlimited hours of core, professional, or firearm continuing education credit may be granted for courses completed in blocks of time of not less than one hour in formally established classroom courses, seminars, or conferences; 4) unlimited hours of professional continuing education credit may be granted for internet courses (but internet courses will not qualify for core or firearm continuing education credit); 5) professional, not core, continuing education credit may be granted for hours of

service on the Contract Security Services Licensing Board, a state or national security board, or the Contract Security Education Advisory Peer Committee; 6) a licensed armored car security company must ensure that the continuing education courses offered to its employees meet the requirements of this section; 7) the Division may assign monitors at no charge to attend a continuing education course to evaluate the course and instructor; 8) it is clarified that the educational and training programs required for initial licensure may not be used to satisfy any continuing education requirement, in whole or in part; and 9) formatting changes are made for clarity, and citations are updated. In Section R156-63b-502, these proposed amendments update citations and add to the definitions of unprofessional conduct failing as an armored car security company to comply with Subsection R156-63b-304(6) regarding continuing education courses/providers. (EDITOR'S NOTE: The original proposed amendment upon which this change in proposed rule (CPR) was based was published in the November 15, 2018, issue of the Utah State Bulletin, on page 96. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike-out indicates text that has been deleted. You must view the CPR and the proposed amendment together to understand all of the changes that will be enforceable should the agency make this rule effective.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-63-101 and Subsection 58-1-106(1)(a) and Subsection 58-1-202(1)(a)

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** No state government entities will be directly affected by these further amendments because the constrained parties consist only of licensed armored car security officers and the businesses that employ them. Additionally, there are no state government entities acting as businesses that will be impacted. State government entities that employ such businesses are not expected to experience any indirect fiscal costs from these further amendments because these changes are not expected to increase costs for security businesses.
- ◆ **LOCAL GOVERNMENTS:** No local government entities will be directly affected by these further amendments because the constrained parties consist only of licensed armored car security officers and the businesses that employ them. Additionally, there are no local government entities acting as businesses that will be impacted. Local government entities that employ such businesses are not expected to experience any indirect fiscal costs from these further amendments because these changes are not expected to increase costs for these businesses.
- ◆ **SMALL BUSINESSES:** There are a total of eight licensed armored car security businesses in Utah (NAICS 561613), six of which are small businesses. These small businesses are not expected to be cost affected by these further substantive amendments. The changes to Section R156-63b-304 merely fine-tune continuing education (CE) topic requirements, and clarify the CE supervision and record-keeping requirements

expected from these businesses, most of which should already be taking place in the industry. The new provision in Section R156-63b-502, which adds to the definitions of unprofessional conduct failing as an armored car security company to comply with Subsection R156-63b-304(6) regarding continuing education courses/providers, is similar to the other unprofessional conduct provisions of Section R156-63b-502 in that the goal is to provide a deterrent, such that there is a \$0 net impact on all parties involved. Therefore, for the typical member of the affected party, these proposed rule changes are expected to have no direct or indirect fiscal impact. However, inestimable fiscal impacts of the underlying rule include any money a business adjudicated as having violated this rule might have to pay to the state budget in the form of an administrative penalty. This amount is inestimable, both because it applies only in cases of unforeseeable violations, and because the penalty assessed may vary depending on the circumstances of the violation.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are currently 463 armored car security officers in Utah. Licensed individuals are not expected to be directly cost affected by any of these further substantive amendments. In particular, the changes to Section R156-63b-304 merely fine-tune continuing education topic requirements and clarify the expected record-keeping requirements.

COMPLIANCE COSTS FOR AFFECTED PERSONS: As outlined in the previous sections, affected persons are not expected to be impacted by these amendments.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: S.B. 197, passed during the 2018 General Session, amended the Security Personnel Licensing Act (Act) with respect to the basic education and training hours required for initial licensure as an armored car security officer. The Act now requires "a minimum of eight" hours of classroom or online curriculum instead of 24 hours. In accordance with this legislative guidance, and pursuant to the review and recommendations of the Security Services Licensing Board to improve armored car security officer education and training, these proposed rule amendments modify the initial basic education and training requirements. In this regard, the initial basic education and training requirements are reduced to reflect the change in the statute. In response to public comments received after publication of the original proposed amendments upon which this change is based, and after further review by the Security Services Licensing Board, the Division and the Security Services Licensing Board propose these further modifications to the continuing education requirements for licensed armored car security officers. **Additional Changes:** The substantive additional changes are summarized as follows: In Section R156-63b-304, these proposed amendments modify the continuing education requirements as follows: 1) a licensee's 16 hours of "core continuing education" during each renewal cycle must cover each one of the core topics; 2) the topic "management of aggressive behavior, use of force, de-escalation techniques"

is removed as an optional professional continuing education topic, and is added as a required core continuing education topic; 3) unlimited hours of core, professional, or firearm continuing education credit may be granted for courses completed in blocks of time of not less than one hour in formally established classroom courses, seminars, or conferences; 4) unlimited hours of professional continuing education credit may be granted for internet courses (but internet courses will not qualify for core or firearms continuing education credit); 5) professional, not core, continuing education credit may be granted for hours of service on the Contract Security Services Licensing Board, a state or national security board, or the Contract Security Education Advisory Peer Committee; 6) a licensed armored car security company must ensure that the continuing education courses offered to its employees meet the requirements of this section; 7) the Division may assign monitors at no charge to attend a continuing education course to evaluate the course and instructor; and 8) it is clarified that the educational and training programs required for initial licensure may not be used to satisfy any continuing education requirement, in whole or in part. In Section R156-63b-502, these proposed amendments update citations and provide an additional definition of unprofessional conduct to include failing as an armored car security company to comply with Subsection R156-63b-304(6) regarding continuing education courses/providers. **FISCAL IMPACTS -- Small Businesses (less than 50 employees):** There are a total of eight licensed armored car security businesses in Utah (NAICS 561613), six of which are small businesses. These small businesses are not expected to be cost affected by these substantive additional amendments. The changes to Section R156-63b-304 merely fine-tune continuing education topic requirements and clarify the continuing education supervision and record-keeping requirements expected from these businesses, most of which should already be taking place in the industry. The new provision in Section R156-63b-502, which adds to the definitions of unprofessional conduct, is similar to the other unprofessional conduct provisions of Section R156-63b-502 in that the goal is to provide a deterrent, such that there is a zero net impact on all parties involved. Therefore, for the typical member of the affected group of licensees, these proposed rule changes are expected to have no direct or indirect fiscal impact. However, inestimable fiscal impacts of the underlying rule include any money a business might have to pay to the state budget in the form of an administrative penalty, if adjudicated as having violated this rule. This amount is inestimable, both because it applies only in cases of unforeseeable violations, and because the penalty assessed may vary depending on the circumstances of the violation. **Non-Small Businesses (50 or more employees):** Non-small businesses are not expected to be directly cost affected by these further substantive amendments. The changes to Section R156-63b-304 merely fine-tune CE topic requirements, and clarify the CE supervision and record-keeping requirements expected from these businesses, most of which should already be taking place in the industry. The new provision in Section R156-63b-502, which adds to the definitions of unprofessional

conduct, is similar to the other unprofessional conduct provisions of Section R156-63b-502 in that the goal is to provide a deterrent, such that there is a zero net impact on all parties involved. Therefore, for the typical member of the affected group of licensees, these proposed rule changes are expected to have no direct or indirect fiscal impact. However, inestimable fiscal impacts of the underlying rule include any money a non-small business might have to pay to the state budget in the form of an administrative penalty, if adjudicated as having violated this rule. This amount is inestimable, both because it applies only in cases of unforeseeable violations, and because the penalty assessed may vary depending on the circumstances of the violation. Original Proposed Amendments: A discussion of the fiscal impact of the original proposed amendment was published in the November 15, 2018, issue of the Utah State Bulletin, Vol. 2018, No. 22, at pages 96-103. Those proposed rule changes may have an ongoing fiscal cost for licensed security officers due to the additional 16 hours of CE per two-year renewal period that will be required for them to keep active licensure. It is estimated that average costs to course attendees, if they were required to pay for all of their training for the full additional 16 hours required by these proposed amendments, would range between \$75 (for a licensee earning 16 hours by attending a 16-hour course) and \$100 (for a licensee earning 16 hours by attending four four-block-hour courses at \$25 each). Therefore, a licensee could experience a total cost of approximately \$37.50 to \$50 per year ongoing. Based on the current total of 463 armored car security officers in Utah, if it were assumed that every one of these licensees had to pay for all of their additional continuing education training, the licensees could experience a fiscal cost of approximately \$20,256 ongoing (average additional fees of \$43.75 annually x 463 licensees). These costs are not listed in the "Other Persons" line item in the table below, but are reflected in the "Other Persons" line item in the table printed in the November 15, 2018, issue of the Utah State Bulletin, Vol. 2018, referenced above.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

COMMERCE
 OCCUPATIONAL AND PROFESSIONAL
 LICENSING
 HEBER M WELLS BLDG
 160 E 300 S
 SALT LAKE CITY, UT 84111-2316
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Jana Johansen by phone at 801-530-6621, by FAX at 801-530-6511, or by Internet E-mail at janajohansen@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/01/2019

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

♦ 04/11/2019 09:00 AM, Heber Wells Bldg, 160 E 300 S, North Conference Room, first floor, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 05/08/2019

AUTHORIZED BY: Mark Steinagel, Director

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2019	FY 2020	FY 2021
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Person	\$0	\$0	\$0
Total Fiscal Costs:	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Government	\$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

*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 for State Government, Local Government, Small Businesses and Other Persons are described above. Inestimable impacts for Non-Small Businesses are described below.

Appendix 2: Regulatory Impact to Non-Small Businesses (50 or more employees)

There are a total of eight licensed armored car security businesses in Utah (NAICS 561613), two of which are non-small businesses. These non-small businesses are not expected to be directly cost affected by these further substantive amendments. The changes to Section R156-63b-304 merely fine-tune CE topic requirements and clarify the CE supervision and record-keeping requirements expected from these businesses, most of which should already be taking place in the industry. The new provision in Section R156-63b-502 which adds to the definitions of unprofessional conduct failing as an armored car security company to comply with Subsection R156-63b-304(6) regarding continuing education courses/providers is similar to the other unprofessional conduct provisions of Section R156-63b-502 in that the goal is to provide a deterrent, such that there is a \$0 net impact on all parties involved. Therefore, for the typical member of the affected party, the proposed rule is expected to have no direct or indirect fiscal impact. However, inestimable fiscal impacts of the underlying rule include any money a non-small business adjudicated as having violated the rule might have to pay to the state budget in the

form of an administrative penalty. This amount is inestimable, both because it applies only in cases of unforeseeable violations, and because the penalty assessed may vary depending on the circumstances of the violation.

The executive director of the Department of Commerce, Francine A. Gianì, has reviewed and approved this fiscal analysis.

R156. Commerce, Occupational and Professional Licensing.
R156-63b. Security Personnel Licensing Act Armored Car Rule.

R156-63b-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 63, as used in Title 58, Chapters 1 and 63 or this rule:

(1) "Approved basic education and training program" means a basic education and training program that:

(a) meets the standards and is approved by the Division as set forth in Section R156-63b-602; and

(b) has the content required by Section R156-63b-603.

(2) "Approved basic firearms training program" means a firearms education and training program that:

(a) meets the standards and is approved by the Division as set forth in Section R156-63b-602; and

(b) has the content required by Section R156-63b-604.

(3) "Armored car company" includes a peace officer who engages in providing security or guard services when acting in a capacity other than as an employee of the law enforcement agency by whom the peace officer is employed.

(4) "Armored car company" does not include a company which hires as employees, individuals to provide security or guard services for the purpose of protecting tangible property, currency, valuables, jewelry, SNAP benefits as defined in Section 35A-1-102, or other high value items that require secured delivery from one place to another and are owned by or under the responsibility of that company, as long as the security or guard services provided by the company do not benefit any person other than the employing company.

(5) "Authorized emergency vehicle" is as defined in Subsection 41-6a-102(3).

(6) "Compensated", as used in Subsection 58-63-302(1)(c)(viii)(A), means remuneration in the form of W-2 wages unless the qualifying agent is an owner of a contract security or armored car company, in which case "compensated" means the owner's profit distributions or dividends.

(7) "Conviction" means criminal conduct where the filing of a criminal charge has resulted in:

(a) a finding of guilt based on evidence presented to a judge or jury;

(b) a guilty plea;

(c) a plea of nolo contendere;

(d) a plea of guilty or nolo contendere which is held in abeyance pending the successful completion of probation;

(e) a pending diversion agreement; or

(f) a conviction which has been reduced pursuant to Section 76-3-402.

(8) "Corporate officer" as defined in Subsection 58-63-102(9), includes an individual who is on file with the Division of Corporations and Commercial Code as a limited liability company's company officer or "governing person" as defined in Subsection 48-

3a-102(7), or as a limited partnership's "general partner" as defined in Subsection 48-2[3]e-102(8).

(9) "Employee" means an individual providing services in the armored car industry for compensation when the amount of compensation is based directly upon the armored car services provided, and upon which the employer is required under law to withhold federal and state taxes, and for whom the employer is required under law to provide worker's compensation insurance coverage and pay unemployment insurance.

(10) "Instructor" means a person who directly facilitates learning through means of live in-class lecture, group participation, practical exercise, or other means, who has fulfilled the instructor experience and training requirements set forth in Section R156-63b-602.

(11) "Qualified continuing education" means continuing education that meets the standards set forth in Subsection R156-63b-304.

(12) "Qualifying agent" means a natural person who meets all of the requirements set forth in Subsection 58-63-302(1)(c).

(13) "Soft uniform" means a business suit or a polo-type shirt with appropriate slacks. The coat or shirt has an embroidered badge or armored car company logo that clips onto or is placed over the front pocket.

(14) "Supervision" means general supervision as defined in Subsection R156-1-102a(4)(c).

(15) "Trainer" has the same meaning as "instructor".

(16) "Unprofessional conduct," as defined in Title 58, Chapters 1 and 63, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-63b-502.

R156-63b-304. Continuing Education for Armored Car Security Officers as a Condition of Renewal.

In accordance with Subsections 58-1-203(1)(g) and 58-1-308(3)(b), the following continuing education requirements are established as a condition of renewal or reinstatement of licenses issued under Title 58, Chapter 63 in the classifications of armored car security officer:

(1) An armored car security officers shall complete at least 32 hours of continuing education during each two-year renewal cycle. A minimum of 16 hours shall be core continuing education; the remaining hours may consist of professional continuing education or core continuing education.

(a) "Core continuing education" is defined as education ~~covering one or more~~ completed during a two-year renewal cycle, that covers each of the following topics:

(i) company operational procedures manual;

(ii) applicable state laws and rules;

(iii) legal powers and limitations of private security officers;

(iv) observation and reporting techniques;

(v) ethics;

(vi) management of aggressive behavior, use of force, de-escalation techniques;

(vii) emergency techniques; and

(viii) a recognized basic life saving course to obtain or maintain ~~current~~ certification in:

(A) cardiopulmonary resuscitation(CPR);

(B) automated external defibrillator (AED);
 (C) first aid; or
 (D) any other recognized basic life-saving skills.
~~[certification];~~
 (b) "Professional continuing education" is defined as education covering one or more of the following topics:
 (i) executive protection;
 (ii) basic self-defense;
 (iii) driving techniques for the security professional;
 (iv) escort techniques;
 (v) crowd control;
 (vi) access control and the use of electronic detection devices;
 (vii) use of defensive items and objects;
 (viii) ~~[management of aggressive behavior, use of force, de-escalation techniques;~~
~~—(ix)—~~homeland security involving bomb threats and anti-terrorism;~~—(x)—~~
 (ix) Americans with Disabilities Act (ADA) compliance;
or
(x) any other topic relevant to the education of armored car security professionals.

(2) In addition to the 32 hours of core/professional continuing education, an armored car security officer shall complete at least 16 hours of continuing firearms education and training during each two-year renewal cycle. Continuing firearms education and training:

- (a) shall be completed in four-hour blocks every six months;
- (b) may not include any hours for the continuing education requirement in Subsection R156-63b-304(2);
- (c) shall comply with the provisions of Title 15, USC Chapter 85, the Armored Car Industry Reciprocity Act; and
- (d) shall include at minimum:
 - (i) live classroom instruction concerning:
 - (A) restrictions in the use of deadly force; and
 - (B) firearms safety on duty, at home, and on the range; and
 - (ii) a recognized practical pistol recertification course on which the licensee achieves a minimum score of 80% using regular or low light conditions.

(3) Credit for continuing education shall be recognized as follows:

- (a) unlimited hours for core, professional, and firearm continuing education completed in blocks of time of not less than one hour in formally established classroom courses, seminars, or conferences;
- (b) unlimited hours for professional continuing education provided via the Internet, if the course provider verifies registration and participation in the courses by means of an exam which demonstrates that the participant has learned the material presented;
- (c) two hours for each hour of lecturing, training, or instructing a course, if it is the first time the material has been taught during the preceding 12 months, up to a maximum of 12 hours during each two-year renewal period; the type of credit received - whether core, professional, or firearms education and training - shall be based on the subject taught; and

(d) one ~~[core]~~professional continuing education hour for each hour of service on the Contract Security Services Licensing Board, a state or national security board, or the Contract Security Education Advisory Peer Committee, up to a maximum of six hours during each two-year renewal period.

(4) Modification of Required Continuing Education Hours.

(a) A licensee who fails to complete the required four hours of continuing firearms education and training within the appropriate six-month period shall complete one and one half times the number of hours the licensee was deficient for the reporting period ("penalty" hours). Penalty hours shall not satisfy in whole or in part any of the continuing firearms education and training hours required for subsequent renewal of the license.

(b) If a renewal period is shortened or lengthened to effect a change of renewal cycle, the continuing education hours required for that renewal period shall be increased or decreased proportionately.

(c) The Division may defer or waive continuing education requirements as provided in Section R156-1-308d.

(5) ~~[Each]~~Δ licensee shall maintain documentation showing compliance with the requirements of this section, such as certificates of completion or course handouts and materials, for a period of three years from the end of the renewal period for which the continuing education is due.

~~—(b)—~~ A continuing education provider shall give a ~~participants who complete the continuing education a completion certificate or form which contains the:~~

- ~~—(i)—~~ name of the participant;
- ~~—(ii)—~~ date the course was taken;
- ~~—(iii)—~~ location where the course was taken (or type of Internet course);
- ~~—(iv)—~~ title of the course;
- ~~—(v)—~~ name of the continuing education provider and instructor;
- ~~—(vi)—~~ exam score for any exam taken; and
- ~~—(vii)—~~ number of continuing education hours completed.]

(6) An armored car security company licensed under this chapter shall:

(a) review continuing education courses and approve for its employees only those courses that meet the requirements of this section;

(b)(i) maintain accurate records of its approved continuing education courses and of each employee's attendance and course completion; and

(ii) make such records available for audit by representatives of the Division; and

(c) ensure that each provider of its approved continuing education courses:

(i) maintains accurate records of attendance and course completion, by individual licensee, that are available for review by the licensed company, the Division, and the licensee;

(ii) provides individuals completing the course a certificate identifying the:

- (A) name of the individual;
- (B) date the course was taken;
- (C) location where the course was taken or type of Internet course taken;

(D) title of the course identifying its topic(s) as outlined in Subsection R156-63b-304(1);

(E) name of the continuing education provider and instructor;

(F) exam score for any exam taken; and

(G) number of continuing education hours completed.

(7) On a random basis, the Division may assign monitors at no charge to attend a continuing education course for the purposes of evaluating the course and the instructor.

~~(6)8~~ The initial licensure education and training programs defined in Subsections R156-63b-102(1) and (2)~~], which are required to obtain initial licensure as an armored car security officer,~~ may not be used to satisfy, in whole or in part, any of the continuing education requirements of this section.

R156-63b-502. Unprofessional Conduct.

"Unprofessional conduct" includes the following:

(1) making any statement that would reasonably cause another person to believe that an armored car security officer functions as a law enforcement officer or other official of this state or any of its political subdivisions or any agency of the federal government;

(2) utilizing a vehicle with markings, lighting, and/or signal devices that imply or suggest that the vehicle is an authorized emergency vehicle as defined in Subsection 41-6a-102(3) and Section 41-6a-310 ~~and in Title R722, Chapter 340~~;

(3) utilizing a vehicle with an emergency lighting system that violates the requirements of Section 41-6a-1616 of the Utah Motor Vehicle Code;

(4) wearing a uniform, insignia, or badge that would lead a reasonable person to believe that the armored car security officer is connected with a federal, state, or municipal law enforcement agency;

(5) being incompetent or negligent as an armored car security officer or as an armored car company so as to cause injury to a person or create an unreasonable risk that a person might be harmed;

(6) failing as an armored car company or its officers, directors, partners, proprietors or responsible management personnel to adequately supervise employees so as to place the public health and safety at risk;

(7) failing to immediately notify the Division of the cancellation of the armored car company's insurance policy;

(8) failing as an armored car company or an armored car security officer to report a criminal offense pursuant to Section R156-63b-612;

(9) pursuant to Subsection R156-63b-612(~~3~~1), failing as an armored car company or an armored car security officer to report to the Division a violation of:

(a) any provision set forth in 18 U.S.C. Chapter 44, 922(g)1-9;

(b) Utah Code Subsection 76-10-503(1); or

(c) Utah Code Subsection 58-63-302(1)(~~a~~h), (2)(c), or (3)(c);

(10) wearing a uniform, insignia, or badge, or displaying a license, that would lead a reasonable person to believe that an individual is connected with an armored car company, when not employed as an armored car security officer by an armored car company; and

(11) failing as an armored car security officer to complete required continuing education hours, in violation of Section R156-63b-304; and

(12) failing as an armored car security company to comply with R156-63b-304(6) regarding continuing education courses or providers.

KEY: licensing, security guards, armored car security officers, armored car company

Date of Enactment or Last Substantive Amendment: 2019

Notice of Continuation: May 15, 2018

Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-202(1)(a); 58-63-101

End of the Notices of Changes in Proposed Rules Section

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the agency is required to review the rule. This review is intended to help the agency determine, and to notify the public, that the administrative rule in force is still authorized by statute and necessary. Upon reviewing a rule, an agency may: repeal the rule by filing a **PROPOSED RULE**; continue the rule as it is by filing a **FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (REVIEW)**; or amend the rule by filing a **PROPOSED RULE** and by filing a **REVIEW**. By filing a **REVIEW**, the agency indicates that the rule is still necessary.

A **REVIEW** is not followed by the rule text. The rule text that is being continued may be found in the online edition of the *Utah Administrative Code* available at <https://rules.utah.gov/>. The rule text may also be inspected at the agency or the Office of Administrative Rules. **REVIEWS** are effective upon filing.

REVIEWS are governed by Section 63G-3-305.

Administrative Services, Facilities Construction and Management

R23-3

Planning, Programming, Request for Capital Development Projects and Operation and Maintenance Reporting for State Owned Facilities

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 43569
FILED: 03/06/2019

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Subsection 63A-5-103 (2), which directs the Building Board to make rules for its duties and those of the Division of Facilities Construction and Management. This rule sets forth the policies and procedures for authorization, funding, and development of programs for capital development and capital improvement projects, as well as the use of the planning fund. In addition, this rule provides the standards for the program as contained in Section 63A-5-103(2)(e). The Board's authority to administer the planning process for state facilities is found in Section 63A-4-103. The statutes governing the planning fund are contained in Section 63A-5-211.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE

FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments were received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule sets forth the guidelines for planning and programming requests for capital development and improvement projects. It provides direction for use of the planning fund, as well as operation and maintenance reporting for state-owned facilities. In addition, it establishes definitions, requirements, and clarifies standards for these programs. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

ADMINISTRATIVE SERVICES
FACILITIES CONSTRUCTION AND MANAGEMENT
ROOM 4110 STATE OFFICE BLDG
450 N STATE ST
SALT LAKE CITY, UT 84114-1201
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Cecilia Niederhauser by phone at 801-538-3261, by FAX at 801-538-9694, or by Internet E-mail at cniederhauser@utah.gov
- ◆ Jeff Reddoor by phone at 801-971-9830, or by Internet E-mail at jreddoor@utah.gov
- ◆ Michael Kelley by phone at 801-538-3105, or by Internet E-mail at mkelley@agutah.gov
- ◆ Nicole Alder by phone at 801-538-3240, or by Internet E-mail at nicolealder@agutah.gov

AUTHORIZED BY: Ned Carnahan, Building Board Chair

EFFECTIVE: 03/06/2019

**Administrative Services, Facilities
Construction and Management
R23-29**

Delegation of Project Management

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 43567
FILED: 03/06/2019

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Section 63A-5-103, which directs the Utah State Building Board to make rules necessary for the discharge of its duties and the duties of the Division of Facilities Construction and Management (Division). This rule provides the guidelines and procedures for delegation of construction projects to the University of Utah, Utah State University, and the Department of Transportation. This rule also provides for the use of Partnering Agreements between the Division and state agencies.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments were received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule sets forth the guidelines and procedures for delegation of projects by the Division by clarifying definitions, requirements, and delegation limits. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

ADMINISTRATIVE SERVICES
FACILITIES CONSTRUCTION AND MANAGEMENT
ROOM 4110 STATE OFFICE BLDG
450 N STATE ST
SALT LAKE CITY, UT 84114-1201
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Cecilia Niederhauser by phone at 801-538-3261, by FAX at 801-538-9694, or by Internet E-mail at cniederhauser@utah.gov
- ◆ Jeff Reddoor by phone at 801-971-9830, or by Internet E-mail at jreddoor@utah.gov

- ◆ Michael Kelley by phone at 801-538-3105, or by Internet E-mail at mkelley@agutah.gov
- ◆ Nicole Alder by phone at 801-538-3240, or by Internet E-mail at nicolealder@agutah.gov

AUTHORIZED BY: Ned Carnahan, Building Board Chair

EFFECTIVE: 03/06/2019

**Administrative Services, Facilities
Construction and Management
R23-33**

**Rules for the Prioritization and Scoring
of Capital Improvements by the Utah
State Building Board**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 43568
FILED: 03/06/2019

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Subsection 63A-5-104(10) which directs the Building Board to make rules necessary for the allocating of capital improvement funds subject to terms in the statute. Under Subsection 63A-5-103(2), the Building Board has administrative rulemaking authority. This rule sets forth the basis and guidelines for a prioritization and scoring process for capital improvements that occurs annually before the Building Board.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments were received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule sets forth the guidelines for the prioritization and scoring of capital improvements by the Utah State Building Board, and provides clarifying definitions, processes, and required procedures for project needs requests, prioritization and scoring, scored project review, and submittals to the Legislature. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 ADMINISTRATIVE SERVICES
 FACILITIES CONSTRUCTION AND MANAGEMENT
 ROOM 4110 STATE OFFICE BLDG
 450 N STATE ST
 SALT LAKE CITY, UT 84114-1201
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Cecilia Niederhauser by phone at 801-538-3261, by FAX at 801-538-9694, or by Internet E-mail at cniederhauser@utah.gov
- ◆ Jeff Reddoor by phone at 801-971-9830, or by Internet E-mail at jreddoor@utah.gov
- ◆ Michael Kelley by phone at 801-538-3105, or by Internet E-mail at mkelley@agutah.gov
- ◆ Nicole Alder by phone at 801-538-3240, or by Internet E-mail at nicolealder@agutah.gov

AUTHORIZED BY: Ned Carnahan, Building Board Chair

EFFECTIVE: 03/06/2019

Education, Administration
R277-524
Paraprofessional/Paraeducator
Programs, Assignments, and
Qualifications

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**

DAR FILE NO.: 43583
 FILED: 03/14/2019

**NOTICE OF REVIEW AND STATEMENT OF
 CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized by Utah Constitution, Article X, Section 3, which vests general control and supervision of public education in the State Board of Education (Board), Subsection 53E-3-401(4), which gives the Board authority to adopt rules in accordance with its responsibilities, Subsection 53E-3-501(1)(a)(i), which requires the Board to establish rules and minimum standards for the public schools regarding the qualification and certification of educators and ancillary personnel who provide direct student services, and No Child Left Behind (NCLB), Pub. L. No. 107-110, Title 1, Sec. 1119 which requires that each local education agency receiving assistance under this part shall ensure that all paraprofessionals shall be appropriately qualified.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be necessary because it designates appropriate assignments of paraprofessionals and qualifications for paraprofessionals hired before and after 01/06/2002, consistent with NCLB requirements. This rule establishes the formula for distribution of Paraeducator funding under Section 53F-2-411 to eligible schools. This rule provides minimum standards for use of funds and reporting requirements. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

EDUCATION
 ADMINISTRATION
 250 E 500 S
 SALT LAKE CITY, UT 84111-3272
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Angela Stallings by phone at 801-538-7550, by FAX at 801-538-7768, or by Internet E-mail at angie.stallings@schools.utah.gov

AUTHORIZED BY: Angela Stallings, Deputy Superintendent of Policy

EFFECTIVE: 03/14/2019

Education, Administration
R277-724
Criteria for Sponsors Recruiting Day
Care Facilities in the Child and Adult
Care Food Program

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**

DAR FILE NO.: 43579
 FILED: 03/13/2019

**NOTICE OF REVIEW AND STATEMENT OF
 CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized by Utah Constitution, Article X, Section 3, which vests general control

and supervision of public education in the State Board of Education (Board), by Subsection 53E-3-501(3), which authorizes the Board to administer and distribute funds made available through programs of the federal government, and by Subsection 53E-3-401(4), which allows the Board to adopt rules in accordance with its responsibilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R277-724 continues to be necessary because it establishes eligibility criteria for new sponsors to recruit participants for child care centers and day care homes in unserved areas. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 EDUCATION
 ADMINISTRATION
 250 E 500 S
 SALT LAKE CITY, UT 84111-3272
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Angela Stallings by phone at 801-538-7550, by FAX at 801-538-7768, or by Internet E-mail at angie.stallings@schools.utah.gov

AUTHORIZED BY: Angela Stallings, Deputy Superintendent of Policy

EFFECTIVE: 03/13/2019

**Health, Family Health and Preparedness, Licensing
 R432-10**

Specialty Hospital – Long-Term Acute Care Construction Rule

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 43563
 FILED: 03/04/2019

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE

OR REQUIRE THE RULE: Title 26, Chapter 21, is the health code that mandates the licensing of health care facilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no written comments from any party regarding this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be required by Title 26, Chapter 21, of the Health Facility Licensure and Inspection Act. There are four long-term acute care specialty hospitals in Utah. The Department of Health agrees with the need to continue this rule.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 HEALTH
 FAMILY HEALTH AND PREPAREDNESS,
 LICENSING
 3760 S HIGHLAND DR
 SALT LAKE CITY, UT 84106
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Kristi Grimes by phone at 801-273-2821, or by Internet E-mail at kristigrimes@utah.gov

AUTHORIZED BY: Joseph Miner, MD, Executive Director

EFFECTIVE: 03/04/2019

**Health, Family Health and Preparedness, Licensing
 R432-11
 Orthopedic Hospital Construction**

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 43564
 FILED: 03/04/2019

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 26, Chapter 21, is the health code that mandates the licensing of health care facilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE

FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no written comments from any party regarding this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be required by Title 26, Chapter 21, of the Health Facility Licensure and Inspection Act. There is currently not an orthopedic hospital in Utah, however, in the recent past there was one. The Department of Health agrees with the need to continue this rule.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 HEALTH
 FAMILY HEALTH AND PREPAREDNESS,
 LICENSING
 3760 S HIGHLAND DR
 SALT LAKE CITY, UT 84106
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Kristi Grimes by phone at 801-273-2821, or by Internet E-mail at kristigrimes@utah.gov

AUTHORIZED BY: Joseph Miner, MD, Executive Director

EFFECTIVE: 03/04/2019

**Health, Family Health and Preparedness, Licensing
 R432-12**

Small Health Care Facility (Four to Sixteen Beds) Construction Rule

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
 DAR FILE NO.: 43565
 FILED: 03/04/2019

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 26, Chapter 21, is the health code that mandates the licensing of health care facilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no written comments from any party regarding this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be required by Title 26, Chapter 21, of the Health Facility Licensure and Inspection Act. There are nine small health care facilities in Utah. The Department of Health agrees with the need to continue this rule.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 HEALTH
 FAMILY HEALTH AND PREPAREDNESS,
 LICENSING
 3760 S HIGHLAND DR
 SALT LAKE CITY, UT 84106
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Kristi Grimes by phone at 801-273-2821, or by Internet E-mail at kristigrimes@utah.gov

AUTHORIZED BY: Joseph Miner, MD, Executive Director

EFFECTIVE: 03/04/2019

**Insurance, Administration
 R590-226
 Submission of Life Insurance Filings**

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
 DAR FILE NO.: 43580
 FILED: 03/14/2019

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 31A-2-201(3) authorizes the Insurance Commissioner to write rules to implement the provisions of the Insurance Code, Title 31A. Section 31A-2-201.1 authorizes the Insurance Commissioner to regulate the filing of rates, forms, and reports. Subsection 31A-2-202(2) authorizes the Insurance Commissioner to prescribe the forms to be used in filing reports.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Insurance Department (Department) has received no written comments regarding this rule during the past five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: It is important that this rule remain in force to allow the Department to provide uniformity among life insurance companies active in the Utah. It allows for uniformity in how a company filing is made and the information and documentation to be included, which allows for a uniform review of these forms by the Department. Therefore, this rule should be continued.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: It is important that this rule remain in force to allow the Department to provide uniformity among life and annuity insurance companies active in Utah. It allows for uniformity in how a company filing is made and the information and documentation to be included, which allows for a uniform review of these forms by the Department. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

INSURANCE
ADMINISTRATION
ROOM 3110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY, UT 84114-1201
or at the Office of Administrative Rules.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

INSURANCE
ADMINISTRATION
ROOM 3110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY, UT 84114-1201
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Steve Gooch by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at sgooch@utah.gov

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Steve Gooch by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at sgooch@utah.gov

AUTHORIZED BY: Steve Gooch, Information Specialist

AUTHORIZED BY: Steve Gooch, Information Specialist

EFFECTIVE: 03/14/2019

EFFECTIVE: 03/14/2019

Insurance, Administration

R590-227

Submission of Annuity Filings

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 43581
FILED: 03/14/2019

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 31A-2-201(3) authorizes the Insurance Commissioner to write rules to implement the provisions of the Insurance Code, Title 31A. Section 31A-2-201.1 authorizes the Insurance Commissioner to regulate the filing of rates, forms, and reports. Subsection 31A-2-202(2) authorizes the Insurance Commissioner to prescribe the forms to be used in filing reports.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Insurance Department (Department) has received no written comments regarding this rule during the past five years.

Insurance, Administration

R590-228

Submission of Credit Life and Credit Accident and Health Insurance Form and Rate Filings

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 43582
FILED: 03/14/2019

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 31A-2-201(3) authorizes the Insurance Commissioner to write rules to implement the provisions of the Insurance Code, Title 31A. Section 31A-2-201.1 authorizes the Insurance Commissioner to regulate the filing of rates, forms, and reports. Subsection 31A-2-202(2) authorizes the Insurance Commissioner to prescribe the forms to be used in filing reports. Section 31A-22-807 authorizes the Insurance Commissioner to set loss ratio standards and tests to make sure the benefits provided are reasonable in relation to the premiums paid for the coverage.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Insurance Department (Department) has received no written comments regarding this rule during the past five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: It is important that this rule remain in force to allow the Department to provide uniformity among companies selling credit life, and credit accident and health products in Utah. This rule allows for uniformity in how a company filing is made, and the information and documents to be included, which allows for a uniform review of these rates and forms. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

INSURANCE
ADMINISTRATION
ROOM 3110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY, UT 84114-1201
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Steve Gooch by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at sgooch@utah.gov

AUTHORIZED BY: Steve Gooch, Information Specialist

EFFECTIVE: 03/14/2019

Insurance, Administration **R590-268**

Small Employer Stop-Loss Insurance

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 43570
FILED: 03/07/2019

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 31A-43-304 authorizes the Insurance Commissioner to adopt rules to implement the provisions of Title 31A, Chapter 43, that are related to the regulation of small employer stop-loss products.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE

FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Insurance Department has received no written comments regarding this rule during the past five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule was a required as a result of the passage of H.B. 160, Health System Reform Amendments, during the 2013 General Session. This bill required the Insurance Department to develop a rule to set the content of the stop-loss insurance disclosure, prohibit lasering, and establish the form and manner of rate and form filings and of the annual actuarial certification and report on stop-loss experience. The Insurance Department continues to use the provisions of this rule to effectively regulate the health insurance market. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

INSURANCE
ADMINISTRATION
ROOM 3110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY, UT 84114-1201
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Steve Gooch by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at sgooch@utah.gov

AUTHORIZED BY: Steve Gooch, Information Specialist

EFFECTIVE: 03/07/2019

Public Safety, Driver License **R708-10**

Driver License Restrictions

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 43590
FILED: 03/15/2019

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 53-3-104(1)(a) authorizes the Division of Driver License (Division) to create rules for examining driver license applicants necessary for the safety and welfare of the public. Section 53-3-208 allows the Division to impose restrictions to a driver license applicant to assure the applicant is safe to operate a motor vehicle.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received since the last five-year review of this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is authorized under Subsection 53-3-104(1)(a) and is necessary in order to define driving restrictions and codes authorized for use by the Division under Section 53-3-208 in order to ensure that an applicant is safe to operate a motor vehicle. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

PUBLIC SAFETY
DRIVER LICENSE
CALVIN L RAMPTON COMPLEX
4501 S 2700 W 3RD FL
SALT LAKE CITY, UT 84119-5595
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Kim Gibb by phone at 801-556-8198, by FAX at 801-964-4482, or by Internet E-mail at kgibb@utah.gov
♦ Tara Zamora by phone at 801-964-4483, by FAX at 801-964-4482, or by Internet E-mail at tarazamora@utah.gov

AUTHORIZED BY: Chris Caras, Director

EFFECTIVE: 03/15/2019

**Public Safety, Driver License
R708-26
Learner Permit Rule**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 43591
FILED: 03/15/2019

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under 53-3-104(1)(c), and requires the Division of Driver License (Division) to create rules regarding the restrictions to be imposed on a person driving a motor vehicle with a temporary learner permit, or a learner permit.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received since the last five-year review of this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Subsection 53-3-104(1)(c) requires the Division to create rules regarding the restrictions to be imposed on a person driving a motor vehicle with a temporary learner permit, or a learner permit. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

PUBLIC SAFETY
DRIVER LICENSE
CALVIN L RAMPTON COMPLEX
4501 S 2700 W 3RD FL
SALT LAKE CITY, UT 84119-5595
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Kim Gibb by phone at 801-556-8198, by FAX at 801-964-4482, or by Internet E-mail at kgibb@utah.gov
♦ Tara Zamora by phone at 801-964-4483, by FAX at 801-964-4482, or by Internet E-mail at tarazamora@utah.gov

AUTHORIZED BY: Chris Caras, Director

EFFECTIVE: 03/15/2019

**Public Safety, Driver License
R708-31
Ignition Interlock Systems**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 43592
FILED: 03/15/2019

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 41-6a-518(8)(a) requires the commissioner of the Department Public Safety to make rules setting standards for the certification of ignition interlock systems. Subsection 41-6a-518(8)(c) allows the commissioner to adopt in whole or in part, the guidelines, rules, studies, or independent laboratory tests relied upon in certification of ignition interlock systems by other states.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received since the last five-year review of this rule.

DRIVER LICENSE
CALVIN L RAMPTON COMPLEX
4501 S 2700 W 3RD FL
SALT LAKE CITY, UT 84119-5595
or at the Office of Administrative Rules.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is required under Subsection 41-6a-518(8)(a) in order to set standards for the certification of ignition interlock systems. Therefore, this rule should be continued.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Kim Gibb by phone at 801-556-8198, by FAX at 801-964-4482, or by Internet E-mail at kgibb@utah.gov
♦ Tara Zamora by phone at 801-964-4483, by FAX at 801-964-4482, or by Internet E-mail at tarazamora@utah.gov

AUTHORIZED BY: Chris Caras, Director

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
PUBLIC SAFETY

EFFECTIVE: 03/15/2019

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.

Abbreviations

AMD = Amendment

CPR = Change in Proposed Rule

NEW = New Rule

R&R = Repeal & Reenact

REP = Repeal

Education

Administration

No. 43479 (AMD): R277-100. Definitions for Utah State Board of Education (Board) Rules

Published: 02/01/2019

Effective: 03/13/2019

No. 43476 (AMD): R277-487. Public School Data Confidentiality and Disclosure

Published: 02/01/2019

Effective: 03/13/2019

No. 43478 (AMD): R277-551. Charter Schools - General Provisions

Published: 02/01/2019

Effective: 03/13/2019

Environmental Quality

Air Quality

No. 43212 (AMD): R307-110-10. Section IX, Control Measures for Area and Point Sources, Part A, Fine Particulate Matter

Published: 10/01/2018

Effective: 03/05/2019

No. 43212 (CPR): R307-110-10. Section IX, Control Measures for Area and Point Sources, Part A, Fine Particulate Matter

Published: 02/01/2019

Effective: 03/05/2019

No. 43211 (NEW): R307-511. Oil and Gas Industry: Associated Gas Flaring

Published: 10/01/2018

Effective: 03/05/2019

No. 43211 (CPR): R307-511. Oil and Gas Industry: Associated Gas Flaring

Published: 02/01/2019

Effective: 03/05/2019

Health

Family Health and Preparedness, Children with Special Health Care Needs

No. 43472 (AMD): R398-5. Birth Defects Reporting

Published: 02/01/2019

Effective: 03/11/2019

Family Health and Preparedness, Maternal and Child Health

No. 43402 (NEW): R433-200. Family Planning Access Act

Published: 12/15/2018

Effective: 03/06/2019

Regents (Board of)

Administration

No. 43405 (NEW): R765-615. Talent Development Incentive Loan Program

Published: 12/15/2018

Effective: 03/14/2019

End of the Notices of Rule Effective Dates Section

**RULES INDEX
BY AGENCY (CODE NUMBER)
AND
BY KEYWORD (SUBJECT)**

The Rules Index is a cumulative index that reflects all effective changes to Utah's administrative rules. The current Index lists changes made effective from January 2, 2019 through March 15, 2019. The Rules Index is published in the Utah State Bulletin and in the annual Utah Administrative Rules Index of Changes. Nonsubstantive changes, while not published in the Bulletin, do become part of the Utah Administrative Code (Code) and are included in this Index, as well as 120-Day (Emergency) rules that do not become part of the Code. The rules are indexed by Agency (Code Number) and Keyword (Subject).

Questions regarding the index and the information it contains should be addressed to the Office of Administrative Rules (801-538-3003).

A copy of the **RULES INDEX** is available for public inspection at the Office of Administrative Rules (5110 State Office Building, Salt Lake City, UT), or may be viewed online at the Office's web site (<https://rules.utah.gov/>).

RULES INDEX - BY AGENCY (CODE NUMBER)

ABBREVIATIONS

AMD = Amendment (Proposed Rule)	LNR = Legislative Nonreauthorization
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GEX = Governor's Extension	

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
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R23-3	Planning, Programming, Request for Capital Development Projects and Operation and Maintenance Reporting for State Owned Facilities	43524	NSC	03/01/2019	Not Printed
R23-3	Planning, Programming, Request for Capital Development Projects and Operation and Maintenance Reporting for State Owned Facilities	43569	5YR	03/06/2019	Not Printed
R23-29	Delegation of Project Management	43525	NSC	03/01/2019	Not Printed
R23-29	Delegation of Project Management	43567	5YR	03/06/2019	Not Printed
R23-33	Rules for the Prioritization and Scoring of Capital Improvements by the Utah State Building Board	43568	5YR	03/06/2019	Not Printed
<u>Finance</u>					
R25-10	State Entities' Posting of Financial Information to the Utah Public Finance Website	43404	AMD	01/23/2019	2018-24/6
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R65-5	Utah Red Tart and Sour Cherry Marketing Order	43547	NSC	03/13/2019	Not Printed
R65-8	Management of the Junior Livestock Show Appropriation	43545	NSC	03/13/2019	Not Printed
R65-11	Utah Sheep Marketing Order	43548	NSC	03/13/2019	Not Printed
R65-12	Utah Small Grains and Oilseeds Marketing Order	43549	NSC	03/13/2019	Not Printed

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R156-20a (Changed to R156-20b)	Environmental Health Scientist Act Rule	43466	NSC	01/11/2019	Not Printed
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R156-80a	Medical Language Interpreter Act Rule	43465	5YR	01/02/2019	2019-2/19

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R251-105	Applicant Qualifications for Employment with Department of Corrections	43218	AMD	02/11/2019	2018-20/12
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R277-122	Board of Education Procurement	43441	AMD	02/07/2019	2019-1/17
R277-308	New Educator Induction and Mentoring	43442	NEW	02/07/2019	2019-1/22
R277-400	School Facility Emergency and Safety	43507	5YR	02/08/2019	2019-5/95
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R277-419	Pupil Accounting	43475	NSC	01/15/2019	Not Printed
R277-437	Student Enrollment Options	43397	AMD	01/09/2019	2018-23/6
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R277-481	Charter School Oversight, Monitoring and Appeals	43399	REP	01/09/2019	2018-23/12
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R277-486	Professional Staff Cost Program	43508	5YR	02/08/2019	2019-5/95
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R277-555	Corrective Action Against Charter School Authorizers	43396	NEW	01/09/2019	2018-23/38
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R432-11	Orthopedic Hospital Construction	43564	5YR	03/04/2019	Not Printed
R432-12	Small Health Care Facility (Four to Sixteen Beds) Construction Rule	43565	5YR	03/04/2019	Not Printed
R432-270	Assisted Living Facilities	43533	5YR	02/20/2019	2019-6/45

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R623-2	Uniform Ballot Counting Standards	43494	5YR	01/28/2019	2019-4/44
R623-3	Utah State Plan on Election Reform	43495	5YR	01/28/2019	2019-4/45
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KEYWORD AGENCY	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
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	43400	R277-550	NEW	01/09/2019	2018-23/21
	43393	R277-551	NEW	01/09/2019	2018-23/24
	43478	R277-551	AMD	03/13/2019	2019-3/10
	43401	R277-553	NEW	01/09/2019	2018-23/31
	43395	R277-554	NEW	01/09/2019	2018-23/34
	43396	R277-555	NEW	01/09/2019	2018-23/38
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