

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

Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Parts A and F

On 06/05/2019, the Utah Air Quality Board proposed for a 30-day public comment period, amendments to SIP Section X. Vehicle Inspection and Maintenance Program, Parts A and F. More information on the proposed SIP amendment, to include the amended text of the plan and its supporting 110(l) demonstration, is available for review at: <https://deq.utah.gov/public-notices-archive/air-quality-rule-plan-changes-open-public-comment>.

The comment period closes at 5:00 p.m. on 07/31/2019. Comments postmarked on or before that date will be accepted. Comments may be submitted by electronic mail to: mberger@utah.gov or may be mailed to:

*ATTN: SIP Section X, Vehicle Maintenance Program
Bryce Bird, Director
Utah Division of Air Quality
PO Box 144820
Salt Lake City, UT 84114-4820*

End of the Special Notices Section

EXECUTIVE DOCUMENTS

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

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

Calling the Sixty-Third Legislature Into the Second Extraordinary Session, Utah Proclamation No. 2019-2E

PROCLAMATION

WHEREAS, since the close of the 2019 General Session of the 63rd Legislature of the State of Utah, certain matters have arisen which require immediate legislative attention; and

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

NOW, THEREFORE, I, Gary R. Herbert, Governor of the State of Utah, by virtue of the authority vested in me by the Constitution and Laws of the State of Utah, do by this Proclamation call the Senate only of the 63rd Legislature of the State of Utah into the Second Extraordinary Session at the Utah State Capitol in Salt Lake City, Utah, on the 19th day of June 2019, at 4:00 p.m., for the following purpose:

For the Senate to consent to appointments made by the Governor to positions within state government of the State of Utah since the close of the 2019 General Session of the Legislature of the State of Utah.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done at the Utah State Capitol in Salt Lake City, Utah, this 17th day of June 2019.

(State Seal)

Gary R. Herbert
Governor

ATTEST:

Spencer J. Cox
Lieutenant Governor

2019/02/E

NOTICES OF PROPOSED RULES

A state agency may file a **PROPOSED RULE** when it determines the need for a substantive change to an existing rule. With a **NOTICE OF PROPOSED RULE**, an agency may create a new rule, amend an existing rule, repeal an existing rule, or repeal an existing rule and reenact a new rule. Filings received between June 01, 2019, 12:00 a.m., and June 14, 2019, 11:59 p.m. are included in this, the July 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 July 31, 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 October 29, 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

**Administrative Services, Debt
Collection
R21-1
Transfer of Collection Responsibility of
State Agencies**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 43801

FILED: 06/13/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The revisions to this rule clarify debt collection responsibilities and processes for state agencies. Section R21-1-6 modifications create a requirement for state agencies to pass information necessary for the Office of State Debt Collection to be able to collect on the debt. Section R21-1-7 clarifies, but does not change, how penalties, interest, and administrative costs are applied to payments on debts, including "Trust" debts owed to victims of crime. These revisions do not change any rates charged to debtors.

SUMMARY OF THE RULE OR CHANGE: These amendments add language to better clarify the collection responsibility, and the penalty percentage that will be added to account receivables when payments are delinquent.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 63A-3-502(3)(m) and Subsection 63A-3-502(4)(g) and Subsection 63A-3-502(6)(a) and Subsection 63A-3-502(6)(b) and Subsection 63A-3-502(7)(f)

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: Except for Section R21-1-6, these revisions clarify but do not change current practices that would impact costs to the state. Section R21-1-6 requires state agencies to pass on certain information to the Office of State Debt Collection (Office). Agencies may incur additional costs to provide this information if they are not currently providing it. The Office cannot measure what the additional cost, if any, will be to state agencies.
- ◆ LOCAL GOVERNMENTS: These rule changes will not result in any additional costs to the local governments. None of these revisions impact local governments.
- ◆ SMALL BUSINESSES: These revisions clarify, but do not change current practice. Therefore, it should not impact the costs to small businesses who owe money.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: These revisions clarify, but do not change current practice. Therefore, it should not impact the costs to other persons who owe money.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no compliance cost for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed these changes with the Division of Finance Director and believe that these changes are reasonable and warranted.

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

ADMINISTRATIVE SERVICES
DEBT COLLECTION
ROOM 4130 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:

◆ Cory Weeks by phone at 801-538-3100, or by Internet E-mail at cweeks@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2019

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2019

AUTHORIZED BY: John Reidhead, Director

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 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 will have no effect on non-small businesses.

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

R21. Administrative Services, Debt Collection.

R21-1. Transfer of Collection Responsibility of State Agencies.

R21-1-1. Purpose.

The purpose of this rule is to establish the procedures by which agencies shall bill and make initial collection efforts according to a coordinated schedule, the method to be used by agencies to transfer their delinquent accounts receivable to the Office or its designee for additional collection action, write-off of receivables, and the procedures and allocation of costs of collection established pursuant to Subsections 63A-3-502(4)(g), 63A-3-502(6)(b), Section 15-1-4, Utah Code, and by the Legislature in applicable laws.

R21-1-2. Authority.

This rule is established pursuant to Subsections 63A-3-502(3)(m), 63A-3-502(7)(f), 63A-3-502(4)(g), 63A-3-502(6)(b), Section 15-1-4, ~~Utah Code and the Office intent language~~ and fees authorized by the Legislature in applicable laws. Subsection 63A-3-502(3)(m) authorizes the Office to establish procedures for writing off accounts receivable for accounting and collection purposes. Subsection 63A-3-502(7)(f) authorizes the Office to require state agencies to bill and make initial collection efforts of its receivables up to the time the accounts must be transferred. Subsection 63A-3-502(7)(a) authorizes the Office to require state agencies to transfer collection responsibility to the Office or its designee according to time limits specified by the Office. Subsection 63A-3-502(4)(g) authorizes Office to establish a fee to cover the administrative costs of collection, a late penalty fee and an interest charge by following the procedures and requirements of Section 63J-1-504. Subsection 63A-3-502(6)(b) prohibits the Office from assessing the interest charge established by the Office under Subsection 63A-3-502(4)(g) on an account receivable subject to the postjudgment interest rate established by Section 15-1-4. Section 15-1-4 requires civil and criminal judgments of the district court and justice court to bear interest at the federal postjudgment interest rate

plus 2% and sets forth the procedures to be followed. The annual Appropriation Act authorizes the fees charged by the Office to collect accounts and ~~allows~~~~provides legislative intent language allowing~~ the costs of collection to be collected from the debtor.

R21-1-3. Definitions.

In addition to terms defined in Section 63A-3-501, the following terms are defined below as follows:

- (1) "Delinquent" means any account receivable for which the state has not received payment in full by the payment demand date.
- (2) "Designee" means a Private Sector Collector or State Agency that the Office of State Debt Collection has contracted with to provide accounts receivable collection services.
- (3) "Payment demand date" is the date by which the agency requires payment for the account receivable that an entity has incurred.
- (4) "Skipped" means that the entity formerly transacting business with the state is not known at the address or telephone number previously used nor is any new address or telephone number known of the entity.
- (5) "Event" is the day the goods are purchased, services completed, fines, fees, and assessments are due, etc.
- (6) "Trust" means a receivable that is owed to a victim of a crime.

R21-1-4. Agency Billing and Collection Responsibility.

Pursuant to Subsection 63A-3-502(3)(b), (d), and (f) as provided by Subsection 63G-3-201, state agencies shall document and track agency receivables on the State's central accounting system (FINET)~~[the state's Advanced Receivable Subsystem]~~ unless the state agency has received an exemption from the Division of Finance and Office of State Debt Collection. If a state agency receives such an exemption, the state agency shall track their receivables on the agency system and provide the Office with quarterly receivable reports pursuant to 63A-3-502(7)(g). The receivable reports are due to Office no later than 45 days after the end of the quarter.

State agency customers shall be billed within 10 days from the event creating the receivable or the next billing cycle, if reoccurring. The payment demand date shall be no later than 30 days from the event date unless the state agency can demonstrate the 30 day demand date is not appropriate for the agency's business processes. State agencies shall contact customers for payment by phone or written notice when payment is not received within 10 days after the payment demand date.

The Office has published guidelines for billing receivables and collecting delinquent accounts. These guidelines include this rule and the statewide accounting FIACCT 06 policies available on the Division of Finance website, finance.utah.gov~~[are included in the document entitled "Statewide Guidelines for Accounting, Reporting and Collecting Accounts Receivable". This document is available at the Office of State Debt Collection, Room 4130 State Office Building, Salt Lake City, Utah, during regular working hours, for review.]~~

R21-1-5. Transfer of Collection Responsibility.

Each state agency with delinquent accounts shall comply with the provisions of Section 63A-3-502, et seq. unless prohibited by current state or federal statute or regulation. A state agency or user of the Office of State Debt Collection services shall transfer collection responsibility to the Office, or its designee, when the account receivable is not paid within 90 days of the ~~[event]~~initial billing or is

delinquent 61 days. A state agency can negotiate a different receivable transfer date with the Office by demonstrating how the state benefits from the negotiated transfer date. ~~[-Office recommendations related to the transfer of collection responsibility can be found in the Office publication "Statewide Guidelines for Accounting, Reporting and Collecting Accounts Receivable".]~~

R21-1-6. Format for Transfer of Accounts Receivable Data.

(a) State agencies shall transfer delinquent accounts to the Office or its designee electronically through FINET. ~~[the state's Advanced Receivable Subsystem.]~~ State agencies exempted from using FINET for individual receivables ~~[the state's Advanced Receivable Subsystem]~~ shall work with the Office to generate an electronic placement file for placing accounts.

(b) Debts owed by business entities must be transferred by State agencies with:

(1) a list of positively identified liable parties.

(2) Federal tax identification numbers for each liable party.

R21-1-7. Costs of Collection.

Pursuant to Subsections 63A-3-502(4) (g), Section 15-1-4, Utah Code, and by the legislature in applicable laws, the Office shall charge penalty, interest, and administrative costs of collection and shall collect these costs in addition to the receivable balance from the debtor. The fee calculation and payment priority shall be applied according to the following methodology.

(a) Pursuant to 63A-3-502(4)(g)(i), the costs of collection shall be charged on all accounts referred for collection and the cost shall be calculated based on the dollars collected times the rate authorized by the legislature. The cost of collection shall be paid first from each payment.

(b) The Penalty shall be calculated as a percent of the receivable balance referred for collection. ~~[A]~~ Two percent of each payment shall be applied to the outstanding penalty until the penalty is paid in full. The penalty payment shall be calculated ~~[based on]~~ up to the authorized penalty percent set annually by the legislature, times the received payment amount. The calculated penalty amount shall be paid after the costs of collection are determined and paid.

(c) Two types of interest shall be charged on accounts referred to the Office. Postjudgment interest as established by Section 15-1-4, Utah Code, applies to receivables with judgments established by the courts with a sentencing date subsequent to May 5, 1999. Postjudgment interest accrues on the unpaid judgment balance of the receivable. Postjudgment interest that accrues on a trust or the trust portion of a receivable, shall be paid subsequent to the state's outstanding receivable. All other state receivables referred to the Office are charged an interest charge pursuant to 63A-3-502 (4) (g)(iii)(B), Utah Code. This interest is referred to as OSDC interest. OSDC accrued interest shall be paid from each payment up to 5% of the payment after the payment of the costs of collection and ~~[the]~~ 2% penalty except on trust receivables or receivables including a trust account.

(d) Each payment received on trust receivables shall be applied to the following items in the priority listed until the payment is fully disbursed: 1st - cost of collection, 2nd - 2% penalty, 3rd - the trust receivable balance up to the total amount of the receivable, and 4th - the accrued postjudgment interest.

(e) Each payment received on receivables that include trust(s) and state receivable balances shall be applied to the following items in the priority listed until the payment is fully disbursed: 1st - cost of collection, 2nd 2% - penalty, 3rd - the trust(s) receivable balance until paid in full, 4th - accrued post-judgment or OSDC interest on the state receivable balance, 5th - the state receivable balance, and 6th - the accrued trust post-judgment interest.

(f) Each payment received on receivables owed only to the state shall be applied to the following items in the priority listed until the payment is fully disbursed: 1st - cost of collection, 2nd 2% - penalty payment, 3rd - 5% accrued post-judgment or OSDC interest, and 4th - the receivable balance.

(g) Trust Payments sent to victims of crimes that are returned to the Office because of bad addresses, shall be ~~[reversed from the trust account and applied to amounts owed the state on the account. After the state debt is liquidated, payments shall be applied to the trust and if the victim still cannot be located, the payments shall be]~~ retained by the Office, until the victim is located or statute requires transfer to another State agency. Regardless, payments shall continue to be applied to the trust balance(s) until liquidated, and there after applied to State debt. ~~[division of Finance for the appropriate time and then sent to Unclaimed Property and thereafter to Crime Victims Reparation.]~~

R21-1-8. Write Off of Accounts Receivable.

State agencies shall follow the statewide Accounting Policies and Procedures outlined in FIACCT 06-01.14 and 06-02.04, available from the state Division of Finance at finance.utah.gov.

R21-1-9. Original Signature Required on Certain Office of State Debt Collection (OSDC) Documents.

An Original Signature is Required by the Office of State Debt Collection (OSDC) on the following documents:

- (1) Victim Settlement Agreement
- (2) OSDC Debt Repayment Contract Agreement
- (3) Wage Assignments to pay debts
- (4) Authority for the automatic transfer of funds (EFT) to pay debts
- (5) Authority for the automatic Credit/Debit Card charge to pay debts

KEY: accounts receivable, collection transfer

Date of Enactment or Last Substantive Amendment: ~~[September 7, 2012]~~ 2019

Notice of Continuation: June 7, 2017

Authorizing, and Implemented or Interpreted Law: 63A-3-502(3)(m); 63A-3-502(4)(g); 63A-3-502(6)(a); 63A-3-502(6)(b); 63A-3-502(7)(f); 15-1-4

Administrative Services, Debt
Collection
R21-2
Office of State Debt Collection
Administrative Procedures

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 43802

FILED: 06/13/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Revisions to Section R21-2-10 were made to improve the procedures for hearings in informal adjudicative proceedings. These revisions include: 1) clarifying the required information for the hearing notice; 2) allowing the requesting party to bring documentation, witnesses, and legal counsel; 3) allowing the cost of the hearing to be added to the debt if the Office prevails, in order to deter frivolous hearing requests; and 4) allowing a requesting party to withdraw a request for a hearing if it is at least three days before the hearing. Previous language in this section was also eliminated that allowed a hearing officer to deny a hearing in certain circumstances. This change protects the due process right to a hearing for a complainant. The revision in Subsection R21-2-13(1) changes the time required to request a change in a presiding officer from 24 hours to two business days prior to the hearing. This will provide a more reasonable amount of time to arrange for a different presiding officer.

SUMMARY OF THE RULE OR CHANGE: The added language explains administrative hearing requests, including scheduling, location, date, and time. Also, what to bring to the hearing, and the time limit to withdraw the request for the hearing, or time to request a change of presiding officer.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63G-4-202 and Section 63G-4-203

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** These rule changes will not result in any additional costs to the state. The state may realize cost savings if the Office of State Debt Collection (Office) prevails in a hearing and the hearing cost is added to the debt. The Office expect 10 to 25 hearings per year with an average cost per hearing of \$150 to \$300. However, the Office cannot accurately measure the portion of the amount added that will be collected. The Office expects the additional amount that will be collected will average less than \$2,000 per year.
- ◆ **LOCAL GOVERNMENTS:** These rule changes will not result in any additional costs to the local governments. These rule changes do not affect local governments.
- ◆ **SMALL BUSINESSES:** If small businesses who have a debt and request an administrative hearing, if the decision is in favor of the Office, the cost of the hearing will be added to the balance owed by the business. However, rarely do these hearings involve small businesses. Therefore, the amount cannot be estimated.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** If a person has a debt with the state and requests an administrative hearing, they may have costs added to their balance owed if the Office prevails in the complaint. The expected cost of a hearing is \$150 to \$300.

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

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed these changes with the Division of Finance Director and believe that these changes are reasonable and warranted.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 ADMINISTRATIVE SERVICES
 DEBT COLLECTION
 ROOM 4130 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:
 ◆ John Reidhead by phone at 801-538-3095, by FAX at 801-538-3244, or by Internet E-mail at jreidhead@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2019

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2019

AUTHORIZED BY: John Reidhead, Director

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 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 will have no effect on non-small businesses.

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

R21. Administrative Services, Debt Collection.
R21-2. Office of State Debt Collection Administrative Procedures.
R21-2-1. Purpose.

The purpose of this rule is to establish the form of adjudicative proceedings, provide procedures and standards for the conduct of informal hearings, and provide procedures and standards for orders resulting from the administrative process.

R21-2-2. Authority.
 This rule establishes procedures for informal adjudicative proceedings as required by Sections 63G-4-202 and 63G-4-203 of the Utah Administrative Procedures Act.

R21-2-3. Definitions.
 In addition to terms defined in Sections 63A-3-501 and 63G-4-103, the following terms are defined below as follows:

- (1) "Delinquent" means any account receivable for which the state has not received payment in full by the payment demand date.
- (2)(a) "Participate" means present relevant information to the presiding officer within the time period described by statute or rule for requesting a hearing; and
- (b) if a hearing is scheduled, "participate" means attend the hearing.
- (3) "Payment demand date" is the date by which the agency requires payment for the account receivable that an entity has incurred.

R21-2-4. Designation of Presiding Officers.
 All matters over which the office has jurisdiction and which are subject to Section 63G-4-202 will be presided over by the office director or designee.

R21-2-5. Form of Proceeding.
 All adjudicative proceedings commenced by the office or commenced by other persons affected by the office's actions shall be informal adjudicative proceedings.

R21-2-6. Adjudicative Proceedings.
 (1) The following actions are considered to be adjudicative proceedings:
 (a) All hearings which lead to the establishment of an Order to collect delinquent accounts receivable owed to an agency of the State;
 (b) All hearings which lead to the amending of an Administrative Order; and
 (c) All hearings which lead to the setting aside of an Administrative Order.

R21-2-7. Service of Notice and Orders.
 Notices, orders, written decisions, or any other documents for which service is required or permitted to be made by Title 63G, Chapter 4 may be served using methods provided in Title 63G, Chapter 4 or outlined by the Utah Rules of Civil Procedures.

R21-2-8. Procedures for Informal Adjudicative Proceedings.
 The procedures for informal adjudicative proceedings will be as follows:

- (1) The presiding officer will issue an order of default unless the entity does one of the following in response to service of a notice of office action:
 - (a) pays the entire delinquent account receivable in full; or
 - (b) participates as provided in Section R21-2-11;
- (2) The presiding officer shall schedule a hearing if available under Section R21-2-9 and the entity requests it in writing within the following time periods:
 - (a) within 30 days of service of a notice of agency action requesting payment in full of a delinquent accounts receivable;
 - (b) within 20 days of service of a notice of agency action in all other adjudicative proceedings; or
 - (c) before an order is issued by the presiding officer.
- (3) Within a reasonable time after the close of an informal adjudicative proceeding, the presiding officer shall issue a signed order in writing which states the following:
 - (a) the decision;
 - (b) the reason for the decision;
 - (c) a notice of the right to administrative and judicial review available to the parties; and
 - (d) the time limits for filing an appeal or requesting reconsideration.
- (4) The presiding officer's order shall be based on the facts appearing in the office files (the record) and on the facts presented in evidence at any hearings.
- (5) A copy of the presiding officer's order shall be promptly mailed to each of the parties.

R21-2-9. Availability of Hearing in Informal Adjudicative Proceedings.
 (1) A hearing is permitted in an informal adjudicative proceeding if:

(a) the entity in a properly filed request for hearing or in the course of participation raises a genuine issue as to a material fact as provided in Section R21-2-10; and

(b) participates in an office conference.

R21-2-10. Hearings in Informal Adjudicative Proceedings.

(1) All hearing requests shall be ~~[referred to the presiding officer appointed to conduct hearings.]~~ recorded by the office.

(2) The ~~[presiding officer]~~ office shall give timely notice ~~[of the date and time of the hearing to all parties.]~~ to the requesting party informing them that:

(a) an administrative hearing has been scheduled, including the time, date, and location of the hearing;

(b) the requesting party may bring any documentation, witnesses, and/or legal representation to the hearing;

(c) if the resulting decision is in favor of the Office, the cost of the hearing may be added to the balance owed; and

(d) the requesting party has the option to withdraw their request for a hearing in writing at least three business days prior to the hearing.

~~[(3) Before granting a hearing regarding a delinquent account receivable, the presiding officer appointed to conduct the hearing may decide whether or not the respondent raises a genuine issue as to a material fact. If the presiding officer determines that there is no genuine issue as to a material fact, he may deny the request for hearing, and close the adjudicative proceeding.~~

~~(4) If the respondent objects to the denial of the hearing, he may raise that objection as grounds for relief in a request for reconsideration.~~

~~(5) There is no genuine issue as to a material fact if:~~

~~(a) the evidence gathered by the office and the evidence presented for acceptance by the entity are sufficient to establish the delinquent obligation of the entity under applicable law; and~~

~~(b) no other evidence in the record or presented for acceptance by the entity in the course of entity's participation conflicts with the evidence to be relied upon by the presiding officer in issuing an order.]~~

~~[(6)]~~ (3) Evidence upon which a presiding officer may rely in issuing an order when there has been no hearing:

(a) documented information from agency sources;

(b) failure of the entity to produce upon request of the presiding officer canceled checks, or alternative documentation, as evidence of payments made; or

(c) failure of the entity to produce a record kept by a financial institution, the agency initially servicing the debt, the office or its designee, showing payments made.

R21-2-11. Telephonic Hearings.

Telephonic hearings will be held at the discretion of the presiding officer unless the entity specifically requests that the hearing be conducted face to face.

R21-2-12. Procedures and Standards for Orders Resulting from Service of a Notice of Office Action.

(1) If the entity agrees with the notice of action, it may stipulate to the facts and to the amount of the debt and obligation to be paid. A stipulation and order based on that stipulation is prepared by the office for the entity's signature. Orders based on stipulation are not subject to reconsideration or judicial review.

(2) If the entity participates by attending a preliminary conference or otherwise presents relevant information to the presiding officer, but does not reach an agreement with the office or is unavailable to sign a stipulation, and does not request a hearing, the presiding officer shall issue an order based on that participation.

(3) If the entity requests a hearing and participates by attending the hearing, the presiding officer who conducts the hearing shall issue an order based upon the hearing.

(4) If the entity fails to participate as follows, the presiding officer shall issue an order of default, based on whether or not:

(a) the entity fails to participate by presenting relevant information and does not request a hearing in response to the notice of office action;

(b) after proper notice the entity fails to attend a preliminary conference scheduled by the presiding officer to consider matters which may aid in the disposition of the action; or

(c) after proper notice the entity fails to attend a hearing scheduled by the presiding officer pursuant to a written request for a hearing.

(5) The default order is taken for the amount specified in the notice of action which was served on the entity plus accrued interest, penalties and applicable collection costs from the date of the action until paid in full by the entity at the interest rate specified in the default order. The entity may seek to have the default order set aside, in accordance with Section 63G-4-209.

(6) If an entity's request for a hearing is denied under Section R21-2-10, the presiding officer issues an order based upon the information in the office file.

(7) Notwithstanding any prior agreements which sets terms for the payment of the delinquent account receivable, the office reserves the right to intercept state tax refunds or other State payments to the entity to satisfy the debt represented by the delinquent account receivable.

R21-2-13. Conduct of Hearing in Informal Adjudicative Proceedings.

(1) The hearing shall be conducted by a duly qualified presiding officer. No presiding officer shall hear a contested case if it is alleged and proved that good cause exists for the removal of the presiding officer assigned to the case. The party or representative requesting the change of presiding officer shall make the request in writing, and the request shall be filed and called to the attention of the presiding officer not less than ~~[24 hours]~~ two business days in advance of the hearing.

(2) Duties of the presiding officer:

(a) Based upon the notice of office action, objections thereto, if any, and the evidence presented at the hearing, the presiding officer shall determine the liability and responsibility, if any, of the parties.

(b) The presiding officer conducting the hearing may:

(i) regulate the course of hearing on all issues designated for hearing;

(ii) receive and determine procedural requests, rule on offers of proof and evidentiary objections, receive relevant evidence, rule on the scope and extent of cross-examination, and hear argument and make determination of all questions of law necessary to the conduct of the hearing;

(iii) request testimony under oath or affirmation administered by the presiding officer;

(iv) upon motion, amend the notice of office action to conform to the evidence.

(3) Rules of Evidence:

(a) Discovery is prohibited, but the office may issue subpoenas or other orders to compel production of necessary evidence.

(b) Any person who is a party to the proceedings may call witnesses and present such oral, documentary, and other evidence and comment on the issues and conduct such cross-examination of any witness as may be required for a full and true disclosure of all facts relevant to any issue designated for fact hearing and as may affect the disposition of any interest which permits the person participating to be a party.

(c) Any evidence may be presented by affidavit rather than by oral testimony subject to the right of any party to call and examine or cross-examine the affiant.

(d) All relevant evidence shall be admitted.

(e) Official notice may be taken of all facts of which judicial notice may be taken in the courts of this state.

(f) All parties shall have access to information contained in the office's files and to all materials and information gathered in the hearing, to the extent permitted by law.

(g) Intervention is prohibited.

(4) Rights of the parties: A party appearing before the presiding officer for the purpose of a hearing may be represented by a licensed attorney, or, after leave of the presiding officer, any other person designated to act as the party's representative for the purpose of the hearing. The office's supporting evidence for the office's claim shall be presented at a hearing before the presiding officer by a representative of the office. The supporting evidence may, at the office's discretion, be presented by a representative from the office of the Attorney General.

R21-2-14. Order Review.

Nothing in this rule prohibits a party from filing a request for reconsideration or for judicial review as provided in the Sections 63G-4-302 and 63G-4-401.

R21-2-15. Reconsideration.

Either the entity or the office may request reconsideration in accordance with Section 63G-4-302 once during an informal adjudicative proceeding.

R21-2-16. Setting Aside Administrative Orders.

(1) The office may set aside an administrative order for any of the following reasons:

(a) a rule or policy was not followed when the order was taken;

(b) the entity was not properly served with a notice of office action;

(c) the entity was not given due process; or

(d) the order has been replaced by a judicial order which covers the same time period.

(2) the office shall notify the entity of its intent to set the order aside by serving the entity with a notice of office action. The notice shall be signed by the presiding officer at the level which issued the order.

(3) If after serving the entity with a notice of office action, the presiding officer determines that the order shall be set aside, the office shall notify the entity.

R21-2-17. Amending Administrative Orders.

(1) The office may amend an order for either of the following reasons:

(a) a clerical mistake was made in the preparation of the order; or

(b) the time periods covered in the order overlap the time periods in another order for the same participants.

(2) The office shall notify the entity of its intent to amend the order by serving the entity with a notice of office action. The notice shall be signed by the presiding officer at the level which issued the order.

(3) If after serving the entity with a notice of agency action, the presiding officer determines that the order shall be amended, the office shall provide a copy of the amended order to the entity.

KEY: accounts receivable, adjudicative process

Date of Enactment or Last Substantive Amendment: [~~August 13, 2002~~]**2019**

Notice of Continuation: March 17, 2017

Authorizing, and Implemented or Interpreted Law: 63G-4-202; 63G-4-203

**Administrative Services, Debt
Collection
R21-3
Debt Collection Through Administrative
Offset**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 43803

FILED: 06/13/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Section R21-3-7 was added to ensure agencies are not delaying the mailing of required notices to debtors. This will ensure levied individuals will have the appropriate, legal amount of time to respond. Section R21-3-9 was newly allowed under S.B. 120, passed in the 2019 General Session, it provides for consistent application of injured spouse claims in regards to levied amounts.

SUMMARY OF THE RULE OR CHANGE: These changes add the Treatment of Injured Spouse forms, and how an agency proceeds with the injured spouse claim. The changes also add a requirement that agencies mail notices to debtors within two days of the date on the notice.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 59-10-529 and Section 63A-3-302 and Section 63A-3-303 and Section 63A-3-310 and Subsection 63A-3-504(2)(f)

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There may be some costs to the state for the amount it will not collect if a valid injured spouse form is submitted. The Division of Finance (Division) does not have a reasonable ability to measure how often injured spouse claims have been filed with garnishers, or how often the forms are approved or denied.
- ◆ **LOCAL GOVERNMENTS:** Local governments will not see any additional costs. These changes do not affect local governments.
- ◆ **SMALL BUSINESSES:** Small businesses will not see any additional costs. These rule changes affect individuals and not businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** A valid injured spouse claim for the first year filed will protect from collection the portion of a state income tax refund derived from the income of a spouse that doesn't owe a debt. This will result in an increase in the amount of the income tax refund to the married couple, and a decrease in the amount of administrative offset processed by the Division. The amounts will vary by individual case and the Division currently is unable to measure the aggregate impact.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Individuals may incur some costs to submit the required documents necessary for a valid claim. This will vary by individual. Copy and mailing costs will be incurred if injured spouse claims are not submitted electronically.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed these changes with the Division of Finance Director and believe that these changes are reasonable.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 ADMINISTRATIVE SERVICES
 DEBT COLLECTION
 ROOM 4130 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:
 ◆ Cory Weeks by phone at 801-538-3100, or by Internet E-mail at cweeks@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2019

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2019

AUTHORIZED BY: John Reidhead, Director

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 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 will have no effect on non-small businesses.

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

R21. Administrative Services, Debt Collection.
R21-3. Debt Collection Through Administrative Offset.
R21-3-1. Purpose.

The purpose of this rule is to establish procedures to be followed by agencies to reduce or eliminate accounts receivable through administrative offset of tax overpayments or state payments due to entities.

R21-3-2. Authority.

This rule is established pursuant to Subsection 63A-3-310, and Subsection 63A-3-504(2)(f), which authorize[s] the [~~Office of State Debt Collection~~] Division of Finance to establish, by rule, an implementation of the debt collection technique of administrative offset.

R21-3-3. Definitions.

In addition to terms defined in Section 63A-3-501, the following terms are defined below as follows:

- (1) "Division" means the Division of Finance.
- (2) "Match or Matched" means a one-to-one corresponding of a social security number or a federal employer's identification number between the entity and the tax overpayment or other state payment to the entity.

R21-3-4. Eligible Accounts Receivable.

(1) If a delinquent account receivable meets the criteria established under Section 59-10-529, an agency shall proceed under this rule to collect the delinquent amount against tax overpayments.

(2) If a delinquent account receivable meets the criteria established under Section 63A-3-302, an agency shall proceed under this rule to collect the delinquent amount against tax overpayments or state payments due to entities.

R21-3-5. Submission of Accounts Receivable to the Division.

(1) Upon qualifying the account for administrative offset as established in Section R21-3-4, the agency shall submit the account receivable to the division. The account receivable submission shall include:

- (a) name of entity;
 - (b) social security number or federal employer's identification number of the entity;
 - (c) amount of delinquent account receivable; and
- (2) Once the account has been established for administrative offset, it matches continuously from the date of the establishment until the account receivable is totally satisfied.

R21-3-6. Control of Matched Tax Overpayments or Payment Due to Entity by the Division.

The division shall place the entity's matched tax overpayment or payment due to entity in a separate agency fund in the [~~state's~~] State's Accounting System (FINET).

R21-3-7. Notification to Debtors.

All notifications required in 63A-3-303 must be sent within two business days of the date listed on the notice.

R21-3-[7]8. Notification and Response.

- (1) The division shall notify the agency submitting the account receivable of each administrative offset match.
- (2)(a) The agency shall verify the delinquent account balance; and
- (b) notify the division of the amount to be offset.
- (3) The amount shall include the outstanding balance of the delinquent account receivable plus any penalty, interest or applicable collection costs.

(4) The agency shall identify for the division the exact amount(s) to be offset as early as practicable.

R21-3-9. Treatment of Injured Spouse Forms.

(1) Subject to Subsection R21-3-9(2), upon receipt of an injured spouse claim from the spouse of a debtor, a garnisher shall:

- (a) Review the claim for validity;
 - (b) Determine the frequency of claims made; and
 - (c) Release the offset of matched funds proportionate to the income of the injured spouse using the following formula: (income of injured spouse/total household gross income) x levied amount.
- (2) Recognizing that garnishers are not statutorily required to honor injured spouse claims:
- (a) Agencies garnishing taxes under this section must honor at least a first-time injured spouse claim that is determined to be valid.
 - (b) Subsequent claims may be denied at the discretion of the garnisher.
- (3) Valid injured spouse claims should require at a minimum:
- (a) Federal tax returns
 - (b) IRS Form 8379
 - (c) Income documents, including all Form W-2s and Form 1099s.
 - (d) State tax returns.

R21-3-[8]10. Offsetting Matched Accounts.

(1) The division will offset the matched entity tax overpayment or payment due to entity by:

- (a) an "administrative fee". Which shall be charged for performing debt-collection functions associated with the administrative offset; plus
- (b) the amount identified in Subsection R21-3-[7]8(3) to satisfy the delinquent account receivable.

R21-3-[9]11. Release of Offset Funds by the Division.

- (1) The division shall retain the administrative charge.
- (2) The division shall release the offset funds to the agency.
- (3) The division shall release the balance of any available funds from the match to the entity.

R21-3-[10]12. Credit of Accounts Receivable.

Upon receipt of the offset funds from the division, the agency shall deposit the amount into their account and credit the entity's accounts receivable for the amount received.

R21-3-[11]13. Administrative Fee.

Pursuant to Section 63A-3-502(4), the division may charge the agency a fee for the debt collection effort. This fee may be deducted from the amounts collected.

KEY: accounts receivable, administrative offset

Date of Enactment or Last Substantive Amendment: [August 13, 2002]2019

Notice of Continuation: March 17, 2017

Authorizing, and Implemented or Interpreted Law: 63A-3-310; 63A-3-504(2)(f)

**Administrative Services, Records
Committee
R35-1-2
Procedures for Appeal Hearings**

**NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 43767
FILED: 06/03/2019**

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The change in Section R35-1-2 is to specify who the petitioner shall notify so that only one person is responsible for receiving and responding to the notifications. The current lack of specificity causes confusion and delay.

SUMMARY OF THE RULE OR CHANGE: This change is adding a specific person for the petitioner to notify, namely, the Executive Secretary of the Committee.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 63G-2-502(2)(a)

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** This amendment has no fiscal impact on the state budget because it is only administrative in nature.
- ◆ **LOCAL GOVERNMENTS:** This amendment has no fiscal impact on local governments because it is only administrative and internal in nature.
- ◆ **SMALL BUSINESSES:** This amendment has no fiscal impact on small businesses because it is only administrative and internal in nature.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This amendment has no fiscal impact on persons because it is only administrative in nature.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no cost for complying with this change.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This change will not have a fiscal impact on businesses, as it is only administrative in nature, and clarifies a long-standing process utilizing the specific person who currently serves as the Executive Secretary for the Committee.

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

ADMINISTRATIVE SERVICES
RECORDS COMMITTEE
ARCHIVES BUILDING
346 S RIO GRANDE
SALT LAKE CITY, UT 84101-1106

or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Kendra Yates by phone at 801-531-3856, or by Internet E-mail at kendrayates@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2019

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2019

AUTHORIZED BY: Kenneth Williams, Director

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
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State Government	\$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

This amendment has no fiscal impact on non-small businesses because it is only administrative and internal in nature.

R35. Administrative Services, Records Committee.

R35-1. State Records Committee Appeal Hearing Procedures.

R35-1-2. Procedures for Appeal Hearings.

(1) The meeting shall be called to order by the Committee Chair.

(2) Testimony shall be presented by the petitioner and the governmental entity. Each party shall be allowed twenty minutes to present testimony and evidence, to call witnesses, and to respond to questions from Committee members.

(3) Witnesses providing testimony shall be sworn in by the Committee Chair.

(4) Questioning of the witnesses and parties by Committee members is permitted.

(5) The governmental entity must bring the disputed records to the hearing to allow the Committee to view records in camera if it deems an in camera inspection necessary. If the records withheld are voluminous or the governmental entity contends they have not been identified with reasonable specificity, the governmental entity shall notify the Committee and the adverse party at least two days before the hearing and obtain approval from the Committee Chair to bring a representative sample of the potentially responsive records to the hearing, if it is possible to do so.

(6) Third party presentations may be permitted. Prior to the hearing, the third party shall notify the Executive Secretary of intent to present. Third party presentations shall be limited to five minutes.

(7) Closing arguments may be presented by the petitioner and the governmental entity. Each party shall be allowed five minutes to present a closing argument and make rebuttal statements.

(8) After presentation of the evidence, the Committee shall commence deliberations. A Committee Member shall make a motion to grant or to deny the petitioner's request in whole or in part. Following discussion of the motion, the Committee Chair shall call for the question. The motion shall serve as the basis for the Committee Decision and Order. The Committee shall vote and make public the decision of the Committee during the hearing.

(9) The Committee may adjourn, reschedule, continue, or reopen a hearing on the motion of a member.

(10) Except as expressly authorized by law, there shall be no communication between the parties and the members of the Committee concerning the subject matter of the appeal before the hearing or prior to the issuance of a final Decision And Order. Any other oral or written communication from the parties to the members of the Committee, or from the members of the Committee to the parties, shall be directed to the Executive Secretary for transmittal.

(11) The following provisions govern any meeting at which one or more members of the Committee or a party appears telephonically or electronically, pursuant to Utah Code Section 52-4-207.

(a) The anchor location is the physical location from which the electronic meeting originates or from which the participants are connected. The anchor location, unless otherwise designated in the notice, shall be at the offices of the Division of State Archives, Salt Lake City, Utah.

(b) If one or more Committee members or parties may be participating electronically or telephonically, public notices of the meeting shall so indicate. In addition, the notice shall specify the anchor location where the members of the Committee not participating electronically or telephonically will be meeting and where interested persons and the public may attend and monitor the open portions of the meeting.

(c) When notice is given of the possibility of a member of the Committee appearing electronically or telephonically, any member of the Committee may do so and shall be counted as present for purposes of a quorum and may fully participate and vote on any matter coming before the Committee. At the commencement of the meeting, or at such time as any member of the Committee initially appears electronically or telephonically, the Committee Chair shall identify for the record all those who are appearing telephonically or electronically. Votes by members of the Committee who are not at the physical location of the meeting shall be confirmed by the Committee Chair.

(12)(a) If the petitioner wishes to postpone the hearing or withdraw the appeal, the petitioner shall notify the Executive Secretary of the Committee and the governmental entity in writing no later than two days prior to the scheduled hearing date.

(b) The Committee Chair has the discretion to grant or deny a petitioner's request to postpone a hearing based upon: (i) the reasons given by the petitioner in his or her request, (ii) the timeliness of the request, (iii) whether petitioner has previously requested and received a postponement, (iv) any other factor determined to protect the equitable interests of the parties.

(c) The Committee will ordinarily deny a governmental entity's request to postpone the hearing, unless the governmental entity has obtained the petitioner's prior consent to reschedule the hearing date.

KEY: government documents, state records committee, records appeal hearings

Date of Enactment or Last Substantive Amendment: [June 22, 2017]2019

Notice of Continuation: June 3, 2014

Authorizing, and Implemented or Interpreted Law: 63G-2-502(2)

(a)

Agriculture and Food, Regulatory Services

R70-310

Grade A Pasteurized Milk

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 43777

FILED: 06/10/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed changes to this rule are to update incorrect references to the Utah Code, and to update incorporated material to their current versions to ensure

compliance with Food and Drug Administration (FDA) regulations for the shipment and marketing of Grade A milk in the interstate market.

SUMMARY OF THE RULE OR CHANGE: The changes to this rule correct an incorrect citation to the Utah Code. Additionally, it updates the reference to FDA documents from the 2013 version to the current 2017 version. The 2017 versions of these documents add clarity to the preventive control requirements due to a change in the federal law. Additionally, they provide additional guidance on how to conduct a tetracycline-based antibiotics test.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 4-2-103(1)(i)

MATERIALS INCORPORATED BY REFERENCE:

- ◆ Updates Methods of Making Sanitation Ratings of Milk Shippers and the Certifications/ Listings of Single-Service Containers and/or Closures for Milk and/or Milk Products Manufacturers, published by United States Department of Health and Human Services, 01/01/2017
- ◆ Updates Procedures Governing the Cooperative State-Public Health Service/Food and Drug Administration Program of the National Conference on Interstate Milk Shipments, published by United States Department of Health and Human Services, 01/01/2017
- ◆ Updates Grade "A" Pasteurized Milk Ordinance, published by United States Department of Health and Human Services, 01/01/2017

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** These rule changes are not expected to have any impact on state government revenues or expenditures because these changes only correct a citation and clarify previously existing provisions.
- ◆ **LOCAL GOVERNMENTS:** There are no anticipated costs or benefits to local governments as this rule neither requires action from nor provides benefits to local governments.
- ◆ **SMALL BUSINESSES:** These rule changes are not expected to have any impact on small businesses' revenues or expenditures because these changes only correct a citation and clarify previously existing provisions.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** These rule changes are not anticipated to have any fiscal impact on persons other than small businesses, businesses, or local governments entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: These rule changes are not expected to have any impact on revenues or expenditures because these changes only correct a citation and clarify previously existing provisions.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: These rule changes are not expected to have any impact on

revenues or expenditures because these changes only correct a citation and clarify previously existing provisions. However, these changes are necessary to ensure that Utah producers and processor may continue to have access to the market.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 AGRICULTURE AND FOOD
 REGULATORY SERVICES
 350 N REDWOOD RD
 SALT LAKE CITY, UT 84116-3034
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ◆ Melissa Ure by phone at 801-538-4978, or by Internet E-mail at mure@utah.gov
 ◆ Travis Waller by phone at 801-538-7150, by FAX at 801-538-7124, or by Internet E-mail at twaller@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2019

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2019

AUTHORIZED BY: Kerry Gibson, 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
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*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

There are 35 dairy product manufacturing firms in Utah which are considered non-small businesses. These rule changes are not expected to have any impacts on revenues or expenditures because these changes only correct a citation and clarify previously existing provisions. However, the changes are necessary to ensure that Utah producers and processor may continue to have access to the market.

The Commissioner of the Department of Agriculture and Food, Kerry Gibson, has reviewed and approved this fiscal analysis.

R70. Agriculture and Food, Regulatory Services.

R70-310. Grade A Pasteurized Milk.

R70-310-1. Authority.

A. Promulgated Under the Authority of Subsection ~~[4-2-2(+)(j)]~~4-2-103(1)(i).

B. Scope - this rule shall apply to all Grade A pasteurized milk products sold, bought, processed, manufactured or distributed within the State of Utah.

R70-310-2. Adoption of USPHS Ordinance.

"The Grade A Pasteurized Milk Ordinance, ~~[2013]~~2017 Recommendations of the United States Public Health Service/Food and Drug Administration", the 2017 Revision of "Procedures Governing the Cooperative State-Public Health Service/Food and Drug Administration Program of the National Conference on Interstate Milk Shipments," and the ~~[2011]~~2017 Revision of "Methods of Making Sanitation Ratings of Milk Shippers," are hereby adopted and incorporated by reference within this rule. These documents are available for public inspection, during normal working hours, and may be reviewed at the main office of the Utah Department of Agriculture and Food, 350 No. Redwood Road, SLC, UT 84116.

R70-310-3. Regulatory Agency Defined.

The definition of "regulatory agency" as given in section 1(LL) of the Grade A Pasteurized Milk Ordinance shall mean the Commissioner of Agriculture and Food of the State of Utah or his authorized representative(s).

R70-310-4. Penalty.

Violation of any portion of the Grade A Pasteurized Milk Ordinance 2011 recommendation may result in civil or criminal action, pursuant to Section 4-2-15.

KEY: dairy inspections

Date of Enactment or Last Substantive Amendment: ~~[January 29, 2013]~~2019

Notice of Continuation: June 24, 2014

Authorizing, and Implemented or Interpreted Law: 4-2-2

Commerce, Occupational and Professional Licensing
R156-50
 Private Probation Provider Licensing Act Rule

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 43779

FILED: 06/10/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: After a comprehensive review of this rule and recommendations made by the Private Probation Provider Licensing Board (Board), the working group, and the public in attendance at the Board meetings, the proposed amendments clarify private probation service standards throughout the entire rule.

SUMMARY OF THE RULE OR CHANGE: Section R156-50-102 amendments define "client" and "evidence based assessment tool". Section R156-50-502 amendments add to unprofessional conduct failing to comply with the Utah Sentencing Commission Supervision Length Guidelines. Section R156-50-601 amendments clarify and modify the probation supervision requirements for risk/needs assessments, revise interviewing time schedules and timelines for communicating with the sentencing court, and add requirements for providing lists of fees to clients and notifying them of grievance procedures. Section R156-50-602 amendments modify the Presentence Investigative Report requirements and clarify who must be interviewed. Section R156-50-603 amendments modify certain duties and responsibilities of the private probation provider and staff. Section R156-50-604 amendments update requirements regarding fines, restitution, and service fees per current industry practices, and add disclosure and financial responsibility standards. Section R156-50-605 amendments add requirements with respect to providing additional services, obtaining informed consent, and displaying licensure.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-50-1 and Subsection 58-1-106(1) and Subsection 58-1-202(1)(a) and Subsection 58-50-5(1) and Subsection 58-50-9(5)

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: No state government entities will be directly affected by these amendments because the constrained parties consist only of licensed private probation providers and the businesses that employ them. Additionally, there are no state government entities acting as businesses

that will be impacted. As a result, this rule is not expected to impact the state beyond a minimal cost to the Division of Occupational and Professional Licensing (Division) of approximately \$75 to print and distribute the rule and updating current rule posting locations and materials once the proposed amendments are made effective.

◆ LOCAL GOVERNMENTS: No local governments will be directly affected by these amendments because the constrained parties consist only of licensed private probation providers and the businesses that employ them. Additionally, there are no local governments acting as businesses that will be impacted. As a result, this rule is not expected to impact local governments.

◆ SMALL BUSINESSES: There are a total of 127 licensed private probation providers in Utah (NAICS 624190), of which all are small businesses. These small businesses may experience an indirect fiscal cost from providing the additional paperwork containing the grievance procedures required for their employees to keep active licensure. Small businesses could incur costs for additional training in the proposed additions to this rule. However, this is not likely to happen as the industry partners who participated with this rule's working group indicated that the proposed changes reflect current industry practices. As a result, this rule is not expected to impact small businesses.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There are a total of 127 licensed private probation providers in Utah. These proposed rule changes may have an indirect fiscal cost associated with providing the additional paperwork containing the grievance procedures. Other persons could incur costs for additional training in the proposed additions to this rule. However, this is not likely to happen as these proposed changes reflect current industry practices. As a result, this rule is not expected to affect other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are a total of 127 licensed private probation providers in Utah. These proposed rule changes may have an indirect fiscal cost associated with providing the additional paperwork containing the grievance procedures. Licensees could incur costs for additional training in the proposed additions to this rule. However, this is not likely to happen as these proposed changes reflect current industry practices. As a result, this rule is not expected to affect licensees.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Small Businesses: There are a total of 127 licensed private probation providers in Utah (NAICS 624190), of which all are small businesses. These small businesses may experience an indirect fiscal cost from providing the additional paperwork containing the grievance procedures required for their employees to keep active licensure. Small businesses could incur costs for additional training in the proposed additions to this rule. However, this is not likely to happen as the industry partners who participated with this rule's working group

indicated that the proposed changes reflect current industry practices. As a result, this rule is not expected to impact small businesses. Non-Small Businesses: There are a total of 127 licensed private probation providers in Utah (NAICS 624190), none of which are non-small businesses. No fiscal impact will affect any non-small businesses.

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 07/31/2019

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

◆ 07/15/2019 09:00 AM, Heber Wells Bldg, 160 E 300 S, Conference Room 474 (fourth floor), Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2019

AUTHORIZED BY: Mark Steinagel, Director

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	\$60	\$60	\$60
Non-Small Businesses	\$60	\$60	\$60
Other Person	\$0	\$0	\$0
Total Fiscal Costs:	\$60	\$60	\$60
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$60	\$60	\$60
Non-Small Businesses	\$60	\$60	\$60
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits:	\$60	\$60	\$60
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 are a total of 127 licensed private probation providers in Utah (NAICS 624190), none of which are non-small businesses.

The head of the Department of Commerce, Francine Giani, has reviewed and approved this fiscal analysis.

R156. Commerce, Occupational and Professional Licensing.**R156-50. Private Probation Provider Licensing Act Rule.****R156-50-102. Definitions.**

In addition to the definitions in Title 58, Chapters 1 and 50, as used in Title 58, Chapter 50 or this rule:

(1) "Direct supervision of staff" means that the licensee is responsible to direct and control the activities of employees, subordinates, assistants, clerks, contractors, etc., and shall review, approve and sign off on all staff duties and responsibilities. Members of staff shall not engage in those duties and functions performed exclusively by the licensee as defined under R156-50-603.

(2) "Client" means a criminal justice involved person.

(3) "Evidence-based assessment tool" means a validated criminogenic tool that has been psychometrically tested for reliability, validity, sensitivity, and is widely recognized by human service professionals.

(4) "Probation agreement" means the ~~court order which outlines~~ agreement outlining the terms and conditions the probationer shall comply with during ~~the time period of~~ probation in accordance with the court order.

(5) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 50, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-50-502.

R156-50-502. Unprofessional Conduct.

~~In accordance with Subsection 58-50-2(5),~~ "[~~U~~]unprofessional conduct" includes the following:

(1) failing to comply with the continuing professional education requirement of Section R156-50-304;

(2) failing to comply with the operating standards required for a presentence report;

(3) failing to properly supervise the ~~offender~~ client as set forth in the probation agreement;

(4) failing to disclose any potential conflict of interest relating to supervision of a ~~non-offender~~ client as set forth in Subsection 58-50-2(5), including ~~but not limited to~~ the following circumstances:

(a) simultaneously providing mental health therapy services and private probation services to the same ~~offender~~ client;

(b) simultaneously providing education and/or rehabilitation services and private probation services to the same ~~offender~~ client; or

(c) while providing private probation services to a ~~non-offender~~ client, also providing any other service to the ~~offender~~ client for which the licensee receives compensation;

(5) accepting any amount of money or gratuity from a ~~non-offender~~ client other than ~~that~~ the fees which is set forth in the probation agreement; ~~or~~

(6) failing to report any violation of the probation agreement; ~~or~~

(7) failing to comply with Utah Sentencing Commission Supervision Length Guidelines.

R156-50-601. Private Probation Services Standards - Probation Supervision.

In accordance with Subsection 58-50-9(5), the private probation services standards ~~concerning~~ for probation supervision are established and defined as follows:

(1) ~~The~~ private probation provider shall perform the following minimum services for each ~~offender~~ client ~~who is~~ referred by the court:

(a) conduct an initial ~~client~~ interview ~~/assessment with each offender~~ that includes an evidence-based risk/needs screening, and establish a plan of supervision ~~which shall be known as~~ (the "case plan");

(b) if indicated necessary by the risk/needs screening, conduct a risk/needs assessment using an evidence-based assessment tool;

(c) review the court order ~~ed agreement~~ with ~~each offender~~ the client and have the ~~offender~~ client sign the probation agreement;

(d) review with ~~each offender~~ the client:

(i) the court ordered ~~payment contract which shall provide for the collection and distribution of fines and restitution payments, and~~ fines and other financial obligations; and

(ii) the fees for services to be charged to the client, pursuant to Section R156-50-604 ~~performed by the licensee~~;

(e) after the initial client interview and any risk/needs assessment, conduct an individual, face-to-face ~~personal~~ interview with ~~each offender~~ the client in accordance with the case plan ~~and any risk/needs assessment as often~~ not less than once each month ~~and as many additional times~~ as necessary to determine that the ~~offender~~ client is in compliance with the probation agreement ~~and case plan, and not less than~~:

(i) monthly for a high risk client;

(ii) every two months for a moderate risk client; and

(iii) every three months for a low risk client; and

(f) submit written reports as required by the court ~~probation agreement~~.

(2) ~~The private probation provider shall maintain and make available for inspection a current list of fees for services to be charged to the offender which shall be reviewed and approved by the court.~~ A private probation provider shall post a notice of grievance procedures in a conspicuous location at the provider's place(s) of business, or make that notice otherwise available to each client. The notice shall include information on how to contact and file a complaint with the Division's investigation office.

(3) ~~The~~ private probation provider shall ~~be required to~~ report to the court within ~~two~~ three working days, or as directed by the court:

(a) any new known criminal law violations committed by the ~~offender~~ client; and

(b) ~~or report~~ any failure by the client to comply with the terms and conditions of the probation agreement, including payment of fines ~~or other financial obligations, restitution and fees~~.

(4)(a) ~~The~~ At least 30 business days prior to the date of termination of any supervised probation, a private probation provider shall notify in writing the ~~sentencing~~ court and the office of the prosecuting attorney ~~not less than ten working days prior to the date of termination of any supervised probation. The~~; and

(b) include with the notification ~~shall include~~ a report outlining the ~~probationer's~~ client's compliance with terms and

conditions of the probation agreement including payment of any fines and other financial obligations; ~~restitution and fees.~~

~~(5)(a) At least 30 business days prior to an early termination date, a private probation provider shall submit a report to the court with supporting rationale for early termination based on the Utah Sentencing Commission's Supervision Length Guidelines; and~~

~~(b) include in the report:~~

~~(i) Recent Response and Incentive Matrix (RIM) History;~~

~~(ii) information on any new criminal conduct;~~

~~(iii) Case Action Plan (CAP) or risk reduction progress;~~

~~(iv) treatment and programming progress;~~

~~(v) restitution payment history;~~

~~(vi) employment history, residence, and any other relevant factors;~~

~~(vii) a recommendation on the termination of supervision; and~~

~~(viii) for a client convicted of a sexual offense, the results from an exit polygraph conducted to determine any inappropriate conduct while on probation.~~

156-50-602. Private Probation Services Standards - Preparing Presentence Investigative Reports.

In accordance with Subsection 58-50-9(5), the private probation services standards ~~concerning~~ for preparing presentence investigative reports are established and defined as follows:

(1) ~~The~~ A private probation provider shall gather the following ~~relevant~~ information, if applicable and available:

- ~~(a) juvenile arrest and disposition records;~~
- ~~(b) adult arrest and disposition records;~~
- ~~(c) county attorney or city prosecutor file information;~~
- ~~(d) arresting officer's report;~~
- ~~(e) victim impact statement;~~
- ~~(f) driving history record, if the present offense is a driving offense;~~

~~(g) blood/breath alcohol content test results;~~

~~(h) treatment evaluations six months or newer; ~~and~~~~

~~(i) ~~medical reports;~~ custody status and number of jail days served;~~

~~(j) findings from the risk/needs screening and any risk/needs assessments; and~~

~~(k) current situation, to include:~~

~~(i) employment;~~

~~(ii) living situation;~~

~~(iii) level of education;~~

~~(iv) military status;~~

~~(v) behavioral and physical health status; and~~

~~(vi) personal relationship status.~~

(2) ~~The~~ A private probation provider shall conduct interviews with the client, and with the following when relevant and available:

~~(a) the defendant;~~

~~(b) the victim, and~~

~~(c) the following when relevant and available:~~

~~(i) family;~~

~~(ii) friends;~~

~~(c) victim(s);~~

~~(iii) school;~~

~~(iv) employers;~~

~~(v) military; and~~

~~(vi) past and present treatment providers.~~

(3) ~~The~~ A private probation provider shall: ~~recommend restitution, when appropriate;~~

~~(4) The private probation provider shall refer to outside agencies, when appropriate, for additional evaluation;~~

~~(5) The private probation provider shall~~

~~(a) develop and provide report recommendations based upon the risk/needs screening and any risk/needs assessment; ~~and~~~~

~~(b) refer in the report to client information obtained from outside agencies, when appropriate for additional evaluation; and~~

~~(c) recommend restitution, when appropriate.~~

(6) ~~The~~ A private probation provider shall ~~complete and~~ submit the report to the court, defense attorney, and prosecutor at least three business days ~~within not less than 24 hours~~ prior to sentencing.

156-50-603. Private Probation Services Standards - Duties and Responsibilities of the Private Probation Provider and Staff.

In accordance with Subsection 58-50-9(5), the respective duties and responsibilities of the private probation provider and staff are established as follows:

(1) ~~In accordance with Subsection 58-50-9(5),~~ the duties and responsibilities of the private probation provider shall include the following:

~~(a) review, approve and sign all reports required under this chapter or ordered by the court;~~

~~(b) conduct with each client:~~

~~(i) the an initial interview that includes an evidence-based risk/needs screening; and~~

~~(ii) an evidence-based risk needs ~~assessment~~, if indicated ~~with each offender~~;~~

~~(c) establish each client's case plan;~~

~~(d) conduct ~~at least one~~ personal interviews with each ~~offender each month~~ client as determined by the risk/needs screening and any risk/needs assessment, to include:~~

~~(i) review of case plan; and~~

~~(ii) probation agreement compliance;~~

~~(e) conduct all interviews required in the preparation of the presentence report;~~

~~(f) when available, review Bureau of Criminal Investigation, Controlled Substance Database, Utah Court XChange, and other applicable data; and~~

~~(g) attend all evidentiary hearings as requested by the court.~~

(2) The duties and responsibilities of the staff under direct supervision of the private probation provider include the following:

~~(a) assist in the gathering of information and the preparation of reports;~~

~~(b) perform other monthly interviews;~~

~~(c) contact ~~offenders~~ client by telephone or in person to determine compliance with the case plan;~~

~~(d) collect fines, restitutions and fees for services; and~~

~~(e) other clerical duties as assigned by the licensee.~~

R156-50-604. Private Probation Services Standards - [Distribution of Fines, Restitutions, and Service Fees] Disclosures and Financial Responsibility.

In accordance with Subsection 58-50-9(5), ~~[private probation providers shall distribute court ordered fines and restitutions and private probation service fees which are collected by the private probation provider at least every month in equal proportions to the court, the victim, the licensee and any other parties ordered by the court until each party entitled to the monies are paid in full as determined by the court order and case plan.]~~ the private probation service standards for disclosures and financial responsibility regarding services, are established and defined as follows:

(1) A private probation provider shall provide to each client in writing, and personally review with the client:

(a) the provider's current fee schedules for services, including fees for failure to pay for services; and

(b) the prohibition against providers providing services outside of the scope of their license.

(2) A private probation provider may not:

(a) split fees, send or receive any commission or rebate, or accept any other form of remuneration for referral of a client for professional services;

(b) accept any amount of money or gratuity from a client other than the fee set forth in the probation agreement;

(c) use the provider's relationship with the client for personal gain, or for the profit of any entity, agency, or commercial enterprise of any kind; or

(d) charge a client for services not rendered.

(3) A private probation provider shall:

(a) maintain and make available for inspection by the Division the provider's fee schedules; and

(b) make the provider's fee schedules available for review and approval by a court upon request.

R156-50-605. Private Probation Service Standard - Providing Additional Services, Informed Consent, Display of Licensure.

In accordance with Subsection 58-50-9(5), the private probation service standards for providing additional services, informed consent, and display of licensure are established and defined as follows:

(1) A private probation provider may not simultaneously provide private probation services and other services to the same client, when the probation provider is also the licensed, registered, or certified provider of the other services.

(2)(a) A private probation provider shall obtain a client's prior written consent if private probation services will be provided by the licensee, and the licensee is the owner, officer, director, partner, proprietor, or responsible management personnel of any entity, agency, or commercial enterprise of any kind that will simultaneously provide other services to the client for compensation.

(b) Written consent shall be obtained by means of an informed consent form, signed and dated by the client before receiving private probation services, that includes at least the following:

(i) a description of other services, including any:

(A) behavioral health services;

(B) educational services;

(C) substance use disorder services; or

(D) rehabilitation services;

(ii) a separate paragraph describing how the client can withdraw consent;

(iii) a separate paragraph describing client grievance procedures, that includes information on how to contact and file a complaint with the Division's investigation office; and

(iv) a separate paragraph containing an acknowledgment of being informed of the potential conflict of interest.

(d) A signed and dated informed consent form shall be retained for three years from the termination of probation with the client.

(3) A private probation provider shall display a current copy of their Utah Private Probation Provider license in a conspicuous location at the provider's place of business. If a licensee provides private probation services at multiple business locations, the license shall be displayed at each location.

KEY: licensing, probation, private probation provider

Date of Enactment or Last Substantive Amendment: [January 18, 2005] 2019

Notice of Continuation: September 14, 2015

Authorizing, and Implemented or Interpreted Law: 58-50-1; 58-1-106(1)(a); 58-1-202(1)(a); 58-50-5(1); 58-50-9(5)

Education, Administration
R277-305
 School Leadership License Areas of
 Concentration and Programs

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 43794

FILED: 06/12/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Utah State Board of Education (Board) Rule R277-305 reflects one of the new rules required for the school leadership preparation programs under the new licensing system. In May 2018, the Board approved the new Rule R277-301, Educator Licensing, and a significant number of rules related to educator licensing will need to be implemented.

SUMMARY OF THE RULE OR CHANGE: The purpose of Rule R277-305 is to specify the requirements for a professional school leadership license area of concentration, and specify the standards which the Board expects of a school leadership preparation program prior to program approval.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Article X Section 3 and Section 53E-6-201 and Subsection 53E-3-401(4)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** This rule may have a fiscal impact on state government revenues or expenditures. The purpose of this rule is to specify the requirements for a professional school leadership license area of concentration, and specify the standards which the Board expects of a school leadership preparation program prior to program approval. Under this rule, the Superintendent shall explore the adoption of a performance-based school leadership assessment and make recommendations to the Board by 09/01/2020. If the Board chooses to adapt an existing assessment or develop a Utah-specific assignment and fund it at the state level, then this assessment may increase state expenditures. However, this assessment will be part of a legislative request so the rule itself will not lead to additional state expenditures since it will need an appropriation to fund it. In other words, without an additional appropriation then this assessment will not be funded at the state level and alternatively could be funded through an assessment fee similar to other states.

◆ **LOCAL GOVERNMENTS:** This rule is not expected to have any fiscal impact on local governments' revenues or expenditures. The purpose of this rule is to specify the requirements for a professional school leadership license area of concentration, and specify the standards which the Board expects of a school leadership preparation program prior to program approval. This rule will not have a direct fiscal impact on local education agencies (LEAs).

◆ **SMALL BUSINESSES:** This rule is not expected to have any fiscal impact on small businesses' revenues or expenditures. This rule applies to school leadership license areas and preparation programs and thus does not apply to small businesses since the Board is responsible for establishing standards for licensure and school leadership preparation programs (programs run through Utah colleges and universities).

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule is not expected to have any fiscal impact on persons other than small businesses', businesses', or local government entities' revenues or expenditures. The purpose of this rule is to specify the requirements for a professional school leadership license area of concentration, and specify the standards which the Board expects of a school leadership preparation program prior to program approval. Currently, to receive an administrative license, an individual must pass a Board-approved administrative licensure test. This test is paid for by individuals wishing to earn their administrative license. Thus, the potential change to the performance-based school leadership assessment is expected to be cost neutral for individuals.

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

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no non-small businesses in the industry in question, Elementary and Secondary Schools (NAICS 611110). Because there are no non-small businesses, they

do not account for any service deliveries for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. This proposed rule is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses, and it does not require any expenditures of, or generate revenue for, non-small businesses. This rule is not expected to have an independent fiscal impact on state expenditures and it will not have a fiscal impact on LEAs or small businesses. The Program Analyst at the Utah State Board of Education, Jill Curry, has reviewed and approved this fiscal analysis.

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2019

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2019

AUTHORIZED BY: Angela Stallings, Deputy Superintendent of Policy

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 in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.

Appendix 2: Regulatory Impact to Non-Small Businesses

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

The Program Analyst at the Utah State Board of Education, Jill Curry, has reviewed and approved this fiscal analysis.

R277. Education, Administration.

R277-305. School Leadership License Areas of Concentration and Programs.

R277-305-1. Authority and Purpose.

- (1) This rule is authorized by
 - (a) Utah Constitution Article X, Section 3, which vests general control and supervision of public education in the Board;
 - (b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and
 - (c) Section 53E-6-201, which permits the Board to issue certificates for educators.
- (2) The purpose of this rule is to:
 - (a) specify the requirements for a professional school leadership license area of concentration;
 - (b) specify the standards which the Board expects of a school leadership preparation program prior to program approval.

R277-305-2. Definitions.

- (1) "Clinical experience" means a structured opportunity in which a program candidate is mentored by a licensed educator and evaluated by an LEA administrator or university preparation program

faculty member, in order to develop and demonstrate competency in the skills and knowledge necessary to be an effective school leader.

(2) "School leadership license area of concentration" means the initial credential issued by the Board that authorizes a holder to be employed as a school principal, vice-principal, or assistant principal.

R277-305-3. School Leadership License Area of Concentration Requirements.

(1) The Superintendent shall issue a professional school leadership license area of concentration to an individual that applies for the license and meets all requirements in this section.

(2) The requirements for a professional school leadership license area of concentration shall include:

- (a) a master's degree or more advanced degree;
- (b) passage of a school leadership assessment approved by the Superintendent; and
- (c)(i) a recommendation from a Board-approved school leadership preparation program pursuant to the process described in Rule R277-303; or

(ii) subject to Subsection (3), a valid school leadership license in another jurisdiction under the NASDTEC interstate agreement.

(3) Prior to being awarded a school leadership license area of concentration, an applicant that holds a valid school leadership license in another jurisdiction under the NASDTEC interstate agreement as described in Subsection (2)(c)(ii) shall have completed:

- (a) at least one year of school leadership experience in that state; or
- (b) a school leadership preparation program reasonably equivalent to a Board-approved school leadership preparation program pursuant to the process described in Rule R277-303.

R277-305-4. School Leadership Preparation Programs.

(1) Prior to approval by the Superintendent, a preparation program for school leadership shall:

- (a) demonstrate how it will prepare candidates to meet the Utah educational leadership Standards described in R277-530;
- (b) subject to Subsection (2), establish weighted entry requirements that consider prior leadership experiences of applicants and are designed to select high quality candidates to enter the licensure program;
- (c) include school-based clinical experiences for a candidate to observe, practice skills, and reflect on school leadership that:
 - (i) are significant in number, depth, breadth, and duration;
 - (ii) are progressively more complex;
 - (iii) occur in multiple schools;
 - (iv) include working with both elementary and secondary teachers and students; and
 - (v) occur throughout the preparation program;
- (d) require the demonstration of competency in:
 - (i) properly utilizing data, including student performance data, to evaluate educator and school performance and provide actionable information to educators to improve instruction;
 - (ii) facilitating educator use of technology to support and meaningfully supplement the learning of students;
 - (iii) collaborating with stakeholder groups to create a shared vision, mission, and goals for a school;
 - (iv) implementing the shared vision, mission, and goals for a school;

_____ (A) as a principal; and
 _____ (B) as an assistant principal supporting the school principal;
 _____ (v) communicating effectively with parents, community groups, staff, and students;
 _____ (vi) recognizing effective and ineffective instructional practice in order to ensure authentic learning and assessment experiences for all students;
 _____ (vii) implementing a multi-tiered system of supports in individual classrooms and the school as a whole;
 _____ (viii) counseling and coaching educators in relation to the educator's evaluation, professional learning, and student performance to improve the educator's practice;
 _____ (ix) understanding the laws and legal ramifications surrounding school leadership decisions and practices;
 _____ (x) understanding the requirements and LEA responsibilities of the IDEA;
 _____ (xi) ensuring a safe, secure, emotionally protective, and healthy school environment, including the prevention of bullying and youth suicide;
 _____ (xii) establishing and maintaining a school culture that supports inquiry, risk-taking, innovation, and learning of both students and teachers; and
 _____ (xiii) connecting management operations, policies, and resources to the vision and values of the school.

(2) Beginning on January 1, 2020, the entry requirements described in Subsection (1)(b) shall require an individual entering a Board-approved education leadership licensure program to:

_____ (a) clear a USBE fingerprint background check described in:

_____ (i) statute; and
 _____ (ii) background check rule;
 _____ (b) hold a:
 _____ (i) Utah professional educator license; or
 _____ (ii) an equivalent out of state license;
 _____ (c) have been deemed effective or higher by:
 _____ (i) an evaluation system meeting the standards of R277-531;
 or
 _____ (ii) the LEA's equivalent on the applicant's most recent evaluation;
 _____ (d) have a confidential recommendation from:
 _____ (i) the individual's immediate administrative supervisor; or
 _____ (ii) an LEA-level administrator with knowledge regarding the individual's potential as a school leader; and
 _____ (e) pass an interview conducted by the program to measure the potential of the individual as a school leader.

(3) Board-approved education leadership licensure program may waive the entrance requirements described in Subsections (2)(b) through (e) based on program established guidelines for no more than ten percent of an incoming cohort.

(4) For a program applicant accepted on or after January 1, 2020, an -approved school leadership licensure program shall require multiple opportunities for a program applicant to successfully demonstrate application of knowledge and skills gained through the program in one or more clinical experiences in each of the following competencies:

_____ (a) analyzing school assessment data from common formative assessments, summative assessments, standardized assessments, and interim or benchmark assessments with school staff and with individual teachers;

_____ (b) administering all aspects of a teacher evaluation system that meets the requirements of:
 _____ (i) R277-531; or
 _____ (ii) the LEA's equivalent;
 _____ (c) administering all aspects of an evaluation system for a classified employee;
 _____ (d) planning, organizing, conducting, and evaluating the effectiveness of a professional learning activity for school staff;
 _____ (e) supporting or overseeing a school-based learning team;
 _____ (f) working with a School Community Council, including the annual development and evaluation of a school's Teacher and Student Success Act plan and School LAND Trust plan;
 _____ (g) performing formal and informal classroom observations for the purpose of improving instruction;
 _____ (h) acting as the LEA representative in IEP and 504 accommodation plan meetings;
 _____ (i) appropriately handling cases of student discipline referred to the school office;
 _____ (j) supervising school activities and monitoring the process for collecting and handling fees and gate receipts; and
 _____ (k) implementing a school's screening and hiring process, including interviews and the notification of successful and unsuccessful applicants.

R277-305-5. Superintendent Responsibilities.

_____ (1) The Superintendent shall ensure that the model mentoring program required under Rule R277-308 includes induction for new school leaders.

_____ (2) The Superintendent shall explore the adoption of a performance-based school leadership assessment and make related recommendations to the Board by September 1, 2020.

_____ (3) The Superintendent shall include a list of resources for potential school leadership candidates to help them prepare for school leadership on the Utah Leading through Effective and Dynamic Education website.

_____ (4) The Superintendent shall implement a network for principal.

_____ (5) The Superintendent shall create a depository of school principal learning resources that can be utilized by LEAs in the Utah Leading through Effective and Dynamic Education website.

KEY: school leadership license, program

Date of Enactment or Last Substantive Amendment: 2019

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

Education, Administration
R277-322

LEA Codes of Conduct

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 43787

FILED: 06/11/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: In the 2019 General Session, H.B. 391, Modifications to Governmental Immunity Provisions, passed which requires the Utah State Board of Education (Board) to create a model "appropriate behavior policy" (model policy). Rule R277-517 is being repealed and the information is being moved into this proposed rule, R277-322, and will include provisions required in H.B. 391 and the model "appropriate behavior policy" previously found in Rule R277-517. (EDITOR'S NOTE: The proposed repeal of Rule R277-517 is under Filing No. 43790 in this issue, July 1, 2019, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: Rule R277-517 is being repealed and the information is moved to this proposed rule, R277-322, and will include provisions required in H.B. 391 (2019), including provisions related to the Board's model "appropriate behavior policy".

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Article X Section 3 and Subsection 53E-3-401(4)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** Rule R277-322 is created from Rule R277-517 and it includes provisions required in H.B. 391 (2019). This new rule replaces the term "code of conduct" with "appropriate behavior policy" which is defined in statute (H.B. 391). This rule also requires the Board to create a model appropriate behavior policy. However, this requirement comes directly from the legislation so any fiscal impact regarding staff time to create the model policy is a result of this statutory change and not this rule. Thus, this proposed rule is not expected to have a fiscal impact on state government revenues or expenditures.

◆ **LOCAL GOVERNMENTS:** Rule R277-322 is created from Rule R277-517 and it includes provisions required in H.B. 391 (2019). This new rule replaces the term "code of conduct" with "appropriate behavior policy" which is defined in statute (H.B. 391). This rule also requires the Board to create a model appropriate behavior policy. This proposed rule is not expected to have a fiscal impact on local governments' revenues or expenditures because local education agencies (LEA) were already required to adopt a code of conduct. They may have to modify their policy, but this change is a result of the statutory change and not this new rule.

◆ **SMALL BUSINESSES:** This proposed rule is not expected to have any fiscal impact on small businesses' revenues or expenditures. This rule applies to LEA behavior policies and thus does not apply to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This proposed rule is not expected to have any fiscal impact on persons other than small businesses', businesses', or local government entities' revenues or expenditures. This rule applies to LEA behavior policies and thus does not apply to other individuals.

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

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no non-small businesses in the industry in question, Elementary and Secondary Schools (NAICS 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. This proposed rule is not expected to have any fiscal impacts on non-small businesses' revenues or expenditures because there are no applicable non-small businesses and it does not require any expenditures of or generate revenue for non-small businesses. This proposed rule has no fiscal impact on LEAs and will not have a fiscal impact on small businesses either. The Program Analyst at the Utah State Board of Education, Jill Curry, has reviewed and approved this fiscal analysis.

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AUTHORIZED BY: Angela Stallings, Deputy Superintendent of Policy

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
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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

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

The Program Analyst at the Utah State Board of Education, Jill Curry, has reviewed and approved this fiscal analysis.

R277. Education, Administration.

R277-322. LEA Codes of Conduct.

R277-322-1. Authority and Purpose.

- (1) This rule is authorized by:
 - (a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;
 - (b) Section 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and
 - (c) Section 63G-7-301, which requires the Board to create a model policy that regulates behavior of a school employee toward a student.
- (2) The purpose of this rule is to require LEAs to create a code of conduct/appropriate behavior policy applicable to the LEA's staff.

R277-322-2. Definitions.

- (1) "Boundary violation" means the same as that term is defined in R277-515.
- (2) "Staff" or "staff member" means an employee, contractor, or volunteer with unsupervised access to students.
- (3) "Sexual conduct" means any sexual contact or communication between a staff member and a student, including:
 - (a) "sexual abuse" as defined in Section 76-5-404.1;
 - (b) "sexual battery" as defined in Section 76-9-702.1; or
 - (c) a staff member and student sharing any sexually explicit or lewd communication, image, or photograph.

R277-322-3. Required Code of Conduct Policy

- (1) The Superintendent shall create a model code of conduct/appropriate behavior policy.
- (2) Each LEA shall adopt a code of conduct/appropriate behavior policy applicable to the LEA's staff.
- (3) An LEA's code of conduct/appropriate behavior policy adopted pursuant to Subsection (2), may not be less stringent than the model code of conduct/appropriate behavior policy described in Subsection (1) and shall include, at a minimum:
 - (a) a statement that a staff member should avoid boundary violations, as defined in Rule R277-515, with students;
 - (b) a statement that a staff member may not subject a student to:
 - (i) physical abuse;
 - (ii) verbal abuse;
 - (iii) sexual abuse; or
 - (iv) mental abuse;
 - (c) a statement that a staff member shall report any suspected incidents of:
 - (i) physical abuse;
 - (ii) verbal abuse;
 - (iii) sexual abuse;
 - (iv) mental abuse; or
 - (v) neglect;
 - (d) a statement that a staff member may not touch a student in a way that makes a reasonably objective student feel uncomfortable;
 - (e) a statement that a staff member may not participate in sexual conduct with a student;
 - (f) a statement regarding appropriate verbal or electronic communication between a staff member and a student;
 - (g) a statement regarding providing gifts, special favors, or preferential treatment to a student or group of students;
 - (h) a statement that a staff member shall not discriminate against a student on the basis of sex, race, religion, or any other prohibited class;
 - (i) a statement regarding appropriate use of electronic devices and social media for communication between a staff member and a student;
 - (j) a statement regarding use of alcohol, tobacco, and illegal substances during work hours and on school property;
 - (k) a statement that a staff member is required to:
 - (i) report any suspicion of child abuse or bullying to the proper authorities;
 - (ii) annually read and sign all policies related to identifying, documenting, and reporting child abuse; and

(iii) for an employee or contractor, annually attend abuse prevention training required in Section 53G-9-207; and

(3) An LEA shall post the LEA's code of conduct/appropriate behavior policy adopted pursuant to Subsection (2) on the LEA's website.

(4) An LEA shall annually provide training to staff regarding the policy, including the staff member's responsibility to report and how to report:

(a) known violations of the LEA's code of conduct/appropriate behavior policy; and

(b) known violations of the Utah Educator Standards contained in R277-515.

(5) A staff member shall annually sign a statement acknowledging that the staff member has read and understands the code of conduct/appropriate behavior policy.

KEY: codes of conduct, appropriate behavior, employee conduct

Date of Enactment of Last Substantive Amendment: 2019

Authorizing, and Implemented, or Interpreted Law: Art X Sec 3; 53E-3-401(4); 63G-7-301

Education, Administration R277-477

Distributions of Funds from the Trust Distribution Account and Administration of the School LAND Trust Program

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 43788

FILED: 06/11/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Utah State Board of Education (Board) and members of the Trust Advisory Committee recommend changes to this rule to reflect new requirements from H.B. 48, passed in the 2019 General Session.

SUMMARY OF THE RULE OR CHANGE: The amendments to this rule reflect minor technical recommendations.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Article X Section 3 and Section 53D-2-202 and Subsection 53E-3-401(4) and Subsection 53F-2-404(2)(d) and Subsection 53G-7-1206(2)

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** These rule changes are not expected to have a fiscal impact on state government revenues or expenditures. This rule applies to the distribution of funds from the Trust Distribution Account and administration of the School LAND Trust Program. These

rule changes include technical corrections, changes based on H.B. 48, School Trust Fund Modifications (2019 General Session), and clarifies that the compliance review processes of the School LAND Trust Program and school community councils are conducted under the direction of the Superintendent and are subject to Rule R277-114. None of these changes impact state revenues or expenditures.

♦ **LOCAL GOVERNMENTS:** These rule changes are not expected to have a fiscal impact on local governments' revenues or expenditures. This rule applies to the distribution of funds from the Trust Distribution Account and administration of the School LAND Trust Program. These rule changes include technical corrections, changes based on H.B. 48 (2019), and clarifies that the compliance review processes of the School LAND Trust Program and school community councils are conducted under the direction of the Superintendent and are subject to Rule R277-114. This program is funded with revenue generated from school trust lands and these rule changes will not impact the distribution of school trust lands funding to schools.

♦ **SMALL BUSINESSES:** These rule changes are not expected to have any fiscal impact on small businesses' revenues or expenditures. This rule applies to the distribution of funds from the Trust Distribution Account, and administration of the School LAND Trust Program which is funded with revenue generated from school trust lands, and thus does not apply to 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' revenues or expenditures. This rule applies to the distribution of funds from the Trust Distribution Account, and administration of the School LAND Trust Program which is funded with revenue generated from school trust lands, and thus does not apply to other individuals.

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

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no non-small businesses in the industry in question, Elementary and Secondary Schools (NAICS 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. These proposed rule changes are not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses, and it does not require any expenditures of or generate revenue for non-small businesses. These rule changes have no fiscal impact on local education agencies and will not have a fiscal impact on small businesses either. The Program Analyst at the Utah State Board of Education, Jill Curry, has reviewed and approved this fiscal analysis.

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THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2019

AUTHORIZED BY: Angela Stallings, Deputy Superintendent of Policy

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

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The Program Analyst at the Utah State Board of Education, Jill Curry, has reviewed and approved this fiscal analysis.

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Fiscal Costs	FY 2020	FY 2021	FY 2022
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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

R277. Education, Administration.

R277-477. Distributions of Funds from the Trust Distribution Account and Administration of the School LAND Trust Program.

R277-477-1. Authority and Purpose.

- (1) This rule is authorized by:
 - (a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;
 - (b) Subsection 53F-2-404(2)(d), which allows the Board to adopt rules regarding the time and manner in which a student count shall be made for allocation of funds; and
 - (c) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.
- (2) In accordance with Section 53D-2-202, through representation on the Land Trusts Protection and Advocacy Committee, the Board exercises trust oversight of:
 - (a) the Common School Trust;
 - (b) the School for the Deaf Trust; and
 - (c) the School for the Blind Trust.
- (3) The Board implements the School LAND Trust Program and provides oversight, support, and training for school community councils and Charter Trust Land Councils consistent with Subsection 53G-7-1206(2), Rule R277-491, and this Rule R277-477.
- (4) The purpose of this rule is to:
 - (a) provide financial resources to a public school to implement a component of a school's ~~improvement plan or charter document~~ Teacher and Student Success Plan in order to enhance and improve student academic achievement;
 - (b) provide a means to involve a parent of a school's student in decision-making regarding the expenditure of School LAND Trust Program funds allocated to the school;
 - (c) provide direction in the distribution of funds from the Trust Distribution Account, as funded in Section 53F-2-404;

(d) provide for appropriate and adequate oversight of the expenditure and use of funds by a designated local board of education, an approving entity, and the Board;

(e) provide for proper allocation of funds as stated in Section 53F-2-404, and the appropriate and timely distribution of the funds;

(f) enforce compliance with statutory and rule requirements, including the responsibility for a school community council to notify school community members regarding the use of funds; and

(g) define the roles, duties, and responsibilities of the Superintendent with regards to the School Children's Trust.

R277-477-2. Definitions.

(1) "Approving entity" means an LEA governing board, university, or other legally authorized entity that may approve or reject a plan for a district or charter school.

(2)(a) "Charter trust land council" means a council comprised of a two person majority of elected parents of students attending the charter school convened to act in lieu of the school community council for the charter school.

(b) "Charter trust land council" includes a charter school governing board if:

(i) the charter governing board meets the two-parent majority requirement; and

(ii) the charter school governing board chooses to serve as the charter trust land council.

(3) "Council" means a school community council or a charter trust land council.

(4) "Digital citizenship" means the same as that term is defined in Section 53G-7-1202.

(5) "Fall enrollment report" means the audited census of students registered in Utah public schools as reported in the audited October 1 Fall Enrollment Report of the previous year.

(6) "Funds" means School LAND Trust program funding as defined in Section 53F-2-404.

(7) "Most critical academic need" means an academic need identified in a school's ~~improvement plan or school's charter~~ Teacher and Student Success Plan.

(8) "Parent," for a charter school, includes a grandparent of a student currently enrolled at the school.

(9)(a) "Principal" means an administrator licensed as a principal in the state and employed in that capacity at a school.

(b) "Principal" includes the director of a charter school.

(10) "Satellite charter school" has the same meaning as that term is defined in Section R277-482-2.

(11) "School safety principles" has the same meaning as described in Section 53G-7-1202.

(12) "Student" means a child in public school grades kindergarten through 12 counted on the fall enrollment report of ~~a school district, charter school, or USDB~~ an LEA.

(13) "Trust Distribution Account" means the restricted account within the Uniform School Fund created under Subsection 53F-9-201(2).

R277-477-3. Distribution of Funds - Local Board or Local Charter Board Approval of School LAND Trust Plans.

(1) A public school receiving School LAND Trust Program funds shall have:

(a) a school community council as required by Section 53G-7-1202 and Rule R277-491;

(b) a charter school trust land council as required by Section 53G-7-1205; or

(c) an approved exemption under this rule.

(2) A public school receiving School LAND Trust Program funds shall submit a principal assurance form, as described in Section R277-491-4 and Subsection 53G-7-1206(3)(c), prior to the public school receiving a distribution of School LAND Trust Program funds.

(3) A charter school that elects to receive School LAND Trust funds shall:

(a) have a charter trust land council;

(b) be subject to Section 53G-7-1203 if the charter trust land council is not a charter school governing board; and

(c) receive training about Section 53G-7-1206.

(4) A charter school that is a small or special school may receive an exemption from the charter land trust council composition requirements contained in Subsection 53G-7-1205(9) upon application to the school's authorizer if the small or special school demonstrates and documents a good faith effort to recruit members to the charter trust land council.

(5) The principal of a charter school that elects to receive School LAND Trust funds shall submit a plan, approved by the school's governing board, to the School Children's Trust Section on the School LAND Trust website:

(a) no later than April 1; or

(b) for a newly opening charter school, no later than November 1 in the school's first year in order to receive funding in the year the newly opening charter school opens.

(6)(a) An approving entity:

(i) shall consider a plan annually; and

(ii) may approve or disapprove a school plan.

(b) If an approving entity does not approve a plan, the approving entity shall:

(i) provide a written explanation why the approving entity did not approve the plan; and

(ii) request that the school revise the plan, consistent with Subsection 53G-7-1206(4)(d).

(7)(a) To receive funds, the principal of a public school shall submit a School LAND Trust plan to the School Children's Trust Section annually through the School LAND Trust website using the form provided.

(b) The Board may grant an exemption from a school using the Superintendent-provided form, described in Subsection (7)(a), on a case-by-case basis.

(8) In addition to the requirements of Subsection (6), the School LAND Trust plan described in Subsection (7)(a) shall include the date the council voted to approve the plan.

(9)(a) The principal of a school shall ensure that a council member has an opportunity to provide a signature indicating the member's involvement in implementing the current School LAND Trust plan and developing the school plan for the upcoming year.

(b) The principal shall collect a council member's signature, as described in Subsection (9)(a), digitally or through a paper form created by the Membership Form on the website and uploaded to the database.

(c) An LEA or district school, upon the permission of the LEA's governing board, may design the LEA or district school's own form to collect the information required by this Subsection (9).

(10)(a) An approving entity for a school district shall establish a timeline, including a deadline, for a school to submit a school's School LAND Trust plan.

(b) A timeline described in Subsection (10)(a) shall:

(i) require a school's School LAND Trust plan to be submitted to the approving entity with sufficient time so that the approving entity may approve the school's School LAND Trust plan no later than May 15 of each year; and

(ii) allow sufficient time for a council to reconsider and amend the council's School LAND Trust plan if the approving entity rejects the school's plan and still allow the school to meet the May 15 approving entity's approval deadline.

(c) After an approving entity has completed the approving entity's review, the approving entity shall notify the School Children's Trust Section that the review is complete.

(11)(a) Prior to approving a plan, an approving entity shall review a School LAND Trust plan under the approving entity's purview to confirm that a School LAND Trust plan contains:

(i) academic goals;

(ii) specific steps to meet the academic goals described in Subsection (11)(a)(i);

(iii) measurements to assess improvement; and

(iv) specific expenditures focused on student academic improvement needed to implement plan goals.

(b) The approving entity shall determine whether a School LAND Trust plan is consistent with the approving entity's pedagogy, programs, and curriculum.

(c) Prior to approving a School LAND Trust plan, the president or chair of the approving entity shall provide training annually on the requirements of Section 53G-7-1206 to the members of the approving entity.

(12)(a) After receiving the notice described in Subsection (10)(c), the School Children's Trust Section shall review each School LAND Trust plan for compliance with the law governing School LAND Trust plans.

(b) The School Children's Trust Section shall report back to the approving entity concerning which School LAND Trust plans were found to be out of compliance with the law.

(c) An approving entity shall ensure that a School LAND Trust plan that is found to be out of compliance with the law by the School Children's Trust Section is amended or revised by the council to bring the school's School LAND Trust plan into compliance with the law.

(13) If an approving entity fails to comply with Subsection (12)(c), the Superintendent may report the failure to the Audit Committee of the Board as described in Section R277-477-9.

R277-477-4. Appropriate Use of School LAND Trust Program Funds.

(1) Parents, teachers, and the principal, in collaboration with an approving entity, shall review school-wide assessment data annually and use School LAND Trust Program funds in data-driven and evidence-based ways to improve educational outcomes, including:

(a) strategies that are measurable and show academic outcomes with multi-tiered systems of support; and

(b) counselors and educators working with students and families on academic and behavioral issues when a direct impact on academic achievement can be measured.

(2) School LAND Trust Program expenditures are required to have a direct impact on the instruction of students in the particular school's areas of most critical academic need.

(3) A school may not use School LAND Trust Program funds for the following:

(a) to cover the fixed costs of doing business;

(b) for construction, maintenance, facilities, overhead, security, or athletics; or

(c) to pay for non-academic in-school, co-curricular, or extracurricular activities.

(4) A school district or local school board may not require a council or school to spend the school's School LAND Trust Program funds on a specific use or set of uses.

(5)(a) A council may budget and spend no more than \$7,000 for in-school civic and character education, including student leadership skills training, ~~[and]~~ digital citizenship training~~[as described in Section 53G-7-1202], and implementing school safety principles.~~

(b) A school may designate School LAND Trust Program funds to implement school safety principles or for an in-school civic or character education program or activity only if the plan clearly describes how the program or activity has a direct impact of the instruction of students in a school's areas of most critical academic need.

(6) Notwithstanding other provisions in this rule, a school may use funds as needed to implement a student's Individualized Education Plan.

(7) Student incentives implemented as part of an academic goal in the School LAND Trust Program may not exceed \$2 per awarded student in an academic school year.

R277-477-5. Distribution of Funds - Determination of Proportionate Share.

(1)(a) A local school board or charter school governing board shall report the prior year expenditure of distributions for each school.

(b) The total expenditures each year described in Subsection (1)(a) may not be greater than the total available funds for any school or school district.

(c) A school district shall adjust the current year distribution of funds received from the School LAND Trust Program as described in Section 53F-2-404, as necessary to maintain an equal per student distribution within a school district based on school openings and closings, boundary changes, and other enrollment changes occurring after the fall enrollment report.

(2) A charter school and each of the charter school's satellite charter schools are a single LEA for purposes of public school funding.

(3)(a) For purposes of this Subsection (3) and Subsection (4), "qualifying charter school" means a charter school that:

(i) would receive more funds from a per pupil distribution than the charter school receives from the base payment described in Subsection (3)(c); and

(ii) is not a newly opening charter school as described in Subsection (4).

(b) The Superintendent shall distribute the funds allocated to charter schools as described in this Subsection (3).

(c) The Superintendent shall first distribute a base payment to each charter school that is equal to the product of:

(i) an amount equal to the total funds available for all charter schools; and

(ii) at least 0.4%.

(d) After the Superintendent distributes the amount described in Subsection (3)(c), the Superintendent shall distribute the remaining funds to qualifying charter schools on a per pupil basis.

(4)(a) The Superintendent shall distribute an amount of funds to a newly opening charter school that is equal to the greater of:

(i) the base payment described in Subsection (2)(c); or

(ii) a per pupil amount based on the newly opened charter school's projected October 1 enrollment count.

(b) The Superintendent shall increase or decrease a newly opening charter school's first year distribution of funds in the school's second year to reflect the newly opening charter school's actual first year October 1 enrollment.

(5) If a school chooses not to apply for funds or does not meet the requirements for receiving funds, the Superintendent shall deposit the unused balance in the Trust Distribution Account.

R277-477-6. School LAND Trust Program - Implementation of Plans and Required Reporting.

(1) A school shall implement a plan as approved.

(2)(a) The principal shall submit a plan amendment authorized by Subsection 53G-7-1206(4)(d)(iii) through the School LAND Trust website for approval, including the date the council approved the amendment and the number of votes for, against, and absent.

(b) The approving entity shall:

(i) consider the amendment for approval; and

(ii) approve an amendment before the school uses funds according to the amendment.

(c) The School Children's Trust Section shall review an amendment for compliance with statute and rule before the school uses funds according to the amendment.

(3)(a) A school shall provide an explanation for any carryover that exceeds one-tenth of the school's allocation in a given year in the School LAND Trust Plan or final report.

(b) The Superintendent shall recommend a district or school with a consistently large carryover balance over multiple years for corrective action for not making adequate and appropriate progress on an approved plan.

(c) The ~~Board~~ Superintendent may take corrective action to remedy excessive carryover balances ~~[as outlined in Section R277-477-9]~~ consistent with Rule R277-114.

(4) By approving a plan on the School LAND Trust website, the approving entity affirms that:

(a) the entity has reviewed the plan; and

(b) the plan meets the requirements of statute and rule.

(5)(a) A district or charter school business official shall enter prior year audited expenditures by specific category on the School LAND Trust website on or before October 1.

(b) The expenditure data shall appear in the final report submitted online by a principal, as required by Subsection 53G-7-1206(5)(b).

(6) A principal shall submit a final report on the School LAND Trust website by October 20 annually.

R277-477-7. School LAND Trust Program - School Children's Trust Section to Review Compliance.

(1)(a) The School Children's Trust Section shall review each school's final report for consistency with the approved school plan.

(b) The School Children's Trust Section shall create a list of all schools whose final reports indicate that funds from the School LAND Trust Program were expended inconsistent with the statute, rule, or the school's approved plan.

(c) The School Children's Trust Section shall annually report a school described in Subsection (1)(b) to the school district contact person, district superintendent, and president of the local board of education or charter board, as applicable.

(2) The School Children's Trust Section may visit a school receiving funds from the School LAND Trust Program to discuss the program, receive information and suggestions, provide training, and answer questions.

(3)(a) The Superintendent shall supervise annual compliance reviews to review expenditure of funds consistent with the approved plan, allowable expenses, and the law.

(b) The Superintendent shall report annually to the Board Audit Committee on compliance review findings and other compliance issues.

~~[(c) After receiving the report described in Subsection (3)(b) and any other relevant information requested by the committee, the Board Audit Committee may make a determination regarding questioned expenditures and corrective action as outlined in Section R277-477-9.]~~

R277-477-8. Superintendent Responsibilities.

The Superintendent shall:

(1) represent the Board on the Land Trusts Protection and Advocacy Committee in accordance with Section 53D-2-202;

(2) review and approve a charter school plan on behalf of the State Charter School Board;

(3) provide notice as necessary to the State Charter School Board of changes required of charter schools for compliance with statute and rule;

(4) review and approve a plan submitted by the USDB school community council as necessary;

(5) prepare the annual distribution of funds to implement the School LAND Trust Program pursuant to Section 53F-2-404;

(6) report the total distribution amount for the following fiscal year to the Legislative Fiscal Analyst before December 31 annually; ~~[and]~~

(7) provide training to entities involved with the School LAND Trust Program consistent with Subsection 53G-7-1206(8) ~~]; and~~

(8) implement corrective action, if appropriate, consistent with Rule R277-114 if an LEA or its council fails to comply with the provisions of this rule.

~~[R277-477-9. Failure to Comply with Rule.~~

~~(1) If a local school board, school district, district or charter school, or council fails to comply with the provisions of this rule, the Superintendent may report the failure to the Audit Committee of the Board.~~

~~(2) If the Audit Committee of the Board finds that any local school board, school district, district or charter school, or council failed to comply with statute or rule, the Audit Committee may recommend that the Board take any or all of the following actions:~~

~~(a) in cooperation with the local school board or charter school governing board, develop a corrective action plan for the school district, district or charter school, or council;~~

~~(b) require the school to reimburse the School LAND Trust Program for any inappropriate expenditures;~~

~~(c) reduce, eliminate, or withhold future funding; or~~

~~(d) any other necessary and appropriate corrective action.~~

~~(3) The Board may, by majority vote, take any of the actions outlined in Subsection (2) to correct or remedy a violation of statute or rule by a local school board, school district, district or charter school, or council.]~~

KEY: schools, school community councils, trust lands funds
Date of Enactment or Last Substantive Amendment:
~~[December 10, 2018]2019~~
Notice of Continuation: August 13, 2015
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-16-101.5(4); 53A-1-401

Education, Administration
R277-491
School Community Councils

NOTICE OF PROPOSED RULE
(Amendment)

DAR FILE NO.: 43789
 FILED: 06/11/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Utah State Board of Education (Board) and members of the Trust Advisory Committee recommend changes to this rule to reflect new requirements in H.B. 48, School Trust Fund Modifications, passed in the 2019 General Session.

SUMMARY OF THE RULE OR CHANGE: Amendments to this rule include minor technical recommendations.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Article X Section 3 and Section 53G-7-1202 and Section 53G-7-1203 and Subsection 53E-3-401(4)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** These rule changes include technical corrections and changes based on H.B. 48 (2019).

These rule changes are not expected to have a fiscal impact on state government revenues or expenditures. This rule applies to School Community Councils which administer the School LAND Trust Program and none of these changes impact state revenues or expenditures.

◆ **LOCAL GOVERNMENTS:** These rule changes include technical corrections and changes based on H.B. 48 (2019). These rule changes are not expected to have a fiscal impact on local education agencies (LEAs). This rule applies to School Community Councils which administer the School LAND Trust Program. This program is funded with revenue generated from school trust lands and these rule changes will not impact the distribution of school trust lands funding to schools.

◆ **SMALL BUSINESSES:** These rule changes are not expected to have any fiscal impact on small businesses' revenues or expenditures. This rule applies to School Community Councils which administer the School LAND Trust Program which is funded with revenue generated from school trust lands, and thus does not apply to 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' revenues or expenditures. This rule applies to School Community Councils which administer the School LAND Trust Program which is funded with revenue generated from school trust lands, and thus does not apply to other individuals.

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

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no non-small businesses in the industry in question, Elementary and Secondary Schools (NAICS 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. These proposed rule changes are not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses, and it does not require any expenditures of or generate revenue for non-small businesses. These rule changes have no fiscal impact on LEAs and will not have a fiscal impact on small businesses either. The Program Analyst at the Utah State Board of Education, Jill Curry, has reviewed and approved this fiscal analysis.

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2019

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2019

AUTHORIZED BY: Angela Stallings, Deputy Superintendent of Policy

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

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

The Program Analyst at the Utah State Board of Education, Jill Curry, has reviewed and approved this fiscal analysis.

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

R277. Education, Administration.

R277-491. School Community Councils.

R277-491-1. Authority and Purpose.

- (1) This rule is authorized by:
 - (a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board; and
 - (b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.
- (2) The purpose of this rule is to:
 - (a) provide procedures and clarifying information to a school community council to assist the council in fulfilling school community council responsibilities consistent with Sections 53G-7-1202 through 53G-7-1203;
 - (b) provide direction to a local school board, school, and school district in establishing and maintaining a school community council;
 - (c) provide a framework and support for improved academic achievement of students that is locally driven from within an individual school;
 - (d) encourage increased participation of a parent, school employee, and others to support the mission of a school community council;
 - (e) increase public awareness of:
 - (i) school trust lands;
 - (ii) the permanent State School Fund; and
 - (iii) educational excellence; and
 - (f) enforce compliance with the laws governing a school community council.
- (3) This rule does not apply to charter schools.

R277-491-2. Definitions.

- (1) "Local school board" means the locally elected school board designated in Section 53G-4-201.
- (2)(a) "Principal" means an administrator licensed as a principal in the state and employed in that capacity at a school.
- (b) "Principal" includes a specific designee of the principal.
- (3) "School community" means the geographic area a school district designates as the attendance area, with reasonable inclusion of a parent of a student who attends the school but lives outside the attendance area.

(4) "Student" means a child in a public school, grades kindergarten through 12, counted on the audited October 1 fall enrollment report.

R277-491-3. School Community Council Member Election Provisions.

(1) In addition to the election notice requirements of Section 53G-7-1202, the principal shall provide notice of:

- (a) the location where a ballot may be cast; and
- (b) the means by which a ballot may be cast, whether in person, by mail, or by electronic transfer.

(2)(a) A school community council may establish a procedure that allows a parent to mail a ballot to the school in the event the distance between a parent and the voting location would otherwise discourage parental participation.

(b) A mailed or hand-delivered ballot shall meet the same timeline as a ballot voted in person.

(3)(a) A school, school district, or local school board may allow a parent to vote by electronic ballot through a district approved election process that is consistent with the election requirements in Subsection 53G-7-1202(5).

(b) If allowed, the school or school district shall clearly explain on its website the opportunity to vote by electronic means.

(4) In the event of a change in statute or rule affecting the composition of a school community council, a council member who is elected or appointed prior to the change may complete the term for which the member was elected.

(5)(a) A public school that is a secure facility, juvenile detention facility, hospital program school, or other small or special school may receive School LAND Trust Program funds without having a school community council if the school demonstrates and documents a good faith effort to:

- (i) recruit members;
- (ii) have meetings; and
- (iii) publicize the opportunity to serve on the council.

(b) A local school board shall make the determination whether to grant the exemption for a school described in Subsection (5)(a).

R277-491-4. School Community Council Principal Responsibilities.

(1) Following an election, the principal shall enter and electronically sign on the School LAND Trust Program website a Principal's Assurance Form affirming:

- (a) the school community council's election;
- (b) that vacancies were filled by election if necessary;

and

(c) that the school community council's bylaws or procedures comply with Section 53G-7-1202, Rule R277-477, and this rule.

(2) In addition to the requirements of Subsections 53G-7-1203 (5) and (6), each year the principal shall post the following information on the school's website on or before October 20:

(a) an invitation to a parent to serve on the school community council that includes an explanation of how a parent can directly influence the expenditure of the School LAND Trust Program funds;

(b) the dollar amount the school receives each year from the School LAND Trust Program;

(c) a copy of or link to the current ~~[School Improvement]~~Teacher and Student Success Plan as required in Section 53G-7-~~[1204]~~1302; and

~~[(d) if the School LAND Trust Plan and School Improvement Plan have been consolidated into one, a statement that the local board has consolidated the two plans into one.]~~

(d) minutes of approved council meetings for the current school year.

R277-491-5. School Community Council Chair Responsibilities.

(1) After the school community council election, the school community council shall annually elect at the council's first meeting a chair and vice chair in accordance with Subsection 53G-7-1202(5)(j).

(2) The school community council chair shall:

- (a) set the agenda for every meeting;
- (b) conduct every meeting;
- (c) keep written minutes of every meeting, consistent with Section 53G-7-1203;

(e) inform council members about resources available on the School LAND Trust Program website; and

(f) welcome and encourage public participation in school community council meetings.

(3) The chair may delegate the responsibilities established in this section as appropriate at the chair's discretion.

R277-491-6. School Community Council Business.

(1)(a) The school community council shall adopt rules of order and procedure to govern a council meeting in accordance with Subsection 53G-7-1203(10).

(b) The rules of order and procedure shall outline the process for:

- (i) electing the school community council, including:
- (A) the number of parent members and school employee members on the council; and
- (B) beginning dates for the term of each member's position;

- (ii) selecting a chair and vice chair;
- (iii) removing from office a member who moves away or fails to attend meetings regularly; and

(i)(iv) a member to declare a conflict of interest if required by the local school board's policy.

(2) The school community council shall:

- (a) report on a plan, program, or expenditure at least annually to the local school board; and
- (b) encourage participation on the school community council by members of the school community and recruit a potential candidate to run for an open position on the council.

(3)(a) The principal shall provide an annual report to the school community council that summarizes current practices used by the school district and school to facilitate the school community council's responsibilities under Subsections 53G-7-1203(3)(a)(iii) (D), (iv), and (v).

(b) The report described in Subsection (3)(a) shall include:

- (i) information concerning internet filtering protocols for school and district devices that access the internet;
- (ii) local instructional practices, monitoring, and reporting procedures; and

(iii) internet safety training provided to a student and parent by the school or district.

(c) A school community council's School LAND Trust Program plan may not conflict with the school district's approved LEA plan related to a digital teaching and learning grant awarded to the school district under Title 53F, Chapter 2, Part 5.

(4) A school community council shall comply with the requirements of Subsection 53G-7-1202(3)(vi).

~~(4)5~~ A school community council may advise and inform the local school board and other members of the school community regarding the uses of School LAND Trust Program funds.

~~[R277-491-7. Failure to Comply with Rule.~~

~~(1) If a local school board, school district, school, or school community council fails to comply with the provisions of this rule, the Superintendent may report the failure to the Audit Committee of the Board.~~

~~(2)(a) The Audit Committee shall allow the local school board, school district, school, or school community council to present information to the Audit Committee.~~

~~(b) The Audit Committee of the Board may recommend to the Board a reduction or elimination of School LAND Trust funds for a school district or school if the Audit Committee finds that the local school board, school district, school, or school community council has not complied with statute or rule.~~

~~(3) Before the Board takes action on the Audit Committee's recommendation, the Board shall allow the local school board, school district, school, or school community council to present information to the Board.]~~

KEY: school community councils

Date of Enactment or Last Substantive Amendment:
~~[December 10, 2018]~~2019

Notice of Continuation: August 13, 2015

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-401(4); 53A-1a-108; 53A-1a-108.1; 53G-7-12

Education, Administration
R277-517
LEA Codes of Conduct

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 43790

FILED: 06/11/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: In the 2019 General Session, H.B. 391 passed requiring the Utah State Board of Education (Board) to create a model "appropriate behavior policy" (model policy). Elements of what is required in the model policy have been required in Rule R277-517.

SUMMARY OF THE RULE OR CHANGE: Rule R277-517 is being repealed and the information moved into Rule R277-322, and will include provisions required in H.B. 391 (2019) and the model "appropriate behavior policy". Rule R277-322 will also include the applicable requirements from Rule R277-517. Rule R277-517 is repealed in its entirety. (EDITOR'S NOTE: The proposed new Rule R277-322 is under Filing No. 43787 in this issue, July 1, 2019, of the Bulletin.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Article X Section 3 and Subsection 53E-3-401(4)

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: Rule R277-517 is being repealed because it is being moved into Rule R277-322 and will include provisions required in H.B. 391, Modifications to Governmental Immunity Provisions (2019 General Session). This repeal is not expected to have a fiscal impact on state government revenues or expenditures because Rule R277-517 is fully captured in proposed new Rule R277-322 so the major change is not substantive.

◆ LOCAL GOVERNMENTS: Rule R277-517 is being repealed because it is being moved into Rule R277-322 and will include provisions required in H.B. 391 (2019). This repeal is not expected to have a fiscal impact on local governments' revenues or expenditures because Rule R277-517 is fully captured in proposed new Rule R277-322 so the major change is not substantive.

◆ SMALL BUSINESSES: This rule repeal is not expected to have any fiscal impact on small businesses' revenues or expenditures. This rule applies to LEA codes of conduct thus does not apply to small businesses.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This rule repeal is not expected to have any fiscal impact on persons other than small businesses', businesses', or local government entities' revenues or expenditures. This rule applies to LEA codes of conduct and thus does not apply to other individuals.

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

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no non-small businesses in the industry in question, Elementary and Secondary Schools (NAICS 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. This proposed repeal is not expected to have any fiscal impacts on non-small businesses' revenues or expenditures because there are no applicable non-small businesses, and it does not require any expenditures of or generate revenue for non-small businesses. This rule repeal has no fiscal impact

on local education agencies and will not have a fiscal impact on small businesses either. The Program Analyst at the Utah State Board of Education, Jill Curry, has reviewed and approved this fiscal analysis.

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2019

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2019

AUTHORIZED BY: Angela Stallings, Deputy Superintendent of Policy

Other Persons	\$0	\$0	\$0
Total 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

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

The Program Analyst at the Utah State Board of Education, Jill Curry, has reviewed and approved this fiscal analysis.

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

R277. Education, Administration.

[R277-517. LEA Codes of Conduct.

R277-517-1. Authority and Purpose.

- (1) This rule is authorized by:
 - (a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board; and
 - (b) Section 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

(2) The purpose of this rule is to require LEAs to create a code of conduct applicable to the LEA's staff.

R277-517-2. Definitions.

- (1) "Boundary violation" means the same as that term is defined in R277-515.
- (2) "Staff" or "staff member" means an employee, contractor, or volunteer with unsupervised access to students.

R277-517-3. Required Code of Conduct.

- (1) Each LEA shall adopt a code of conduct applicable to the LEA's staff.
- (2) A code of conduct, adopted pursuant to Subsection (1), shall include, at a minimum:
 - (a) a statement that a staff member should avoid boundary violations, as defined in Rule R277-515, with students;
 - (b) a statement that a staff member may not subject a student to:
 - (i) physical abuse;
 - (ii) verbal abuse;
 - (iii) sexual abuse; or
 - (iv) mental abuse;

~~(c) a statement that a staff member shall report any suspected incidents of:~~
~~(i) physical abuse;~~
~~(ii) verbal abuse;~~
~~(iii) sexual abuse;~~
~~(iv) mental abuse; or~~
~~(v) neglect;~~
~~(d) a statement that a staff member may not touch a student in a way that makes a reasonably objective student feel uncomfortable;~~
~~(e) a statement regarding appropriate verbal or electronic communication between a staff member and a student;~~
~~(f) a statement regarding providing gifts, special favors, or preferential treatment to a student or group of students;~~
~~(g) a statement that a staff member shall not discriminate against a student on the basis of sex, race, religion, or any other prohibited class;~~
~~(h) a statement regarding appropriate use of electronic devices and social media for communication between a staff member and a student;~~
~~(i) a statement regarding use of alcohol, tobacco, and illegal substances during work hours and on school property;~~
~~(j) a statement that a staff member is required to:~~
~~(i) report any suspicion of child abuse or bullying to the proper authorities;~~
~~(ii) annually read and sign all policies related to identifying, documenting, and reporting child abuse; and~~
~~(iii) for an employee or contractor, annually attend abuse prevention training required in Section 53G-9-207; and~~
~~(3) An LEA shall post a code of conduct adopted pursuant to Subsection (1) on the LEA's website.~~
~~(4) An LEA shall provide information to staff that they should report and how to report:~~
~~(a) known violations of the LEA's code of conduct; and~~
~~(b) known violations of the Utah Educator Standards contained in R277-515.~~

KEY: codes of conduct

Date of Enactment or Last Substantive Amendment: January 10, 2017

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

**Education, Administration
R277-522**

**Entry Years Enhancements (EYE) for
Quality Teaching - Level 1 Utah
Teachers**

**NOTICE OF PROPOSED RULE
(Amendment)**

**DAR FILE NO.: 43791
FILED: 06/11/2019**

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule will no longer be necessary upon adoption of Utah State Board of Education's (Board) new licensing system. This amendment adds a sunset provision to the rule.

SUMMARY OF THE RULE OR CHANGE: The amendment to Rule R277-522 adds a sunset date of 06/30/2023, and establishes a clear date when the Praxis Principles of Learning and Teacher (PLT) test will no longer be required.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Article X Section 3 and Section 53A-6-106 and Section 53E-3-401 and Subsection 53A-6-102(2)(a)(iii)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** This rule change is not expected to have any fiscal impact on state government revenues or expenditures. In the Board's redesign of the educator licensing system, the need for this rule has been eliminated. Thus, this rule change adds a sunset date of 06/30/2023, and establishes a clear date when the PLT test will no longer be required.

◆ **LOCAL GOVERNMENTS:** This rule change is not expected to have any fiscal impact on local governments' revenues or expenditures. In the Board's redesign of the educator licensing system, the need for this rule has been eliminated. Thus, this rule change adds a sunset date of 06/30/2023, and establishes a clear date when the PLT test will no longer be required.

◆ **SMALL BUSINESSES:** This rule change is not expected to have any fiscal impact on small businesses' revenues or expenditures. This rule applies to educator licensing and thus does not apply to small businesses since the Board is responsible for educator licensing.

◆ **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' revenues or expenditures. In the Board's redesign of the educator licensing system, the need for this rule has been eliminated. Thus, this rule change adds a sunset date of 06/30/2023, and establishes a clear date when the PLT test will no longer be required.

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

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no non-small businesses in the industry in question, Elementary and Secondary Schools (NAICS 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per

year. This proposed rule change is not expected to have any fiscal impacts on non-small businesses' revenues or expenditures because there are no applicable non-small businesses and it does not require any expenditures of or generate revenue for non-small businesses. This rule change has no fiscal impact on local education agencies and will not have a fiscal impact on small businesses either. The Program Analyst at the Utah State Board of Education, Jill Curry, has reviewed and approved this fiscal analysis.

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2019

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2019

AUTHORIZED BY: Angela Stallings, Deputy Superintendent of Policy

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

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

The Program Analyst at the Utah State Board of Education, Jill Curry, has reviewed and approved this fiscal analysis.

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

R277. Education, Administration.

R277-522. Entry Years Enhancements (EYE) for Quality Teaching - Level 1 Utah Teachers.

R277-522-1. Authority and Purpose.

- (1) This rule is authorized by:
 - (a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;
 - (b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law;
 - (c) Subsection 53E-6-103(2)(a)(iii), which finds that the implementation of progressive strategies regarding induction, professional development and evaluation are essential in creating successful teachers; and
 - (d) Section 53E-6-301, which directs the Board to establish rules for the training and experience required of educator license applicants .

(2) The purpose of this rule is to outline required entry years enhancements of professional and emotional support for Level 1 teachers to develop successful teaching skills and strategies with assistance from experienced colleagues.

R277-522-2. Definitions.

- (1) "Comprehensive Administration of Credentials for Teachers in Utah Schools" or "CACTUS" has the same meaning as set forth in Subsection R277-512-2(1).

(2) "Entry years" means the three years a beginning teacher holds a Level 1 license.

(3) "Interstate New Teacher Assessment and Support Consortium" or "INTASC" means the organization that has established Model Standards for Beginning Teacher Licensing and Development, which include ten principles reflecting what beginning teachers should know and be able to do as a professional teacher.

(4) "LEA" includes, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

(5) "Level 1 license" has the same meaning as set forth in Subsection R277-503-2(9).

(6) "Level 2 license" has the same meaning as set forth in Subsection R277-503-2(10).

(7) "Level 3 license" has the same meaning as set forth in Subsection R277-503-2(11).

(8) "Mentor" means a Level 2 or Level 3 educator, who is trained to advise and guide Level 1 teachers.

(9) "Praxis II" or "Praxis II - Principles of Learning and Teaching" is a widely-used standards-based test designed by the Educational Testing Services to assess a beginning teacher's pedagogical knowledge.

(10) "Professional development" means locally or Board-approved education-related training or activities that enhance an educator's background consistent with Rule R277-501.

(11) "Teaching assessment or evaluation" means an observation of a Level 1 teacher's instructional skills by a school district or school administrator using an evaluation tool based on or similar to INTASC principles.

(12) "Working portfolio" means a collection of documents prepared by a Level 1 teacher and used as a tool for evaluation.

R277-522-3. Required Entry Years Enhancements Requirements for a Level 1 Teacher to Advance to a Level 2 License.

(1) Prior to advancement to a Level 2 license, a Level 1 teacher shall:

- (a) satisfactorily collaborate with a trained mentor;
- (b) pass a required pedagogical exam;
- (c) complete three years of employment and evaluation;

and

- (d) compile a working portfolio.

(2) A principal shall assign a mentor to each Level 1 teacher in the first semester of teaching to supervise and act as a resource for the entry level teacher.

(3) A mentor teacher shall teach in the same school, and where feasible, in the same subject area as the Level 1 teacher.

(4) A mentor assigned in accordance with Subsection (2) shall:

- (a) hold a Level 2 or 3 license; and
- (b) have completed a mentor training program including continuing professional development.

(5) A mentor assigned in accordance with Subsection (2) shall:

- (a) guide the Level 1 teacher to meet the procedural demands of the school and school district;
- (b) provide moral and emotional support;

(c) arrange for opportunities for the Level 1 teacher to observe teachers who use various models of teaching;

(d) share personal knowledge and expertise about new materials, planning strategies, curriculum development and teaching methods;

(e) assist the Level 1 teacher with classroom management and discipline;

(f) support the Level 1 teacher on an ongoing basis;

(g) help the Level 1 teacher to understand the implications of student diversity for teaching and learning;

(h) engage the Level 1 teacher in self-assessment and reflection; and

(i) assist with development of the Level 1 teacher's portfolio.

(6) A Level 1 teacher shall pass the Praxis II with a qualifying score of at least 160 prior to advancing to Level 2 licensure.

(a) A Level 1 teacher may take the Praxis II successive times.

(b) The Superintendent shall post a Level 1 teacher's Praxis II results in CACTUS.

(7) A Level 1 teacher shall successfully complete evaluation through an LEA or accredited private school.

(a) A Level 1 teacher shall maintain full employment for three years in an LEA or accredited private school.

(b) An employing LEA or accredited private school may, following evaluation of a Level 1 teacher's experience, determine that teaching experience outside of the Utah public schools satisfies the teaching experience requirement of this rule.

(c) An LEA has discretion in determining the employment or reemployment status of individuals.

(d)(i) A Level 1 teacher's employing LEA or accredited private school is responsible for conducting the evaluations required under this rule.

(ii) An LEA may assign evaluations required under this rule to a school principal.

(e) A Level 1 teacher's evaluations shall take place at least twice during the first year of teaching and at least twice during each of the following two years with a satisfactory final evaluation.

(8) A Level 1 teacher shall compile a working portfolio during the teacher's entry years.

(a) A Level 1 teacher's employing LEA or accredited private school shall review and evaluate the portfolio.

(b) The Superintendent may review the portfolio upon request during the Level 1 teacher's second year of teaching.

(9) A portfolio required under Subsection (8) shall be based upon INTASC principles; and may:

- (a) include teaching artifacts;
- (b) include notations explaining the artifacts; and
- (c) include a reflection and self-assessment of the teacher's own practice; or

(d) be interpreted broadly to include the employing LEA's or accredited private school's requirement of samples of the first year teaching experience.

R277-522-4. Satisfaction of Entry Years Enhancements.

(1) If a Level 1 teacher fails to complete all enhancements as enumerated in Section R277-522-3, the Level 1

teacher may remain in a provisional employment status until the Level 1 teacher completes the enhancements.

(a) An LEA or accredited private school may make a written request to the Superintendent for a one year extension of the Level 1 license in order to provide time for the educator to satisfy entry years enhancements.

(b) A Level 1 teacher may repeat some or all of the entry years enhancements.

(c) An opportunity to repeat or appeal an incomplete or unsatisfactory entry years enhancements process shall be designed and offered by the employing LEA or accredited private school.

(2) An LEA or accredited private school shall make an annual recommendation to the Board of teachers approved in its schools to receive a Level 2 license, including documentation demonstrating completion of the enhancements.

(3) An LEA or accredited private school may also report the names of teachers who did not successfully complete entry years enhancements to the Board.

(4) The Superintendent shall prepare an annual report tracking the success of retention and the job satisfaction of Utah educators who complete the entry years enhancement program.

R277-522-5. Sunset Clause.

(1) This rule will sunset on June 30, 2023.

(2) An individual holding a current Level 1 license on January 1, 2020 may be upgraded to a Level 2 license without completing the requirements of Subsection R277-522-3(6).

KEY: mentoring, teachers

Date of Enactment or Last Substantive Amendment: ~~November 7, 2017~~ 2019

Notice of Continuation: September 13, 2017

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-6-103(2)(a)(iii); 53E-6-301; 53E-3-401(4)

**Education, Administration
R277-600**

**Student Transportation Standards and
Procedures**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 43795

FILED: 06/12/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: S.B. 4 from the 2019 General Session eliminated the Guarantee Transportation Levy program found in Subsection 53F-2-403(7). S.B. 4 also created the Rural School District Transportation Grant Program found in Section 53F-2-415.

SUMMARY OF THE RULE OR CHANGE: Modifications to Utah State Board of Education (Board) Sections Rule R277-

600-6 and R277-600-10 implement the removal of the Guarantee Transportation Levy Program and Section R277-600-13 creates the criteria for implementation the Rural School District Transportation Grant Program.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Article X Section 3 and Section 53F-2-402 and Section 53F-2-403 and Section 53F-2-412 and Subsection 53E-3-401(4) and Subsection 53E-3-501(1)(d)

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** These rule changes are not expected to have any fiscal impact on state government revenues or expenditures. These changes remove language regarding the Guarantee Transportation Levy and add language for the Rural School District Transportation Grant Program. In S.B. 4, Public Education Budget Adjustments (2019), language for the Guarantee Transportation Levy was removed from statute and language was added outlining the Rural School District Transportation Grant Program along with funding adjustments for the statutory changes. Thus, these rule changes will not have an independent fiscal impact.

♦ **LOCAL GOVERNMENTS:** These rule changes are not expected to have any fiscal impact on local governments' revenues or expenditures. These changes remove language regarding the Guarantee Transportation Levy and add language for the Rural School District Transportation Grant Program. In S.B. 4 (2019), language for the Guarantee Transportation Levy was removed from statute and language was added outlining the Rural School District Transportation Grant Program along with funding adjustments for the statutory changes. Thus, these rule changes will not have an independent fiscal impact.

♦ **SMALL BUSINESSES:** These rule changes are not expected to have any material fiscal impact on small businesses' revenues or expenditures. These rule changes apply to state school transportation programs and thus do not apply to 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' revenues or expenditures. These rule changes apply to state school transportation programs and thus does not apply to other individuals.

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

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no non-small businesses in the industry in question, Elementary and Secondary Schools (NAICS 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. These proposed rule changes are not expected to have

any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses and it does not require any expenditures of or generate revenue for non-small businesses. These rule changes have no fiscal impact on local education agencies and will not have a fiscal impact on small businesses either. The Program Analyst at the Utah State Board of Education, Jill Curry, has reviewed and approved this fiscal analysis.

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2019

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2019

AUTHORIZED BY: Angela Stallings, Deputy Superintendent of Policy

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 in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.

Appendix 2: Regulatory Impact to Non-Small Businesses

There are no non-small businesses in the industry in question, Elementary and Secondary Schools (NAICS 611110). Because there are no non-small businesses, they do not account for any service deliveries for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. These proposed rule changes are not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses and they do not require any expenditures of or generate revenue for non-small businesses.

The Program Analyst at the Utah State Board of Education, Jill Curry, has reviewed and approved this fiscal analysis.

R277. Education, Administration.

R277-600. Student Transportation Standards and Procedures.

R277-600-1. Authority and Purpose.

(1) This rule is authorized by:

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

(b) Subsection 53E-3-501(1)(d), which directs the Board to establish rules for bus routes, bus safety and other transportation needs;

(c) Sections 53F-2-402 and 53F-2-403, which provide for distribution of funds for transportation of public school students[and disability standards for student bus riders];

(d) Section 53F-2-[412]417, which directs the Board to make rules to implement [unsafe route]rural school district transportation grants; and

(e) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

(2) The purpose of this rule is to specify the standards under which school districts may qualify for and receive state transportation funds.

R277-600-2. Definitions.

(1) "ADA" means average daily attendance.

(2) "ADM" means average daily membership.

(3) "AFR" means a school district's annual financial report, one component of which is the AFR for all pupil transportation costs.

(4) "Annual Program Report" or "APR" has the same meaning as defined in Section R277-484-2.

([4]5)(a) "Approved costs" means the Board approved costs of transporting eligible students from home to school to home

once each day, after-school routes, approved routes for students with disabilities and vocational students attending school outside their regularly assigned attendance boundary, and a portion of the bus purchase prices.

(b) All approved costs are adjusted by the Superintendent consistent with a Board-approved formula per the annual legislative transportation appropriation.

~~(5)~~6) "Deadhead miles" means miles traveled while operating a bus with no passengers on board.

~~(6)~~7) "Extended school year" or "ESY" means an extension of the school district or charter school traditional school year to provide special education and related services to a student with a disability, in accordance with the student's IEP, and at no cost to the student's parent[s] or guardian.

~~(7)~~8) "Hazardous" means in a state of danger or potential danger, which may result in injury or death.

~~(8)~~9) "Local school board" means a local school district board of education.

~~(9)~~10) "Multipurpose passenger vehicle" or "MPV" means any motor vehicle with less than 10 passenger positions, including the driver's position, which cannot be certified as a bus.

~~(10)~~11) "Public route" means a road, thoroughfare, walkway, or highway.

~~(11)~~12) "Pupil Transportation Advisory Committee" means the committee described in Subsection 53F-2-403(5).

~~(12)~~13) "Pupil Transportation Schedule A1" means a report submitted annually to the Superintendent covering all estimated miles and minutes of to/from pupil transportation within an LEA.

~~(13)~~14) "Out-of-pocket expense" means gasoline, oil, and tire expenses.

~~(14)~~15) "Unsafe route" has the same meaning as defined in Subsection 53F-2-412(1).

R277-600-3. General Provisions.

(1)(a) The Superintendent shall use state transportation funds to reimburse school districts for the costs reasonably related to transporting students to and from school.

(b) The Board shall define the limits of a school district's transportation costs reimbursable by state funds in a manner that encourages safety, economy, and efficiency.

(2) Allowable transportation costs are divided into two categories:

(a) A Category costs include expenditures for regular bus routes established by the school district, and approved by the state.

(b) B Category costs include other methods of transporting students to and from school.

(3) The Superintendent shall develop a formula to allocate A Category costs based on a calculated rate.

(4) The Superintendent shall approve B Category costs on a line-by-line basis after:

(a) comparing the costs submitted by a school district with the costs of alternative methods of performing the designated functions; and

(b) accounting for legislative appropriation variations.

(5) The Superintendent shall develop a uniform accounting procedure for the financial reporting of transportation costs, which shall specify the methods used to calculate allowable transportation costs.

(6) The Superintendent shall develop uniform forms for the administration of the transportation program.

(7)(a) An LEA shall record all student transportation costs, including accurate mileage, minute, and trip records.

(b) An LEA may maintain records and financial worksheets during the fiscal year for audit purposes.

R277-600-4. Eligibility.

(1) The Superintendent shall only disburse state transportation funds for transporting eligible students.

(2) The Superintendent shall determine transportation eligibility for elementary students (k-6) and secondary students (7-12) in accordance with the mileage from home, specified in Subsections 53F-2-403(1) and (2), to the school attended by assignment of the local school board.

(3) A student whose IEP identifies transportation as a necessary related service is eligible for transportation regardless of distance from the school attended by assignment of the local school board.

(4) A student who attends school for at least one-half day at a location other than the local school board designated school is not eligible for transportation for distances up to one and one-half miles.

(5) A school district that implements double sessions as an alternative to new building construction may transport, one-way to or from school, with Board approval, affected elementary students residing less than one and one-half miles from school, if the local school board determines the transportation would improve safety affected by darkness or other hazardous conditions.

(6) The distance from home to school is determined as follows: From the center of the public route [~~road, thoroughfare, walkway, or highway~~]-open to public use, opposite the regular entrance [~~of the one~~]-where the pupil is living, over the nearest public route [~~(thoroughfare, road, walkway, or highway)~~]-open regularly for use by the public, to the center of the public route [~~(thoroughfare, road, walkway, or highway)~~]-open to public use, opposite the nearest public entrance to the school grounds which the student is attending.

R277-600-5. Student with Disabilities Transportation.

(1)(a) A student with a disability shall be transported on regular buses and regular routes whenever possible, unless the IEP team determines otherwise.

(b) A school district may request approval, prior to providing transportation, for reimbursement for transporting students with disabilities who cannot be safely transported on regular school bus runs.

(2) A school district may be reimbursed for the costs of transporting or for alternative transportation for students with disabilities whose severity of disability, or combination of disabilities, necessitates special transportation.

(3) During the regular school year, an eligible special transportation route from the assigned school site to an alternative program location shall be for a minimum of fifteen days with primarily the same group of students.

(4) During the ESY, an eligible special transportation route from the assigned school site to an alternative program location shall be for a minimum of ten days with primarily the same group of students.

(5) ESY services shall meet the standards of Part B of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. 1401(3) and Board Special Education Rules.

(6) The Utah Schools for the Deaf and the Blind shall provide transportation for students who are transported to its self-contained classes, unless an exception is approved by the Superintendent.

R277-600-6. Bus Route Approval.

(1)(a) A local school board shall propose bus routes subject to approval by the Superintendent.

(b) A local school board shall provide information requested by the Superintendent prior to approval of a route.

(c) During the regular school year, an eligible route from the assigned school site to an alternative program location shall be for a minimum of fifteen days with primarily the same group of students.

(d) The Superintendent may not approve a route for reimbursement if an equitable student transportation allowance or a subsistence allowance for the necessary transportation is more cost-effective.

(2) The Superintendent may approve exceptions for good cause shown.

(3) A bus route shall:

(a) traverse the most direct public ~~[route]~~road;

(b) be reasonably cost-effective in comparison to other feasible alternatives;

(c) provide adequate safety for students;

(d) traverse roads that are constructed and maintained in a manner that does not cause property damage; and

(e) include an economically appropriate number of students.

(4)(a) The minimum number of general education students required to establish a bus route is ten.

(b) The minimum number of students with disabilities required to establish a bus route is five.

(c) A bus route may be established for fewer students upon special permission of the Superintendent.

(5) A school district shall designate safe areas for bus stops.

(6)(a) A student's parent or guardian is responsible for the student's own transportation to bus stops up to one and one-half miles from home.

(b) A parent or guardian with a student ~~[with]~~that has a disability is responsible for the student's own transportation to bus stops unless the IEP team determines otherwise.

(7)(a) A school district shall report changes made in existing routes or the addition of new routes to the Superintendent as they occur.

(b) The Superintendent shall review and may refuse to fund route changes.

(8) The Superintendent may reimburse a school district for transporting another district's students across school district boundaries so long as:

(a) the route promotes efficient transportation for both districts;

(b) the route serves a group or community of students and families rather than a single student or a single family;

(c) the local school boards of both participating districts vote in an open meeting that students who reside in one district can be better and more economically served by another district; and

(d) both districts and the Superintendent maintain documentation annually of the boards' votes and the map of the approved route.

(9) A school district may transport eligible students home after school activities held at the students' school of regular attendance and within a reasonable time period after the close of the regular school day and receive approved route mileage.

(10)(a) The Superintendent may approve atypical routes as alternatives to building construction if routes are needed to allow more efficient school district use of school facilities.

(b) Building construction alternatives include:

(i) elementary double sessions;

(ii) year-round school; and

(iii) attendance across school district boundaries.

(11)(a) A school district may use ~~[the State Guarantee Transportation Levy or]~~local transportation funds to transport students across state lines or out-of-state for school sponsored activities or required field trips if:

(i) the local school board has a policy that includes approval of trips at the appropriate administrative level;

(ii) the school or school district has considered the purpose of the trip or activity and any competing risk or liability;

(iii) given the distance, purpose and length of the trip, the school district has determined that the use of a publicly owned school bus is appropriate for the trip or activity; and

(iv) the local school board has consulted with State Risk Management.

(b) If school bus routes transport students across Utah state lines or outside of Utah for required to and from routes, routes are reimbursable providing a school district maintains documentation that:

(i) the routes are necessary;

(ii) the routes are more cost-effective; or

(iii) the routes provide greater safety for students than in-state routes.

R277-600-7. Alternative Transportation.

(1) The Superintendent shall analyze bus routes that involve a large number of deadhead miles to determine if an alternative method of transporting students is more efficient.

(2) Approved alternatives include the alternatives described in Subsections (3) through (9).

(3)(a) The costs incurred in transporting eligible pupils in a school district MPV are approved costs as long as the costs demonstrate efficiency; or

(b) The costs incurred in paying a parent or guardian of an eligible student[s] an allowance in lieu of school district-supplied transportation are approved costs.

(4)(a) A parent or guardian of a student may be reimbursed for the mileage to the bus stop or school, whichever is closer to the student's home.

(b) The allowance under this Subsection (4)(a) may not be less than \$0.35 per mile, nor greater than the reimbursement allowance permitted by the Utah Department of Administrative Services for use of privately owned vehicles set forth in the Utah Travel Regulations.

(5) A district shall annually perform a cost-benefit analysis as part of its determination of the LEA specific reimbursement rate and make this analysis available to the public.

(6)(a) A district shall make a student mileage allowance under this Section R277-600-7 to only one student per family for each trip that is necessary for all the students within a family to attend school.

(b) If siblings are on different school schedule[s] or ride buses that are on significantly different schedules, [~~multiple students within a parent or guardian family~~] may claim and be paid for student mileage allowances for multiple students.

(7) If a student eligible for reimbursement under this Section R277-600-7 or the student's parent or guardian is unable to provide private transportation, with prior approval from the Superintendent, an amount equivalent to the student allowance may be paid to the school district to help pay the costs of school district transportation.

(8)(a) A district shall measure and certify a student's mileage in school district records.

(b) A student's ADA, as entered in school records, is used to determine the student's attendance.

(9)(a) The cost incurred in providing a subsistence allowance is an approved cost under the following conditions:

(i) a student lives more than 60 miles (one way) on well-maintained roads from the student's assigned school, a parent or guardian may be reimbursed for the student's room and board if the student relocates temporarily to reside in close proximity to the student's assigned school;

(ii) payment may not exceed the Substitute Care Rate for Family Services for the current fiscal year;

(iii) adjustments for changes made in the rate during the year shall be included in the allowance; and

(iv) in addition to the reimbursement for room and board, the subsistence allowance may include the costs of up to 18 round trips per year.

(b)(i) A subsistence allowance is not available to a parent or guardian who maintains a separate home during the school year for the convenience of the family.

(ii) A parent or guardian's primary residence during the school year is the residence of the child.

(10) A school district may contract or lease with a third party provider for pupil transportation services.

(11)(a) The cost incurred in engaging in a contract or leasing for transportation is an approved cost at the prorated amount available to school districts.

(b) The Superintendent shall determine reimbursements for school districts using a leasing arrangement in accordance with the comparable cost for the school district to operate its own transportation.

(c) Under a contract or lease, a school district's transportation administrator's time may not exceed one percent of the commercial contract cost.

(12) If a school district contracts or leases with a third party provider or other LEA for pupil transportation services, it shall maintain and provide to the Superintendent upon request the following items as if it operated its own transportation:

(a) eligible student counts;

(b) bus route mileage;

(c) bus route minutes; and

(d) service to students with disabilities and bus inventory data.

R277-600-8. Other Reimbursable Expenses.

The Superintendent may reimburse a school district for the following costs with state transportation funds:

(1) salaries of clerks, secretaries, trainers, drivers, a supervisor, mechanics, and other personnel necessary to operate the transportation program, subject to the following limitations:

(a) a full time supervisor may be paid at the same rate as other professional directors in the school district; and

(b) a school district shall ensure that a supervisor's salary is commensurate with the number of buses, number of eligible students transported, and total responsibility relative to other school district supervisory functions;

(2) a school district may claim a percentage of the school district superintendent's or other supervisor's salary for reimbursement if the school district's eligibility count is less than 600 and a verifiable record of administrative time spent in the transportation operation is maintained; and

(3) the wage time for bus drivers may include to and from school time consisting of:

(i) 10 minute pre-trip inspection;

(ii) actual driving time;

(iii) 10 minute post-trip inspection and bus cleanup; and

(iv) 10 minute bus servicing and fueling;

(4) a proportionate amount of a superintendent's or supervisor's employee benefits (health, accident, life insurance);

(5) purchased property services;

(6) property, comprehensive, and liability insurance;

(7) communication expenses and travel for supervisors to workshops or national conventions;

(8) supplies and materials for vehicles, the school district transportation office and the garage;

(9) training expenses to complete bus driver instruction and certification required by the Board; and

(10) other related costs approved by the Superintendent, which may include additional bus driver training.

R277-600-9. Non-reimbursable Expenses.

(1) AFR for all pupil transportation costs may only include pupil transportation costs and other school district expenditures directly related to pupil transportation.

(2) In determining expenditures for eligible to and from school transportation, all related costs shall be reduced on a pro rata basis for the miles not connected with approved costs.

(3) Expenses determined by the Superintendent as not directly related to transportation of eligible students to and from school may not be reimbursed.

(4)(a) A local school board may determine appropriate non-school uses of school buses.

(b) A local school board may lease or rent public school buses to:

(i) federal, state, county, or municipal entities;

(ii) entities insured by State Risk Management;

(iii) non-government entities; or

(iv) entities not insured through State Risk Management.

(c) As part of any agreement to allow non-school use of a school bus, a local school board shall:

(i) require full cost reimbursement for any non-public school use including:

- (A) cost per mile;
- (B) cost per minute; and
- (C) bus depreciation;

(ii) require a non-school user to provide:

(A) proof of insurance through State Risk Management or private insurance coverage; and

(B) a fully executed agreement for full release of indemnification;

(iii) require that any non-school use is revenue neutral; and

(iv) consult with State Risk Management to determine adequacy of documentation of insurance and indemnity for any entity requesting use or rental of publicly owned school buses.

(5) A local school board shall approve the use of school buses by a non-governmental entity or an entity not insured through State Risk Management in an open meeting.

(6)(a) In the event of an emergency, local, regional, state or federal authorities may request the use of school buses or school bus drivers or both for the period of the emergency.

(b) A local school board shall grant a request under Subsection (a) so long as the use can be accommodated consistent with continuing student transportation and student safety requirements.

R277-600-10. Board Local Levy.

(1) Costs for school district transportation of students which are not reimbursable may be paid for from general school district funds or from the proceeds of the Board Local Levy authorized under Section 53F-~~2-602~~8-302.

(2) The revenue from the Board Local Levy may be used for transporting students and for school bus replacement.

(3)(a) A local school board may approve the transportation of students in areas where walking constitutes a hazardous condition from general local school board funds or from the Board Local Levy.

(b) A local school board shall determine hazardous walking conditions by an analysis of the following factors:

- (i) volume, type, and speed of vehicular traffic;
- (ii) age and condition of students traversing the area;
- (iii) condition of the roadway, sidewalks and applicable means of access in the area; and

- (iv) environmental conditions.

(c) A local school board may designate hazardous conditions.

~~[(4) Guarantee Transportation Levy~~

~~(a) The Superintendent shall distribute funds appropriated under Subsection 53F-2-403(7) according to each school district's proportional share of its qualifying state contribution.~~

~~(b) The qualifying state contribution for school districts shall be the difference between 85 percent of the average state cost per qualifying mile multiplied by the number of qualifying miles and the current funds raised per school district by an amount of revenue equal to at least .0002 per dollar of taxable value of the school district's Board Local Levy under Section 53F-2-602.]~~

R277-600-11. Exceptions.

(1)(a) When undue hardships and inequities are created through exact application of these standards, a school district may request an exception to these rules from the Superintendent for individual cases.

(b) Hardships or inequities under Subsection (1)(a) may include written evidence demonstrating that no significant increased costs (less than one percent of a school district's transportation budget) is incurred due to a waiver or that students cannot be provided services consistent with the law due to transportation exigencies.

(c) The Superintendent may consult with the Pupil Transportation Advisory Committee in considering the exemption.

(2) A school district shall not be penalized in the computation of its state allocation for the presence on an approved to and from school route of an ineligible student who does not create an appreciable increase in the cost of the route.

(3) There is an appreciable increase in cost under Subsection (2) if, because of the presence of ineligible students, any of the following occurs:

- (a) another route is required;
- (b) a larger or additional bus is required;
- (c) a route's mileage is increased;
- (d) the number of pick-up points below the mileage limits for eligible students exceeds one; and
- (e) significant additional time is required to complete a route.

(4)(a) An ineligible student may ride a school bus on a space available basis.

(b) An eligible student may not be displaced or required to stand in order to make room for an ineligible student.

R277-600-12. Rural School Transportation Reimbursement Program.

(1) The Superintendent shall annually determine which LEAs are eligible for rural school transportation reimbursement using the criteria described in Subsection 53F-5-211(1)(a).

(2) The Superintendent shall measure eligibility based on:

- (a) the most recent October 1 UTREx submission; and
- (b) the prior year's transportation data submitted in accordance with Section R277-484-3.

(3) By November 1 annually, the Superintendent shall notify an LEA that the LEA may seek reimbursement.

(4) An LEA eligible for reimbursement shall:

(a) provide evidence to the Superintendent in the first year of the LEA's eligibility that the LEA has provided transportation to and from the school for the past five years;

(b) submit to the Superintendent in the first year of the LEA's eligibility the LEA's current year pupil transportation Schedule A1 by December 30; and

(c) in subsequent years of eligibility, submit all transportation reports in accordance with Section R277-484-3.

(5) Submission of the pupil transportation Schedule A1 shall constitute an annual application and request for reimbursement by an LEA with an eligible school.

(6)(a) The Superintendent shall calculate and process reimbursements to LEAs once a year.

(b) The Superintendent shall determine allowable costs eligible for reimbursement taking into account:

(i) eligible routes; and

(ii) eligible miles and minutes as reported on the pupil transportation Schedule A1.

(c) The Superintendent shall reimburse an LEA based on the LEA's percentage of total unreimbursed eligible costs submitted.

(d) If the annual appropriation is insufficient to fund all submitted eligible cost payments, the Superintendent shall prorate the reimbursement up to the amount of the appropriation.

(7) An LEA shall permit the Superintendent to review accounting ledgers, student records, and transportation records upon request in order to determine:

(a) a school's eligibility in accordance with Subsection (1); and

(b) allowability of an LEA's submitted costs.

R277-600-13. Rural School District Transportation Grant Program.

(1) The Superintendent shall annually determine which school districts are eligible for the rural school district transportation grant program using the criteria described in Subsection 53F-2-417(2).

(2) The Superintendent shall measure school district eligibility based on:

(a) the prior year's transportation data submitted in accordance with Section R277-484-3; and

(b) the most recent county classification.

(3)(a) By November 1 annually, the Superintendent shall notify a school district that the school district may apply for a grant and the amount of available grant funds based on the prior-year eligible miles for unreimbursed costs associated with activities described in 53F-2-417(3).

(b) The Superintendent shall prorate an eligible school district's award amount up to the amount of the appropriation.

(4) A school district eligible for the grant program shall:

(a) provide assurance within the school district's application that matching funds from the school district's board local levy will be utilized for the purposes outlined in Subsection 53F-2-417(1); and

(b) report revenue from the board local levy and related expenditures for the grant program in the school district's Annual Program Report for that specific fiscal year.

(5)(a) The Superintendent shall process the grant award in the state's grants management system

(b) The Superintendent shall allocate funds to eligible school districts once a year.

(6) A school district shall permit the Superintendent to review accounting ledgers, student records, and transportation records upon request in order to determine:

(a) a school's eligibility in accordance with Subsection (1); and

(b) allowability of an LEA's submitted program costs.

(7) If a school district does not comply with the requirements of the grant program, the Superintendent may impose corrective action in accordance with Rule R277-114.

KEY: school buses, school transportation

Date of Enactment or Last Substantive Amendment: [January 9,]2019

Notice of Continuation: September 15, 2016

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-501(1)(d); 53E-3-401(4); 53F-2-41[2]5; 53F-2-403

**Education, Administration
R277-707
Enhancement for Accelerated Students
Program**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 43813

FILED: 06/14/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-707 was published in the May 1, 2019, issue of the Utah State Bulletin under Filing No. 43651 for public comment. Upon the request of 18 individuals, a public hearing on the rule was held 05/31/2019. The Utah State Board of Education (Board) discussed whether the funding should be based entirely on advanced placement (AP) course enrollment or based on a split between AP course enrollment and the number of students receiving a two or higher on AP exams. As a response to the requested public hearing, the Board is further amending Rule R277-707.

SUMMARY OF THE RULE OR CHANGE: This rule is being amended to include new language for a split approach to funding allocation for AP courses, and to clarify requirements to promote equity of access to Gifted and Talented, Advanced Placements and International Baccalaureate programs.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Article X Section 3 and Section 53F-2-408 and Subsection 53E-3-401(4)

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: These rule changes are not expected to have any fiscal impact on state government revenues or expenditures. This rule applies to the Enhancement for Accelerated Students Program which is funded with a state appropriation and that is not affected by the changes in this rule.

◆ LOCAL GOVERNMENTS: These rule changes will have a fiscal impact on local education agencies (LEAs). They change the funding distribution formula for the advanced placement program for LEAs. Prior to these changes, the funds were distributed based on advanced placement exams

passed with a 3 or higher. With these rule changes, these funds will be distributed with 70% of the funds for exams passed with a 3 or higher and 30% for enrollment in advanced placement classes. The total amount of funding going to LEAs for advanced placement will remain the same, but some LEAs may receive more funding for advanced placement and other LEAs may receive less funding for advanced placement depending on enrollment and exams passed.

♦ **SMALL BUSINESSES:** These rule changes are not expected to have any fiscal impact on small businesses' revenues or expenditures. This rule applies to the Enhancement for Accelerated Students Program which is state funded, and thus does not apply to 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' revenues or expenditures. This rule applies to the Enhancement for Accelerated Students Program which is state funded and thus does not apply to other individuals.

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

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no non-small businesses in the industry in question, Elementary and Secondary Schools (NAICS 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. These proposed rule changes are not expected to have any fiscal impacts on non-small businesses' revenues or expenditures because there are no applicable non-small businesses and it does not require any expenditures of or generate revenue for non-small businesses. These rule changes have no fiscal impact on LEAs and will not have a fiscal impact on small businesses either. The Program Analyst at the Utah State Board of Education, Jill Curry, has reviewed and approved this fiscal analysis.

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2019

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2019

AUTHORIZED BY: Angela Stallings, Deputy Superintendent of Policy

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 in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.

Appendix 2: Regulatory Impact to Non-Small Businesses

There are no non-small businesses in the industry in question, Elementary and Secondary Schools (NAICS 611110). Because there are no non-small businesses, they do not account for any service delivery for

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

The Program Analyst at the Utah State Board of Education, Jill Curry, has reviewed and approved this fiscal analysis.

R277. Education, Administration.

R277-707. Enhancement for Accelerated Students Program.

R277-707-1. Authority and Purpose.

(1) This rule is authorized by:

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

(b) Section ~~[53A-17a-165]~~53F-2-408, which ~~[allows]~~requires the Board to ~~[adopt rules]~~establish a distribution formula for the expenditure of funds appropriated for the Enhancement for Accelerated Students Program; and

(c) Subsection ~~[53A-1-401]~~53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

(2)(a) The purpose of this rule is to specify the procedures for distributing funds appropriated under Section ~~[53A-17a-165]~~53F-2-408 to LEAs.

(b) The intent of this appropriation is to provide resources to LEAs to enhance the academic growth of students whose academic achievement is accelerated.

R277-707-2. Definitions.

(1) "Accelerated students" means ~~[children and youth whose superior academic performance or potential for accomplishment requires a differentiated and challenging instructional model]~~students participating in accelerated programs.

(2) "Accelerated programs" means student services with increased depth, complexity, or rigor, which may include above-grade level coursework, including:

(a) Gifted and Talented programs;

(b) IB programs; or

(c) AP courses.

~~(2)3~~ "Advanced placement" or "AP" courses means rigorous courses developed by the College Board where:

(a) each course is developed by a committee composed of college faculty and AP teachers, and covers the breadth of information, skills, and assignments found in the corresponding college course; and

(b) students who perform well on the AP exam may be:

(i) granted credit; or

(ii) advanced standing at participating colleges or universities.

~~(3)4~~(a) "Gifted and talented programs" means programs to:

(a) assist individual students to develop their high potential and enhance their academic growth; and

~~(b)]~~ identify ~~[students]~~, through multiple assessment instruments, and serve students with outstanding abilities in the following areas:

(i) general intellectual ability;

(ii) specific academic aptitude; and

(iii) creative or productive thinking.

~~(b) Instruments for identifying gifted and talented students shall not be solely dependent upon English vocabulary or comprehension skills and shall take into consideration abilities of culturally diverse students and students with disabilities.~~

~~(4)5~~ "International Baccalaureate" or "[IB]" Program means one of the following programs established by the International Baccalaureate Organization:

(a) the Diploma Program;

(b) the Middle Years Program; or

(c) the Primary Years Program.

~~(6) "Underrepresented students" means a subset of students, as determined by an LEA and approved by the Superintendent, that holds a smaller percentage in a program as compared to the overall LEA population.~~

~~(5)7~~ "Weighted Pupil Unit" means the basic state funding unit.

~~(6) "Utah Consolidated Application" or "UCA" means the web-based grants management tool employed by the Board through which LEAs submit plans and budgets for approval by the Superintendent.]~~

R277-707-3. Eligibility, and Application, ~~Distribution and Use of Funds.~~

(1) All LEAs are eligible to apply for the Enhancement for Accelerated Students Program funds ~~[using the UCA]~~annually.

(2)~~(a)~~ An LEA shall have a process for identifying students whose academic achievement would benefit from the support of accelerated programs.

~~(b) These instruments shall not be solely dependent upon English vocabulary or comprehension skills and shall take into consideration abilities of culturally diverse students and students with disabilities.]~~

~~(3) To receive program money, an LEA shall submit an application to the Superintendent that includes an LEA's plan for:~~

(a) how the LEA intends to engage all parents so that parents understand the opportunities available for their children in elementary, middle school, high school and beyond, including how the LEA will comply with Rule R277-462;

(b) how the LEA intends to spend program money; and

(c) how the LEA intends to eliminate barriers and increase student enrollment, in accelerated academic programs, including underrepresented students.

~~(4) The Superintendent shall publish expectations, growth percentage capacities, timelines, funding dates, and required submission dates related to an LEA application and plan for increasing enrollment, including underrepresented students, in accelerated academic programs.~~

~~(3) The distribution formula includes an allocation of money for:~~

(a) Advanced Placement courses:

(i) The designated funds for the advanced placement program equal 0.38 multiplied by the difference between the funds appropriated for the Enhancement for Accelerated Students Program less the allotment under Subsection 53A-17a-165(3);

~~(ii)(A) The total funds designated for the advanced placement program are divided by the total number of Advanced Placement exams passed with a grade of 3 or higher by students.~~

~~(B) This calculation results in a fixed amount per exam passed with each participating LEA receiving that amount for each exam successfully passed by one of its students.~~

~~(b) Gifted and Talented programs:~~

~~(i) The designated funds for the Gifted and Talented Program equal 0.62 multiplied by the difference between the funds appropriated for the Enhancement for Accelerated Students Program less the allotment under Subsection 53A-17a-165(3).~~

~~(ii) Each LEA shall receive its share of funds in the proportion that the LEA's number of weighted pupil units for kindergarten through grade twelve bears to the state total.~~

~~(iii) An LEA shall expend Gifted and Talented program funds in accordance with the UCA guidelines.~~

~~(e) IB: LEAs shall have an IB authorized program to qualify for funds:~~

~~(i) Fifty percent of the total funds designated for IB consistent with Subsection 53A-17a-165(3) shall be equally distributed among all authorized IB programs in the state.~~

~~(ii) The remaining fifty percent of allocation shall be distributed to LEAs with Diploma Programs where students scored a grade of 4 or higher on IB exams, resulting in a fixed amount of dollars per exam passed.]~~

R277-707-4. Distribution and Use of Funds

~~(1) The Superintendent shall distribute Enhancement of Accelerated Students program funds as follows:~~

~~(a) the greater of 1.5% or \$100,000 to support IB programs;~~

~~(b) 60% of the total EASP allocation to LEAs to support Gifted and Talented programs; and~~

~~(c) the remaining funds to LEAs to support AP programs.~~

~~(2)(a) The Superintendent shall determine funding to be awarded to an LEA's IB programs by:~~

~~(i) dividing the number of students enrolled in an LEA's IB program by the total enrollment of students in IB programs throughout the state; and~~

~~(ii) multiplying the result from Subsection (2)(a)(i) by the total IB allocation.~~

~~(b) The Superintendent shall determine 30% of the funding to be awarded for LEA AP programs by:~~

~~(i) dividing the number of students enrolled in an LEA's AP classes by the total enrollment of students in AP classes throughout the state; and~~

~~(ii) multiplying the result from Subsection (2)(b)(i) by 30% of the total AP allocation.~~

~~(c) The Superintendent shall determine 70% of the funding to be awarded for LEA AP programs by:~~

~~(i) dividing the number of students in the LEA receiving a three or higher on an AP examination by the total number of students receiving a three or higher on an AP examination throughout the state; and~~

~~(ii) multiplying the result from Subsection (2)(c)(i) by 70% of the total AP allocation.~~

~~(3) If an LEA fails to demonstrate progress in meeting plan goals for placing and retaining underrepresented students in accelerated programs, the Superintendent may:~~

~~(a) place the LEA on probation and provide targeted technical assistance; and~~

~~(b) reduce funding to the LEA.~~

~~(4) Subject to the general requirements of Section R277-700-7:~~

~~(a) A middle school or high school:~~

~~(i) shall provide all course registration opportunities to each student; and~~

~~(ii) through consultation with students, parents, educators, and administrators, may consider academic readiness, but may not require prerequisites for enrolling in an AP or IB course.~~

~~(b) A school that offers a program eligible for funding under Section 53F-2-408, may not prohibit a student from enrolling in the course based on the student's:~~

~~(i) grades or grade point average;~~

~~(ii) state standardized assessment scores; or~~

~~(iii) referral or lack of a referral from an educator;~~

~~(c) In addition to the restrictions listed in Subsection (d), a middle school or high school may not prohibit a student from enrolling in a course based on the student's:~~

~~(i) grade level;~~

~~(ii) participation in or passing a pre-requisite course;~~

~~(iii) participation in or passing an honors-level or college-preparatory course; or~~

~~(iv) requirements over the summer.~~

~~(5) An LEA may use Enhancement for Accelerated Students Program funds for:~~

~~(a) gifted and talented programs, including professional learning for teachers;~~

~~(b) identification of underrepresented students;~~

~~(c) Advanced Placement courses;~~

~~(d) Advanced Placement test fees of eligible low-income students, as defined in Section 53F-2-408;~~

~~(e) International Baccalaureate programs; or~~

~~(f) International Baccalaureate test fees of eligible low-income students, as defined in Section 53F-2-408.~~

R277-707-[4]5. Performance Criteria and Reports.

~~(1) An LEA receiving funds[~~], as set forth in Section R277-707-3,~~] shall [~~be required to~~] submit an annual evaluation report to the Superintendent consistent with Section [~~53A-17a-165~~]53F-2-408.~~

~~(2) An LEA shall present the evaluation report identified in Subsection (1) to the LEA's local board in a public meeting.~~

~~(3) At a minimum, [~~F~~]the report shall include the following performance criteria related to the identified students whose academic achievement is accelerated, which shall be disaggregated by groups as defined in the State Accountability System:~~

~~[~~(a) number of identified students disaggregated by subgroups;~~~~

~~(b) graduation rates for identified students;]~~

~~(a) number of elementary, middle school, and high school students participating in Gifted and Talented programs;~~

~~([~~e~~]b) number of AP classes taken, completed, and exams passed with a score of [~~3~~]2 or above[~~by identified students~~];~~

~~([~~d~~]c) number of IB classes taken, completed, and exams passed with a score of 4 or above[~~by identified students~~]; and~~

~~(d) evidence of stakeholder input demonstrating that the LEA engaged parents;~~

~~[~~(e) number of Concurrent Enrollment classes taken and credit earned by identified students;~~~~

~~(f) ACT or SAT data, including the number of students participating, at or above the college readiness standards;~~
~~(g) gains in proficiency in language arts; and~~
~~(h) gains in proficiency in mathematics.]~~
(4) As part of the LEA's annual report under Subsection (1), an LEA shall provide:
(a) an accounting of how the LEA's funds were disbursed to the teacher level; and
(b) evidence, disaggregated by subgroups, demonstrating that the LEA is:
(i) increasing student enrollment, in the LEA's accelerated academic courses, including underrepresented students; or
(ii) meeting goals in the LEA's plan to increase enrollment and retention, in the LEA's accelerated academic courses, including underrepresented students.
~~[(2) The Superintendent shall submit an annual report on program effectiveness to the Public Education Appropriations Subcommittee of the Utah State Legislature consistent with Subsection 53A-17a-165(6).]~~

KEY: accelerated learning, enhancement programs
Date of Enactment or Last Substantive Amendment: ~~July 11, 2016~~**2019**
Notice of Continuation: May 16, 2016
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; ~~[53A-17a-165]~~**53F-2-408**; ~~[53A-17a-165(5); 53A-1-401]~~**53E-3-401(4)**

Education, Administration
R277-710
Intergenerational Poverty Interventions
in Public Schools

NOTICE OF PROPOSED RULE
 (Amendment)

DAR FILE NO.: 43793
 FILED: 06/12/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-710 was recently reviewed by the Utah State Board of Education (Board) and the following changes were deemed necessary.

SUMMARY OF THE RULE OR CHANGE: The following has been amended in Rule R277-710: 1) an increase in the grant range from \$150,000 to \$200,000 per school year; 2) added a new Section R277-710-5; 3) updated the application process in Section R277-710-6; and 4) amended Superintendent Oversight and Reporting Requirements in Section R277-710-7.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Article X Section 3 and Subsection 53E-3-401(4) and Subsection 53F-5-207(4)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** This rule is being updated based on feedback and consistency with other programs. These rule changes are not expected to have a fiscal impact on state government revenues or expenditures. This rule applies to the Intergenerational Poverty Interventions Grant Program which is funded with a state appropriation which is not affected by these changes.

◆ **LOCAL GOVERNMENTS:** The rule is being updated based on feedback and consistency with other programs. These rule changes may have a fiscal impact on some local education agencies (LEAs). For program applicants without an existing after school program, under these rule changes, they may apply for grants of up to \$200,000 instead of up to \$150,000. A specific fiscal impact from these changes cannot be calculated because the Board does not know how many applicants will apply for and receive a grant over \$150,000. The change to \$200,000 does not apply to schools with existing after school programs. The total amount of funding going to LEAs for the program will remain the same.

◆ **SMALL BUSINESSES:** These rule changes are not expected to have any fiscal impact on small businesses' revenues or expenditures. This rule applies to the Intergenerational Poverty Interventions Grant Program which is state funded and thus does not apply to 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' revenues or expenditures. This rule applies to the Intergenerational Poverty Interventions Grant Program which is state funded. These rule changes include coordinating language with Rule R277-407 on school fees, but these change are not expected to have a fiscal impact on other individuals.

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

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no non-small businesses in the industry in question, Elementary and Secondary Schools (NAICS 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. These proposed rule changes are not expected to have any fiscal impacts on non-small businesses' revenues or expenditures because there are no applicable non-small businesses and it does not require any expenditures of or generate revenue for non-small businesses. These rule

changes may have a fiscal impact on LEAs although the specific impact is not quantifiable, but it will not have a fiscal impact on small businesses. The Program Analyst at the Utah State Board of Education, Jill Curry, has reviewed and approved this fiscal analysis.

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2019

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2019

AUTHORIZED BY: Angela Stallings, Deputy Superintendent of Policy

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

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

The Program Analyst at the Utah State Board of Education, Jill Curry, has reviewed and approved this fiscal analysis.

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

R277. Education, Administration.

R277-710. Intergenerational Poverty Interventions in Public Schools.

R277-710-1. Authority and Purpose.

- (1) This rule is authorized by:
 - (a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;
 - (b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and
 - (c) Subsection 53F-5-207(4), which directs the Board to accept proposals and award grants under the program.
- (2) The purpose of this rule is:
 - (a) to provide for distribution of funds to LEAs; and
 - (b) to provide for out-of-school educational services that assist students affected by intergenerational poverty in achieving academic success.
- (3) This rule provides eligibility criteria, provides minimum application criteria, provides timelines, and provides for Superintendent oversight and reporting.

R277-710-2. Definitions.

- (1) "Eligible student" means a student in grades k-12 of the public school system who is classified as a child affected by intergenerational poverty.
- (2)(a) "Intergenerational poverty (IGP)" means poverty in which two or more successive generations of a family continue in the cycle of poverty and government dependence.

(b) "Intergenerational poverty" does not include situational poverty as defined in Subsection 35A-9-102(2).

(3) "Program" means the Intergenerational Poverty Interventions Grant Program that provides educational services outside of the regular school day, including before school, [~~after school, or summer programs~~].

R277-710-3. Grant Eligibility.

(1) Only LEAs are eligible to apply for funds under the program.

(2) An LEA, in designing the LEAs program services, may collaborate with a community-based organization that provides quality after school programs.

(3) The Board shall give priority to applicants that have a significant number or percentage of students affected by intergenerational poverty.

(4) Program funds are intended to provide supplemental services beyond what is already available through state and local funding.

(a)(i) For an LEA with a school that has an existing after school program, the program funds may be used to augment the amount or intensity of services to benefit students affected by IGP.

(ii) A program applicant that has an existing after school program may apply for a grant in the range of \$30,000 to \$50,000 per school year.

(b)(i) For an LEA with a school that does not have an existing after school program, the program funds may be used to establish a quality after school program.

(ii) A program applicant without an existing after school program may apply for grants in the range of \$100,000-~~\$150~~200,000 per school year.

(5) An LEA that participates in the program and serves students in grades k-6 may be eligible to apply for additional federal after school funding through the Department of Workforce Services.

R277-710-4. Program Requirements.

An applicant for a program grant shall design a program that includes the following minimum components:

(1) a description of the level of administrative support and leadership at the LEA to effectively implement, monitor, and evaluate the program;

(2) an explanation of how the LEA will provide adequate supervision and support to successfully implement or increase programs at the school level;

(3) a summary of a needs assessment conducted by the LEA to determine the academic needs and interests of participating students and their families;

(4) the identification of intended outcomes of the program and how these outcomes will be measured;

(5) an explanation of how the LEA or school will provide services to improve the academic achievement of children affected by intergenerational poverty;

(6) a commitment to assess program quality and effectiveness and make changes as needed;

(7) an outline of the scope of services, including days of the week, number of hours, and number of weeks;

(8) an explanation of the LEA's strategy for coordinating with and engaging the Department of Workforce Services to provide services for the LEA's eligible students;

(9) an explanation of how the LEA will work with the Department of Workforce Services, the Department of Health, the Department of Human Services, and the juvenile courts to provide services to the LEA's eligible students;

(10) the identification of IGP eligible students categorized by age, and schools in which the LEA plans to develop programs with the grant money;

(11) an annual program budget and identification of the estimated cost per student; and

(12) establishment and maintenance of data systems that inform program decisions and annual reporting requirements.

R277-710-5. Program Fees.

(1) Program fees charged by an LEA or school are subject to the provisions of R277-407.

(2) An LEA or school may impose a fee, including fees on a sliding scale, related to the LEA's program if the LEA or school complies with the provisions of R277-407, including:

(a) ensuring the program fee is approved by the LEA governing board before the LEA or school charges the fee;

(b) advertising or notifying parents and students of fee waiver eligibility and the process for a parent or student to obtain a fee waiver; and

(c) providing a student or parent an opportunity to appeal the LEA's denial of the student or parent's request for a fee waiver.

R277-710-~~5~~6. Application Process.

(1) The Superintendent shall:

(a) create a scoring rubric to evaluate grant applications;

(b) solicit competitive grant applications from LEAs; ~~and~~

(c) review an LEA grant application according to the scoring rubric described in Subsection (1)(a); and

(d) award grant funds to LEAs based on the recommendations of a program grant application review panel. ~~Score the applications, and make funding recommendations to the Board.~~

(2) An LEA may apply for a grant through the Utah Consolidated Application (UCA).

(3)(a) The Superintendent shall convene a panel of application reviewers who demonstrate no conflicts of interest.

(b) The panel reviewers shall score applications and the panel shall make recommendations for funding to the Board.

(4) In a year when there is a grant competition:

(a) the application deadline is ~~June 16~~May 15; and

~~(b) the application review shall be completed by June 23;~~

~~(c) the Superintendent shall provide recommendations of grant applicants to the Board no later than July 1; and~~

~~(d)~~(b) the Superintendent shall notify grant recipients no later than ~~August 5~~July 1.

(5) The Superintendent, in future years, subject to continuing appropriations, may adjust the time periods and create applicable timelines to allow LEAs more time to propose programs and complete applications.

R277-710-~~6~~7. Superintendent Oversight and Reporting Requirements.

(1) The Superintendent shall provide adequate oversight in the administration of the IGP program to include:

- (a) conducting the annual application process and awarding of funds;
- (b) monitoring program implementation; and
- (c) gathering and reporting required data.

~~[(2)] To effectively administer the IGP program, the Superintendent shall reserve up to 5% of the appropriation for the program for administrative and evaluation purposes.~~

~~[(3)]~~(2) An LEA that receives program grant money shall annually provide to the Superintendent the information that is necessary for the Board's report to the Utah Intergenerational Welfare Reform Commission as required by Subsection 53F-5-207(7).

~~[(4)]~~(3) The annual report required under Subsection 53F-5-207(7) shall include:

- (a) the progress of LEA programs in expending grant money;
- (b) the progress of LEA programs in improving the academic achievement of children affected by intergenerational poverty; and
- (c) the LEA's coordination efforts with the Department of Workforce Services, the Department of Health, the Department of Human Services, and the juvenile courts.

KEY: public schools, poverty, intervention

Date of Enactment or Last Substantive Amendment: ~~[August 11, 2016]~~2019

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-401(4); 53F-5-207

Environmental Quality, Air Quality
R307-110-31
Section X, Vehicle Inspection and Maintenance Program, Part A, General Requirements and Applicability

NOTICE OF PROPOSED RULE
 (Amendment)
 DAR FILE NO.: 43806
 FILED: 06/13/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Utah Air Quality Board (Board) has proposed for public comment amended Utah State Implementation Plan, Section X, Part A. As a result, Section R307-110-31 incorporates Section X, Part A into the rule, and must be amended to change the Board adoption date to the anticipated adoption date of the amended plan.

SUMMARY OF THE RULE OR CHANGE: Section R307-110-31 is amended by changing the date of the last adoption by the Air Quality Board to 90/04/2019.

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

MATERIALS INCORPORATED BY REFERENCE:

- ◆ Updates Utah State Implementation Plan Section X, Part A, Vehicle Inspection and Maintenance Program, General Requirements and Applicability, published by Utah Division of Air Quality, 09/04/2019

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.

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:

- ◆ Mark Berger by phone at 801-536-4000, by FAX at 801-536-0085, or by Internet E-mail at mberger@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2019

THIS RULE MAY BECOME EFFECTIVE ON: 09/04/2019

AUTHORIZED BY: Bryce Bird, Director

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 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 each county implements their own Inspection and Maintenance programs. This rule only incorporates those existing plans into the State Implementation Plan.

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.

R307-110-31. Section X, Vehicle Inspection and Maintenance Program, Part A, General Requirements and Applicability.

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part A, General Requirements and Applicability, as most recently amended by the Utah Air Quality Board on ~~December 5~~ September 4, 2012², 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: [March 5,] 2019

Notice of Continuation: January 27, 2017

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

Environmental Quality, Air Quality
R307-110-36
Section X, Vehicle Inspection and Maintenance Program, Part F, Cache County

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 43807

FILED: 06/13/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Utah Air Quality Board (Board) has proposed for public comment amended Utah State Implementation Plan, Section X, Part F. As a result, Section R307-110-36 incorporates Section X, Part F into this rule, must be amended to change the Board adoption date to the anticipated adoption date of the amended plan.

SUMMARY OF THE RULE OR CHANGE: Section R307-110-36 is amended by changing the date of the last adoption by the Air Quality Board to 09/04/2019.

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

MATERIALS INCORPORATED BY REFERENCE:

- ◆ Updates Utah State Implementation Plan Section X, Part A, Vehicle Inspection and Maintenance Program, General Requirements and Applicability, published by Utah Division of Air Quality, 09/04/2019

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.

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:
 ♦ Mark Berger by phone at 801-536-4000, by FAX at 801-536-0085, or by Internet E-mail at mberger@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2019

THIS RULE MAY BECOME EFFECTIVE ON: 09/04/2019

AUTHORIZED BY: Bryce Bird, Director

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	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 Persons	\$0	\$0	\$0
Total 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 each county implements their own Inspection and Maintenance programs. This rule only incorporates those existing plans into the State Implementation Plan.

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.

R307-110-36. Section X, Vehicle Inspection and Maintenance Program, Part F, Cache County.

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part F, Cache County, as most recently adopted by the Utah Air Quality Board on [November 6]September 4, 201[3]2, 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: [March 5,] 2019

Notice of Continuation: January 27, 2017

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

Environmental Quality, Air Quality
R307-204
 Emission Standards: Smoke
 Management

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 43808

FILED: 06/13/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: H.B. 155, signed 03/21/2019, amended Section 19-2-107.5: Solid Fuel Burning. As a result, Rule R307-204

must be amended to include the requirements set forth in the newly amended state statute.

SUMMARY OF THE RULE OR CHANGE: Rule R307-204 has been amended to include required language as directed in Section 19-2-107.5. Additional amendments have been made to streamline this rule, combining similar sections and removing redundancies, outdated language, and outdated conformity policies.

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. These proposed changes do 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 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:
 ◆ Mark Berger by phone at 801-536-4000, by FAX at 801-536-0085, or by Internet E-mail at mberger@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2019

THIS RULE MAY BECOME EFFECTIVE ON: 09/04/2019

AUTHORIZED BY: Bryce Bird, Director

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 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 impacts on non-small businesses' revenues or expenditures, because the amendments bring the code into compliance with recent changes in Utah state code and/or are already required under federal regulation.

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

R307. Environmental Quality, Air Quality.**R307-204. Emission Standards: Smoke Management.****R307-204-1. Purpose and Goals.**

(1) The purpose of R307-204 is to establish by rule procedures that mitigate the impacts on ~~[public health]~~air quality and visibility ~~[of]~~from prescribed fire ~~and wildland fire~~.

R307-204-2. Applicability.

(1) R307-204 applies to all persons using prescribed fire ~~or wildland fire~~ on land they own or manage.

(2) R307-204 does not apply to agricultural activities specified in 19-2-114 and to those regulated under R307-202, or to activities otherwise permitted under R307.

R307-204-3. Definitions.

The following additional definitions apply only to R307-204.

"Annual Emissions Goal" means the annual establishment of a planned quantitative value of emissions reductions from prescribed fire.

"Best Management Practices" means smoke management and dispersion techniques used during a prescribed fire ~~or a wildland fire use event~~ that affect the direction, duration, height or density of smoke.

~~["Burn Plan" means the plan required for each fire application ignited by managers. It must be prepared by qualified personnel and approved by the appropriate agency administrator prior to implementation. Each plan follows specific agency direction and must include critical elements described in agency manuals.]~~

"Burn Window" means the period of time during which the prescribed fire is scheduled for ignition.

"Emission Reduction Techniques (ERT)" mean techniques for controlling emissions from prescribed fires to minimize the amount of emission output per unit or acre burned.

"Federal Class I Area" means any Federal land that is federally classified or reclassified Class I.

~~["Fire Prescription" means the measurable criteria that define conditions under which a prescribed fire may be ignited, guide selection of appropriate management responses, and indicates other required actions. Prescription criteria may include safety, economic, public health, environmental, geographic, administrative, social, or legal considerations.]~~

"Land Manager" means any federal, state, local or private entity that owns, administers, directs, oversees or controls the use of public or private land, including the application of fire to the land.

"Non-burning Alternatives to Fire" means non-burning techniques that are used to achieve a particular land management objective, including but not limited to reduction of fuel loading, manipulation of fuels, enhancement of wildlife habitat, and ecosystem restructuring. These alternatives are designed to replace the use of fire for at least ~~the next~~ five years.

"Nonfull suppression event" means a naturally ignited wildland fire (wildfire) for which a land manager secures less than full suppression to accomplish a specific pre-stated resource management objective in a predefined geographic area.

"Particulate Matter" means the liquid or solid particles such as dust, smoke, mist, or smog found in air emissions.

"Pile" means natural materials or debris resulting from some type of fuels management practice that have been relocated either by hand or machinery into a concentrated area.

"Pile Burn" means burning of individual piles.

"Prescribed Fire or Prescribed Burn" means [any fire ignited by management actions to meet specific objectives, such as achieving resource benefits] a wildland fire originating from a planned ignition to meet specific objectives identified in a written, approved, prescribed fire plan.

"Prescribed Fire Plan" means the plan required for each fire application ignited by managers. It must be prepared by qualified personnel and approved by the appropriate agency administrator prior to implementation. Each plan follows specific agency direction and must include critical elements described in agency manuals.

"Prescription" means the measurable criteria that define conditions under which a prescribed fire may be ignited, guide selection of appropriate management responses, and indicates other required actions. Prescription criteria may include safety, economic, public health, environmental, geographic, administrative, social, or legal considerations.

"Smoke Sensitive Receptors" means population centers such as towns and villages, campgrounds and trails, hospitals, nursing homes, schools, roads, airports, Class I areas, nonattainment and maintenance areas, areas whose air quality monitoring data indicate pollutant levels that are close to health standards, and any other areas where smoke and air pollutants can adversely affect public health, safety and welfare.

"Wildfire" means unplanned ignition of a wildland fire (such as a fire caused by lightning, volcanoes, unauthorized and accidental human-caused fires) and escaped prescribed fires.

"Wildland" means an area in which development is essentially non-existent, except for pipelines, power lines, roads, railroads, or other transportation or conveyance facilities. Structures, if any, are widely scattered.

"Wildland Fire" means any non-structure fire ~~other than prescribed fire,~~ that occurs in the wildland.

~~["Wildland Fire Use Event" means naturally ignited wildland fire that is managed to accomplish specific pre-stated resource management objectives in predefined geographic areas.~~

"Wildland Fire Implementation Plan (WFIP)" means the plan required for each fire that is allowed to burn.

~~["WFIP Stage I" means the initial wildland fire strategy planning document. It is developed for fires less than 20 acres, with a low potential of spread and negative impacts. It must be completed within 8 hrs. of start.~~

~~["WFIP Stage II" means a more detailed wildland fire strategy planning document. It is developed for fires greater than 20 acres that are more active fires with a greater potential for geographic extent. It must be completed within 24 hrs. of start.]~~

R307-204-4. General Requirements.

(1) Management of On-Going Fires. The land manager shall notify the Division of all wildfires, including nonfull suppression events. If, after consultation with the land manager, the [d]Director determines that a prescribed fire, [wildland fire use event,] wild[and] fire, or any smoke transported from other locations, is degrading air quality to levels that could violate the National Ambient Air Quality

Standards or burn plan conditions, the land manager shall promptly stop igniting additional prescribed fires.

(2) ~~— Emissions Calculations. In calculating emissions information required under R307-204, each land manager shall use emission factors approved by the Director.~~

~~— (3) Non-burning Alternatives to Fire. [Beginning in 2004 and annually thereafter, e] Each land manager shall submit to the [d] Director annually, by March 15, a list of areas treated using non-burning alternatives to fire during the previous calendar year, including the number of acres, the specific types of alternatives used, and the location of these areas.~~

([4] 3) Annual Emissions Goal. The [d] Director shall provide an opportunity for an annual meeting with land managers for the purpose of evaluation and adoption of the annual emission goal. The annual emission goal shall be developed in cooperation with states, federal land management agencies and private entities, to control prescribed fire emissions increases to the maximum feasible extent.

([5] 4) Long-term Fire Projections. Each land manager shall provide to the [d] Director by March 15 annually long-term projections of future prescribed fire activity for annual assessment of visibility impairment.

R307-204-5. Burn Schedule.

(1) Any land manager planning prescribed fire burning more than 50 acres per year shall submit the burn schedule to the [d] Director on forms provided by the Division ~~[of Air Quality]~~, and shall include the following information for all prescribed fires including those smaller than 20 acres:

(a) ~~[Project number and p]~~ Project name and de minimis status;

(b) ~~[Air Quality Basin, UTM coordinate for the central point of the prescribed fire, project elevation, and county]~~ Latitude and longitude;

(c) ~~[Total project acres, description of major fuels, type of burn, ignition method]~~ Acres for the year, fuel type, and planned use of emission reduction techniques to support establishment of the annual emissions goal; and

(d) ~~[Earliest]~~ Expected burn dates and burn duration.

(2) Each land manager shall submit each year's burn schedule no later than March 15 of that year.

(3) Any land manager who makes changes to the burn schedule shall submit an amendment to the burn schedule within 10 days after the change.

R307-204-6. Small Prescribed Fires (de minimis).

(1) A prescribed fire that covers less than 20 acres per burn or less than 30,000 cubic feet of piled material shall be ignited [only] either when (1) the clearing index is 500 or greater[-], (2) when the clearing index is between 400 and 499, if;

~~— (2) A prescribed fire that covers less than 20 acres per day may be ignited when the National Weather Service Clearing Index is between 500 and 400 with approval of the director.~~

(a) The prescribed fire ~~[should be]~~ is recorded as a de minimis prescribed fire on the [Utah A] annual [B] burn [S] schedule[-].

(b) The [E] land [M] manager ~~[is required to notify]~~ obtains approval from the [d] Director by ~~[-fax,]~~ e-mail[-], or phone prior to ignition of the burn ~~[-when burning below a National Weather Service Clearing Index is between 500 and 400.]; and~~

(c) The land manager ~~[must include]~~ submits to the Director hourly photographs, a record of any complaints, hourly meteorological conditions and an hourly description of the smoke plume ~~[-must be recorded and submitted].~~

R307-204-7. [Small Prescribed Pile Fires (de minimis)].

~~— (1) Pile burns covering up to 30,000 cubic feet per day shall be ignited only when the clearing index is 500 or greater.~~

~~— (2) Pile burns covering up to 30,000 cubic feet per day may be ignited when the National Weather Service Clearing Index is between 500 and 400 with approval of the director.~~

~~— (a) The pile fire should be recorded as a de minimis prescribed fire on the Utah Annual Burn Schedule.~~

~~— (b) The Land Manager is required to notify the director by fax, e-mail, or phone prior to ignition of the burn when burning below a National Weather Service Clearing Index is between 500 and 400.~~

~~— (c) The land manager must include hourly photographs, a record of any complaints, hourly meteorological conditions and an hourly description of the smoke plume must be recorded and submitted.~~

R307-204-8. [Large Prescribed Fires].

(1) ~~[Burn Plan.]~~ For a prescribed fire that covers 20 acres or more per burn or 30,000 cubic feet of piled material or more, the land manager shall submit to the [d] Director a ~~[burn]~~ prescribed fire plan at least one week before the beginning of the burn window.[-] The plan shall include [ing] e a [-fire] prescription and description of other state, county, municipal, or federal resources available on scene, or for contingency purposes.

(2) ~~[Pre-Burn Information. For a prescribed fire that covers 20 acres or more per burn, t]~~ The land manager shall submit pre-burn information to the [d] Director at least two weeks before the beginning of the burn window. The pre-burn information shall be submitted to the [d] Director on the appropriate form provided by the Division ~~[of Air Quality by fax, electronic mail or postal mail.]~~ and shall include the following information:

(a) The ~~[three-letter ID, project number, date submitted, name of person submitting the form, burn manager, and phone numbers]~~ project name, total acres, and latitude and longitude;

(b) Summary of ignition method, burn type, and burn objectives, such as restoration or maintenance of ecological functions or [indication of fire resiliency] hazardous fuel reduction;

(c) Any sensitive receptor within 15 miles, including any Class I or nonattainment or maintenance area, and distance and direction in degrees from the project site;

~~— (d) Planned mitigation methods;]~~

([e] d) The smoke dispersion or visibility model used and results;

([f] e) The estimated amount of total particulate matter anticipated;

([g] f) A description of how the public and land managers in neighboring states will be notified;

([h] g) A map depicting both the daytime and nighttime smoke path and down-drainage flow for a minimum of 15 miles from the burn site with smoke-sensitive areas delineated;

([i] h) Safety and contingency plans for addressing any smoke intrusions; ~~[- and~~

~~(j) If the fire is in a nonattainment or maintenance area and is subject to general conformity (42 U.S.C. 7506(e)), a copy of the conformity demonstration showing that the fire meets the requirements of the Clean Air Act and conforms with the applicable State Implementation Plan.]~~

~~(k)i) Planned use of emission reduction techniques to support establishment of an annual emissions goal, if not already submitted under R307-204-5[-]; and~~

~~(h)j) Any other information needed by the [d]Director for smoke management purposes, or for assessment of contribution to visibility impairment in any Class I area.~~

~~(3) Burn Request.~~

~~(a) The land manager shall submit to the [d]Director a burn request on the form provided by the Division[-of Air Quality] by 1000 hours at least two business days before the planned ignition time. The form [may be submitted by fax or electronic mail, and]must include the following information:~~

~~(i) The [three-letter identification and project number consistent with the annual burn schedule required in R307-204-5(1)-above]project name;~~

~~(ii) The date submitted and by whom;[-and]~~

~~(iii) The burn manager conducting the burn and phone numbers[-]; and~~

~~(iv) The dates of the requested burn window.~~

~~(b) No large prescribed fire [requiring a burn plan-]shall be ignited before the [d]Director approves the burn request.~~

~~(c) If a prescribed fire is delayed, changed or not completed following burn approval, any significant changes in the burn plan shall be submitted to the [d]Director before the burn request is submitted. [-If a prescribed fire is not carried out, the land manager shall list the reasons on the burn request form provided by the Division of Air Quality and shall submit the form by fax or electronic mail to the director by 0800 hours the following business day.]~~

~~(4) Daily Emissions Report. By 0800 hours on the day following the prescribed [burn]fire, for each day of prescribed fire activity covering 20 acres or more, the land manager shall submit to the [d]Director a daily emission report on the form provided by the Division[-of Air Quality] including the following information:~~

~~(a) [The three-letter identification and project number consistent with the annual burn schedule required in R307-204-5(1)-above]Project name;~~

~~(b) The date submitted and by whom;~~

~~(c) The start and end dates and times of the burn;~~

~~(d) Emission information[-including], to include total affected acres, black acres, tons fuel consumed per acre, and tons particulate matter produced;~~

~~(e) Public interest regarding smoke;~~

~~(f) Daytime [ventilation]smoke behavior;~~

~~(g) Nighttime smoke behavior;~~

~~(h) Emission reduction techniques applied; and~~

~~(h)j) Evaluation of the techniques used by the land manager to reduce emissions or manage the smoke from the prescribed burn[-;and~~

~~(i) Emission reduction techniques applied].~~

~~(5) Emission Reduction and Dispersion Techniques. Each land manager shall take measures to prevent smoke impacts. Such measures may include best management practices such as dilution, emission reduction or avoidance in addition to others described in the pre-burn information form provided by the Division[-of Air Quality].~~

An evaluation of the techniques shall be included in the daily emissions report required by (4) above.

(6) Monitoring. Land managers shall monitor the effects of the prescribed fire on smoke sensitive receptors and on visibility in Class I areas, as directed by the burn plan. Hourly visual monitoring and documentation of the direction of the smoke plume shall be recorded on the form provided by the Division[-of Air Quality] or on the land manager's equivalent form. Complaints from the public shall be noted in the land managers project file. Records shall be available for inspection by the [d]Director for six months following the end of the fire.

[R307-204-9. Large Prescribed Pile Fires.

~~(1) Burn Plan. For a prescribed pile fire that exceeds 30,000 cubic feet per day, the land manager shall submit to the director a burn plan, including a fire prescription.~~

~~(2) Pre-Burn Information. For a prescribed pile fire that exceeds 30,000 cubic feet or more per burn, the land manager shall submit pre-burn information to the director at least two weeks before the beginning of the burn window. The pre-burn information shall be submitted to the director on the appropriate form provided by the Division of Air Quality by fax, electronic mail or postal mail and shall include the following information:~~

~~(a) The three-letter ID, project number, date submitted, name of person submitting the form, burn manager, and phone numbers;~~

~~(b) Summary of burn objectives, such as restoration or maintenance of ecological functions or indication of fire resiliency;~~

~~(c) Any sensitive receptor within 15 miles, including any Class I or nonattainment or maintenance area, and distance and direction in degrees from the project site;~~

~~(d) Planned mitigation methods;~~

~~(e) The smoke dispersion or visibility model used and results;~~

~~(f) The estimated amount of total particulate matter anticipated;~~

~~(g) A description of how the public and land managers in neighboring states will be notified;~~

~~(h) A map depicting both the daytime and nighttime smoke path and down-drainage flow for a minimum of 15 miles from the burn site with smoke sensitive areas delineated;~~

~~(i) Safety and contingency plans for addressing any smoke intrusions; and~~

~~(j) If the fire is in a nonattainment or maintenance area and is subject to general conformity (42 U.S.C. 7506(e)), a copy of the conformity demonstration showing that the fire meets the requirements of the Clean Air Act and conforms with the applicable State Implementation Plan.~~

~~(k) Planned use of emission reduction techniques to support establishment of an annual emissions goal, if not already submitted under R307-204-5.~~

~~(l) Any other information needed by the director for smoke management purposes, or for assessment of contribution to visibility impairment in any Class I area.~~

~~(3) Burn Request.~~

~~(a) The land manager shall submit to the director a burn request on the form provided by the Division of Air Quality by 1000 hours at least two business days before the planned ignition time. The~~

form may be submitted by fax or electronic mail, and must include the following information:

- ~~(i) The three-letter identification and project number consistent with the annual burn schedule required in R307-204-5(1) above;~~
- ~~(ii) The date submitted and by whom; and~~
- ~~(iii) The burn manager conducting the burn and phone numbers.~~

~~(b) No prescribed pile fire requiring a burn plan shall be ignited before the director approves the burn request.~~

~~(c) If a prescribed pile fire is delayed, changed or not completed following burn approval, any significant changes in the burn plan shall be submitted to the director before the burn request is submitted. If a prescribed fire is not carried out, the land manager shall list the reasons on the burn request form provided by the Division of Air Quality and shall submit the form by fax or electronic mail to the director by 0800 hours the following business day.~~

~~(4) Daily Emissions Report. By 0800 hours on the day following the prescribed pile burn, for each day of pile fire activity exceeding 30,000 cubic feet, the land manager shall submit to the director a daily emission report on the form provided by the Division of Air Quality including the following information:~~

- ~~(a) The three-letter identification and project number consistent with the annual burn schedule required in R307-204-5(1) above;~~
- ~~(b) The date submitted and by whom;~~
- ~~(c) The start and end dates and times of the burn;~~
- ~~(d) Emission information including black acres, tons fuel consumed per acre, and tons particulate matter produced;~~
- ~~(e) Public interest regarding smoke;~~
- ~~(f) Daytime ventilation;~~
- ~~(g) Nighttime smoke behavior;~~
- ~~(h) Evaluation of the techniques used by the land manager to reduce emissions or manage the smoke from the prescribed pile burn; and~~

~~(i) Emission reduction techniques applied.~~

~~(5) Emission Reduction and Dispersion Techniques. Each land manager shall take measures to prevent smoke impacts. Such measures may include best management practices such as dilution, emission reduction or avoidance in addition to others described in the pre-burn information form provided by the Division of Air Quality. An evaluation of the techniques shall be included in the daily emissions report required by (4) above.~~

~~(6) Monitoring. Land managers shall monitor the effects of the prescribed pile fire on smoke sensitive receptors and on visibility in Class I areas, as directed by the burn plan. Hourly visual monitoring and documentation of the direction of the smoke plume shall be recorded on the form provided by the Division of Air Quality or on the land manager's equivalent form. Complaints from the public shall be noted in the land managers project file. Records shall be available for inspection by the director for six months following the end of the fire.~~

R307-204-10. Requirements for Wildland Fire Use Events.

- ~~(1) Burn Approval Required.~~
- ~~(a) The land manager shall notify the director of any potential wildland fire use (WFU) event having a WFIP Stage I. The following information will be provided:~~
 - ~~(i) UTM coordinate of the fire;~~

- ~~(ii) Active burning acres;~~
- ~~(iii) Probable fire size and daily anticipated growth in acres;~~
- ~~(iv) Types of wildland fuel involved;~~
- ~~(v) An emergency telephone number that is answered 24 hours a day;~~
- ~~(vi) Wilderness or Resource Natural Area designation, if applicable;~~
- ~~(vii) Distance to nearest community;~~
- ~~(viii) Elevation of fire; and~~
- ~~(ix) Fire's airshed number.~~

~~(b) The Land Managers shall notify the director of any potential wildland fire use event covering more than 20 acres or having a WFIP Stage II due to higher potential for spread and negative impacts. In addition to the information required for a WFU with a WFIP Stage I, the following additional information will be provided to the director as it is being developed:~~

- ~~(i) WFIP Stage II wildland fire implementation plan and anticipated emissions;~~
- ~~(ii) A map depicting both the daytime and nighttime smoke path and down drainage flow for a minimum of 15 miles from the burn site with smoke sensitive areas delineated; and~~
- ~~(iii) Additional computer smoke modeling, if requested by the director.~~

~~(c) The director's approval of the smoke management element of the wildland fire implementation plan shall be obtained before managing the fire as a wildland fire use event.~~

~~(2) Daily Emission Report for wildland fire use event. By 0800 hours on the business day following fire activity covering 20 acres or more, the land manager shall submit to the director the daily emission report on the form provided by the Division of Air Quality, including the following information:~~

- ~~(a) The three-letter identification, project number, Air Quality Basin, and name of the burn manager;~~
- ~~(b) UTM coordinate;~~
- ~~(c) Dates and times of the start and end of the burn;~~
- ~~(d) Black acres by wildland fuel type;~~
- ~~(e) Estimated proportion of wildland fuel consumed by wildland fuel type;~~
- ~~(f) Proportion of moisture in the wildland fuel by size class;~~
- ~~(g) Emission estimates;~~
- ~~(h) Level of public interest or concern regarding smoke; and~~
- ~~(i) Conformance to the wildland fire implementation plan.~~

~~(3) Monitoring. The land manager shall monitor the effects of smoke on smoke sensitive receptors and visibility in Class I areas as directed by the wildland fire implementation plan. Complaints from the public shall be recorded in the project file. Records shall be available for inspection by the director for six months following the end of the fire.]~~

KEY: air quality, [wildland]prescribed fire, smoke[, land manager]

Date of Enactment or Last Substantive Amendment: [July 7,] 201[1]2

Notice of Continuation: February 5, 2015

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

**Environmental Quality, Waste
Management and Radiation Control,
Radiation
R313-19-34
Terms and Conditions of Licenses**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 43810

FILED: 06/14/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule change is proposed in order to maintain compatibility with the U.S. Nuclear Regulatory Commission (NRC) requirements and to enhance patient safety. To maintain the authority to regulate the use of certain licensed radioactive materials in the state of Utah, the state must maintain rules that are compatible with NRC requirements. Recent changes to 10 CFR Part 35 and related requirements were adopted by the NRC and published in the 07/16/2018 Federal Register (83 FR 33046). This proposed rule change maintains compatibility with the changes published for the requirements in 10 CFR 30.3a(g).

SUMMARY OF THE RULE OR CHANGE: The proposed rule change incorporates the requirements of 10 CFR 30.34(9), and consequently the requirements of 10 CFR 35.204(a), which requires commercial radiopharmacies to test each eluate from the elution of Molybdenum-99/Technetium (Mo-99/Tc-99m) generators for breakthrough instead of testing only the first eluate from the generator. Additionally, the change requires that results of breakthrough tests that exceed permissible concentrations from all medical generators be reported to the Director of the Division of Waste Management and Radiation Control (DWMRC) and the manufacturer of the generator. The reports must be made within a specified time frame and must be made by telephone and in writing.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-3-104 and Section 19-6-104

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** In the state of Utah there are two state-owned entities that provide commercial radiopharmacy services (NAICS# 325412). Only one of these entities uses medical generators to prepare dosages for distribution to other licensees for medical use under the provisions of Rule R313-32. Until 2002, testing each eluate of a Mo-99/Tc-99m medical generator for breakthrough was required. The 2002 revisions of 10 CFR Part 35 eliminated this requirement. Presently, only the initial elution of a Mo-99/Tc-99m medical generator is required to be tested for the breakthrough concentration of a specific impurity. Subsequent elutions are not required to be tested. Even so, radiopharmacy licensees

in the state of Utah continued to test every eluate for the breakthrough concentrations. Due to certain incidents that occurred after 2002, the NRC determined that the requirement was necessary for patient safety. The requirement was reinstated in the regulations and a reporting requirement was added. Because the radiopharmacies in the state of Utah continued to test each eluate from the Mo-99/Tc-99m generators, there will be no increase to the number of breakthrough tests that must be conducted. The number of tests that may exceed the permissible concentration limits is not known but is estimated by the NRC to be about seven reports per year based on reports voluntarily made by medical licensees across the nation. The reports must be made by the licensee to the Director of DWMRC and the generator's manufacturer. The licensee's presently report any breakthrough test that exceeds the permissible concentration to the generator's manufacturer, therefore the proposed rule change will only add a requirement to make the report to the Director of DWMRC. There are no fees proposed in the rule change, therefore, there are no direct or indirect fiscal impacts associated with the proposed rule change. Since no additional breakthrough testing will be required and the required reports are presently made to the generator's manufacturer, the licensee is expected to experience a direct fiscal impact related to reporting breakthrough tests that exceed the permissible concentration to the Director of DWMRC. Using the estimated personnel time required to make the report and the mean hourly wage of a pharmacist to determine the potential costs associated with seven reports for results that exceed the permissible concentration, it is expected that the licensee may experience a direct fiscal impact of about \$420. The proposed rule change requires licensees to report the results of medical generator breakthrough tests that exceed permissible concentration limits to the Director of the DWMRC. There are no fees associated with the rule change; therefore, there are no expected direct or indirect fiscal impacts for the revenues or expenditures of the DWMRC. Using the number of reports that may be made to the Director each year by all affected licensees, as estimated by the NRC, the DWMRC may receive about 14 reports annually. Based on the number of reports, the estimated time for processing the reports and evaluating the incident, and estimated personnel costs, the DWMRC is expected to experience an indirect fiscal impact of about \$2,520 per year. (EDITOR'S NOTE: A proposed amendment to Rule R313-32 is under Filing No. 43812 in this issue, July 1, 2019, of the Bulletin.)

◆ **LOCAL GOVERNMENTS:** The proposed rule change is not expected to have any fiscal impact on local governments' revenues or expenditures because interactions due to the proposed rule change with government agencies all occur at the state government level. There is no interaction of local government agencies with either the licensee or the DWMRC with respect to this rule.

◆ **SMALL BUSINESSES:** There is one small business in the state of Utah that has been issued a radioactive materials license to provide commercial radiopharmacy services (NAICS# 325412) in the state. The assumptions as stated above under the state budget answer remain the same for the

analysis of the impacts to small businesses. The commercial radiopharmacy uses Mo-99/Tc-99m generators and other medical generators to prepare dosages for distribution to other licensees who use radioactive materials for medical use under the provisions of Rule R313-32. The proposed rule change will require the licensee to test each eluate from the Mo-99/Tc-99m generator to ensure that the breakthrough does not exceed the permissible concentration; however, the radiopharmacy presently performs this testing and there will be no change to the licensee's operations due to this proposed rule change. Additionally, the proposed rule change requires that a breakthrough test that exceeds the permissible concentration be reported to the state and the manufacturer. Reports are currently made to the manufacturer if a permissible breakthrough concentration limit is exceeded as required by the manufacturer. Based on voluntary reports made to the NRC over the years, the NRC estimates that licensees will report approximately seven tests where the results of breakthrough tests exceed the permissible concentration each year. The licensee is expected to have a direct fiscal impact related to the reporting requirement of about \$420 per year. There are no other direct fiscal impacts expected to be experienced by the licensee.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** It is possible that the 47 medical use radioactive materials licensees could experience an indirect fiscal impact from the proposed rule change if the radiopharmacy licensees increase the prices they charge for the dosages they prepare from the Mo-99/Tc-99m eluate due to the increased indirect fiscal costs they will incur; however, the expected costs to the licensee are not significant. Therefore, it is likely that the prices charged to medical use licensees will remain the same. At this time, it is not expected that medical use licensees will experience direct or indirect fiscal impacts due to this proposed change.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The affected licensees will experience an estimated total of \$420 annually to remain compliant with this proposed rule change.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Although the proposed rule change will directly cost the affected licensees about \$420 in personnel costs to provide the required reports to the state, the proposed rule change is necessary to enhance patient safety. There were a number of cases where a medical generator's eluate exceeded the permissible concentration limit and was found by a licensee that was voluntarily testing the eluates at a greater frequency than required. There were also a number of cases where a patient set off a monitoring portal after the medical isotope they had been administered should have decayed to undetectable levels. This was the result of the breakthrough concentration exceeding the permissible concentration at the time of administration to the patient. Since there was no reporting requirement, even though a few of these instances

occurred simultaneously in different parts of the nation, the NRC and the agreement states were not able to quickly identify the issue and address corrective measures. The reporting requirement was proposed to address patient safety, and provide a mechanism for tracking and a timely response and solution to address the unnecessary patient exposure to radiation from elevated breakthrough concentrations. Given the small number of expected reports that will be made to the DWMRC, processing the reports will have a minimal impact on the work assigned to DWMRC personnel.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 ENVIRONMENTAL QUALITY
 WASTE MANAGEMENT AND RADIATION
 CONTROL, RADIATION
 SECOND FLOOR
 195 N 1950 W
 SALT LAKE CITY, UT 84116-4880
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ◆ Gwyn Galloway by phone at 801-536-4258, by FAX at 801-533-4097, or by Internet E-mail at ggalloway@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2019

THIS RULE MAY BECOME EFFECTIVE ON: 08/09/2019

AUTHORIZED BY: Ty Howard, Director

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2020	FY 2021	FY 2022
State Government	\$2,940	\$2,940	\$2,940
Local Government	\$0	\$0	\$0
Small Businesses	\$420	\$420	\$420
Non-Small Businesses	\$0	\$0	\$0
Other Person	\$0	\$0	\$0
Total Fiscal Costs:	\$3,360	\$3,360	\$3,360
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:	-\$3,360	-\$3,360	-\$3,360

*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 proposed rule change is not expected to have any fiscal impact on non-small businesses' revenues or expenditures, because there are only two radioactive materials licensees that are affected by the proposed rule change and neither licensee is a "Non-Small Business" entity. One licensee is considered to be a state agency and the other is a small business entity. There are also no manufacturers of the devices affected by the proposed rule change that operate in the state of Utah. Therefore, there are no non-small business entities that are affected by the proposed rule.

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

R313. Environmental Quality, Waste Management and Radiation Control, Radiation.

R313-19. Requirements of General Applicability to Licensing of Radioactive Material.

R313-19-34. Terms and Conditions of Licenses.

(1) Licenses issued pursuant to Rule R313-19 shall be subject to provisions of the Act, now or hereafter in effect, and to all rules, and orders of the Director.

(2)(a) Licenses issued or granted under Rules R313-21 and R313-22 and rights to possess or utilize radioactive material granted by a license issued pursuant to Rules R313-21 and R313-22 shall not be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of a license to a person unless the Director shall, after securing full information find that the transfer is in accordance with the provisions of the Act now or hereafter in effect, and to all rules, and orders of the Director, and shall give his consent in writing.

(b) An application for transfer of license shall include:

(i) The identity, technical and financial qualifications of the proposed transferee; and

(ii) Financial assurance for decommissioning information required by R313-22-35.

(3) Persons licensed by the Director pursuant to Rules R313-21 and R313-22 shall confine use and possession of the material licensed to the locations and purposes authorized in the license.

(4) Licensees shall notify the Director in writing and request termination of the license when the licensee decides to terminate activities involving materials authorized under the license.

(5) Licensees shall notify the Director in writing immediately following the filing of a voluntary or involuntary petition for bankruptcy under any Chapter of Title 11, Bankruptcy, of the United States Code by or against:

(a) the licensee;

(b) an entity, as that term is defined in 11 USC 101(15), controlling the licensee or listing the license or licensee as property of the estate; or

(c) an affiliate, as that term is defined in 11 USC 101(2), of the licensee.

(6) The notification specified in Subsection R313-19-34(5) shall indicate:

(a) the bankruptcy court in which the petition for bankruptcy was filed; and

(b) the date of the filing of the petition.

(7) Licensees required to submit emergency plans pursuant to Subsection R313-22-32(8) shall follow the emergency plan approved by the Director. The licensee may change the approved plan without the Director's approval only if the changes do not decrease the effectiveness of the plan. The licensee shall furnish the change to the Director and to affected off-site response organizations within six months after the change is made. Proposed changes that decrease, or potentially decrease, the effectiveness of the approved emergency plan may not be implemented without prior application to and prior approval by the Director.

(8) Each licensee preparing technetium-99m radiopharmaceuticals from molybdenum-99/technetium-99m generators or rubidium-82 from strontium-82/rubidium-82 generators shall test the generator eluates for molybdenum-99 breakthrough or strontium-82 and strontium-85 contamination, respectively, in accordance with Rule R313-32 (incorporating 10 CFR 35.204 by reference). The licensee shall record the results of each test and retain each record for three years after the record is made. The licensee shall report the results of each test that exceeds the permissible concentration listed in R313-32 (incorporating 10 CFR 35.204(a)) at the time of generator elution, in accordance with R313-32 (incorporating 10 CFR 35.3204).

(9) Each portable gauge licensee shall use a minimum of two independent physical controls that form tangible barriers to secure portable gauges from unauthorized removal, whenever portable gauges are not under the control and constant surveillance of the licensee.

(10)(a) Authorization under Subsection R313-22-32(9) to produce Positron Emission Tomography (PET) radioactive drugs for noncommercial transfer to medical use licensees in its consortium does not relieve the licensee from complying with applicable FDA, other Federal, and State requirements governing radioactive drugs.

(b) A licensee authorized under Subsection R313-22-32(9) to produce PET radioactive drugs for noncommercial transfer to medical use licensees in its consortium shall:

(i) Satisfy the labeling requirements in Subsection R313-22-75(9)(a)(iv) for each PET radioactive drug transport radiation shield and each syringe, vial, or other container used to hold a PET radioactive drug intended for noncommercial distribution to members of its consortium.

(ii) Possess and use instrumentation to measure the radioactivity of the PET radioactive drugs intended for noncommercial distribution to members of its consortium and meet the procedural, radioactivity measurement, instrument test, instrument check, and instrument adjustment requirements in Subsection R313-22-75(9)(c).

(c) A licensee that is a pharmacy authorized under Subsection R313-22-32(9) to produce PET radioactive drugs for noncommercial transfer to medical use licensees in its consortium shall require that any individual that prepares PET radioactive drugs shall be:

(i) an authorized nuclear pharmacist that meets the requirements in Subsection R313-22-75(9)(b)(ii); or

(ii) an individual under the supervision of an authorized nuclear pharmacist as specified in Rule R313-32 (incorporating 10 CFR 35.27 by reference).

(d) A pharmacy authorized under Subsection R313-22-32(9) to produce PET radioactive drugs for noncommercial transfer to medical use licensees in its consortium that allows an individual to work as an authorized nuclear pharmacist, shall meet the requirements of Subsection R313-22-75(9)(b)(v).

KEY: licenses, reciprocity, transportation, exemptions
Date of Enactment or Last Substantive Amendment: [~~October 13, 2017~~]**2019**
Notice of Continuation: July 1, 2016
Authorizing, and Implemented or Interpreted Law: 19-3-104; 19-6-104

**Environmental Quality, Waste
 Management and Radiation Control,
 Radiation
 R313-22-75
 Special Requirements for a Specific
 License to Manufacture, Assemble,
 Repair, or Distribute Commodities,
 Products, or Devices Which Contain
 Radioactive Material**

**NOTICE OF PROPOSED RULE
 (Amendment)
 DAR FILE NO.: 43809
 FILED: 06/14/2019**

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: A change to 10 CFR Part 35 and changes to

related U.S. Nuclear Regulatory Commission (NRC) requirements were adopted by the NRC and published in the 07/16/2018, Federal Register (83 FR 33046). In order to maintain the authority to regulate the use of certain licensed radioactive materials in the state of Utah, the state must maintain rules that are compatible with NRC requirements. The purpose of the proposed rule changes are to maintain compatibility with the NRC requirements. These proposed rule changes maintain compatibility with the changes published for the requirements in 10 CFR 32.72(a)(4), 10 CFR 32.72(b)(5)(i), and 10 CFR 32.72(d).

SUMMARY OF THE RULE OR CHANGE: These proposed rule changes incorporate corresponding federal regulations in 10 CFR 32.72 that clarify the requirements regarding the labeling for radioactive drugs manufactured and prepared by commercial radiopharmacies and manufacturers for distribution to licensees for medical use under Rule R313-32. Additionally, individuals who are certified by an approved specialty board and seek to be named on a radioactive materials license as an Authorized Nuclear Pharmacist (ANP) will no longer be required to submit a written attestation statement regarding their training and experience. (EDITOR'S NOTE: a proposed amendment to Rule R313-32 is under Filing No. 43812 in this issue, July 1, 2019, of the Bulletin.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-3-104 and Section 19-6-104

ANTICIPATED COST OR SAVINGS TO:
 ♦ **THE STATE BUDGET:** There are two commercial radiopharmacies (NAICS# 325412) with radioactive materials licenses operated by the University of Utah that manufacture or prepare radioactive drugs under the supervision of an ANP for transfer or distribution to radioactive materials licensees for medical use under Rule R313-32. Additionally, the Division of Waste Management and Radiation Control, Radiation (Division) has regulatory oversight of the radiopharmacy licensees and reviews the training and experience (qualifications) of individuals who are to be named on the radiopharmacy licenses as an ANP. There are no fees assessed by the proposed rules; therefore, there are no direct or indirect fiscal impacts associated with the proposed rule changes for any state agency, including the commercial radiopharmacies. Additionally, the proposed changes for the labeling requirements are not expected to have direct or indirect non-fiscal impacts on revenues or expenditures for any state agency or the commercial radiopharmacies. This is because the proposed changes clarify the labeling requirements for radioactive drugs manufactured or prepared by the radiopharmacies and require no changes to the labeling or the labeling procedures currently in use by the radiopharmacies. These proposed rule changes also address changes to documentation required to be submitted for individuals who are board certified by an approved specialty board and who are applying to be named as an ANP on a radioactive materials license. There are three potential pathways in the requirements that an individual can use to

qualify to be named as an ANP on a radioactive materials license. Only one of these pathways requires that the individual be board certified by an approved specialty board, but all of the pathways currently require the submission of a written attestation statement. These proposed rule changes remove the submission of the written attestation statement for an application to become an ANP from only one of the three pathways. The written attestation statement will still be required for the other two qualification pathways. The NRC estimates that about 30 % of the individuals that are named on a radioactive materials license as an ANP used the board certification pathway to qualify as an ANP. The employment opportunities for ANPs is very limited. In the state of Utah, there are a total of 10 individuals named as ANPs (seven by state-operated radiopharmacies and three in a small business radiopharmacy). The number of ANPs in the state has remained stable and no positions have been added or lost for a number of years. Given the limited employment opportunities, once an ANP is named on a radioactive materials license, it has been observed that the ANP will remain employed with that entity until they retire. Therefore, in the state of Utah it has been observed that turnover of ANPs rarely occurs; NRC estimates a turnover rate of 10% for ANPs. There is no expectation that one of the seven ANPs employed by the state-operated radiopharmacies will leave employment in the next three years. Because there is no anticipated turnover in the state, the proposed rule changes are not expected to have an actual impact on the radiopharmacies or other state agencies. However, for the purposes of this analysis, it will be assumed that one ANP will leave employment annually and the applicant for the ANP's replacement will be board certified each year. Using these assumptions, there is an expectation that the licensee will experience an estimated direct fiscal benefit of approximately \$55 per year. There is typically no cost associated with obtaining a written attestation since the individuals receive a copy of a written attestation upon completion of their schooling. However, there may be a small cost associated with copying the written attestation statement for inclusion with the submitted ANP application. Assuming a cost of \$ 0.25 per page for copying, there could be a direct fiscal impact of \$0.75. The licensee's Radiation Safety Officer (usually an ANP) and one of the pharmacy technologists would prepare and submit the application for the individual to become an ANP in the same way that an application is presently created and submitted. The only difference would be that the individual would not need to locate the written attestation statement he was given when his training was completed and the licensee would not need to review the attestation and make a copy of the attestation statement to include with the ANP application. The change to completing and reviewing the application would result in an estimated direct fiscal benefit of approximately \$55. This would offset the direct fiscal impact of \$0.75. The application would be submitted to the Division with the oversight of the licensee for ANP review and approval. The review process for the application would proceed in the same manner as presently used by the Division. The difference for the review of the application would be the indirect fiscal benefit realized from

the savings in personnel time related to the review of the written attestation. Therefore, the Division would experience a fiscal benefit estimated to be about \$45 for the review of the ANP application. In total, state agencies would experience an estimated direct fiscal impact of \$0.75, a direct fiscal benefit of approximately \$55, and an estimated indirect fiscal benefit of approximately \$45 for each of the ANP applications to name individuals who are board certified by an approved specialty board on a radioactive materials license as an ANP. Assuming one ANP application is received from a commercial radiopharmacy each year, the above stated estimated would be the annual expected impacts to the state's expenditures and revenues.

◆ **LOCAL GOVERNMENTS:** This rule change is not expected to have any impact on the revenues or expenditures for local governments because it only affects government agencies at a state level. There are no radioactive material licenses issued to local government entities for operation as a commercial radiopharmacy and local governments have no regulatory authority over the use of radioactive materials.

◆ **SMALL BUSINESSES:** There is one commercial radiopharmacy (NAICS# 325412) that qualifies as a small business and has been issued a radioactive materials license that authorizes them to manufacture and prepare radioactive drugs for transfer or distribution to other licensees for medical use under Rule R313-32. As stated under the state budget answer above, there are no fees associated with these proposed changes. The changes to the labeling requirements will have no impact on the small business licensee since the proposed changes clarify the labeling requirements but do not require the licensee to modify the labels or labeling procedures presently used by the licensee. This radiopharmacy employs a total of three ANPs. As stated above, there are only 10 ANPs employed throughout the state of Utah and turnover is very infrequent. There is no expectation that an ANP will be replaced in the next three years; however, an assumption will be made that one ANP per year will be replaced and the individual applying for the position is board certified by an approved specialty board. The licensee will be expected to experience a direct fiscal benefit worth approximately \$55 if not required to submit the written attestation statement with the ANP application. This would offset a direct fiscal impact of \$0.75 for copying the attestation statement. These impacts would be per ANP application submitted; however, since one ANP application is assumed to be submitted each year, these would also be the annual impacts for the licensee.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Since there are no fees associated with the proposed requirements there are no direct or indirect fiscal impacts of the proposed rule changes for the expenditures or revenues of any "person" as defined above. Licensees are responsible for applying to have individuals named on their radioactive materials licenses as ANPs. Therefore, the impact on a person, as defined above, is minimal. The proposed rule changes will impact a person only if the person is board certified by an approved specialty board and is being added to a radioactive materials license as an ANP. The potential

impact for a person would involve the amount of time it would take the person to locate their copy of the written attestation statement they were given upon completion of their training and providing a copy of the attestation statement to the licensee. If it is assumed that the person was paid for the time to gather his attestation statement, bring it to the licensee's facility, make a copy of the statement on the licensee's equipment and provide the copy to the licensee, the person could experience an indirect fiscal benefit worth about \$30. This would be a one-time benefit for the person. If the person was to be added to a different radioactive materials license as an ANP in the future after the initial application has been approved, a different pathway for qualification as an ANP would be used and this benefit would not be available.

COMPLIANCE COSTS FOR AFFECTED PERSONS: These proposed rule changes do not result in additional compliance costs for affected persons other than those stated above.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Since the proposed changes to the labeling requirements do not require changes to the current labels or labeling procedures used by radiopharmacy licensees for radioactive drugs that are manufactured or prepared and distributed to other medical use licensees for use under Rule R313-32, this portion of the rule change has no direct or indirect fiscal impact for the affected entities. The other portion of the proposed rule change will only impact a licensee if a new board certified individual is to be added to the licensee's radioactive materials license. There are a number of conditions that would need to be met before this proposed rule change would apply to a licensee or the state agency that would review the qualifications of the proposed ANP. Because all of the conditions would have to be met at the same time for the rule to be applicable, it is highly unlikely that the proposed rule would be applied in the next few years. If the conditions were all met it would be unlikely that more than one ANP would be replaced. Therefore, the potential direct fiscal benefits would be minimal for the savings that would result from not being required to submit a written attestation statement with an application for a new ANP.

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

ENVIRONMENTAL QUALITY
WASTE MANAGEMENT AND RADIATION
CONTROL, RADIATION
SECOND FLOOR
195 N 1950 W
SALT LAKE CITY, UT 84116-4880
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Gwyn Galloway by phone at 801-536-4258, by FAX at 801-533-4097, or by Internet E-mail at ggalloway@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2019

THIS RULE MAY BECOME EFFECTIVE ON: 08/09/2019

AUTHORIZED BY: Ty Howard, Director

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2020	FY 2021	FY 2022
State Government	\$0.75	\$0.75	\$0.75
Local Government	\$0	\$0	\$0
Small Businesses	\$0.75	\$0.75	\$0.75
Non-Small Businesses	\$0	\$0	\$0
Other Person	\$0	\$0	\$0
Total Fiscal Costs:	\$1.50	\$1.50	\$1.50
Fiscal Benefits			
State Government	\$100	\$100	\$100
Local Government	\$0	\$0	\$0
Small Businesses	\$55	\$55	\$55
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits:	\$155	\$155	\$155
Net Fiscal Benefits:	\$153.50	\$153.50	\$153.50

*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 proposed rule changes are not expected to have any fiscal impact on non-small businesses revenues or expenditures, because there are

only two radioactive materials licensees that are affected by the proposed rule changes and neither licensee is a "Non-Small Business" entity. Two licensees are considered to be a state agencies and the other is a small business entity (NAICS 325412). There are also no manufacturers of medical devices affected by the proposed rule that operate in the state of Utah. Therefore, there are no non-small business entities that are affected by these proposed rule changes.

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

R313. Environmental Quality, Waste Management and Radiation Control, Radiation.

R313-22. Specific Licenses.

R313-22-75. Special Requirements for a Specific License to Manufacture, Assemble, Repair, or Distribute Commodities, Products, or Devices Which Contain Radioactive Material.

(1) Licensing the introduction of radioactive material in exempt concentrations into products or materials, and transfer of ownership or possession of the products and materials.

(a) The authority to introduce radioactive material in exempt concentrations into equipment, devices, commodities or other products may be obtained only from the Nuclear Regulatory Commission, Washington, D.C. 20555; and

(b) The manufacturer, processor or producer of equipment, devices, commodities or other products containing exempt concentrations of radioactive materials may obtain the authority to transfer possession or control of the equipment, devices, commodities, or other products containing exempt concentrations to persons who are exempt from regulatory requirements only from the Nuclear Regulatory Commission, Washington, D.C. 20555.

(2) Licensing the distribution of radioactive material in exempt quantities. Authority to transfer possession or control by the manufacturer, processor or producer of equipment, devices, commodities or other products containing byproduct material whose subsequent possession, use, transfer, and disposal by other persons who are exempted from regulatory requirements may be obtained only from the Nuclear Regulatory Commission, Washington, D.C. 20555.

(3) Reserved

(4) Licensing the manufacture and distribution of devices to persons generally licensed under Subsection R313-21-22(4).

(a) An application for a specific license to manufacture or distribute devices containing radioactive material, excluding special nuclear material, to persons generally licensed under Subsection R313-21-22(4) or equivalent regulations of the Nuclear Regulatory Commission, an Agreement State or a Licensing State will be approved if:

(i) the applicant satisfies the general requirements of Section R313-22-33;

(ii) the applicant submits sufficient information relating to the design, manufacture, prototype testing, quality control, labels, proposed uses, installation, servicing, leak testing, operating and safety instructions, and potential hazards of the device to provide reasonable assurance that:

(A) the device can be safely operated by persons not having training in radiological protection,

(B) under ordinary conditions of handling, storage and use of the device, the radioactive material contained in the device will not be released or inadvertently removed from the device, and

it is unlikely that a person will receive in one year, a dose in excess of ten percent of the annual limits specified in Subsection R313-15-201(1), and

(C) under accident conditions, such as fire and explosion, associated with handling, storage and use of the device, it is unlikely that a person would receive an external radiation dose or dose commitment in excess of the following organ doses:

TABLE

Whole body; head and trunk; gonads; or lens of eye	active blood-forming organs; 150.0 mSv (15 rems)
Hands and forearms; feet and ankles; localized areas of skin averaged over areas no larger than one square centimeter	2.0 Sv (200 rems)
Other organs	500.0 mSv (50 rems); and

(iii) each device bears a durable, legible, clearly visible label or labels approved by the Director, which contain in a clearly identified and separate statement:

(A) instructions and precautions necessary to assure safe installation, operation and servicing of the device; documents such as operating and service manuals may be identified in the label and used to provide this information,

(B) the requirement, or lack of requirement, for leak testing, or for testing an "on-off" mechanism and indicator, including the maximum time interval for testing, and the identification of radioactive material by radionuclide, quantity of radioactivity, and date of determination of the quantity, and

(C) the information called for in one of the following statements, as appropriate, in the same or substantially similar form:

(I) "The receipt, possession, use and transfer of this device, Model No., Serial No., are subject to a general license or the equivalent, and the regulations of the Nuclear Regulatory Commission or a state with which the Nuclear Regulatory Commission has entered into an agreement for the exercise of regulatory authority. This label shall be maintained on the device in a legible condition. Removal of this label is prohibited." The label shall be printed with the words "CAUTION - RADIOACTIVE MATERIAL" and the name of the manufacturer or distributor shall appear on the label. The model, serial number, and name of the manufacturer or distributor may be omitted from this label provided the information is elsewhere specified in labeling affixed to the device.

(II) "The receipt, possession, use and transfer of this device, Model No., Serial No., are subject to a general license or the equivalent, and the regulations of a Licensing State. This label shall be maintained on the device in a legible condition. Removal of this label is prohibited." The label shall be printed with the words "CAUTION - RADIOACTIVE MATERIAL" and the name of the manufacturer or distributor shall appear on the label. The model, serial number, and name of the manufacturer or distributor may be omitted from this label provided the information is elsewhere specified in labeling affixed to the device.

(iv) Each device having a separable source housing that provides the primary shielding for the source also bears, on the

source housing, a durable label containing the device model number and serial number, the isotope and quantity, the words, "Caution-Radioactive Material," the radiation symbol described in Section R313-15-901, and the name of the manufacturer or initial distributor.

(v) Each device meeting the criteria of Subsection R313-21-22(4)(c)(xiii)(A), bears a permanent label, for example, embossed, etched, stamped, or engraved, affixed to the source housing if separable, or the device if the source housing is not separable, that includes the words, "Caution-Radioactive Material," and, if practicable, the radiation symbol described in Section R313-15-901.

(vi) The device has been registered in the Sealed Source and Device Registry.

(b) In the event the applicant desires that the device be required to be tested at intervals longer than six months, either for proper operation of the "on-off" mechanism and indicator, if any, or for leakage of radioactive material or for both, the applicant shall include in the application sufficient information to demonstrate that a longer interval is justified by performance characteristics of the device or similar devices and by design features which have a significant bearing on the probability or consequences of leakage of radioactive material from the device or failure of the "on-off" mechanism and indicator. In determining the acceptable interval for the test for leakage of radioactive material, the Director will consider information which includes, but is not limited to:

- (i) primary containment, or source capsule;
- (ii) protection of primary containment;
- (iii) method of sealing containment;
- (iv) containment construction materials;
- (v) form of contained radioactive material;
- (vi) maximum temperature withstood during prototype tests;

(vii) maximum pressure withstood during prototype tests;

(viii) maximum quantity of contained radioactive material;

(ix) radiotoxicity of contained radioactive material; and

(x) operating experience with identical devices or similarly designed and constructed devices.

(c) In the event the applicant desires that the general licensee under Subsection R313-21-22(4), or under equivalent regulations of the Nuclear Regulatory Commission, an Agreement State or a Licensing State be authorized to install the device, collect the sample to be analyzed by a specific licensee for leakage of radioactive material, service the device, test the "on-off" mechanism and indicator, or remove the device from installation, the applicant shall include in the application written instructions to be followed by the general licensee, estimated calendar quarter doses associated with this activity or activities, and basis for these estimates. The submitted information shall demonstrate that performance of this activity or activities by an individual untrained in radiological protection, in addition to other handling, storage, and use of devices under the general license, is unlikely to cause that individual to receive a dose in excess of ten percent of the annual limits specified in Subsection R313-15-201(1).

(d)(i) If a device containing radioactive material is to be transferred for use under the general license contained in Subsection R313-21-22(4), each person that is licensed under Subsection R313-22-75(4) shall provide the information specified in Subsections

R313-22-75(4)(d)(i)(A) through (E) to each person to whom a device is to be transferred. This information must be provided before the device may be transferred. In the case of a transfer through an intermediate person, the information must also be provided to the intended user prior to initial transfer to the intermediate person. The required information includes:

(A) a copy of the general license contained in Subsection R313-21-22(4); if Subsections R313-21-22(4)(c)(ii) through (iv) or R313-21-22(4)(c)(xiii) do not apply to the particular device, those paragraphs may be omitted;

(B) a copy of Sections R313-12-51, R313-15-1201, and R313-15-1202;

(C) a list of services that can only be performed by a specific licensee;

(D) Information on acceptable disposal options including estimated costs of disposal; and

(E) An indication that the Director's policy is to issue civil penalties for improper disposal.

(ii) If radioactive material is to be transferred in a device for use under an equivalent general license of the Nuclear Regulatory Commission, an Agreement State, or Licensing State, each person that is licensed under Subsection R313-22-75(4) shall provide the information specified in Subsections R313-22-75(4)(d)(ii)(A) through (D) to each person to whom a device is to be transferred. This information must be provided before the device may be transferred. In the case of a transfer through an intermediate person, the information must also be provided to the intended user prior to initial transfer to the intermediate person. The required information includes:

(A) A copy of an Agreement State's or Licensing State's regulations equivalent to Sections R313-12-51, R313-15-1201, R313-15-1202, and Subsection R313-21-22(4) or a copy of 10 CFR 31.5, 10 CFR 31.2, 10 CFR 30.51, 10 CFR 20.2201, and 10 CFR 20.2202. If a copy of the Nuclear Regulatory Commission regulations is provided to a prospective general licensee in lieu of the Agreement State's or Licensing State's regulations, it shall be accompanied by a note explaining that use of the device is regulated by the Agreement State or Licensing State; if certain paragraphs of the regulations do not apply to the particular device, those paragraphs may be omitted;

(B) A list of services that can only be performed by a specific licensee;

(C) Information on acceptable disposal options including estimated costs of disposal; and

(D) The name or title, address, and phone number of the contact at the Nuclear Regulatory Commission, Agreement State, or Licensing State from which additional information may be obtained.

(iii) An alternative approach to informing customers may be proposed by the licensee for approval by the Director.

(iv) Each device that is transferred after February 19, 2002 must meet the labeling requirements in Subsection R313-22-75(4)(a)(iii).

(v) If a notification of bankruptcy has been made under Section R313-19-34 or the license is to be terminated, each person licensed under Subsection R313-22-75(4) shall provide, upon request, to the Director, the Nuclear Regulatory Commission, or an appropriate Agreement State or Licensing State, records of final disposition required under Subsection R313-22-75(4)(d)(vii)(H).

(vi) Each person licensed under Subsection R313-22-75(4) to initially transfer devices to generally licensed persons shall comply with the requirements of Subsections R313-22-75(4)(d)(vi) and (vii).

(A) The person shall report all transfers of devices to persons for use under the general license under Subsection R313-21-22(4) and all receipts of devices from persons licensed under Subsection R313-21-22(4) to the Director. The report must be submitted on a quarterly basis on Form 653, "Transfers of Industrial Devices Report" as prescribed by the Nuclear Regulatory Commission, or in a clear and legible report containing all of the data required by the form.

(B) The required information for transfers to general licensees includes:

(I) The identity of each general licensee by name and mailing address for the location of use; if there is no mailing address for the location of use, an alternative address for the general licensee shall be submitted along with information on the actual location of use.

(II) The name, title, and phone number of the person identified by the general licensee as having knowledge of and authority to take required actions to ensure compliance with the appropriate regulations and requirements;

(III) The date of transfer;

(IV) The type, model number, and serial number of device transferred; and

(V) The quantity and type of radioactive material contained in the device.

(C) If one or more intermediate persons will temporarily possess the device at the intended place of use before its possession by the user, the report must include the same information for both the intended user and each intermediate person, and clearly designate the intermediate persons.

(D) For devices received from a Subsection R313-21-22(4) general licensee, the report must include the identity of the general licensee by name and address, the type, model number, and serial number of the device received, the date of receipt, and, in the case of devices not initially transferred by the reporting licensee, the name of the manufacturer or initial transferor.

(E) If the licensee makes changes to a device possessed by a Subsection R313-21-22(4) general licensee, such that the label must be changed to update required information, the report must identify the general licensee, the device, and the changes to information on the device label.

(F) The report must cover each calendar quarter, must be filed within 30 days of the end of the calendar quarter, and must clearly indicate the period covered by the report.

(G) The report must clearly identify the specific licensee submitting the report and include the license number of the specific licensee.

(H) If no transfers have been made to or from persons generally licensed under Subsection R313-21-22(4) during the reporting period, the report must so indicate.

(vii) The person shall report all transfers of devices to persons for use under a general license in the Nuclear Regulatory Commission's, an Agreement State's, or Licensing State's regulations that are equivalent to Subsection R313-21-22(4) and all receipts of devices from general licensees in the Nuclear Regulatory Commission's, Agreement State's, or Licensing State's jurisdiction

to the Nuclear Regulatory Commission, or to the responsible Agreement State or Licensing State agency. The report must be submitted on Form 653, "Transfers of Industrial Devices Report" as prescribed by the Nuclear Regulatory Commission, or in a clear and legible report containing all of the data required by the form.

(A) The required information for transfers to general licensee includes:

(I) The identity of each general licensee by name and mailing address for the location of use; if there is no mailing address for the location of use, an alternative address for the general licensee shall be submitted along with information on the actual location of use.

(II) The name, title, and phone number of the person identified by the general licensee as having knowledge of and authority to take required actions to ensure compliance with the appropriate regulations and requirements;

(III) The date of transfer;

(IV) The type, model number, and serial number of the device transferred; and

(V) The quantity and type of radioactive material contained in the device.

(B) If one or more intermediate persons will temporarily possess the device at the intended place of use before its possession by the user, the report must include the same information for both the intended user and each intermediate person, and clearly designate the intermediate persons.

(C) For devices received from a general licensee, the report must include the identity of the general licensee by name and address, the type, model number, and serial number of the device received, the date of receipt, and, in the case of devices not initially transferred by the reporting licensee, the name of the manufacturer or initial transferor.

(D) If the licensee makes changes to a device possessed by a general licensee, such that the label must be changed to update required information, the report must identify the general licensee, the device, and the changes to information on the device label.

(E) The report must cover each calendar quarter, must be filed within 30 days of the end of the calendar quarter, and must clearly indicate the period covered by the report.

(F) The report must clearly identify the specific licensee submitting the report and must include the license number of the specific licensee.

(G) If no transfers have been made to or from a Nuclear Regulatory Commission licensee, or to or from a particular Agreement State or Licensing State licensee during the reporting period, this information shall be reported to the Nuclear Regulatory Commission or the responsible Agreement State or Licensing State agency upon request of the agency.

(H) The person shall maintain all information concerning transfers and receipts of devices that supports the reports required by Subsection R313-22-75(4)(d)(vii). Records required by Subsection R313-22-75(4)(d)(vii)(H) must be maintained for a period of three years following the date of the recorded event.

(5) Special requirements for the manufacture, assembly or repair of luminous safety devices for use in aircraft. An application for a specific license to manufacture, assemble or repair luminous safety devices containing tritium or promethium-147 for use in aircraft for distribution to persons generally licensed under Subsection R313-21-22(5) will be approved if:

(a) the applicant satisfies the general requirements of Section R313-22-33; and

(b) the applicant satisfies the requirements of 10 CFR 32.53 through 32.56 (2015) or their equivalent.

(6) Special requirements for license to manufacture or initially transfer calibration sources containing americium-241, plutonium or radium-226 for distribution to persons generally licensed under Subsection R313-21-22(7). An application for a specific license to manufacture calibration and reference sources containing americium-241, plutonium or radium-226 to persons generally licensed under Subsection R313-21-22(7) will be approved if:

(a) the applicant satisfies the general requirements of Section R313-22-33; and

(b) the applicant satisfies the requirements of 10 CFR 32.57 through 32.59, and 10 CFR 70.39 (2015), or their equivalent.

(7) Manufacture and distribution of radioactive material for certain in vitro clinical or laboratory testing under general license. An application for a specific license to manufacture or distribute radioactive material for use under the general license of Subsection R313-21-22(9) will be approved if:

(a) the applicant satisfies the general requirements specified in Section R313-22-33;

(b) the radioactive material is to be prepared for distribution in prepackaged units of:

(i) iodine-125 in units not exceeding 370 kilobecquerel (ten uCi) each;

(ii) iodine-131 in units not exceeding 370 kilobecquerel (ten uCi) each;

(iii) carbon-14 in units not exceeding 370 kilobecquerel (ten uCi) each;

(iv) hydrogen-3 (tritium) in units not exceeding 1.85 megabecquerel (50 uCi) each;

(v) iron-59 in units not exceeding 740.0 kilobecquerel (20 uCi) each;

(vi) cobalt-57 in units not exceeding 370 kilobecquerel (ten uCi) each;

(vii) selenium-75 in units not exceeding 370 kilobecquerel (ten uCi) each; or

(viii) mock iodine-125 in units not exceeding 1.85 kilobecquerel (0.05 uCi) of iodine-129 and 1.85 kilobecquerel (0.05 uCi) of americium-241 each;

(c) prepackaged units bear a durable, clearly visible label:

(i) identifying the radioactive contents as to chemical form and radionuclide, and indicating that the amount of radioactivity does not exceed 370 kilobecquerel (ten uCi) of iodine-125, iodine-131, carbon-14, cobalt-57, or selenium-75; 1.85 megabecquerel (50 uCi) of hydrogen-3 (tritium); 740.0 kilobecquerel (20 uCi) of iron-59; or Mock Iodine-125 in units not exceeding 1.85 kilobecquerel (0.05 uCi) of iodine-129 and 1.85 kilobecquerel (0.05 uCi) of americium-241 each; and

(ii) displaying the radiation caution symbol described in Section R313-15-901 and the words, "CAUTION, RADIOACTIVE MATERIAL", and "Not for Internal or External Use in Humans or Animals";

(d) one of the following statements, as appropriate, or a substantially similar statement which contains the information called for in one of the following statements, appears on a label

affixed to each prepackaged unit or appears in a leaflet or brochure which accompanies the package:

(i) "This radioactive material shall be received, acquired, possessed and used only by physicians, veterinarians, clinical laboratories or hospitals and only for in vitro clinical or laboratory tests not involving internal or external administration of the material, or the radiation therefrom, to human beings or animals. Its receipt, acquisition, possession, use and transfer are subject to the regulations and a general license of the Nuclear Regulatory Commission or of a state with which the Nuclear Regulatory Commission has entered into an agreement for the exercise of regulatory authority.

.....
Name of Manufacturer"

(ii) "This radioactive material shall be received, acquired, possessed and used only by physicians, veterinarians, clinical laboratories or hospitals and only for in vitro clinical or laboratory tests not involving internal or external administration of the material, or the radiation therefrom, to human beings or animals. Its receipt, acquisition, possession, use and transfer are subject to the regulations and a general license of a Licensing State.

.....
Name of Manufacturer"

(e) the label affixed to the unit, or the leaflet or brochure which accompanies the package, contains adequate information as to the precautions to be observed in handling and storing radioactive material. In the case of the Mock Iodine-125 reference or calibration source, the information accompanying the source shall also contain directions to the licensee regarding the waste disposal requirements set out in Section R313-15-1001.

(8) Licensing the manufacture and distribution of ice detection devices. An application for a specific license to manufacture and distribute ice detection devices to persons generally licensed under Subsection R313-21-22(10) will be approved if:

(a) the applicant satisfies the general requirements of Section R313-22-33; and

(b) the criteria of 10 CFR 32.61, 32.62, 2015 ed. are met.

(9) Manufacture, preparation, or transfer for commercial distribution of radioactive drugs containing radioactive material for medical use under R313-32.

(a) An application for a specific license to manufacture and distribute radiopharmaceuticals containing radioactive material for use by persons licensed pursuant to Rule R313-32 will be approved if:

(i) the applicant satisfies the general requirements specified in Section R313-22-33;

(ii) the applicant submits evidence that the applicant is at least one of the following:

(A) registered with the U.S. Food and Drug Administration (FDA) as the owner or operator of a drug establishment that engages in the manufacture, preparation, propagation, compounding, or processing of a drug under 21 CFR 207.20(a);

(B) registered or licensed with a state agency as a drug manufacturer;

(C) licensed as a pharmacy by a State Board of Pharmacy; or

(D) operating as a nuclear pharmacy within a medical institution; or

(E) registered with a State Agency as a Positron Emission Tomography (PET) drug production facility.

(iii) the applicant submits information on the radionuclide; the chemical and physical form; the maximum activity per vial, syringe, generator, or other container of the radioactive drug; and the shielding provided by the packaging to show it is appropriate for the safe handling and storage of the radioactive drugs by medical use licensees; and

(iv) the applicant ~~satisfies~~ commits to the following labeling requirements:

(A) A label is affixed to each transport radiation shield, whether it is constructed of lead, glass, plastic, or other material, of a radioactive drug to be transferred for commercial distribution. The label must include the radiation symbol and the words "CAUTION, RADIOACTIVE MATERIAL" or "DANGER, RADIOACTIVE MATERIAL"; the name of the radioactive drug or its abbreviation; and the quantity of radioactivity at a specified date and time. For radioactive drugs with a half life greater than 100 days, the time may be omitted.

(B) A label is affixed to each syringe, vial, or other container used to hold a radioactive drug to be transferred for commercial distribution. The label must include the radiation symbol and the words "CAUTION, RADIOACTIVE MATERIAL" or "DANGER, RADIOACTIVE MATERIAL" and an identifier that ensures that the syringe, vial, or other container can be correlated with the information on the transport radiation shield label.

(b) A licensee described by Subsections R313-22-75(9)(a)(ii)(C) or (D):

(i) May prepare radioactive drugs for medical use, as defined in Rule R313-32 (incorporating 10 CFR 35.2 by reference), provided that the radioactive drug is prepared by either an authorized nuclear pharmacist, as specified in Subsections R313-22-75(9)(b)(ii) and (iv), or an individual under the supervision of an authorized nuclear pharmacist as specified in Rule R313-32 (incorporating 10 CFR 35.27 by reference).

(ii) May allow a pharmacist to work as an authorized nuclear pharmacist if:

(A) this individual qualifies as an authorized nuclear pharmacist as defined in Rule R313-32 (incorporating 10 CFR 35.2 by reference);

(B) this individual meets the requirements specified in Rule R313-32 (incorporating 10 CFR 35.55(b) and 10 CFR 35.59 by reference) and the licensee has received an approved license amendment identifying this individual as an authorized nuclear pharmacist; or

(C) this individual is designated as an authorized nuclear pharmacist in accordance with Subsection R313-22-75(9)(b)(iv).

(iii) The actions authorized in Subsections R313-22-75(9)(b)(i) and (ii) are permitted in spite of more restrictive language in license conditions.

(iv) May designate a pharmacist, as defined in Rule R313-32 (incorporating 10 CFR 35.2 by reference), as an authorized nuclear pharmacist if:

(A) The individual was a nuclear pharmacist preparing only radioactive drugs containing accelerator produced radioactive material, and

(B) The individual practiced at a pharmacy at a Government agency or Federally recognized Indian Tribe before November 30, 2007, or at all other pharmacies before August 8, 2009, or an earlier date as noticed by the NRC.

(v) Shall provide to the Director:

(A) a copy of each individual's certification by a specialty board whose certification process has been recognized by the Nuclear Regulatory Commission or Agreement State as specified in Rule R313-32 (incorporating 10 CFR 35.55(a) by reference) ~~with the written attestation signed by a preceptor as required by Rule R313-32 (incorporating 10 CFR 35.55(b)(2) by reference)~~; or

(B) the Nuclear Regulatory Commission or Agreement State license; or

(C) the permit issued by a licensee or Commission master materials permittee of broad scope or the authorization from a commercial nuclear pharmacy authorized to list its own authorized nuclear pharmacist; or

(D) the permit issued by a U.S. Nuclear Commission master materials licensee; or

(E) documentation that only accelerator produced radioactive materials were used in the practice of nuclear pharmacy at a Government agency or Federally recognized Indian Tribe before November 30, 2007 or at all other locations of use before August 8, 2009, or an earlier date as noticed by the NRC; and

(F) a copy of the state pharmacy licensure or registration, no later than 30 days after the date that the licensee allows, pursuant to Subsections R313-22-75(9)(b)(ii)(A) and R313-22-75(9)(b)(ii)(C), the individual to work as an authorized nuclear pharmacist.

(c) A licensee shall possess and use instrumentation to measure the radioactivity of radioactive drugs. The licensee shall have procedures for use of the instrumentation. The licensee shall measure, by direct measurement or by combination of measurements and calculations, the amount of radioactivity in dosages of alpha-, beta-, or photon-emitting radioactive drugs prior to transfer for commercial distribution. In addition, the licensee shall:

(i) perform tests before initial use, periodically, and following repair, on each instrument for accuracy, linearity, and geometry dependence, as appropriate for the use of the instrument; and make adjustments when necessary; and

(ii) check each instrument for constancy and proper operation at the beginning of each day of use.

(d) A licensee shall satisfy the labeling requirements in R313-22-75(9)(a)(iv).

~~([d]e)~~ Nothing in Subsection R313-22-75(9) relieves the licensee from complying with applicable FDA, or Federal, and State requirements governing radioactive drugs.

(10) Manufacture and distribution of sources or devices containing radioactive material for medical use. An application for a specific license to manufacture and distribute sources and devices containing radioactive material to persons licensed under Rule R313-32 for use as a calibration, transmission, or reference source or for the uses listed in Rule R313-32 (incorporating 10 CFR 35.400, 10 CFR 35.500, 10 CFR 35.600, and 35.1000 by reference) will be approved if:

(a) the applicant satisfies the general requirements in Section R313-22-33;

(b) the applicant submits sufficient information regarding each type of source or device pertinent to an evaluation of its radiation safety, including:

(i) the radioactive material contained, its chemical and physical form and amount,

(ii) details of design and construction of the source or device,

(iii) procedures for, and results of, prototype tests to demonstrate that the source or device will maintain its integrity under stresses likely to be encountered in normal use and accidents,

(iv) for devices containing radioactive material, the radiation profile of a prototype device,

(v) details of quality control procedures to assure that production sources and devices meet the standards of the design and prototype tests,

(vi) procedures and standards for calibrating sources and devices,

(vii) legend and methods for labeling sources and devices as to their radioactive content, and

(viii) instructions for handling and storing the source or device from the radiation safety standpoint, these instructions are to be included on a durable label attached to the source or device or attached to a permanent storage container for the source or device; provided that instructions which are too lengthy for a label may be summarized on the label and printed in detail on a brochure which is referenced on the label;

(c) the label affixed to the source or device, or to the permanent storage container for the source or device, contains information on the radionuclide, quantity and date of assay, and a statement that the source or device is licensed by the Director for distribution to persons licensed pursuant to Rule R313-32 (incorporating 10 CFR 35.18, 10 CFR 35.400, 10 CFR 35.500, and 10 CFR 35.600 by reference) or under equivalent regulations of the Nuclear Regulatory Commission, an Agreement State or a Licensing State; provided that labeling for sources which do not require long term storage may be on a leaflet or brochure which accompanies the source;

(d) the source or device has been registered in the Sealed Source and Device Registry.

(e) in the event the applicant desires that the source or device be required to be tested for leakage of radioactive material at intervals longer than six months, the applicant shall include in the application sufficient information to demonstrate that a longer interval is justified by performance characteristics of the source or device or similar sources or devices and by design features that have a significant bearing on the probability or consequences of leakage of radioactive material from the source; and

(f) in determining the acceptable interval for test of leakage of radioactive material, the Director shall consider information that includes, but is not limited to:

(i) primary containment or source capsule,

(ii) protection of primary containment,

(iii) method of sealing containment,

(iv) containment construction materials,

(v) form of contained radioactive material,

(vi) maximum temperature withstood during prototype tests,

(vii) maximum pressure withstood during prototype tests,

(viii) maximum quantity of contained radioactive material,

(ix) radiotoxicity of contained radioactive material, and

(x) operating experience with identical sources or devices or similarly designed and constructed sources or devices.

(11) Requirements for license to manufacture and distribute industrial products containing depleted uranium for mass-volume applications.

(a) An application for a specific license to manufacture industrial products and devices containing depleted uranium for use pursuant to Subsection R313-21-21(7) or equivalent regulations of the Nuclear Regulatory Commission or an Agreement State will be approved if:

(i) the applicant satisfies the general requirements specified in Section R313-22-33;

(ii) the applicant submits sufficient information relating to the design, manufacture, prototype testing, quality control procedures, labeling or marking, proposed uses and potential hazards of the industrial product or device to provide reasonable assurance that possession, use or transfer of the depleted uranium in the product or device is not likely to cause an individual to receive a radiation dose in excess of ten percent of the annual limits specified in Subsection R313-15-201(1); and

(iii) the applicant submits sufficient information regarding the industrial product or device and the presence of depleted uranium for a mass-volume application in the product or device to provide reasonable assurance that unique benefits will accrue to the public because of the usefulness of the product or device.

(b) In the case of an industrial product or device whose unique benefits are questionable, the Director will approve an application for a specific license under Subsection R313-22-75(11) only if the product or device is found to combine a high degree of utility and low probability of uncontrolled disposal and dispersal of significant quantities of depleted uranium into the environment.

(c) The Director may deny an application for a specific license under Subsection R313-22-75(11) if the end use of the industrial product or device cannot be reasonably foreseen.

(d) Persons licensed pursuant to Subsection R313-22-75(11)(a) shall:

(i) maintain the level of quality control required by the license in the manufacture of the industrial product or device, and in the installation of the depleted uranium into the product or device;

(ii) label or mark each unit to:

(A) identify the manufacturer of the product or device and the number of the license under which the product or device was manufactured, the fact that the product or device contains depleted uranium, and the quantity of depleted uranium in each product or device; and

(B) state that the receipt, possession, use and transfer of the product or device are subject to a general license or the equivalent and the regulations of the Nuclear Regulatory Commission or an Agreement State;

(iii) assure that the uranium before being installed in each product or device has been impressed with the following legend clearly legible through a plating or other covering: "Depleted Uranium";

(iv) furnish to each person to whom depleted uranium in a product or device is transferred for use pursuant to the general license contained in Subsection R313-21-21(5) or its equivalent:

(A) a copy of the general license contained in Subsection R313-21-21(7) and a copy of form DWMRC-12; or

(B) a copy of the general license contained in the Nuclear Regulatory Commission's or Agreement State's regulation equivalent to Subsection R313-21-21(7) and a copy of the Nuclear Regulatory Commission's or Agreement State's certificate, or alternatively, furnish a copy of the general license contained in Subsection R313-21-21(7) and a copy of form DWMRC-12 with a note explaining that use of the product or device is regulated by the Nuclear Regulatory Commission or an Agreement State under requirements substantially the same as those in Subsection R313-21-21(7);

(v) report to the Director all transfers of industrial products or devices to persons for use under the general license in Subsection R313-21-21(7). The report shall identify each general licensee by name and address, an individual by name or position who may constitute a point of contact between the Director and the general licensee, the type and model number of device transferred, and the quantity of depleted uranium contained in the product or device. The report shall be submitted within thirty days after the end of the calendar quarter in which the product or device is transferred to the generally licensed person. If no transfers have been made to persons generally licensed under Subsection R313-21-21(7) during the reporting period, the report shall so indicate;

(vi) provide certain other reports as follows:

(A) report to the Nuclear Regulatory Commission all transfers of industrial products or devices to persons for use under the Nuclear Regulatory Commission general license in 10 CFR 40.25 (2010);

(B) report to the responsible state agency all transfers of devices manufactured and distributed pursuant to Subsection R313-22-75(11) for use under a general license in that state's regulations equivalent to Subsection R313-21-21(7);

(C) reports shall identify each general licensee by name and address, an individual by name or position who may constitute a point of contact between the agency and the general licensee, the type and model number of the device transferred, and the quantity of depleted uranium contained in the product or device. The report shall be submitted within thirty days after the end of each calendar quarter in which a product or device is transferred to the generally licensed person;

(D) if no transfers have been made to Nuclear Regulatory Commission licensees during the reporting period, this information shall be reported to the Nuclear Regulatory Commission, and

(E) if no transfers have been made to general licensees within a particular Agreement State during the reporting period, this information shall be reported to the responsible Agreement State agency upon the request of that agency; and

(vii) records shall be kept showing the name, address and point of contact for each general licensee to whom the person transfers depleted uranium in industrial products or devices for use pursuant to the general license provided in Subsection R313-21-21(7) or equivalent regulations of the Nuclear Regulatory Commission or an Agreement State. The records shall be maintained for a period of two years and shall show the date of each transfer, the quantity of depleted uranium in the product or device

transferred, and compliance with the report requirements of Subsection R313-22-75(11).

KEY: specific licenses, decommissioning, broad scope, radioactive materials

Date of Enactment or Last Substantive Amendment: [~~October 13, 2017~~]2019

Notice of Continuation: July 1, 2016

Authorizing, and Implemented or Interpreted Law: 19-3-104; 19-6-104

Environmental Quality, Waste Management and Radiation Control, Radiation **R313-32** Medical Use of Radioactive Material

NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 43812

FILED: 06/14/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of these rule changes are to update the medical use of radioactive material requirements which were last updated in their entirety in 2002. The proposed changes address technological advances, changes to medical procedures, and enhance patient safety. The changes are proposed in order to maintain compatibility with U.S. Nuclear Regulatory Commission (NRC) requirements. To maintain authority to regulate certain licensed radioactive materials in the state of Utah, the state must maintain rules that are compatible with NRC requirements. Recent changes to 10 CFR Part 35 and related NRC requirements were adopted by the NRC and published in the 07/16/2018 Federal Register (83 FR 33046). These proposed rule changes maintain compatibility with the changes published for the requirements in 10 CFR Part 35 by incorporating the 2019 version of 10 CFR Part 35 by reference. An additional change is being requested to Rule R313-32 to allow licensees to hold radioactive wastes with half-lives less than 175 days to be disposed using the decay in storage method so that the materials will not be required to be disposed as low level radioactive waste.

SUMMARY OF THE RULE OR CHANGE: These proposed rule changes address the removal of the requirement for a written attestation statement from proposed authorized users who are board certified by approved specialty boards, adds the ability for licensees to have Associate Radiation Safety Officers, clarifies requirements for the use of sealed sources in diagnostic procedures, clarifies training and experience requirements for unsealed radioactive materials requiring the use of a written directive, includes additional requirements for

testing and reporting requirements for the use of generators used for obtaining specific isotopes, includes changes to the medical event requirements, and adds specific medical event reporting requirements for permanent brachytherapy implants. In addition to the above changes to adopt the NRC revisions, a change is being proposed to add a new subsection, as stated in Subsection R313-32-2(5), to include specific requirements for holding radioactive waste for "decay-in-storage" (DIS) if the radioactive material has a half-life of greater than 120 days, but less than 175 days. Currently, radioactive waste containing materials with half-lives greater than 120 days is required to be disposed as low-level radioactive waste (LLRW). Recently, a new radioactive drug using Lutetium-177 (Lu-177) was introduced into use at medical facilities in the state of Utah. It has been determined that this drug contains a very small quantity of a radioactive impurity that has a half-life of about 161 days. If the impurity is detected in the radioactive waste, the waste created from the administration of Lu-177 is required to be disposed as LLRW unless a variance from the Board is requested and approved. In anticipation of the increased use of this radioactive drug, the proposed change will allow the Director to approve an amendment for the DIS of radioactive waste containing materials with half-lives greater than 120 days but less than 175 days on a case-by-case basis. For approval, the licensee would be required to demonstrate that the waste will be secured and safely stored, that the additional waste would not exceed the licensee's storage capacity, and that the licensee will meet the survey criteria required for DIS waste with half-lives of 120 days or less.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-3-104 and Section 19-6-104

MATERIALS INCORPORATED BY REFERENCE:

- ◆ Updates 10 CFR Part 35, published by GPO, 01/01/2019

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: The following are very rough estimates of the possible costs and benefits associated with the proposed changes. The implementation of these proposed requirements is dependent on the uses of radioactive materials by each separate licensee. Licensees in the state that use radioactive materials only for diagnostic purposes may not choose or be required to implement any of the proposed changes or may choose to implement just a few of the proposed changes. Licensees using radioactive materials for the therapeutic treatment of patients will be required to implement certain of the proposed changes, but may choose not to implement other proposed changes. Since each licensee is not required to implement all of the proposed rule changes, licensees may choose to avail themselves of some of the proposed requirements that benefit licensees multiple times in a year, may not implement any of the proposed changes or may implement the proposed changes in a myriad of combinations, an estimate of the costs and benefits to licensees and state agencies is difficult to determine. However, rough estimates were made for the

proposed changes. For the rough estimates, it was assumed that the 45 medical use licensees could simplistically be separated into businesses that provide both diagnostic and therapeutic treatments with radioactive materials and those licensees that provide only diagnostic services using radioactive materials. It was also assumed that each group would use each of the proposed rule changes possibly applicable to their operations at least once in a year. As an example, it was assumed that businesses performing only diagnostic scans would have no need to add an Associate Radiation Safety Officer (ARSO) to their radioactive materials license since the types of radioactive materials used at these facilities would be limited. Also, since the requirements of Rule R313-32 (incorporating 10 CFR 35.490 or 10 CFR 35.690 by reference) apply only to the therapeutic use of radioactive materials, these requirements would not be applicable to those businesses that only provide diagnostic services. Lastly, for determining the costs or benefits associated with the proposed requirements, all estimates for the number of licensees affected by the proposed requirement was rounded up to the next whole number when calculating the number of impacted licensees. There are currently 45 licensees authorized to medically use radioactive materials pursuant to Rule R313-32. Therefore, the DWMRC provides regulatory oversight for 45 medical use licensees. Of these, four are operated by a state-owned and operated entity. One of these four licensees provides both diagnostic and therapeutic treatments for patients while the other three licensees limit their practices to diagnostic services. There are no fees associated with the proposed rule changes. The proposed rule changes will result in both direct fiscal costs and direct fiscal benefits in the form of personnel costs and savings to the state licensees. Using the NRC's regulatory impact analysis associated with the federal regulatory changes to 10 CFR Part 35 (ML16124B034, Secy-16-0080; Enclosure 2) as guidance and using the assumptions stated above, for the four licensees there may be an estimated direct fiscal cost for the implementation of these requirements of approximately \$2,963.96. In addition, the four licensees could experience an annual direct fiscal cost of approximately \$1,064.49 and a direct fiscal benefit of approximately \$2,102.45. In addition to the direct fiscal costs and benefits, the state may also experience indirect fiscal cost and benefits related to the regulatory oversight of the licensees. These costs and savings are based on personnel costs and savings and are related to the processing of requests to add authorized users and other changes to the radioactive materials licenses, as well as, responses to reports made to the state due to the proposed changes. The state will incur a one-time indirect fiscal cost of about \$6,480 to implement the proposed changes and an annual ongoing indirect fiscal cost of about \$971.10 for the regulatory oversight of the proposed changes. In addition to the stated indirect fiscal costs, the state could also experience indirect fiscal benefits of about \$3,870.00 annually. These licensees will also be impacted by the requirement proposed for the disposal of certain materials. This requirement will result in a direct benefit to the licensees; however, the benefit cannot be analyzed at this time. The radioactive material in question is from a new

medical treatment for certain cancers and it is unknown how many facilities will provide this treatment to patients or how much waste will be created from its use. Therefore, this direct fiscal benefit cannot be estimated. In total, the state may experience one-time direct fiscal implementation costs of about \$2,963.96 and experience ongoing direct fiscal costs of about \$1,064.49. Additionally, the state may experience one-time indirect fiscal implementation costs of about \$6,480 and indirect fiscal costs of about \$971.10 annually. The state may also experience direct fiscal benefits of approximately \$2,102.45 and indirect fiscal benefits of about \$3,870 annually.

◆ **LOCAL GOVERNMENTS:** These proposed rule changes are not expected to have any impact on the revenues or expenditures for local governments because it only affects government agencies at a state level. There are no radioactive material licenses for the medical use of radioactive materials issued to a local government entity. Additionally, local governments have no regulatory authority for the possession and use of radioactive materials.

◆ **SMALL BUSINESSES:** There are 12 small businesses in the state of Utah that have radioactive materials licenses authorizing the medical use of radioactive materials (NAICS # 622111). Of the 12 licensees, 5 of the licensees provide only diagnostic services to their patients. The remaining 7 licensees provide treatment for various cancers and other therapeutic treatments. There are no fees associated with the proposed rule changes. The referenced information and noted assumptions stated under the state budget answer above were also used to develop the analysis for this section. As stated above, licensees may experience both one-time and ongoing (annual) direct fiscal impacts associated with the implementation of the proposed requirements. The 5 licensees limited to providing diagnostic treatments may experience one-time direct fiscal impacts of about \$906.75 and ongoing direct fiscal impacts of about \$525.92. Additionally, these licensees may experience annual direct fiscal benefits of approximately \$1,450.80. The remaining 7 small business licensees, who provide both diagnostic and therapeutic treatments to patients, may incur direct fiscal impacts of about \$7,846.12 to implement the proposed changes and annual direct fiscal impacts of about \$1,904.18. Licensees providing both diagnostic and therapeutic services using radioactive materials may also experience direct fiscal benefits of about \$4,532.30 annually. In total, the licensees considered to be small businesses may experience one-time direct fiscal implementation costs of about \$17,846.05 and annual direct fiscal costs of about \$2,430.10. The small business licensees may also experience annual direct fiscal benefits of approximately \$5,983.10.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** It is difficult to determine how many persons as defined above will be impacted by these proposed rule changes. An individual will only be affected by the proposed rule changes regarding applications to be named on a license as an authorized user or an authorized medical physicist if the individual is board certified and has not previously been named on a radioactive materials license. This information

cannot be determined until the information is received. The NRC determined that there is about a 3% turnover rate for licensees, but this includes individuals leaving employment at one facility and beginning practice on a different license. Assuming that each licensee has approximately four unique physicians named on the license and there are eight medical physicists in the state, there are about 200 individuals named on the 45 medical licenses. If a 3% turnover is assumed, 6 of the individuals would leave employment. If those individuals are replaced by physicians that have never been named on a license, it is assumed that 30% of those individuals would be certified by one of the approved specialty boards. Therefore, it is possible that two individuals might benefit from the proposed changes to the requirements. This would be an indirect fiscal benefit in that the individuals will save the time necessary from collecting the written attestation statements that they were provided when completing their schooling and providing it to their new employer (the licensee) for the licensee to request that the individual be added to the license. It is estimated that this would save each individual about one half hour of time spent to locate the paperwork they were previously given. Therefore, each individual may experience a direct fiscal benefit of about \$64.25 or a total of about \$128.50 for both individuals. Note that this is a one-time benefit unless the individual requests to expand their radioactive material authorizations to add additional radioactive materials approvals for materials that they have not used before.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Small business licensees providing diagnostic services may incur one-time direct fiscal cost of \$181.35 and ongoing (annual) fiscal cost of about \$105.18 per licensee to implement the proposed changes. These direct fiscal costs will be offset by the potential direct fiscal benefits of about \$290.16 that may be experience by each of these licensees. Small business licensees providing both diagnostic and therapeutic services may experience one-time direct fiscal cost of about \$2,419.90 and ongoing (annual) direct fiscal cost of approximately \$272.03 per licensee. Additionally, each of these licensees may experience direct fiscal benefit of about \$647.47 per licensee. Non-small business licensees providing diagnostic services may incur one-time direct fiscal cost of \$181.35 and ongoing (annual) fiscal cost of about \$217.62 per licensee to implement the proposed changes. These direct fiscal costs may be offset by the potential direct fiscal benefit of \$435.24 that could be experienced by each of these licensees. Non-small business licensees providing both diagnostic and therapeutic services may experience one-time direct fiscal cost of about \$2,419.90 and ongoing (annual) direct fiscal cost of approximately \$285.10 per licensee. Additionally, each of these licensees could experience direct fiscal benefit of about \$560.97 per license to offset the costs associated with the proposed changes. Individuals who are approved by an authorized specialty board and work for a licensee who wishes to add the individual to the licensee's radioactive materials license may save approximately one half hour of their time to locate the written attestation statement that they

were provided upon completion of their training. Therefore, each individual may save about \$64.25.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed requirements are being adopted to remain compatible with the US Nuclear Regulatory Commission requirements and to include specific requirements for holding radioactive waste for "decay-in-storage" (DIS) if the radioactive material has a half-life of greater than 120 days but less than 175 days. Although rough estimates of the possible costs and benefits to these entities are provided above, the numbers may not be very accurate for each separate licensee. Many of the proposed changes may or may not be implemented by a licensee depending on the types of radioactive materials used. Additionally, many of the proposed requirements could be used many times within a year. For example, if the licensee is adding multiple authorized users for radioactive materials listed in Rule R313-32 (incorporating 10 CFR 35.100 by reference), the licensee may experience the possible direct fiscal benefit associated with the proposed changes for each board approved individual that is being added to their license. It is also possible that the licensee will not experience a benefit from the addition of any individual to the license if the individuals are not board certified or were previously named on another radioactive materials license. Licensees may implement the proposed changes in a myriad of combinations or may not implement any of the proposed changes. Because of this, there is a wide range of potential costs and benefits associated with the proposed changes for each licensee. The reported costs and benefits assume that each licensee would implement the proposed changes applicable to the two main categories of services provided at least once, unless the proposed changes were not applicable to the facilities within the state. For example, although the proposed changes add a requirement to test the breakthrough concentration for each eluate of a Mo-99/Tc-99m medical generator, there are no medical use licensees that possess one of these generators therefore, the costs associate with the testing of the generator were not addressed in the estimate. The possible direct fiscal benefits associated with the addition of the requirement regarding the disposal of certain radioactive waste were also not included in the estimate. The radioactive materials address by the requirement added by the DWMRC are new to the market and there is no data available for its use in Utah.

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

ENVIRONMENTAL QUALITY
 WASTE MANAGEMENT AND RADIATION
 CONTROL, RADIATION
 SECOND FLOOR
 195 N 1950 W
 SALT LAKE CITY, UT 84116-4880
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Gwyn Galloway by phone at 801-536-4258, by FAX at 801-533-4097, or by Internet E-mail at ggalloway@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2019

THIS RULE MAY BECOME EFFECTIVE ON: 08/09/2019

AUTHORIZED BY: Ty Howard, Director

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2020	FY 2021	FY 2022
State Government	\$9,443.96	\$3,166.94	\$3,166.94
Local Government	\$0	\$0	\$0
Small Businesses	\$20,276.22	\$2,430.10	\$2,430.10
Non-Small Businesses	\$65,805.97	\$8,515.89	\$8,515.89
Other Person	\$0	\$0	\$0
Total Fiscal Costs:	\$95,526.15	\$14,112.93	\$14,112.93
Fiscal Benefits			
State Government	\$5,972.45	\$5,972.45	\$5,972.45
Local Government	\$0	\$0	\$0
Small Businesses	\$5,983.10	\$5,983.10	\$5,983.10
Non-Small Businesses	\$16,819.57	\$16,819.57	\$16,819.57
Other Persons	\$128.51	\$128.51	\$128.51
Total Fiscal Benefits:	\$28,903.63	\$28,903.63	\$28,903.63
Net Fiscal Benefits:	-\$66,623	\$14,790.70	\$14,790.70

*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

There are 32 non-small business entities (NAICS #622110, NAICS # 622111) that hold radioactive materials licenses for use of radioactive materials under the provisions of Rule R313-32 and that are not owned or operated by a state agency. The implementation of these proposed requirements is dependent on the uses of radioactive materials authorized for use by each separate licensee. Those licensees that use radioactive materials only for diagnostic purposes may not implement any of the proposed changes, may implement just a few of the proposed changes or may implement all of the proposed changes that could be applicable to their operations. Licensees using radioactive materials for the therapeutic treatment of patients will be required to implement certain of the proposed changes; however, may not implement all proposed changes. Since each licensee is not required to implement all of the proposed rule changes, may avail themselves of some of the proposed requirements that benefit licensees multiple times in a year, or may choose not to implement any of the proposed changes, an estimate of the costs and benefits to licensees and state agencies is difficult to determine. However, as before, it was assumed that the 32 non-small business medical use licensees could simplistically be separated into businesses that provide therapeutic treatments with radioactive materials and those licensees that perform diagnostic scans using radioactive materials. Although it is quite unlikely, each licensee was assumed to implement all proposed changes that could apply to their operations one time each year. Therefore, the provided estimates are likely to overestimate the costs and benefits that may be experienced by the licensees. As an example, businesses performing only diagnostic scans would have no need to write, document, and implement procedures to verify the post-implant source positions within 60 days from the date that the sources were implanted since this is a therapeutic procedure. However, there are also numerous businesses that provide therapeutic services to patients that are not authorized to permanently implant the sources to which this requirement would apply.

Only nine of the 32 licensees qualifying as large businesses restrict their services to diagnostic services while the remaining 23 licensees provide both diagnostic and therapeutic services using radioactive materials. There are no fees associated with the proposed changes and no fees charged for amendments to the radioactive materials licenses. The costs and benefits for each group of licensees are direct fiscal impacts for the licensee and are based on estimated savings and costs due to personnel time that will be used or saved and the average wage for the personnel performing the task or duty delineated by the proposed change. Those licensees providing only diagnostic services may experience an initial one-time direct fiscal impact of about \$1,632.15 and ongoing direct fiscal impacts (annual) of about \$1,958.59. These licensees may also experience a direct fiscal benefit of about \$3,917.16 annually.

The remaining 23 licensees of the 32 non-small business licensees provide both diagnostic and therapeutic services using radioactive materials. These licensees may experience an initial one-time direct fiscal impact of approximately \$55,657.93 and on-going (annual) direct fiscal impact of about \$6,557.30. Additionally, these licensees may experience direct fiscal benefit of about \$12,902.41 annually. These licensees will also be impacted by the requirement proposed for the disposal of certain materials.

The impact of the requirement proposed by the DWRC that is not contained in 10 CFR Part 35 was not included in this analysis. This requirement will result in a direct benefit to the licensees; however, the benefit cannot be analyzed at this time. The radioactive material in question is from a new medical treatment for certain cancers and it is unknown how many facilities will provide this treatment to patients or how much waste will be created from its use. Therefore, this direct fiscal benefit cannot be estimated.

In total, the non-small business licensees may experience one-time direct fiscal implementation costs of about \$57,290.08 and annual direct fiscal costs of about \$8,515.89. These licensees may also experience annual direct fiscal benefit of approximately \$16,819.57.

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

R313. Environmental Quality, Waste Management and Radiation Control, Radiation.**R313-32. Medical Use of Radioactive Material.****R313-32-1. Purpose and Authority.**

(1) The purpose of this rule is to prescribe requirements and provisions for the medical use of radioactive material and for issuance of specific licenses authorizing the medical use of this material. These requirements and provisions provide for the protection of the public health and safety. The requirements and provisions of Rule R313-32 are in addition to, and not in substitution for, other sections of Title R313.

(2) The rules set forth herein are adopted pursuant to the provisions of Subsections 19-3-104(4) and 19-3-104(7).

R313-32-2. Clarifications or Exceptions.

For the purposes of Rule R313-32, 10 CFR 35.2 through 35.7; 35.10(d) through 35.10(f); 35.11(a) through 35.11(b); 35.12; and 35.13(b) through ~~35.3067~~35.3204 (~~2010~~2019) are incorporated by reference with the following clarifications or exceptions:

(1) The exclusion of the following:

(a) In 10 CFR 35.2, exclude definitions for "Address of Use," "Agreement State," "Area of Use," "Dentist," "Pharmacist," "Physician," "Podiatrist," and "Sealed Source"; ~~and~~

(b) In 10 CFR 35.19, exclude "or the common defense and security";

~~(b)(c)~~ (c) In 10 CFR 35.3067, exclude "_with a copy to the Director, Office of Nuclear Material Safety and Safeguards[-]";

(d) In 10 CFR 35.3045(d), 10 CFR 3047(d), 10 CFR 35.3067, and 10 CFR 35.3204(b), exclude "By an appropriate method listed in Sec. 30.6(a) of this chapter."

(2) The substitution of the following date references:

(a) "May 13, 2005" for "October 24, 2002"; and

(b) ["May 10, 2006" for "April 29, 2005."]"December 31, 2019" for "January 14, 2019";

(3) The substitution of the following rule references:

(a) "Rules R313-32 and R313-15" for reference to "this part and 10 CFR Part 20" in 10 CFR 35.61(a);

(b) "Rule R313-15[or]" for reference to "Part 20 of this chapter" in 10 CFR 35.70(a) and 10 CFR 35.80(a)(4);

(b)(c) "Rules R313-19 and R313-22" for reference to "Part 30 of this chapter" in 10 CFR 35.18(a)(4);

(d) "Rules R313-19 and R313-22 or equivalent Nuclear Regulatory Commission or Agreement State requirements for reference to "10 CFR Part 30 or the equivalent requirements of an Agreement State" in 10 CFR 35.49(c)[except for the reference to "Part 30 of this chapter" found in 10 CFR 35.65(d)];

(e)(c) "10 CFR Part 30" for reference to "Part 30 of this chapter" as found in 10 CFR 35.65[~~(b)~~](a)(4);

(f)(f) "Rules R313-15[and], R313-19, and R313-22" for reference to "parts 20 and 30 of this chapter" as found in 10 CFR 35.63(e)(1);

(g)(g) "Section R313-12-110" for reference to "Sec. 30.6 of this chapter" as found in 10 CFR 35.14(c).[or for reference to "Sec. 30.6(a)" or for reference to "Sec. 30.6(a) of this chapter";

(h)(h) "Section R313-15-101" for reference to "Sec. 20.1101 of this chapter" as found in 10 CFR 35.24(a);

~~(g)~~(i) "Subsection R313-15-301(1)(a)" for reference to "Sec. 20.1301(a)(1) of this chapter" as found in 10 CFR 35.310(a)(2)(i) and 10 CFR 35.410(a)(4)(i);

~~(h)~~(j) "Subsection R313-15-301(1)(c)" for reference to "Sec. 20.1301(c) of this chapter" as found in 10 CFR 35.310(a)(2)(ii) and 10 CFR 35.410(a)(4)(ii);

~~(i)~~(k) "Section R313-15-501" for reference to "Sec. 20.1501 of this chapter" as found in 10 CFR 35.652(a);

~~(j)~~(l) "Section R313-18-12" for reference to "Sec. 19.12 of this chapter" as found in 10 CFR 35.27(a)(1), 10 CFR 35.27(b)(1), 10 CFR 35.310, and 10 CFR 35.410;

~~(k)~~(m) "Rules R313-19, R313-22 and Subsection R313-22-75(10) or equivalent U.S. Nuclear Regulatory Commission or Agreement State ~~regulations~~ requirements" for reference to "10 CFR Part 30 and Sec. 32.74 of this chapter or equivalent requirements of an Agreement State[-]" as found in 10 CFR 35.65(b)49(a);

~~(l)~~(n) "Subsection R313-22-75(10) or equivalent Nuclear Regulatory Commission or Agreement State requirements" ~~[for reference to "10 CFR 32.74 of this chapter," or for reference to "Sec. 32.74 of this chapter" except for the reference to "Sec. 32.74 of this chapter" found in 10 CFR 35.65(b)]~~ for references to "Sec. 32.74 of this chapter or equivalent Agreement State regulations" found in 10 CFR 35.65(a)(1) and 10 CFR 35.65(a)(2);

~~(m)~~(o) "Rule R313-70" for reference to "Part 170 of this chapter";

~~(n)~~(p) "Subsection R313-19-34(2)" for reference to "Sec. 30.34(b) of this chapter" as found in 10 CFR 35.14(b)(4);

~~(o)~~(q) "[~~Rule~~]Section R313-22-50" for reference to "Part 33 of this chapter" in 10 CFR 35.15;

~~(p)~~(r) "Subsection R313-22-50(2)" for reference to "Sec. 33.13 of this chapter" in 10 CFR 35.12(e);

~~(q)~~(s) "Subsection R313-22-75(9)(b)(iv)" for reference to "Sec. 32.72(b)(4)" in 10 CFR 35.2 for the definition of Authorized Nuclear Pharmacist;

~~(r)~~(t) "Subsection R313-22-75(9) or equivalent Nuclear Regulatory Commission or Agreement State requirements[-, 10 CFR 32.72,-]" for reference to "Sec. 32.72 of this chapter or equivalent Agreement State requirements" as found in 10 CFR 35.63(b)(2)(i), 10 CFR 35.63(c)(3)(i), 10 CFR 35.100(a)(1), 10 CFR 35.200(a)(1), and 10 CFR 35.300(a)(1);

~~(s)~~ "Subsection R313-22-75(9)(b)(v)" for reference to "Sec. 32.72(b)(5)"

~~(t)~~ "(e)(1) or (e)(2)" for reference to "(e)(1)" in 10 CFR 35.50(d);

~~(u)~~ "35.600 or 35.1000" for reference to "35.600" in 10 CFR 35.41(b)(1); and

~~(v)~~(u) "Subsection R313-22-32(9) [-, 10 CFR 30.32(j),] or equivalent Nuclear Regulatory Commission or Agreement State requirements" for reference to "Sec. 30.32(j) of this chapter or equivalent Agreement State requirements" as found in 10 CFR 35.63(b)(2)(iii), 10 CFR 35.63(c)(3)(ii), 10 CFR 35.100(a)(2), 10 CFR 35.200(a)(2), or 10 CFR 35.300(a)(2).

(4) The substitution of the following terms:

(a) "radioactive material" for reference to "byproduct material";

(b) [~~"original" for "original and one copy";~~] "a Director, a Nuclear Regulatory Commission, or Agreement State" for reference

to "an NRC or Agreement State" in 10 CFR 35.63(b)(2)(ii), 10 CFR 35.100(c), 10 CFR 35.200(c), or 10 CFR 35.300(c);

(c) "Director is (801) 536-0200 or after hours, (801) 536-4123" for "NRC Operations Center is (301) 816-5100[954-0550]" as found in the footnote included for 10 CFR 35.3045(c);

(d) "Form DWMRC-01, 'Application for Radioactive Material License[-Application]'" for reference to "NRC Form 313, 'Application for Material License'" as found in 10 CFR 35.12(b)(1), 10 CFR 35.12(c)(1)(i) and 10 CFR 35.18(a)(1);

(e) "Form DWMRC-01" for reference to "NRC Form 313" as found in 10 CFR 35.12(c)(1)(ii);

~~(e)~~(f) "[~~State of Utah radioactive materials~~]medical use license issued by the Director" for reference to "NRC medical use license" in 10 CFR 35.6(c);

~~(f)~~(g) "[~~the~~]Director, the U.S. Nuclear Regulatory Commission, or an Agreement State" for reference to "[~~the~~] Commission or Agreement State" in 10 CFR 35.2 for the definitions of Authorized Medical Physicist (2)(i), Authorized Nuclear Pharmacist (2)(iii) and Radiation Safety Officer (2)(i), in 10 CFR 35.57(b)(1) (first instance), 10 CFR 35.57(b)(2) (first instance), 10 CFR 35.433(a)(2)(i); or for references to "[~~the~~]Commission or an Agreement State" in 10 CFR 35.2 for the definitions of Associate, Radiation Safety Officer (2)(i) and Ophthalmic Physicist (2)(i), 10 CFR 35.11(a), in 10 CFR 35.50(a), 10 CFR 35.50(a)(2)(ii)(A), 10 CFR 35.50(c)(1), 10 CFR 35.51(a), 10 CFR 35.51(a)(2)(i), 10 CFR 35.55(a), 10 CFR 35.190(a), 10 CFR 35.290(a), 10 CFR 35.390(a), 10 CFR 35.392(a), 10 CFR 35.394(a), 10 CFR 35.396(a)(3), 10 CFR 35.433(a)(2)(i), 10 CFR 35.490(a), 10 CFR 35.590(a), 10 CFR 35.605(a), 10 CFR 35.605(b), 10 CFR 35.605(c), 10 CFR 35.655(b) and 10 CFR 35.690(a);

~~(g)~~(h) "[~~an~~]Director, [~~the~~]a U.S. Nuclear Regulatory Commission, or an Agreement State" for references to "[~~a~~] Commission or Agreement State" in 10 CFR 35.2 for the definitions of Authorized Medical Physicist (2)(iii), Authorized Nuclear Pharmacist (2)(i), Authorized User (2)(i), Authorized User (2)(iii) and Ophthalmic Physicist (2)(ii), in 10 CFR 13(b)(4)(ii), 10 CFR 35.14(a)(2)(second instance), 10 CFR 35.57(a)(1)(second instance), 10 CFR 35.57(b)(1)(second instance), 10 CFR 35.57(b)(2)(second instance), 10 CFR 35.433(a)(2)(ii)(second instance); or for references to "Commission or an Agreement State" in 10 CFR 35.50(c)(2)(second instance);

~~(h)~~(i) [~~"Equivalent U.S. Nuclear Regulatory Commission or Agreement State"~~]license issued by the Director, the Nuclear Regulatory Commission, or the Agreement State" for reference to [~~"equivalent Agreement State"~~]Commission or Agreement State license" [~~as found~~]in 10 CFR 35.14(a)(2)(first instance)[63(b)(2)(i), 10 CFR 35.63(e)(3), 10 CFR 35.65(a), 10 CFR 35.100(a), 10 CFR 35.200(a), and 10 CFR 35.300(a);

~~(i)~~(j) "Director" for reference to "NRC Operations Center" in 10 CFR 35.3045(c), [~~and~~] 10 CFR 35.3047(c), and 10 CFR 35.3204(a);

(k) "license issued by the Director, the Nuclear Regulatory Commission or an Agreement State" for reference to "Commission or Agreement State license" in 10 CFR 35.13(b)(4)(i), 10 CFR 35.14(a)(2)(first instance), 10 CFR 35.50(b)(1)(ii) or for reference to "Commission or an Agreement State license" in 10 CFR 35.50(b)(1)(ii), 10 CFR 35.50(c)(2), and 10 CFR 35.57(a)(2);

~~(j) "Utah Division of Waste Management and Radiation Control" for reference to "NRC Operations Center" in Footnote 3 to 10 CFR 35.3045;~~

~~[(k)](l) "Director at the address specified in Section R313-12-110" for reference to "appropriate NRC Regional Office listed in Sec. 30.6 of this chapter" in 10 CFR 35.3045(d), 10 CFR 35.3047(d), 10 CFR 35.3067, and 10 CFR 35.3204(b);~~

~~[(h)](m) "[Utah Waste Management and Radiation Control]Board" for reference to "Commission" in 10 CFR 35.18(a)(3)(second instance) and 10 CFR 35.19;~~

~~[(n)](n) "Director" for reference to "Commission" in [40 CFR 35.10(b),] 10 CFR 35.[12(d)(2)]12(d)(4), 10 CFR 35.14(a) [(first instance)], 10 CFR 35.14(b), 10 CFR 35.18(a), 10 CFR 35.18(a)(3)(first instance), 10 CFR 35.18(b), 10 CFR 35.24(a)(1), 10 CFR 35.24(c), 10 CFR 35.26(a), and 10 CFR 35.1000(b);~~

~~[(o)](o) "[the]Director" for reference to "NRC" in [40 CFR 35.13(b)(4)(i),] 10 CFR 35.3045(g)(1), [and] 10 CFR 35.3047(f)(1), and 10 CFR 35.3204(a)(second instance);~~

~~[(p)](p) ["the U.S. Nuclear Regulatory Commission or an Agreement State" for reference to "an Agreement State" in 10 CFR 35.49(a) and 10 CFR 35.49(e)] "Nuclear Regulatory Commission" for reference to "Commission" in 10 CFR 35.67(b)(2);~~

~~[(q)](q) ["Director, a U.S. Nuclear Regulatory Commission, or Agreement State]" "Director" for reference to ["NRC or Agreement State]" "NRC" in 10 CFR 35.[63(b)(2)(ii)]3045(g)(1), 10 CFR 35.[100(e)]3047(f)(1), [40 CFR 35.200(e),] and 10 CFR 35.[300(e)]35.3204(a)(second instance); and~~

~~[(r)](r) [In 10 CFR 35.75(a) "Footnote 1", substitute "The current version of NUREG-1556, Vol. 9" for "NUREG-1556 Vol. 9;]" "the Director" for reference to "NRC" in 10 CFR 35.13(b)(4)(i);~~

~~(s) "licenses issued by the Director" for reference to "NRC licenses" in 10 CFR 35.57(c);~~

~~(t) "Director, the Nuclear Regulatory Commission, or an Agreement State" for reference to "NRC" in 10 CFR 35.13(b)(5), 10 CFR 35.14(a)(2), 10 CFR 35.57(b)(3), and 10 CFR 35.57(a)(4);~~

~~(u) "(c)" for reference to "(b)" in 10 CFR 35.92.~~

~~(5) The addition of the following to 10 CFR 35.92:~~

~~(b) The Director may approve a radioactive material with a physical half-life of greater than 120 days but less than 175 days for decay-in-storage before disposal without regard to its radioactivity on a case by case basis if the licensee:~~

~~(1) Requests an amendment to the licensee's radioactive materials license for the approval;~~

~~(2) Can demonstrate that the radioactive waste will be safely stored, and accounted for during the decay-in-storage period and that the additional radioactive waste will not exceed the licensee's radioactive waste storage capacity; and~~

~~(3) Commits to monitor the waste before disposal as stated in paragraphs (a)(1) and (a)(2) of this section before the waste is disposed."~~

KEY: radioactive materials, radiopharmaceutical, brachytherapy, nuclear medicine

Date of Enactment or Last Substantive Amendment: [~~October 13, 2010~~]2019

Notice of Continuation: July 1, 2016

Authorizing, and Implemented or Interpreted Law: 19-3-104; 19-6-107

Governor, Economic Development R357-15 Enterprise Zone Tax Credit

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 43814

FILED: 06/14/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule filing is to clarify the requirements for a business entity to qualify for an enterprise zone tax credit.

SUMMARY OF THE RULE OR CHANGE: Section R357-15-2 creates and updates definitions that are used to administer the program. Section R357-15-4 is updated to more accurately reflect the documentation and verification requirement for participation in the program. Section R357-15-5 is updated to more accurately reflect the application review and authorization process to receive an enterprise zone tax credit.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 63N-2-213(6)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There is no aggregate anticipated cost or savings to the state budget. These changes merely codify the procedures the Office of Economic Development (Office) under the Governor's office has historically used.

◆ **LOCAL GOVERNMENTS:** There is no aggregate anticipated cost or savings to local governments. These changes merely codify the procedures the Office has historically used.

◆ **SMALL BUSINESSES:** There is no aggregate anticipated cost or savings to small businesses. These changes merely codify the procedures the Office has historically used.

◆ **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. These changes merely codify the procedures the Office has historically used.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. These changes merely codify the procedures the Office has historically used.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: These rule changes will not result in fiscal impact to businesses. These changes merely codify the procedures the Office has historically used to administer the program.

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

GOVERNOR
 ECONOMIC DEVELOPMENT
 60 E SOUTH TEMPLE 3RD FLR
 SALT LAKE CITY, UT 84111
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Dane Ishihara by phone at 801-538-8865, or by Internet E-mail at dishihara@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2019

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2019

AUTHORIZED BY: Val Hale, Executive Director

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

There is no regulatory impact creating financial cost to small businesses or non-small businesses or other persons. These proposed rule changes are to clarify the standards for participation in the Utah Works Program (Program). There are no general regulations being promulgated by this rule because the Program is voluntary and does not require non-participants to do anything. There is no impact to businesses or persons general because this rule only applies to those who chose to participate in this Program in order to receive a grant.

The head of the Governor's Office of Economic Development, Val Hale, has reviewed and approved this fiscal analysis.

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

R357. Governor, Economic Development.

R357-15. Enterprise Zone Tax Credit.

R357-15-2. Definitions.

(+) The definitions below are in addition to or serve to clarify the definitions found in ~~[Utah Code]Section 63N-2-20[+]2~~, ~~[Utah Code]Section 59-7-614.10~~, and ~~Section 59-10-103[6]Z~~, and ~~Section 63N-2-202~~.

(1) "Annual investment", "Investment" or "Qualifying investment" means the purchase of most types of tangible property (except land) such as buildings, machinery, vehicles, furniture, and equipment that:

(a) qualifies for depreciation under the Internal Revenue Service's Form 4562; and

(b) is put into service at an operating address, of the business entity, that is within an enterprise zone designated by the office for the applicable tax year.

(2) "Baseline" means: ~~The highest total number of employees employed by the applicant for the previous three years. This number will be the baseline to determine all new incremental full-time employee positions~~ the highest count of employment positions that existed within the business entity during the previous three taxable years.

(3) "Qualifying investment in plant, equipment, or other depreciable property" means an investment in most types of tangible property (except land), such as buildings, machinery, vehicles, furniture, and equipment that qualifies for depreciation under the Internal Revenue Service's Form 4562 in the amount of acquisition cost less trade-in allowance.

(4) "Software purchases" means tangible physical property, cloud services, or software as a service.]

([5]3) "Qualified business use vehicle" means an automobile, light truck, heavy truck, van, utility vehicle, or motorcycle [vehicles registered in the name of the business entity and used more than 50% of the time for the business entity].

(4) "New full-time employee position" means a position that has been newly created in addition to the baseline filled by an employee working at least 30 hours per week;

~~(a) for a period of at least six consecutive months; and~~
~~(b) where the period ends in the tax year for which the credit is claimed.~~

~~(6)5) "Payment documentation" means a:~~

- ~~(a) bank statement[;];~~
~~(b) cleared check[~~-, loan, or~~];~~
~~(c) signed and executed financing agreement; and[~~-which identifies the business entity, date and amount paid.~~]~~
~~(d) signed statement from the seller confirming the payer, payee, date paid, and amount paid for cash payments.~~

~~(7)6) "Purchase documentation" means a bill of sale, contract of sale, receipt, invoice, or other documentation which identifies the buyer, seller, purchase price, item(s) purchased, and the date of purchase[~~property tax notice which identifies the business entity and date issued~~].~~

~~(8)7) "Value-added business entity" means a company that creates a change in the physical state or form of a product in a manner that enhances its value, thus expanding the customer base of the product. Examples include milling wheat into flour or making strawberries into jam.~~

R357-15-4. Required Documentation and Verification Information.

(1) To claim any of the tax credits available under 63N-2-201 et. seq. the following basic information must be provided to the Office[-];

(a) ~~[B]~~business entity's~~[or Individual's]~~ name that is claiming a tax credit on a Utah Tax filing submission;

(b) ~~[A]~~contact name, email, phone number, mailing address and relevant title(s);

(c) ~~[F]~~the physical operating address where the business entity~~[or individual]~~ is located including a screenshot of the address pinpoint within the Enterprise Zone as found on locate.utah.gov.

~~[----- i. A tax credit shall not be issued if the only connection to an enterprise zone is a P.O. Box;]~~

(d) ~~[F]~~the business entity's~~[or individual's]~~ tax identification number whether a federally provided Employer Identification Number (EIN) or a Social Security Number (SSN); and

(e) ~~[additional-]~~information as required under Section R357-15-3~~[in the Application]~~.

(2) To qualify for any of the Employment tax credits pursuant to Subsections 63N-2-213(7)(a)[-] through (d) the following documentation and information is required:

(a) ~~[A-]~~current total of all ~~[full-time-]~~employees including the total of employees as reported to the Department of Workforce Services for the last three years[-];

(b) ~~[F]~~the number of ~~[N]~~new ~~[Incremental]~~full-time ~~[E]~~employee ~~[P]~~positions created above the baseline.

(i)[-] For each ~~[New Incremental Employee Position]~~new full-time employee position above the baseline the applicant must provide:

~~[1-](A) Employee Name;~~

~~[2-](B) Employee wages paid[Hourly Wage and/or Annual Salary];~~

~~[3-](C) Employee hours worked[Average Hours worked per week];~~

~~[4-](D) Employee Hire date and termination date id applicable;~~

~~[5-](E) If applicable, proof of employer-sponsored health insurance program if the employer pays at least 50% of the premium cost;~~

~~[6-](E) If applicable, evidence that the business entity adds value to agricultural commodities through manufacturing or processing[-], including a list of sample products or processes.~~

~~[----- a. List of sample products or processes.~~

~~7. Other documentation requested by the Office on the tax credit application.]~~

(3) To qualify for the private capital investment tax credit under Subsections 63N-2-213(7)(e) and (f) the following documentation and information is required:

(a) If the private capital investment is for the rehabilitation of a building in an Enterprise Zone the applicant must provide:

(i)[-] The rehabilitated building's physical address

(ii)[-] Documents showing the current owner such as the deed or mortgage documents;

(iii)[-] The date the building was last occupied;

(iv)[-] A current occupancy permit or certificate;

(v)[-] ~~Purchase documentation~~~~[Receipts and paid invoices]~~

of all rehabilitation expenses totaling the amount the tax credit is calculated from;~~[and]~~

~~[----- 1. The Office may request further documentation to verify receipts and paid invoices including accompanying bank statements.]~~

~~(vi) One or more forms of payment documentation validating any rehabilitation expense with an amount claimed equal to or greater than the amount established by the office is paid in entirety; and~~

vii. Any other documentation requested by the Office including a sworn affidavit confirming the rehabilitation costs from the owner of the building if applicant is not the owner of the building.

(b) If the private capital investment is a qualifying investment in plant, equipment, or other depreciable property in an Enterprise Zone the applicant must provide:

~~[----- i. receipts and/or loan documentation showing the entire purchase price and amount paid by the applicant;]~~

(i)[+/-] an itemized list of qualified investments being claimed for the credit on a template provided by the office;

(ii)[+/-] purchase documentation for all investment claimed; and~~[one or more forms of payment documentation validating item is paid in entirety for each item equal or greater than an amount established by the office];~~

~~(iii) one or more forms of payment documentation validating an investment with an amount claimed that is equal to or greater than an amount established by the office is paid in entirety;~~

(iv)[-] property and real estate investments~~[transactions]~~ also require;~~[the contract of sale,]~~

~~(A) a settlement statement[-]; and~~

~~(B) property tax notice with building and land values separated from total property value.[-and financing agreement; and]~~

~~(V)[-] qualified business use vehicle and other motor vehicle investments also require[purchases shall also include Utah Bill of Sale TC-843;] business use percentage[-use and financing agreement or payment documentation].~~

R357-15-5. Application Review and Authorization Process for an Enterprise Zone Tax Credit.

(1) The Office shall review all submitted applications within a reasonable amount of time and approve or deny the application

(a) The Office shall review all tax credits claimed and documentation provided.

(b) The Office may request additional documentation or information if the Office determines that further verification is required.

i. Failure to comply with a request for additional documentation may result in a denial of the application.

(2) The Office will issue tax credit certificates for all tax credits for which an applicant has applied, qualified and been approved by the Office.

(a) This Office may issue a partial approval if only parts of the application are determined to qualify.

(3) The Office must provide written notice that includes its reasoning when denying any or a portion of a tax credit application.

(4) If approved in whole or in part, the Office shall provide any necessary documents and instructions, approved by the Utah Tax Commission, for claiming the tax credit.

(5)(a) When a business entity is seeking to receive a tax credit for the purchase of a qualified business use vehicle, in conformity with Subsection 63N-2-213(7)(f), the office shall not grant a tax credit for the trade-in value of a qualified business use vehicle that the business entity traded into the purchase of the vehicle for which the tax credit is being sought.

(b) The amount claimed towards investment in a qualified business use vehicle or a motor vehicle described in subsection R357-15-4(3)(b)(v) is determined as acquisition cost, less any trade in value in accordance with subsection R357-15-5(5), multiplied by the business use percentage.

(6) The trade in value in a purchase may be claimed towards a state tax credit for private capital investment that is qualifying investment in plant, equipment, or other depreciable property when, in the purchase that qualifies as investment by the business entity, there was traded in:

(a) plant, equipment, or other depreciable property that qualifies for depreciation on IRS Form 4562 and is not a qualified business use vehicle;

(b) a qualified business use vehicle that was traded in by an individual who is an owner or officer of the applying business entity;
or

(c) a building, property, or other real estate investment that qualifies for depreciation on IRS Form 4562.

(6) The Office may deny claims of investment for ~~Qualified Investments being claimed as~~ software purchases that are cloud services or software as a service.

(7) The Office may deny claims for investment ~~applications with Qualified Investments~~ purchased prior to the three previous taxable years ~~more than three calendar years ago~~.

(8) The Office may deny claims for ~~Qualified~~ Investments purchased from another entity with the same ownership.

(9) The Office may deny claims if the only connection to an enterprise zone for a business entity is a P.O. Box.

(10) The Office may deny claims for investment that was transferred from personal use to business use unless the original investment and personal use occurred within the same taxable year the asset was placed into service by the applying business entity.

(11) The Office may deny claims for state tax credits under Subsections 63N-2-213(7)(a)-(f) if 51% of a business entity's employees that are employed at facilities, that are within a designated enterprise zone, of a business entity do not reside within the county in

which the enterprise zone is located or an enterprise zone that is immediately adjacent or contiguous to the county in which the enterprise zone is located as per section 63N-2-212.

KEY: enterprise zones, tax credits

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

Authorizing, and Implemented or Interpreted Law: 63N-2-213(6)

Health, Health Care Financing, Coverage and Reimbursement Policy **R414-303** Coverage Groups

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 43796

FILED: 06/13/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of these changes are to implement provisions of Medicaid expansion set forth in S.B. 96, passed in the 2019 General Session.

SUMMARY OF THE RULE OR CHANGE: This rule allows the Department of Health (Department) to make presumptive determinations for the new Adult Expansion group. It also reduces the income limit for the Parent/Caretaker Relative (PCR) group and makes other clarifications. (EDITOR'S NOTE: A corresponding 120-day (emergency) rule filing that is effective as of 05/07/2019 is under Filing No. 43706 in the June 1, 2019, issue of the Bulletin.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-1-5 and Section 26-18-3 and Section 26-18-415

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There is an expected annual cost of \$435,800,000 in which up to 90,000 individuals may become eligible for Adult Medicaid coverage. This fiscal analysis also applies to the companion filings for Section R414-311-6 and Rule R414-312. (EDITOR'S NOTE: The proposed amendment to Section R414-311-6 is under Filing No. 43797 and the proposed new rule filing for Rule R414-312 is under Filing No. 43798 in this issue, July 1, 2019, of the Bulletin.)

◆ **LOCAL GOVERNMENTS:** There is no impact on local governments because they neither fund nor provide services under the Medicaid program. This fiscal analysis also applies to the companion filings for Section R414-311-6 and Rule R414-312.

◆ **SMALL BUSINESSES:** Small businesses may see a share of revenue up to \$435,800,000 with the expansion of adult Medicaid coverage, in which up to 90,000 individuals may

become eligible. This fiscal analysis also applies to the companion filings for Section R414-311-6 and Rule R414-312.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Medicaid providers may see a share of revenue up to \$435,800,000 with the expansion of adult Medicaid coverage, and up to 90,000 individuals will see a share of out-of-pocket savings based on that amount. This fiscal analysis also applies to the companion filings for Section R414-311-6 and Rule R414-312.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs because this rule filing can only result in increased revenue and out-of-pocket savings. This fiscal analysis also applies to the companion filings for Section R414-311-6 and Rule R414-312.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Businesses will see a share of revenue through Medicaid expansion to a larger group of adults.

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

HEALTH
HEALTH CARE FINANCING,
COVERAGE AND REIMBURSEMENT POLICY
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:

◆ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov or mail at PO Box 143012, Salt Lake City, UT 84114-3102

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2019
THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2019

AUTHORIZED BY: Joseph Miner, MD, Executive Director

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2020	FY 2021	FY 2022
State Government	\$435,800,000	\$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:	\$435,800,000	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$145,300,000	\$0	\$0
Non-Small Businesses	\$145,200,000	\$0	\$0
Other Persons	\$145,300,000	\$0	\$0
Total Fiscal Benefits:	\$435,800,000	\$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

About 25,200 non-small business providers of Medicaid services may see a portion of annual revenue that totals \$435,800,000, based on expansion to the Adult Medicaid population. Additionally, up to 90,000 individuals will see a share of out-of-pocket savings based on that amount.

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.

R414-303. Coverage Groups.

R414-303-4. Medicaid for Parents and Caretaker Relatives, Pregnant Women, Children, Adults, and Individuals Infected with Tuberculosis Using MAGI Methodology.

(1) The Department provides Medicaid coverage to individuals who are eligible as described in 42 CFR 435.110, 435.116, 435.118, and 435.139, and 42 U.S.C. 1396a(a)(10)(A)(ii)(XII). The Department uses the MAGI methodology defined in Section R414-304-5 to determine household composition and countable income for these individuals.

(2) To qualify for coverage, a parent or other caretaker relative must have a dependent child living with the parent or other caretaker relative.

(3) The Department provides Medicaid coverage to parents and other caretaker relatives as required in 42 CFR 435.110, whose countable income is equal to or below the applicable income standard for the individual's family size. For a family that exceeds 16 persons, the Department adds \$62 to the income standard for each family member. The income standards are as follows:[55% of the Federal Poverty Level (FPL).]

TABLE

Family Size	Income Standard
1	\$438
2	\$544
3	\$678
4	\$797
5	\$912
6	\$1,012
7	\$1,072
8	\$1,132
9	\$1,196
10	\$1,257
11	\$1,320
12	\$1,382
13	\$1,443
14	\$1,505
15	\$1,569
16	\$1,630

(4) The Department provides Medicaid coverage to children who are zero through five years of age as required in 42 CFR 435.118, whose countable income is equal to or below 139% of the FPL.

(5) The Department provides Medicaid coverage to children who are six through 18 years of age as required in 42 CFR 435.118, whose countable income is equal to or below 133% of the FPL.

(6) The Department provides Medicaid coverage to pregnant women as required in 42 CFR 435.116.

(a) The Department elects the income limit of 139% of the FPL to determine a pregnant woman's eligibility for Medicaid.

(b) An individual, as defined in Subsection R414-302-3(2), may only receive coverage through the end of the month in which the individual turns 19 years old.

(7) The Department provides Medicaid coverage to an infant until the infant turns one-year old when born to a woman eligible for Utah Medicaid on the date of the delivery of the infant, in compliance with Sec. 113(b)(1), Children's Health Insurance Program

Reauthorization Act of 2009, Pub. L. No. 111 3. The infant does not have to remain in the birth mother's home and the birth mother does not have to continue to be eligible for Medicaid. The infant must continue to be a Utah resident to receive coverage.

(8) The Department provides Medicaid coverage to an individual who is infected with tuberculosis and who does not qualify for a mandatory Medicaid coverage group. The individual's income cannot exceed the amount of earned income an individual, or if married, a couple, can have to qualify for Supplemental Security Income.

R414-303-11. Presumptive Eligibility for Medicaid.

(1) ~~The Department adopts and incorporates by reference, the definitions found [at]in 42 CFR 435.1101, and the provisions for presumptive eligibility found [at]in 42 CFR 435.1103[-] and 42 CFR 435.1110[-], October 1, 2013 ed., in relation to determinations of presumptive eligibility, apply to Section R414-303-11.~~

(2) The following definitions also apply to this section:

(a) "covered provider" means a provider whom the Department determines is qualified to make a determination of presumptive eligibility for a pregnant woman and who meets the criteria defined in Section 1920(b)(2) of the Social Security Act.

Covered provider also means a hospital that elects to be a qualified entity under a memorandum of agreement with the Department;

(b) "presumptive eligibility" means a period of eligibility for medical services based on self-declaration that the individual meets the eligibility criteria.

(3) The Department provides coverage to a pregnant woman during a period of presumptive eligibility if a covered provider determines, based on preliminary information, that the woman states she:

(a) is pregnant;

(b) meets citizenship or alien status criteria as defined in Section R414-302-3;

(c) has household income that does not exceed 139% of the federal poverty guideline applicable to her declared household size; and

(d) is not already covered by Medicaid or CHIP.

(4) A pregnant woman may only receive medical assistance during one presumptive eligibility period for any single term of pregnancy.

(5) A child born to a woman who is only presumptively eligible at the time of the infant's birth is not eligible for the one year of continued coverage defined in Section 1902(e)(4) of the Social Security Act. If the mother applies for Utah Medicaid after the birth and is determined eligible back to the date of the infant's birth, the infant is then eligible for the one year of continued coverage under Section 1902(e)(4) of the Social Security Act. If the mother is not eligible, the eligibility agency shall determine whether the infant is eligible under other Medicaid programs.

(6) A child determined presumptively eligible who is under 19 years of age may receive presumptive eligibility only through the end of the month after the presumptive determination date or until the end of the month in which the child turns 19, whichever occurs first.

(7) An individual determined presumptively eligible for former foster care children coverage may receive presumptive eligibility only through the end of the month after the presumptive determination date or until the end of the month in which the individual turns 26 years old, whichever occurs first.

(8) An individual determined presumptively eligible for adult coverage may receive presumptive eligibility through whichever of the following occurs first:

(a) Through the end of the month following the month of the presumptive determination;

(b) Through the end of the month in which the individual turns 65 years old; or

(c) Until the eligibility agency makes a determination for ongoing medical assistance.

~~([8]9) The Department shall limit the coverage groups for which a hospital may make a presumptive eligibility decision to the groups described in 42 CFR 435.110, 435.116, 435.118, 435.150, and Rule R414-312.[defined in Section 1920 (pregnant women, former foster care children, parents or caretaker relatives), Section 1920A (children under 19 years of age) and 1920 B (breast and cervical cancer patients but only Centers for Disease Control provider hospitals can do presumptive eligibility for this group) of the Social Security Act, January 1, 2013:]~~

([9]10) A hospital must enter into a memorandum of agreement with the Department to be a qualified entity and receive training on policy and procedures.

(1[0]1) The hospital shall cooperate with the Department for audit and quality control reviews on presumptive eligibility determinations the hospital makes. The Department may terminate the agreement with the hospital if the hospital does not meet standards and quality requirements set by the Department.

(1[+]2) The covered provider may not count as income the following:

- (a) Veteran's Administration (VA) payments;
- (b) Child support payments; or
- (c) Educational grants, loans, scholarships, fellowships, or gifts that a client uses to pay for education.

(1[2]3) An individual found presumptively eligible for one of the following coverage groups may only receive one presumptive eligibility period in a calendar year:

- (a) Parents or caretaker relatives;
- (b) Children under 19 years of age;
- (c) Former foster care children;[-and]
- (d) Individuals with breast or cervical cancer[-]; and
- (e) Adult expansion.

KEY: MAGI-based, coverage groups, former foster care youth, presumptive eligibility

Date of Enactment or Last Substantive Amendment: [~~July 1, 2017~~2019]

Notice of Continuation: January 8, 2018

Authorizing, and Implemented or Interpreted Law: 26-18-3; 26-1-5

Health, Health Care Financing, Coverage and Reimbursement Policy **R414-311-6** Household Composition and Income Provisions

NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 43797
FILED: 06/13/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule filing is to update, in accordance with S.B. 96, passed in the 2019 General Session, standards of income for Targeted Adult Medicaid (TAM).

SUMMARY OF THE RULE OR CHANGE: This amendment increases the federal poverty level (FPL) percentage to 5%, thus removing the income disregard for TAM members who are part of the new Adult Expansion group. (EDITOR'S NOTE: A corresponding 120-day (emergency) rule filing that is effective as of 05/07/2019 is under Filing No. 43707 in the June 1, 2019, issue of the Bulletin.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-1-5 and Section 26-18-3 and Section 26-18-415

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There is an expected annual cost of \$435,800,000 in which up to 90,000 individuals may become eligible for Adult Medicaid coverage. This fiscal analysis also applies to the companion filings for Rules R414-303 and R414-312. (EDITOR'S NOTE: The proposed amendment to Rule R414-303 is under Filing No. 43796 and the proposed new rule filing for Rule R414-312 is under Filing No. 43798 in this issue, July 1, 2019, of the Bulletin.)

◆ **LOCAL GOVERNMENTS:** There is no impact on local governments because they neither fund nor provide services under the Medicaid program. This fiscal analysis also applies to the companion filings for Rules R414-303 and R414-312.

◆ **SMALL BUSINESSES:** Small businesses may see a share of revenue up to \$435,800,000 with the expansion of adult Medicaid coverage, in which up to 90,000 individuals may become eligible. This fiscal analysis also applies to the companion filings for Rules R414-303 and R414-312.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Medicaid providers may see a share of revenue up to \$435,800,000 with the expansion of adult Medicaid coverage, and up to 90,000 individuals will see a share of out-of-pocket savings based on that amount. This fiscal analysis also applies to the companion filings for Rules R414-303 and R414-312.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs because this rule filing can only result in increased revenue and out-of-pocket savings. This fiscal analysis also applies to the companion filings for Rules R414-303 and R414-312.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Businesses will see a share of revenue through Medicaid expansion to a larger group of adults.

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

HEALTH
HEALTH CARE FINANCING,
COVERAGE AND REIMBURSEMENT POLICY
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:

◆ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov or mail at PO Box 143012, Salt Lake City, UT 84114-3102

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2019

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2019

AUTHORIZED BY: Joseph Miner, MD, Executive Director

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2020	FY 2021	FY 2022
State Government	\$435,800,000	\$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:	\$435,800,000	\$0	\$0
Fiscal Benefits	FY 2020	FY 2021	FY 2022
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$145,300,000	\$0	\$0
Non-Small Businesses	\$145,200,000	\$0	\$0
Other Persons	\$145,300,000	\$0	\$0
Total Fiscal Benefits:	\$435,800,000	\$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

About 25,200 non-small business providers of Medicaid services may see a portion of annual revenue that totals \$435,800,000 based on expansion to the Adult Medicaid population. Additionally, up to 90,000 individuals will see a share of out-of-pocket savings based on that amount.

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.

R414-311. Targeted Adult Medicaid.

R414-311-6. Household Composition and Income Provisions.

(1) The eligibility agency shall use the provisions of Section R414-304-5 to determine household composition and countable income.

(2) Section R414-304-12 applies to the budgeting of income through the Modified Adjusted Gross Income (MAGI) methodology.

(3) For an individual to be eligible to enroll in Targeted Adult Medicaid, the individual must have ~~zero~~ countable income at or below 5% of the federal poverty level (FPL).

KEY: Medicaid, Targeted Adult Medicaid, eligibility

Date of Enactment or Last Substantive Amendment: [~~May 8, 2018~~]2019

Authorizing, and Implemented or Interpreted Law: 26-18

**Health, Health Care Financing,
Coverage and Reimbursement Policy
R414-312
Adult Expansion Medicaid**

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 43798

FILED: 06/13/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this new rule is to implement provisions of Medicaid expansion set forth in S.B. 96, passed in the 2019 General Session.

SUMMARY OF THE RULE OR CHANGE: This rule expands coverage to adults who are 19 through 64 years of age and meet basic Medicaid eligibility criteria. (EDITOR'S NOTE: A corresponding 120-day (emergency) rule filing that is effective as of 05/07/2019 is under Filing No. 43708 in the June 1, 2019, issue of the Bulletin.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-1-5 and Section 26-18-3 and Section 26-18-415

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There is an expected annual cost of \$435,800,000 in which up to 90,000 individuals may become eligible for Adult Medicaid coverage. This fiscal analysis also applies to the companion filings for Rule R414-303 and Section R414-311-6. (EDITOR'S NOTE: The proposed amendment to Rule R414-303 is under Filing No. 43796 and the proposed amendment to Section R414-311-6 is under Filing No. 43797 in this issue, July 1, 2019, of the Bulletin.)

◆ LOCAL GOVERNMENTS: There is no impact on local governments because they neither fund nor provide services under the Medicaid program. This fiscal analysis also applies to the companion filings for Rule R414-303 and Section R414-311-6.

◆ SMALL BUSINESSES: Small businesses may see a share of revenue up to \$435,800,000 with the expansion of adult Medicaid coverage, in which up to 90,000 individuals may become eligible. This fiscal analysis also applies to the companion filings for Rule R414-303 and Section R414-311-6.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Medicaid providers may see a share of revenue up to \$435,800,000 with the expansion of adult Medicaid coverage, and up to 90,000 individuals will see a share of out-of-pocket savings based on that amount. This fiscal analysis also applies to the companion filings for Rule R414-303 and Section R414-311-6.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs because this rule can only result in increased revenue and out-of-pocket savings. This fiscal analysis also applies to the companion filings for Rule R414-303 and Section R414-311-6.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Businesses will see a share of revenue through Medicaid expansion to a larger group of adults.

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

HEALTH
HEALTH CARE FINANCING,
COVERAGE AND REIMBURSEMENT POLICY
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:

◆ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov or mail at PO Box 143012, Salt Lake City, UT 84114-3102

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2019

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2019

AUTHORIZED BY: Joseph Miner, MD, Executive Director

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2020	FY 2021	FY 2022
State Government	\$435,800,000	\$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:	\$435,800,000	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$145,300,000	\$0	\$0
Non-Small Businesses	\$145,200,000	\$0	\$0
Other Persons	\$145,300,000	\$0	\$0
Total Fiscal Benefits:	\$435,800,000	\$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

About 25,200 non-small business providers of Medicaid services may see a portion of annual revenue that totals \$435,800,000, based on expansion to the Adult Medicaid population. Additionally, up to 90,000 individuals will see a share of out-of-pocket savings based on that amount.

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.

R414-312. Adult Expansion Medicaid.

R414-312-1. Introduction and Authority.

(1) This rule is authorized by Sections 26-1-5 and 26-18-3 and allowed under Subsection 1115(f) of the Social Security Act.

(2) This rule establishes eligibility requirements for enrollment under the Primary Care Network 1115 Demonstration Waiver for Adults, also known as the Adult Expansion Medicaid program.

R414-312-2. Definitions.

The definitions in Rules R414-1 and R414-301 apply to this rule.

R414-312-3. General Provisions.

The provisions in Rule R414-301 apply to all applicants and enrollees.

R414-312-4. General Eligibility Requirements.

Unless otherwise stated, the provisions in Rule R414-302 and Section R414-306-4 apply to all applicants and enrollees.

(1) The following individuals are not eligible for Adult Expansion Medicaid:

(a) Individuals eligible for any Medicaid program without a spenddown; or

(b) Individuals eligible for or receiving Medicare.

(2) An individual must be at least 19 years old and not yet 65 years old to enroll in Adult Expansion Medicaid.

(a) The month in which an individual turns 19 years old is the first month in which the individual may enroll in Adult Expansion Medicaid.

(b) An individual may only enroll in Adult Expansion Medicaid through the month in which the individual turns 65 years old.

(3) The eligibility agency may only enroll applicants during an open enrollment period. The Department may limit the number it enrolls and may stop enrollment at any time.

(4) The eligibility agency shall waive the open enrollment requirement if the enrollee completes a review within three months of case closure as outlined in Section R414-308-6.

(5) A resource test is not required.

R414-312-5. Application, Eligibility Reviews, and Improper Medical Assistance.

The provisions of Rule R414-308 apply to all applicants and enrollees.

R414-312-6. Household Composition and Income Provisions.

(1) The eligibility agency shall use the provisions of Section R414-304-5 to determine household composition and countable income.

(2) Section R414-304-12 applies to the budgeting of income through the Modified Adjusted Gross Income (MAGI) methodology.

(3) For an individual to be eligible to enroll in Adult Expansion Medicaid, the individual must have countable income at or below 95% of the federal poverty level (FPL).

KEY: Medicaid, adult expansion, eligibility

Date of Enactment or Last Substantive Amendment: 2019

Authorizing, and Implemented or Interpreted Law: 26-18

Health, Family Health and
Preparedness, Licensing
R432-270-8
Personnel

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 43773

FILED: 06/05/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to modify the section regulating the staff qualifications for licensed assisted living facilities. The Health Facility Committee reviewed and approved this rule amendment on 02/13/2019.

SUMMARY OF THE RULE OR CHANGE: This amendment removes the requirement for all direct care staff to be Certified Nurse Aides (CNA) in an Assisted Living Level II Facility. The rule requiring the facility to have one Certified Nurse Aide on staff at all times remains in effect.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 21

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The state government assisted living facility survey process was thoroughly reviewed. This proposed rule amendment could lead to decreased health care facility deficiencies, however, with all the variables within the survey process and the facility practices this is an inestimable benefit.

◆ **LOCAL GOVERNMENTS:** Local governments' city business licensing requirements were considered. This proposed rule amendment should not impact local governments' revenues or expenditures.

◆ **SMALL BUSINESSES:** After conducting a thorough analysis, it was determined that this rule amendment should not impact costs for small business licensed assisted living facilities. There are 169 non-small and small businesses (NAICS codes used - Homes for the Elderly 623312). The Type II small business assisted living facilities will still need the same amount of staffing to operate. They will not need to hire CNAs, but costs for care staff will remain the same. The industry reports no difference in costs for staffing due to this rule.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** After conducting a thorough analysis, it was determined that this rule amendment will not result in a fiscal impact to affected persons because this amendment modifies health care facility requirements and therefore, would not add costs for persons, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: After conducting a thorough analysis, it was determined that this proposed rule change will not result in a fiscal impact to affected persons because this amendment modifies health care facility requirements and therefore, would not add costs to persons.

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 not result in fiscal impact to businesses.

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 or mail at PO Box 142001, Salt Lake City, UT 84114-2001

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2019

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2019

AUTHORIZED BY: Joseph Miner, MD, Executive Director

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

There are 169 assisted living facilities that operate in Utah. These facilities are a mix of non-small businesses and small businesses. This rule change that is to no longer require assisted living level II facilities to have certified nurse aides (CNA) providing personal care is not expected to have any fiscal impacts on these businesses' revenues or expenditures, because employee wages are comparable for CNA and non-CNA caregivers.

The Department of Health Executive Director Joseph K. Miner, MD, has reviewed and approved this fiscal analysis.

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

R432. Health, Family Health and Preparedness, Licensing.

R432-270. Assisted Living Facilities.

R432-270-8. Personnel.

(1) Qualified competent direct-care personnel shall be on the premises 24 hours a day to meet residents needs as determined by the residents' assessment and service plans. Additional staff shall be employed as necessary to perform office work, cooking, housekeeping, laundering and general maintenance.

(2) The services provided or arranged by the facility shall be provided by qualified persons in accordance with the resident's written service plan.

(3) All personnel who provide personal care to residents in a Type I and Type II facility shall be at least 18 years of age or be a certified nurse aide and shall have related experience in the job assigned or receive on the job training.

~~[(4)](4) Personnel who provide personal care to residents in a Type II facility must be certified nurse aides or complete a state-certified nurse aide program within four months of the date of hire.~~

~~[(5)](4)~~ Personnel shall be licensed, certified, or registered in accordance with applicable state laws.

~~[(6)](5)~~ The administrator shall maintain written job descriptions for each position, including job title, job responsibilities, qualifications or required skills.

~~[(7)](6)~~ Facility policies and procedures must be available to personnel at all times.

~~[(8)](7)~~ Each employee must receive documented orientation to the facility and the job for which they are hired. Orientation shall include the following:

- (a) job description;
- (b) ethics, confidentiality, and residents' rights;
- (c) fire and disaster plan;

- (d) policy and procedures;
- (e) reporting responsibility for abuse, neglect and exploitation; and
- (f) dementia specific training including:
 - (i) communicating with dementia patients and their caregivers;
 - (ii) communication methods and when they are appropriate;
 - (iii) types and stages of dementia including information on the physical and cognitive declines as the disease progresses;
 - (iv) person centered care principles; and
 - (v) how to maintain safety in the dementia patient environment.
- (8) Each direct-care employee shall receive 16 hours of documented one-on-one training with a direct-care employee, with at least 3 months of experience and who has completed orientation, or the supervising nurse at the facility.
 - (a) This training is not transferrable to another facility and must include:
 - (i) transfer assistance; and
 - (ii) activities of daily living.
 - (b) Direct-care employees hired from a staffing agency must be certified nurse aides and are exempt from the 16 hours of one-on-one training.
- (9) Each employee shall receive documented in-service training. The training shall be tailored to annually include all of the following subjects that are relevant to the employee's job responsibilities:
 - (a) principles of good nutrition, menu planning, food preparation, and storage;
 - (b) principles of good housekeeping and sanitation;
 - (c) principles of providing personal and social care;
 - (d) proper procedures in assisting residents with medications;
 - (e) recognizing early signs of illness and determining when there is a need for professional help;
 - (f) accident prevention, including safe bath and shower water temperatures;
 - (g) communication skills which enhance resident dignity;
 - (h) first aid;
 - (i) resident's rights and reporting requirements of Section 62A-3-201 to 312; and
 - (j) Dementia/Alzheimer's specific training.
- (10) The facility administrator shall annually receive a total of 4 hours of Dementia/Alzheimer's specific training.
- (11) An employee who reports suspected abuse, neglect, or exploitation shall not be subject to retaliation, disciplinary action, or termination by the facility for that reason alone.
- (12) The facility shall establish a personnel health program through written personnel health policies and procedures which protect the health and safety of personnel, residents and the public.
- (13) The facility must complete an employee placement health evaluation to include at least a health inventory when an employee is hired. Facilities may use their own evaluation or a Department approved form.
 - (a) A health inventory shall obtain at least the employee's history of the following:
 - (i) conditions that may predispose the employee to acquiring or transmitting infectious diseases; and

- (ii) conditions that may prevent the employee from performing certain assigned duties satisfactorily.
- (b) The facility shall develop employee health screening and immunization components of the personnel health program.
- (c) Employee skin testing by the Mantoux Method or other FDA approved in-vitro serologic test and follow up for tuberculosis shall be done in accordance with R388-804, Special Measures for the Control of Tuberculosis.
 - (i) The licensee shall ensure that all employees are skin-tested for tuberculosis within two weeks of:
 - (A) initial hiring;
 - (B) suspected exposure to a person with active tuberculosis;
 - and
 - (C) development of symptoms of tuberculosis.
 - (ii) Skin testing shall be exempted for all employees with known positive reaction to skin tests.
 - (d) All infections and communicable diseases reportable by law shall be reported to the local health department in accordance with the Communicable Disease Rule, R386-702-3.
 - (14) The facility shall develop and implement policies and procedures governing an infection control program to protect residents, family and personnel; which includes appropriate task related employee infection control procedures and practices.
 - (15) The facility shall comply with the Occupational Safety and Health Administration's Blood-borne Pathogen Standard.

KEY: health care facilities

Date of Enactment or Last Substantive Amendment: [~~August 27, 2018~~]**2019**

Notice of Continuation: February 20, 2019

Authorizing, and Implemented or Interpreted Law: 26-21-5; 26-21-1

**Human Services, Juvenile Justice
Services
R547-15
Formula for Reform Savings**

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 43805

FILED: 06/13/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: In accordance with H.B. 404 passed during the

2019 General Session and Section 62A-7-113, this proposed rule provides a formula to calculate the savings from general fund appropriations resulting from out-of-home placements for youth offenders with the Division of Juvenile Justice Services (Division).

SUMMARY OF THE RULE OR CHANGE: This proposed rule establishes the authority and purpose, which is required by Section 62A-7-113 and authorized by Title 63G, Chapter 3, the Utah Administrative Rulemaking Act. This proposed rule also provides the following definitions that are used in the established formula: out-of-home placements, lapsing funds, and average nightly count. Lastly, this rule establishes a formula to calculate the savings from general fund appropriations resulting from out-of-home placements for youth offenders with the Division. (EDITOR'S NOTE: A corresponding 120-day (emergency) rule that is effective as of 06/13/2019 is under Filing No. 43804 in this issue, July 1, 2019, of the Bulletin.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-7-113

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** This proposed rule is not expected to have any fiscal impact to the state budget. Any administrative costs associated with enactment of this rule and procedure is negligible, and would be absorbed by the existing budget.
- ◆ **LOCAL GOVERNMENTS:** It is not anticipated that local governments see any fiscal impact from this rule or the formula that is established within it.
- ◆ **SMALL BUSINESSES:** Small businesses are not impacted by the formula that is established within this proposed rule.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Persons other than small businesses, businesses, or local government entities are not impacted by the formula that is established within this proposed rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no anticipated compliance costs as this rule does not provide an impact to any persons.

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 will not result in a fiscal impact to businesses.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Abbielee Gardner by phone at 801-538-3961, or by Internet E-mail at abbielee@utah.gov
- ◆ Jonah Shaw by phone at 801-538-4219, by FAX at 801-538-3942, or by Internet E-mail at jshaw@utah.gov
- ◆ Laura Powell by phone at 801-538-4365, or by Internet E-mail at laurapowell@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2019

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2019

AUTHORIZED BY: Ann Williamson, Executive Director

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 in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.

Appendix 2: Regulatory Impact to Non-Small Businesses

This proposed rule is not expected to have any fiscal impacts on non-small businesses' revenues or expenditures, because this rule's purpose is to establish a formula to calculate savings from general

fund appropriations resulting from out-of-home placements for youth offenders with the Division. This rule does not impact or affect non-small businesses.

The head of the Department of Human Services, Ann Williamson, has reviewed and approved this fiscal analysis.

R547. Human Services, Juvenile Justice Services.

R547-15. Formula for Reform Savings.

R547-15-1. Authority and Purpose.

Section 62A-7-113 requires the division to create a rule to establish a formula calculating the savings from General Fund appropriations resulting from out-of-home placements for youth offenders with the division.

R547-15-2. Definitions.

(1) Definitions:

(a) Out-of-home placements means division programs consisting of:

(i) Detention as defined in 62A-7-101

(ii) Long-term secure care

(iii) Residential community placements

(b) Lapsing funds means funds unspent during a fiscal year that are not designated as non-lapsing.

(c) Average Nightly Count means the average number of youths enrolled at midnight in a program for a specified time period.

R547-15-3. Formula.

(1) Formula:

(a) For the JJS Programs and Operations line item and the DHS Community Providers Line item:

(i) At the end of each fiscal year, the Division of Finance shall transfer the lesser of the lapsing balance in each line item or:

(ii) An amount to be determined based on calculating the percent reduction in average nightly counts of youth in out of home placements from the base year of 2017 to the current year, multiplied by total year end expenditures.

(A) $((FY17-Current \text{ FY})/FY17)*Current \text{ FY Expenditures}$

KEY: human services, reinvestment, formula, Juvenile Justice Services

Date of Enactment or Last Substantive Amendment: 2019

Authorizing, and Implemented or Interpreted Law: 62A-7-113

**Money Management Council,
Administration**

R628-22

**Conditions and Procedures for the use
of Negotiable Brokered Certificates of
Deposit**

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 43815

FILED: 06/14/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: In the 2019 General Session, negotiable brokered certificates of deposit were added to Section 51-7-11 as allowable investments for public treasurers to utilize, subject to Money Management Council rule. This rule provides the conditions and procedures that must be followed for public entities to purchase negotiable brokered certificates of deposit.

SUMMARY OF THE RULE OR CHANGE: This rule provides the conditions that a public treasurer must follow when purchasing negotiable brokered certificates of deposit from a certified investment adviser or a certified broker dealer. There are limitations on the maximum length of maturity, par value, purchase price, and allowed and not allowed structures of types of brokered certificates of deposit. Public treasurers can only purchase these types of certificates of deposit from a certified investment adviser or a certified dealer as defined in Section 51-7-3 of the Utah Money Management Act.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 51-7-11(3)(p) and Subsection 51-7-17(4)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There is no anticipated cost or savings to the state budget as these types of investments will not be utilized by the state treasurer. The investments are limited to par values under \$250,000 and are too small for the state to utilize effectively.

◆ **LOCAL GOVERNMENTS:** There are approximately 900 public entities in the state and it is anticipated that a number of them will use these investments. How many is inestimable because usage will vary due to the size of a entity's portfolio,

budgetary concerns, and market conditions. Because of the variation in market conditions it is inestimable as to what the anticipated savings/additional earnings would be for a public treasurer when using these investment tools. Additionally, they will be used as one of a number of other investment instruments that will be used presumably to spread out risk and exposure and it would be difficult to quantify the additional earnings.

◆ **SMALL BUSINESSES:** The Money Management Act requires that any broker or adviser that works with public treasurers be "certified", so although the NAICS #523120 for brokers shows 242 firms and #523930 for advisers shows 528 firms, there are only eight certified advisers on the list, five of which would qualify as small businesses. On the

certified broker/dealer list there are sixteen certified firms, eleven of which would qualify as small businesses. As noted above, because of the variation in market conditions and inability to identify how many public treasurers would use these instruments, it is inestimable as to what the anticipated profits a small certified broker/dealer or certified investment adviser would receive from the sale of these investments to public treasurers.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no anticipated cost or savings to other persons as this rule is specific to public entities, certified investment advisers, and certified dealers.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no other compliance costs for either certified brokers or certified advisers as they already paid a annual fee under Council Rules R628-15 and R628-16 to be certified to work with public entities.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: As noted above, the count of affected certified broker dealers is sixteen and for certified investment advisers is eight although the NAICS shows 242 broker firms and 528 adviser firms. There are approximately 900 public entities in the state of Utah. The Council cannot estimate how many of these entities will use these investments nor what the impact will be on their portfolios as the markets affect interest rates earned on these certificates of deposit and the markets variations affect how many basis points a broker/adviser can charge.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 MONEY MANAGEMENT COUNCIL
 ADMINISTRATION
 ROOM 180 UTAH STATE CAPITOL COMPLEX
 350 N STATE ST
 SALT LAKE CITY, UT 84114
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ◆ Ann Pedroza by phone at 801-538-1883, by FAX at 801-538-1465, or by Internet E-mail at apedroza@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2019

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2019

AUTHORIZED BY: Douglas DeFries, Chair

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 in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.

Appendix 2: Regulatory Impact to Non-Small Businesses

The Money Management Act requires that any broker or adviser that works with public treasurers be "certified", so although the NAICS code 523120 for brokers shows 242 firms and the code for advisers #523930, shows 528 firms, there are only eight certified advisers on the list, three of which would qualify as non-small businesses. On the certified broker list there are sixteen certified firms, five of which would qualify as non-small businesses.

Because of the variation in market conditions and inability to identify how many public treasurers would use these instruments, it is inestimable as to what the anticipated profits a non-small certified broker/dealer or certified investment adviser would receive from the sale of these investments to public treasurers.

The head of Money Management Council, Doug DeFries, has reviewed and approved this fiscal analysis.

R628. Money Management Council, Administration.**R628-22. Conditions and Procedures for the Use of Negotiable Brokered Certificates of Deposit.****R628-22-1. Authority.**

This rule is issued pursuant to Section 51-7-11(3)(p) and 51-7-17(4).

R628-22-2. Scope.

This rule applies to all public treasurers who purchase negotiable brokered certificates of deposit.

R628-22-3. Purpose.

The purpose of this rule is to establish requirements for the investing of public funds in negotiable brokered certificates of deposit.

R628-22-4. Definitions.

For purposes of this rule the following terms are defined in Section 51-7-3 of the Act and when used in this rule have the same meaning as in the Act:

- (1) Council;
- (2) Public funds;
- (3) Public treasurer;
- (4) Certified dealer, and
- (5) Certified investment adviser.

"Negotiable brokered certificate of deposit" means: a certificate of deposit issued by a financial institution that is guaranteed by the applicable federal deposit insurance limit and that can be sold in a secondary market, but cannot be cashed in before maturity.

"Step up" negotiable brokered certificates of deposit means: the interest rate automatically increases at specified intervals.

"LIBOR" means: London Interbank Offered Rate, which is a benchmark interest rate or LIBOR's subsequent replacement.

R628-22-5. General Rule.

(1) A public treasurer may invest public funds in negotiable brokered certificates of deposit only through a certified investment adviser or a certified broker dealer. These negotiable certificates of deposit shall be:

- (a) limited to a maximum maturity of five years from the time of purchase settlement;
- (b) limited to a purchased par value not to exceed 97% of the stated applicable federal deposit insurance limit per each financial institution at the time of purchase, and;
- (c) limited to purchases where the purchase price does not exceed par.

(2) The public treasurer shall ensure that there is no overlap of purchased certificates of deposits in other deposit accounts of the financial institution when purchasing brokered certificates of deposit that would cause the public entity to exceed the applicable federal deposit insurance limit.

R628-22-6. Allowed Structures.

Structures allowed for negotiable brokered certificates of deposit are:

- (1) Fixed rate;
- (2) callable;

(3) Step up rates, and

(4) Floating rate certificates of deposit based on Libor or Libor's subsequent replacement.

R628-22-7. Types of Structures Not Allowed.

Negotiable brokered deposits that are issued based on the following are not allowed:

- (1) inflation linked;
- (2) index linked;
- (3) equity linked, or
- (4) other types of derivate linked securities.

R628-22-8. Reporting Requirements.

A public entity shall file a report with the Council of negotiable brokered CD's along with all other deposits and investments on or before July 31 and January 31 of each year for deposits held on June 30 and December 31 respectively.

KEY: public funds, investments, brokered certificates of deposit

Date of Enactment or Last Substantive Amendment: 2019

Authorizing, and Implemented or Interpreted Law: 51-7-17(4); 51-7-11(3)(p)

**Public Service Commission,
Administration
R746-460**

**Rules Governing Customer Information
and Marketing for Large-Scale Electric
and Gas Utilities**

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 43811

FILED: 06/14/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This new rule is the result of the Public Service Commission's rulemaking docket to address proper use of utility customer lists, appropriate utility-related solicitation communications, use of monopoly utility branding, and other related issues. This new rule addresses use of utility customer lists and customer-related data, utility-related solicitation communications, use of a utility logo for unsolicited marketing to utility customers, and other associated issues. This new rule resulted as a consensus draft from extensive work of all interested stakeholders.

SUMMARY OF THE RULE OR CHANGE: This new rule is intended to clarify the requirements for use of utility customer lists and customer-related data, utility-related solicitation communications, use of a utility logo for unsolicited marketing to utility customers, and other associated issues. This rule

defines terms, identifies provisions under which customer information may be shared and used and how utility customers may opt out of information sharing, addresses the treatment of shared data as confidential, and identifies penalty provisions.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 54-3-1 and Section 54-3-7 and Section 54-4-1

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: There are no anticipated costs or savings to the state budget because this rule does not impose any affirmative obligations on state agencies, and the agencies involved in monitoring compliance will be able to do so within the regular course of existing dockets.

◆ LOCAL GOVERNMENTS: There are no anticipated costs or savings to local governments because this rule does not impose any requirements or obligations on local governments.

◆ SMALL BUSINESSES: There are no anticipated costs or savings to small businesses. To the extent a small business might engage in information sharing or marketing with a utility, compliance with this rule will involve refraining from prohibited practices which should not impose any costs or savings.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Generally, there are no anticipated costs or savings to persons other than small businesses, businesses, or local government entities. A large scale electric or gas utility, as defined under the proposed rule, that wishes to share customer information may incur some cost to obtain the customers' consent. Such costs will vary contingent on, among other things, the number of customers whose information the utility wishes to share and cannot be estimated. However, no utility will incur any costs as a consequence of the rule unless it seeks to share customer information under conditions that require consent for such sharing under this rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons other than those addressed under the businesses answers above.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule is the consensus result of an extensive process that involved significant work and input from all interested stakeholders. Generally, compliance involves refraining from prohibited conduct, which should not carry a fiscal impact. To the extent a utility chooses to share customer information, the utility may incur costs to obtain customer consent. Those costs are not measurable and will depend on the choices and desired uses of customer information by the utility.

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

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:

- ◆ Melissa Paschal by phone at 801-530-6769, or by Internet E-mail at mpaschal@utah.gov
- ◆ Michael Hammer by phone at 801-530-6729, or by Internet E-mail at michaelhammer@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2019

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2019

AUTHORIZED BY: Michael Hammer, Administrative Law Judge

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

Rule R746-460 is a proposed new rule addressing the use of utility customer lists and customer-related data, utility-related solicitation communications, the use of a utility logo for unsolicited marketing to utility customers, and other associated issues. This rule defines terms, identifies provisions under which customer information may be shared and used and how utility customers may opt out of information sharing, addresses the treatment of shared data as confidential, and identifies penalty provisions. This rule resulted as a consensus draft from extensive work of all interested stakeholders. Compliance will require refraining from prohibited practices, which generally should not create any costs. A utility that chooses to share customer information may incur costs to obtain customer consent, but those costs are not measurable and will depend on the choices and desired uses of customer information by the utility.

PSC Chair Thad LeVar has reviewed and approved this fiscal analysis.

R746. Public Service Commission, Administration.
R746-460. Rules Governing Customer Information and Marketing for Large-Scale Electric and Gas Utilities.

R746-460-1. General Provisions.

(1) Purpose -- The purpose of these rules is to establish and enforce certain uniform practices governing:

(a) the sharing of Utility Customer Information or Customer Usage Data by Large-Scale Utilities with utility affiliates or third parties; and

(b) marketing to Large-Scale Utility customers whose information has been shared, when marketing materials use a name or logo that is substantially similar to that of a Large-Scale Utility.

(2) Scope -- These rules shall apply to Large-Scale Utilities that are subject to the regulatory authority of the Commission.

R746-460-2. Definitions.

(1) "Express Consent" means consent that is provided orally or in writing (including via electronic communication), by the consenting customer after having received notification that the utility proposes to share Utility Customer Information with an affiliate, licensee, or third party:

(a) explaining that the customer need not consent to the release of information in order to obtain utility service;

(b) explaining that the customer may subsequently opt out of such sharing of information in the future by contacting the utility; and

(c) providing clear instructions explaining how a customer may subsequently opt out of such sharing of information in the future.

(2) "Large-Scale Electric Utility" has the meaning set forth in Section 54-2-1.

(3) "Large-Scale Gas Utility" means a public utility that provides retail natural gas service to more than 200,000 retail customers in the state.

(4) "Large-Scale Utility" means a Large-Scale Electric Utility or a Large-Scale Gas Utility.

(5) "Utility Customer Information" means a Large-Scale Utility customer's name, address, telephone number, email address, or utility account number, or any combination thereof.

(6) "Customer Usage Data" means an individual utility customer's billing, consumption data, or participation in any specific utility program.

(7) "Small Business and Residential Customers" means

(a) for a Large-Scale Electric Utility, all customers taking service under a residential rate class and any nonresidential customers whose loads have not registered 1,000 kW or greater more than once in the preceding 18-month period; and

(b) for a Large-Scale Gas Utility, all customers within the GS rate classification, or, if there is no such rate classification, all customers whose usage does not exceed 1,250 dekatherms in any one day during the winter season.

R746-460-3. Utility Customer Information and Customer Usage Data.

(1) Permitted Sharing -- Utility Purposes. Large-Scale Utilities may share Utility Customer Information or Customer Usage Data with affiliates, contractors and subcontractors, or other third parties without the customer's consent or permission, in any of the following circumstances:

(a) for use in activities necessary for providing tariff-based services or programs;

(b) as necessary for the operation and maintenance of the Large-Scale Utility's facilities and utility system including but not limited to physical facilities used for energy distribution;

(c) in relation to the utility's conduct of its core utility function or to maintain safe and reliable utility service to customers;

(d) to comply with a warrant, subpoena, court order, or order of an administrative agency having jurisdiction;

(e) for use in a formal proceeding before the Commission including but not limited to general rate cases, customer complaints, or tariff change proceedings;

(f) to assist emergency responders and law enforcement in situations of threat to life or property; or

(g) with the prior approval of the Commission.

(2) Sharing with Third Parties.

(a) Except as provided in Subsection R746-460-3(1), a Large-Scale Utility may share its Utility Customer Information or Customer Usage Data only if the customer provides Express Consent for such sharing to the Large-Scale Utility, its affiliates, or a third party who is seeking such information.

(b) The Large-Scale Utility must retain the following information for each instance of a customer's Express Consent for disclosure of its Utility Customer Information or Customer Usage Data:

(i) the confirmation of consent for the disclosure of private customer information;

(ii) a list of the date of the consent and the affiliates, subsidiaries, or third parties to which the customer has authorized disclosure of its Utility Customer Information or Customer Usage Data; and

(iii) confirmation that the customer's name and service address exactly match the utility's record for such account.

(3) Confidentiality.

(a) A Large-Scale Utility that shares Utility Customer Information or Customer Usage Data pursuant to Subsections R746-460-3(1)(a) through (c) or Subsection R746-460-3(2), may do so only subject to contractual provisions requiring the receiving party (and any of the contractors and subcontractors that the third party has retained to facilitate the marketing efforts) to maintain the Utility Customer Information or Customer Usage Data as confidential and prohibiting further sharing. A Large-Scale Utility that shares Utility Customer Information or Customer Usage Data as part of a Commission proceeding, must identify the information as Confidential Information pursuant to Sections R746-1-601 through R746-1-603.

(b) Notwithstanding the requirements under this rule, a receiving party may share Utility Customer Information, subject to any available confidential protections, shared under Section R746-460-3 in order to:

(i) comply with a warrant, subpoena, court order, or order of an administrative agency having jurisdiction; or

(ii) assist emergency responders and law enforcement in situations of threat to life or property.

(4) Customer Usage Data. Except as otherwise expressly stated herein, Large-Scale Utilities may disclose Customer Usage Data without Express Consent or need to protect the information as confidential when disclosure of multiple customers' data is provided in aggregate form such that the aggregated information does not allow any specific customer to be identified. Nothing in this rule shall prevent Large-Scale Utilities from using and disclosing usage information that does not constitute Customer Usage Data.

R746-460-4. Marketing to Utility Customers.

(1) If an affiliate or licensee of a Large-Scale Utility, or a licensee of a Large-Scale Utility's affiliate, engages in unsolicited marketing of products or services directed to a Large-Scale Utility's customers in Utah using a logo or name brand that is substantially similar to that of the Large-Scale Utility, any written marketing materials shall be drafted to avoid customer confusion about the licensee or affiliate relationship, and, with respect to Small Business and Residential Customers, shall also include a clear and prominent statement that:

(a) the product or service is not being offered by the Large-Scale Utility;

(b) the entity offering the product or service is separate from the Large-Scale Utility; and

(c) the decision to purchase or not purchase the product or service will not impact Large-Scale Utility service.

(2) If a Large-Scale Utility's licensee, affiliate, or affiliate's licensee fails to comply with Subsections R746-460-4(1)(a) through (c), the Large-Scale Utility will be subject to a penalty pursuant to Section 54-7-25.

(3) If written marketing materials contain the information set forth in Subsections R746-460-4(1)(a) through (c), then the Large-Scale Utility is deemed to have complied with these rules and is not subject to any penalty under this section.

(4) A Large-Scale Utility, its affiliate(s), or its affiliate(s)' licensees may utilize a logo or name brand that is substantially similar to that of the Large-Scale Utility without disclosures set forth in Subsection R746-460-4(1) for:

(a) tariff-based services or programs and programs related to the Large-Scale Utility's core utility business, including but not limited to billing services tariffs;

(b) charitable contributions or event sponsorships; and

(c) marketing relating to the Large-Scale Utility's own programs.

KEY: public utilities, electric and gas utility customer information, utility regulation, marketing to utility customers
Date of Enactment or Last Substantive Amendment: 2019
Authorizing, and Implemented or Interpreted Law: 54-4-1; 54-3-1; 54-3-7

Regents (Board of), Administration **R765-621** T. H. Bell Education Scholarship Program

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 43780

FILED: 06/10/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to establish administrative regulations for the T. H. Bell Scholarship program, including eligibility criteria, application procedures, appropriation of funding, and general administration.

SUMMARY OF THE RULE OR CHANGE: This proposed rule provides procedures for administration of the T. H. Bell Teaching Education Scholarship Program, ensuring it recruits first-generation students into teaching careers, encourages outstanding students to teach in high needs areas in Utah's public schools, recognizes teaching as a critically important career choice for the state of Utah.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53B-8-116

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** The legislature appropriated \$1,781,000 ongoing to this program.

♦ **LOCAL GOVERNMENTS:** This rule does not impact local governments. It governs public and some private institutions of higher education.

♦ **SMALL BUSINESSES:** This rule does not impact small businesses. It governs public and some private institutions of higher education.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Individual students who apply for and receive the scholarship governed by this rule may receive scholarship funds covering the cost of tuition, fees, and books for up to four consecutive years while making progress toward earning a eligible degree in teacher education and who teaches in a Utah public school. Although individual award amounts will vary from student to student, the total annual aggregate benefit to all recipients is \$1,781,800.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Scholarship recipients will not incur any compliance costs to apply for or receive the scholarship. Institutions will receive scholarship funds in the form of tuition, fees, and books. Those funds are intended to cover the administrative costs of the program and will therefore not incur unfunded compliance costs. Institutions are allowed to use a percentage of appropriated funds for marketing.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This proposed rule is not expected to fiscally impact non-small private businesses revenues or expenditures because the legislation that required this rule created an incentive scholarship program specifically for eligible students to attend teacher education programs at eligible colleges and universities and three private non-profit organizations. Non-small businesses are not impacted or directly benefit from the incentive loan program, though private non-profit institutions of higher education that offer approved teacher education programs may benefit by receiving a student's scholarship funds. Because scholarship recipients may select from among several public and non-profit colleges and universities to attend, projecting how much private non-profit schools may benefit is impracticable.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 REGENTS (BOARD OF)
 ADMINISTRATION
 BOARD OF REGENTS BUILDING, THE GATEWAY
 60 SOUTH 400 WEST
 SALT LAKE CITY, UT 84101-1284
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ◆ Geoff Landward by phone at 801-321-7136, or by Internet E-mail at glandward@ushe.edu

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2019

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2019

AUTHORIZED BY: Dave Buhler, Commissioner of Higher Education

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2020	FY 2021	FY 2022
State Government	\$1,781,800	\$1,781,800	\$1,781,800
Local Government	\$0	\$0	\$0
Small Businesses	\$60	\$60	\$60
Non-Small Businesses	\$60	\$60	\$60
Other Person	\$0	\$0	\$0
Total Fiscal Costs:	\$1,781,800	\$1,781,800	\$1,781,800
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$60	\$60	\$60
Non-Small Businesses	\$60	\$60	\$60
Other Persons	\$1,781,800	\$1,781,800	\$1,781,800
Total Fiscal Benefits:	\$1,781,800	\$1,781,800	\$1,781,800
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 proposed rule is not expected to fiscally impact non-small private businesses' revenues or expenditures because the legislation that required this rule created an incentive scholarship program specifically for eligible students to attend teacher education programs at eligible colleges and universities, and three private non-profit organizations. Non-small businesses are not impacted or directly benefit from the incentive loan program, though private non-profit institutions of higher education that offer approved teacher education programs may benefit by receiving a student's scholarship funds. Because scholarship recipients may select from among several public and non-profit colleges and universities to attend, projecting how much private non-profit schools may benefit is impracticable.

The Commissioner of Higher Education, David Buhler, has reviewed and approved this fiscal analysis.

R765. Regents (Board of), Administration.
R765-621. Terrell H. Bell Education Scholarship Program.
R765-621-1. Purpose.

To provide procedures for administration of the Terrell H. Bell Teaching Education Scholarship Program, ensuring it recruits first-generation students into teaching careers, encourages outstanding students to teach in high needs areas in Utah's public schools, and to recognize teaching as a critically important career choice for the state of Utah.

R765-621-2. References.

2.1. Title 53B, Chapter 8, Part 116, Terrell H. Bell Education Scholarship Program

2.2. Title 53E, Chapter 6, Part 302, Education Professional Licensure, Licensing Requirements, T3teacher Preparation Programs

R765-621-3. Definitions.

3.1. "Approved Program" means:

3.1.1. a teacher preparation program that meets the education profession licensure standards described in Title 53E, Chapter 6, Part 302, and provides enhanced clinical experiences, or prepares an individual to become a speech-language pathologist or another licensed professional providing services in a public school to students with disabilities; or

3.1.2. courses taken at Salt Lake Community College or Snow College that lead students to make reasonable progress to meet institutional criteria for admission into a program in accordance with section 3.1.1. of this rule.

3.2. "Eligible Institution" a public or private institution of higher education in Utah that offers an approved program.

3.3. "High Needs Area" means a subject area or field in public education that has a high need for teachers or other employees, determined annually by the Board in consultation with State Board of Education.

3.4. "First-generation Student" means an means a student for whom no parent or guardians attained a bachelor's degree.

3.5. "Full-time Enrollment" means 12 semester hours or such other number of hours as determined by the recipient's institution.

3.6. "Part-time Enrollment" means a minimum of 6 credits in a semester.

3.7. "Average Scholarship Amount" means average Utah System of Higher Education undergraduate resident tuition and general student fees for the corresponding academic year.

R765-621-4. General Award Conditions.

4.1. Scholarship Award. Under this program, an eligible institution may award a scholarship to an individual for an amount up to the cost of resident tuition, fees, and books for the number of credit hours in which the individual is enrolled each semester.

4.1.1. An eligible private institution may not award a scholarship for an amount that exceeds the average scholarship amount granted by a public institution of higher education.

4.1.2. A recipient may receive a scholarship for up to four consecutive years, or equivalent when considering institution-approved leaves of absence.

4.1.3. Eligible institutions may award scholarships to full-time or part-time enrolled students.

4.2. Application and Award Procedures.

4.2.1. An eligible institution shall develop processes for promoting and distributing awards consistent with this policy, and will set application deadlines that accommodate both full-time and part-time students.

4.2.2. Applications must require a student's declaration to earn a degree in an approved program.

4.3. Prioritizing Awards. Institutions shall prioritize scholarship awards as follows:

4.3.1. First, to first-generation students who intend to work in any area in a Utah public school.

4.3.2. Second, to students who are not first generation students but intend to work in high needs area in a Utah public school.

4.3.3. Third, to students who meet the requirements in Section 5 of this rule.

R765-621-5. Initial and Continuing Eligibility.

5.1. Applicants must declare their intent to earn a degree in an approved program and to teach in a Utah public school after graduation.

5.2. Award recipients must maintain satisfactory academic progress in accordance with their institution's policies.

5.3. A recipient must make reasonable progress to meet institutional criteria for admission to an approved program. Once admitted to an approved program a recipient must maintain reasonable progress towards completion of an approved program.

5.4. Recipients transferring to another eligible institution will retain an award if they continue to meet criteria established for recipients at the receiving institution.

5.5. After no more than four semesters of full-time, or eight semesters of part-time postsecondary course work, a recipient must apply and be accepted into an approved program at an eligible institution.

5.6. A recipient who has not been accepted into an approved program at an eligible institution may be granted a temporary deferment of an award for up to two years while seeking acceptance into an approved program.

5.7. After providing a recipient notice and an opportunity to respond, an institution may rescind a recipient's scholarship if the dean of education or the director of financial aid determines the recipient:

5.7.1. is failing to make reasonable progress toward completion of program requirements, or

5.7.2. has demonstrated to a reasonable certainty that he or she does not intend to teach at a public school in Utah after graduation.

5.8. Appeals. Upon request by the student, the institution shall provide an opportunity for the student to appeal a dean or director's determination to rescind the scholarship to a committee of at least three impartial persons.

5.9. Leaves of Absence. A recipient may seek leave of absence from attending an institution in accordance with applicable deferral policies at a corresponding eligible institution.

R765-621-6. Transfer of Award Funds.

6.1. Recipients may transfer to another eligible institution and retain the scholarship if they meet all requirements of the receiving institution. Transfer students are ultimately responsible for communicating with colleges/schools of education and financial aid offices at receiving institutions well in advance. Transfer students who do not meet application deadlines or demonstrate satisfactory academic progress may have their scholarship rescinded. The receiving institution is responsible to make any adjustments in a recipient's award.

R765-621-7. Distribution of Award Funds to Institutions.

7.1. The Board will annually distribute available funds to eligible institutions proportionally equal to the total number of teachers who graduated from an eligible institution and were hired by a Utah public school district for the most recent three cohort years available, minus funds for Snow College and Salt Lake Community College allocated at the discretion of the Board.

R765-621-8. Reporting.

8.1. On or before June 30 each year, eligible institutions shall report to the Board of Regents the following:

8.1.1. Any new or procedures, application materials.

8.1.2. The name and student identification number, first-generation status, and specific enrolled program of all recipients to whom the institution awarded scholarship funds the current academic year.

8.1.3. The scholarship amount each recipient received.

8.1.4. The number of first-generation recipients.

KEY: education, scholarship, teaching

Date of Enactment or Last Substantive Amendment: 2019

Authorizing, and Implemented or Interpreted Law: Title 53B, Chapter 8, Part 116

Regents (Board of), Administration
R765-622
Career and Technical Education
Scholarship Program

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 43778

FILED: 06/10/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to implement administrative regulations governing the legislatively created scholarship program. The legislation that created this program was S.B. 136, passed during the 2019 General Session. This rule establishes eligibility criteria, application procedures, and terms of general administration, as directed under the governing statute.

SUMMARY OF THE RULE OR CHANGE: This rule provides procedures for administration of the Career and Technical Education Scholarship Program, which will provide financial assistance to students pursuing career and technical education in high demand industries.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58B-8-115

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** The cost to the state budget is \$300,000 ongoing.

♦ **LOCAL GOVERNMENTS:** This rule does not impact local governments. The scholarship program governed by this rule benefits only eligible students attending eligible institutions of higher education within the state and does not involve local governments in any capacity.

♦ **SMALL BUSINESSES:** This rule does not directly impact small businesses. The scholarship program governed by this rule benefits only eligible students attending eligible institutions of higher education within the state. The institutions who are eligible to participate are public institutions of higher education only. No private school, small or large, may participate.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Students who enroll in eligible career and technical education programs may qualify for scholarships up to the cost of tuition and books, with an aggregate benefit to all recipients of up to \$300,000.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Application for this scholarship is free, and does not require additional compliance costs for recipients. Eligible institutions receive the scholarship funds toward the cost of tuition. The additional administrative burden of administering this program should be born under existing budgets and will not incur compliance costs. Institutions may use appropriated funds for administrative costs as allowed under the budgeting procedures act, if necessary.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule impacts only three public institutions of higher education. It will not directly impact businesses, though some businesses could indirectly benefit by hiring graduates of these programs.

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

REGENTS (BOARD OF)
ADMINISTRATION
BOARD OF REGENTS BUILDING, THE GATEWAY
60 SOUTH 400 WEST
SALT LAKE CITY, UT 84101-1284
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Geoff Landward by phone at 801-321-7136, or by Internet E-mail at glandward@ushe.edu

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2019

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2019

AUTHORIZED BY: Dave Buhler, Commissioner of Higher Education

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2020	FY 2021	FY 2022
State Government	\$300,000	\$300,000	\$300,000
Local Government	\$0	\$0	\$0

Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Person	\$0	\$0	\$0
Total Fiscal Costs:	\$300,000	\$300,000	\$300,000
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	\$300,000	\$300,000	\$300,000
Total Fiscal Benefits:	\$300,000	\$300,000	\$300,000
Net Fiscal Benefits:	\$0	\$0	\$300,000

*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 proposed rule is not expected to fiscally impact non-small businesses' revenues or expenditures because the legislation that required this rule created an incentive scholarship program to be provided to eligible students within the system of higher education who enroll in high demand career and technical education programs. Non-small businesses are neither impacted or directly benefit from the incentive scholarship program.

The Commissioner of Higher Education, David Buhler, has reviewed and approved this fiscal analysis.

R765. Regents (Board of), Administration.

R765-622. Career and Technical Education Scholarship Program.

R765-622-1. Purpose.

To provide procedures for administration of the Career and Technical Education Scholarship Program, which will provide financial assistance to students pursuing career and technical education in high demand industries.

R765-622-2. References.

- 2.1. Title 53B, Chapter 8, Part 115, Career and Technical Education Scholarship Program
- 2.2. Title 53B, Chapter 16, Part 209, Community Colleges
- 2.3. Title 53B, Chapter 18, Part 1201, Utah State University Eastern
- 2.4. Title 53B, Chapter 18, Part 301, Area Education Centers

R765-622-3. Definitions.

3.1. "Eligible Institution" means Salt Lake Community College's School of Applied Technology established in Title 53B,

Chapter 16, Part 209; Snow College; Utah State University Eastern established in Title 53B, Chapter 18, Part 1201; or the Utah State University area education center located at or near Moab described in Title 53B, Chapter 18, Part 301.

3.2. "High Demand Program" means a non-credit career and technical education program that is offered by an eligible institution, leads to a certificate, and is designated by the board in accordance with section 9.1. of this rule.

R765-622-4. General Award Administration.

4.1. Scholarship Award: an eligible institution may award a scholarship to an individual who is enrolled in, or intends to enroll in, a high demand program.

4.1.1. An eligible institution may award a scholarship for an amount of money up to the total cost of tuition, fees, and required textbooks for the high demand program in which the scholarship recipient is enrolled or intends to enroll.

4.1.2. An eligible institution may award a scholarship to a scholarship recipient for up to two academic years.

4.1.3. An eligible institution may cancel a scholarship if the scholarship recipient does not:

- 4.1.3.1. maintain enrollment in the eligible institution on at least a half time basis, as determined by the eligible institution; or
- 4.1.3.2. make satisfactory progress toward the completion of a certificate.

4.2. Application Procedures. An eligible institution shall develop a simple, accessible application process, and will set application deadlines that accommodate both full-time and part-time students.

4.3. Prioritization for Underserved Populations. An eligible institution shall establish criteria to identify underserved populations and to assess if an applicant is a member of an underserved population. Institutions shall prioritize scholarship awards for applicants who are members of an underserved population in accordance with their criteria. Institutions shall provide the criteria and prioritization methodology to the Board.

R765-622-5. Continuing Eligibility.

5.1. After providing a recipient notice and an opportunity to respond, an institution may rescind a recipient's scholarship if it determines the recipient has not met the following requirements:

5.1.1. Award recipients must maintain satisfactory academic progress in accordance with their institutions' policies.

5.1.2. Recipients must be enrolled at least half-time as determined by the institution.

5.2. Deferment. A recipient may seek deferment of an award in accordance with applicable deferral policies at the eligible institution.

R765-622-6. Transfer of Award Funds.

6.1. Recipients who are transferring to another eligible institution are responsible to inform the financial aid office at the institution to which they are transferring that they are an award recipient. The financial aid offices at the respective institutions shall coordinate the transfer of any scholarship funds and information. The receiving institution will verify the transferring student's ongoing eligibility in accordance with this policy and make any adjustments in a recipient's award.

R765-622-7. Distribution of Award Funds to Institutions.

7.1. The Board will annually distribute available funds to eligible institutions in accordance with the following formula:

7.1.1. Fifty percent of each year's appropriation will be divided and evenly distributed to Utah State University, Snow College, and the Salt Lake Community College's School of Applied Technology. Remaining funds will be distributed proportionally to the total rolling three-year average of students enrolled in non-credit CTE courses at each eligible institution.

R765-622-8. Reporting.

8.1. On or before September 30 each year, eligible institutions shall report to the Board of Regents the following:

8.1.1. The name and student identification of all recipients to whom the institution awarded scholarship funds the prior academic year.

8.1.2. The scholarship amount each recipient received, including additional amounts from other sources.

8.1.3. The programs in which scholarship recipients enrolled.

8.1.4. Evidence that award recipients are eligible to receive scholarship awards.

8.2. The Board of Regents may, at any time, request additional documentation or data related to the Career and Technical Education Scholarship Program and may review or formally audit an institution's compliance with this policy.

R765-622-9. Determination of High Demand Programs

9.1. Every other year, after consulting with their regional Department of Workforce Services representatives, the eligible institutions will identify non-credit career and technical education programs that prepare individuals to work in jobs that in Utah have high employer demand and high median hourly wages, or significant industry importance. The institutions shall submit the selected programs to the Board for consideration and final approval.

KEY: education, technical, career, scholarship

Date of Enactment or Last Substantive Amendment: 2019

Authorizing, and Implemented or Interpreted Law: 53B-8-115

School and Institutional Trust Lands,
Administration
R850-70
Sales of Forest Products From Trust
Lands Administration Lands

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 43792

FILED: 06/12/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: In recent years, School and Institutional Trust Lands Administration (SITLA) has observed an increased

interest from parties desiring to harvest wildland seed from trust lands. Wildland seed is a unique product in that the harvesting window is very narrow, sometimes only a couple of weeks, due to weather and other environmental factors. Therefore, when a crop of wildland seed comes on that generates market interest, SITLA has only a brief period of time to issue a permit/contract in order to allow enough time for the harvest to occur. The purpose of these rule amendments are to create a streamlined process specifically for the sale of wildland seed that will allow SITLA to better take advantage of these market opportunities.

SUMMARY OF THE RULE OR CHANGE: First, the limit for over-the-counter sales of small forest product permits, for sales of wildland seed only, will be increased from \$500 to \$5,000. This change will allow SITLA to quickly issue these over-the-counter permits to interested parties for the harvest of seed with a value of up to \$5,000, leaving ample time for the harvest to occur. Persons who purchase small forest products permits for the collection of wildland seed will be restricted to a total value of \$5,000 per calendar year. Second, the rule amendment creates a streamlined process for competitive sales of wildland seed with a value of over \$5,000. Heretofore this rule has required SITLA to publish a sales notice in the newspaper for two consecutive weeks, allow time for the submittal of sealed bids, and potentially hold an oral auction among those submitting the three highest sealed bids. While this process works well for traditional timber sales, it has often proven too lengthy for sales of wildland seed, causing SITLA to miss the narrow harvesting window. The process in the amended rule requires that notice of the sale be sent out to an agency-maintained list of interested parties, which notice may be sent via electronic means. Bids would be accepted up to the established due date and the sale awarded to the harvest bidder.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Articles X, XVIII, and XX and Enabling Act 1894, Sections 6, 8, 10, 12 and Subsection 53C-1-302(1)(a)

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: The increased efficiencies in the administration of SITLA's wildland seed harvesting program as a result of these rule amendments may result in a slight increase in revenues to SITLA from this program, as SITLA will be able to take advantage of more business opportunities. Revenues are deposited into the permanent trust fund on behalf of SITLA's beneficiaries. There are no anticipated costs or savings to SITLA's budget as a result of this rule change as the program will continue to be administered under our current operating budget. There is no anticipated need to adjust SITLA's budget in the future to administer the wildland seed program. Increasing seed harvesting opportunities on trust lands will support the in-state seed market and reduce the need to import seed from out of state sources, resulting in lower prices for state government entities who have a need to purchase seed for projects such as wildfire rehabilitation.

◆ LOCAL GOVERNMENTS: As seed harvesting companies are able to obtain more contracts from SITLA due to

increased efficiencies in the permitting program as a result of these rule amendments, they will be able to generate more profit. While it is difficult to forecast just how much more business these rule amendments may generate, any increased profits by seed companies will benefit local governments in the form of increased tax revenues. Furthermore, increasing seed harvesting opportunities on trust lands will support the in-state seed market and reduce the need to import seed from out of state sources, resulting in lower prices for government entities who have a need to purchase seed for projects such as wildfire rehabilitation.

♦ **SMALL BUSINESSES:** The majority of seed gathering companies are small businesses. While difficult to quantify, streamlining the permitting process on trust lands will present potential cost-savings to these businesses as the turnaround time for obtaining permits will be reduced.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Increasing seed harvesting opportunities on trust lands will support the in-state seed market and reduce the need to import seed from out of state sources, resulting in lower prices for federal government entities who have a need to purchase seed for projects such as wildfire rehabilitation.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs anticipated for the seed gathering companies doing business with SITLA. There are no changes to the fees charged by SITLA for seed gathering permits and there are no changes anticipated to the compliance requirements set forth in the permits as a result of these rule amendments.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: It is anticipated that these rule changes will have a net positive fiscal impact on businesses. The turnaround time for obtaining wildland seed collection permits and contracts will be shortened and the overall process will be simplified, which will present a cost-savings to businesses. These new streamlined processes will also allow SITLA to take advantage of more opportunities for wildland seed sales, which will lead to increased opportunities to do business with seed gathering companies, the majority of which are small businesses.

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

SCHOOL AND INSTITUTIONAL TRUST LANDS
ADMINISTRATION
ROOM 500
675 E 500 S
SALT LAKE CITY, UT 84102-2818
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Chris Fausett by phone at 801-538-5139, or by Internet E-mail at chrisfausett@utah.gov
♦ Lisa Wells by phone at 801-538-5154, or by Internet E-mail at lisawells@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2019

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2019

AUTHORIZED BY: David Ure, Director

Subsection 53C-1-201(3)(c) exempts the School and Institutional Trust Lands Administration from the requirement to conduct a thorough analysis, consistent with the criteria established by the Governor's Office of Management and Budget, of the fiscal impact a rule may have on businesses, as required in Subsection 63G-3-301(5).

R850. School and Institutional Trust Lands, Administration.

R850-70. Sales of Forest Products From Trust Lands Administration Lands.

R850-70-100. Authorities.

This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X, XVIII, and XX of the Utah Constitution, and Section 53C-1-302(1)(a)(ii) which authorize the director of the School and Institutional Trust Lands Administration to provide for the sale of forest products, desert products, and other vegetative material from Trust Lands Administration lands.

R850-70-150. Planning.

1. Pursuant to Section 53C-2-201(1)(a), the Trust Lands Administration shall complete the following planning obligations for all competitive and non-competitive forest product sales, in addition to the rule-based analysis and approval processes required by this rule:

(a) To the extent required by the Memorandum of Understanding between the State Planning Coordinator and the School and Institutional Trust Lands Administration, submit the proposal for review by the Resource Development Coordinating Committee (RDCC);

(b) Evaluation of and response to comments received through the RDCC process; and

(c) Evaluate and respond to any comments received through the advertising and notice processes described in R850-70-600(1).

2. All other forest product sales within this category of activity carry no planning obligations by the agency beyond existing rule-based analysis and approval processes.

R850-70-200. Definitions.

1. Sawlogs: portions of a tree stem that exceed seven feet in length and are at least six inches in diameter inside bark at the small end.

2. Poles: portions of a tree stem that are at least ten feet in length and do not exceed six inches in diameter at four and one-half feet above the ground.

3. Mine Props: portions of a tree stem that are between seven and ten feet in length, and six to nine inches diameter inside bark at the small end.

4. Posts: portions of a tree or tree stem, generally Utah juniper, which are no more than ten feet in length and are less than six inches in diameter at the top (small end).

5. Fuelwood: any portion of a tree, including those portions defined as sawlogs, poles, mine props, or posts that is harvested for use as fuel.

6. Christmas Tree: any coniferous tree, or part thereof, cut and removed from the place where grown without the foliage being removed.

7. Ornamental: any coniferous or deciduous tree, shrub, or bush less than 20' in height and no more than six inches diameter at four and one-half feet above the ground, which is removed from a natural setting, generally with roots attached, for transplant elsewhere.

8. Desert Plants: include any member of the Cactaceae Family or the Agavaceae Family.

9. Other Forest Products: include boughs, branches, pinyon nuts, cones, and Juniper berries~~[and native seed].~~

R850-70-300. Proof-of-Ownership.

Proof-of-ownership shall be issued with each sale of forest products in compliance with Section 78B-8-602.

R850-70-400. Small Forest Product Permit Sales.

~~1. The agency may make non-competitive sales of forest products, with the exception of sawlogs, with a Small Forest Products Permit when the total sale value does not exceed \$500.00. The permit shall be on a form prescribed by the agency. Persons purchasing Small Forest Product Permits shall be restricted to a total value of \$500.00 per commodity per calendar year. A Small Forest Product Permit does not grant exclusive use of the permitted lands or the resources contained thereon.~~

~~2. The agency may not sell sawlogs under a Small Forest Product Permit.~~

~~3. The total sale value of a Small Forest Product Permit issued for the sale of forest products, excluding wildland seed, shall not exceed \$500.00.~~

~~4. The total sale value of a Small Forest Product Permit issued for the collection of wildland seed shall not exceed \$5,000.00.~~

~~5. Persons purchasing Small Forest Product Permits for the collection of wildland seed shall be restricted to a total value of \$500.00 per calendar year.~~

~~6. Persons purchasing Small Forest Product Permits for eligible forest products, excluding wildland seed, shall be restricted to a total value of \$500.00 per commodity per calendar year.~~

~~7. Small Forest Product Permits shall be issued on a form prescribed by the agency.~~

~~8. A Small Forest Product Permit does not grant exclusive use of the permitted lands or the resources contained thereon.~~

R850-70-500. Noncompetitive Sales.

If the director finds it to be in the best interests of the trust, the agency may sell forest products at not less than an agency-established minimum value without soliciting competitive bids.

R850-70-600. Competitive Sales.

1. Except for sales made under a Small Forest Product Permit pursuant to R850-70-400, ~~[S] sales of forest products, excluding wildland seed,~~ shall be initiated by the agency and shall follow the procedures below:

(a) All competitive sales shall be advertised through publication at least once a week for at least two weeks in one or more newspapers of general circulation in the county in which the sale is located. The cost of the notice will be borne by the successful applicant. This notice shall contain, but is not limited to:

- (i) the legal description of the affected lands;
- (ii) the species and estimated quantity of forest products;
- (iii) minimum sale price;
- (iv) bond amounts;
- (v) advertising and processing costs, as far as is known;
- (vi) dates of bidding period;
- (vii) date, time, and location of oral auction; and
- (viii) bidder qualifications.

(b) Notice shall also be given to potential purchasers and other interested parties, whose names are on an agency maintained mailing list prior to any competitive sale.

(c) Initial bidding shall be conducted through sealed bids. Each sealed bid must contain 10% of the bid amount and the application fee. The bidders submitting the three highest sealed bids shall be allowed to enter into an oral auction.

(d) Sales shall be awarded to the highest qualified bidder unless a bidder has been previously disqualified, or is notified by the agency in writing within ~~[ten]~~10 business days of the auction that the bid will be disqualified, on the grounds of previous poor performance or other good cause shown. The agency shall declare the successful bidder within ~~[ten]~~10 business days of the bid opening. Failure of the successful bidder to execute a contract within 30 days of receipt may result in cancellation of the sale and forfeiture of all monies submitted.

2. The agency may withdraw, at its sole discretion any forest products sale prior to contract execution. All fees associated with a withdrawn sale shall be returned to the purchaser.

R850-70-650. Sale of Wildland Seed.

1. Sales of wildland seed, with the exception of sales made under a Small Forest Product Permit pursuant to R850-70-400, shall be initiated by the agency and shall follow the procedures below:

(a) All competitive sales shall be advertised by sending a notice of the sale to potential purchasers and other interested parties on an agency-maintained mailing list. This notice may be circulated through electronic means.

(b) The agency may advertise sales of wildland seed using any other methods the director has determined may increase the potential for additional interest in the sale.

(c) The cost of the notice shall be borne by the successful applicant.

(d) The notice shall contain, but is not limited to, the following:

- (i) the legal description of the affected lands;
- (ii) the species and estimated quantity of wildland seed;
- (iii) the minimum sale price;
- (iv) required bond amounts;
- (v) advertising and processing costs, so far as is known;
- (vi) dates of bidding period; and
- (vii) bidder qualifications.

(e) Sales shall be awarded to the highest qualified bidder unless a bidder has been previously disqualified, or is notified by the agency in writing within five business days of the bid opening that the bid will be disqualified, on the grounds of previous poor performance or other good cause shown.

(f) The agency shall declare the successful bidder within five business days of the bid opening.

(g) Failure of the successful bidder to execute a contract within 30 days of the receipt may result in cancellation of the sale and forfeiture of all monies submitted.

2. The agency may withdraw, at its sole discretion, any wildland seed sale prior to contract execution. All fees associated with a withdrawn sale shall be returned to the purchaser.

3. Performance and payment bonds may be required prior the commencement of harvest operations for the collection of wildland seed at the sole discretion of the agency.

R850-70-700. Timber Sale Contracts.

1. Timber Sale Contracts must be used for all sales of sawlogs and any other forest product, excluding wildland seed, where the value exceeds \$500.00.

2. Timber Sale Contracts must be used for all sales of wildland seed where the value exceeds \$5,000.00.

[2]3. Each Timber Sale Contract shall contain the provisions necessary to ensure the responsible harvest of forest products, including the applicable provisions of 53C-4-202.

R850-70-800. Timber Harvesting.

1. Prior to commencement of harvest operations, excluding the collection of wildland seed, the purchaser shall submit a timber harvest plan for agency review. Harvesting operations shall not commence until the purchaser is notified, in writing, that the timber harvest plan has been approved by the agency.

2. Prior to commencement of harvest operations, excluding the collection of wildland seed, the purchaser shall post with the agency bonds in the form and amounts as may be determined by the agency to assure compliance with all terms and conditions of the sale contract. Such bonds shall include the following:

(a) A performance bond shall be submitted in an amount at least twice the estimated cost of rehabilitation.

(b) A payment bond shall be submitted in an amount equal to the full purchase price of the sale unless the sale has been paid for in advance, or, at the discretion of the agency, the full price of the largest cutting unit of the sale.

3. All bonds posted may be used for payment of all monies due to the Trust Lands Administration on the total purchase price, and also for the costs of compliance with all other performance terms and conditions of the sale as specified in the contract.

4. The purchaser's bonds shall be maintained in effect even if the purchaser conveys all or part of the sale interest to an assignee or subsequent purchaser until such time as the purchaser fully satisfies sale contract obligations, or until such time as the bond is replaced with a new bond posted by the assignee.

5. Bonds may be increased in reasonable amounts, at any time as the agency may order, provided the agency first gives the purchaser 30 days written notice stating the increase and the reason(s) for the increase.

6. Bonds may be accepted in any of the following forms at the discretion of the agency:

(a) Surety bond with an approved corporate surety registered in Utah.

(b) Cash deposit. The Trust Lands Administration will not be responsible for any investment returns on cash deposits.

(c) an irrevocable letter of credit for a period longer than the term of the sale.

7. Bonds shall remain in force until such time as all contract payments and performance provisions have been satisfied by the purchaser and so documented by the agency in writing.

R850-70-900. Assignments.

1. Competitively let sales may be assigned, in accordance with procedures established by the agency, to any person, firm, association, or corporation qualified to execute the terms and conditions of the sale contract, with prior written approval from the agency, provided that the assignee agrees to be bound by the terms and conditions of the sale and to accept the obligations of the assignor.

2. Small Forest Product Permits and other non-competitive sales may not be assigned.

R850-70-1000. Extensions of Time.

Extensions of time to complete the harvesting operations authorized by a timber contract may be granted if the director finds it to be in the best interests of the trust. Prior to the approval of a request for an extension of time, the agency may require amendments to the contract, including, but not limited to:

[(a)]1. Increasing the amounts and extending the effective dates of bonds; and,

[(b)]2. Increasing the price of the forest products authorized by the contract.

R850-70-1100. Forest Product Valuation.

Forest products shall be offered for sale based on a methodology or price schedule to be determined by the agency pursuant to board policy.

R850-70-1200. Long-Term Agreements.

1. Long-term agreements (LTA) are those sales where the harvest of specified forest products will take place over a period of time exceeding two years. Upon approval of the director, the agency may enter into an LTA with a purchaser for a period not to exceed ten years provided that:

(a) Resource or other benefits can be demonstrated by the LTA.

(b) The LTA is advertised and competitively bid.

(c) The area included in the LTA is defined by legal or other tangible description.

(d) The LTA includes provisions for periodic reappraisal and adjustment of prices.

(e) The LTA may not preclude or prohibit forest product sales to other purchasers on trust lands adjacent to or within the area designated by the LTA.

(f) The LTA provides for amendment and cancellation during the term of the LTA.

(g) The LTA does not preclude or prohibit other concurrent resource management activities and uses adjacent to or within the area designated by the LTA.

(h) Each LTA states that access granted by the LTA is not exclusive.

(i) A due-diligence provision is included in each LTA.

R850-70-1300. Fees and Procedures.

The agency may establish fees and develop procedures necessary to provide for the administration and sale of forest products pursuant to Section 53C-1-302(1)(b).

KEY: forest products, administrative procedures, timber

Date of Enactment or Last Substantive Amendment: ~~July 2, 2004~~2019

Notice of Continuation: December 4, 2017
Authorizing, and Implemented or Interpreted Law: 53C-1-302(1);
53C-2-201(1)(a)

End of the Notices of Proposed Rules Section

NOTICES OF 120-DAY (EMERGENCY) RULES

An agency may file a **120-DAY (EMERGENCY) RULE** when it finds that regular rulemaking procedures would:

- (a) cause an imminent peril to the public health, safety, or welfare;
- (b) cause an imminent budget reduction because of budget restraints or federal requirements; or
- (c) place the agency in violation of federal or state law (Subsection 63G-3-304(1)).

As with a **PROPOSED RULE**, a **120-DAY RULE** is preceded by a **RULE ANALYSIS**. This analysis provides summary information about the **120-DAY RULE** including the name of a contact person, justification for filing a **120-DAY RULE**, anticipated cost impact of the rule, and legal cross-references.

Following the **RULE ANALYSIS**, the text of the **120-DAY RULE** is printed. New text is underlined (example) and text to be deleted is struck out with brackets surrounding the deleted text ([example]). An emergency rule that is new is entirely underlined. Likewise, an emergency rule that repeals an existing rule shows the text completely struck out. A row of dots in the text (.) indicates that unaffected text was removed to conserve space.

A **120-DAY RULE** is effective when filed with the Office of Administrative Rules, or on a later date designated by the agency. A **120-DAY RULE** is effective for 120 days or until it is superseded by a permanent rule. Because of its temporary nature, a **120-DAY RULE** is not codified as part of the *Utah Administrative Code*.

The law does not require a public comment period for **120-DAY RULES**. However, when an agency files a **120-DAY RULE**, it may file a **PROPOSED RULE** at the same time, to make the requirements permanent.

Emergency or **120-DAY RULES** are governed by Section 63G-3-304, and Section R15-4-8.

Human Services, Juvenile Justice Services **R547-15** Formula for Reform Savings

NOTICE OF 120-DAY (EMERGENCY) RULE

DAR FILE NO.: 43804

FILED: 06/13/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: In accordance with H.B. 404 passed in the 2019 General Session and Section 62A-7-113, this proposed rule provides a formula to calculate the savings from general fund appropriations resulting from out-of-home placements for youth offenders with the Division of Juvenile Justice Services (Division). This formula is needed for the upcoming fiscal year, which begins 07/01/2019, and the Division anticipates having this emergency rule in place prior to closeout.

SUMMARY OF THE RULE OR CHANGE: This emergency rule is being submitted simultaneously with the proposed version. This rule establishes the authority and purpose, which is required by Section 62A-7-113 and authorized by Title 63G, Chapter 3, the Utah Administrative Rulemaking Act.

This proposed rule also provides the following definitions that are used in the established formula: out-of-home placements, lapsing funds, and average nightly count. Lastly, this rule establishes a formula to calculate the savings from general fund appropriations resulting from out-of-home placements for youth offenders with the Division. (EDITOR'S NOTE: The corresponding proposed Rule R547-15 is under Filing No. 43805 in this issue, July 1, 2019) of the Bulletin.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-7-113

EMERGENCY RULE REASON AND JUSTIFICATION: REGULAR RULEMAKING PROCEDURES WOULD place the agency in violation of federal or state law.

JUSTIFICATION: The Division will need to be in line with H.B. 404 (2019) and Section 62A-7-113 prior to the upcoming fiscal year. This proposed rule provides a formula to calculate the savings from General Fund appropriations resulting from out-of-home placements for youth offenders with the Division. This formula is necessary for the upcoming fiscal year and will need to be in place prior. This emergency rule is being filed simultaneously with the official proposed Rule R547-15.

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** This rule is not expected to have any fiscal impact to the state budget. Any administrative

costs associated with enactment of this rule and procedure is negligible and would be absorbed by the existing budget.

◆ LOCAL GOVERNMENTS: It is not anticipated that local governments will see any fiscal impact from this rule or the formula that is established within it.

◆ SMALL BUSINESSES: Small businesses are not impacted by the formula that is established within this proposed rule.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Persons other than small businesses, businesses, or local government entities are not impacted by the formula that is established within this proposed rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no anticipated compliance costs as this rule does not provide an impact to any persons.

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 will not result in a fiscal impact to businesses.

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

HUMAN SERVICES
JUVENILE JUSTICE SERVICES
195 N 1950 W
SALT LAKE CITY, UT 84116
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Abbielee Gardner by phone at 801-538-3961, or by Internet E-mail at abbielee.gardner@utah.gov

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

◆ Laura Powell by phone at 801-538-4365, or by Internet E-mail at laurapowell@utah.gov

EFFECTIVE: 06/13/2019

AUTHORIZED BY: Ann Williamson, Executive Director

R547. Human Services, Juvenile Justice Services.

R547-15. Formula for Reform Savings.

R547-15-1. Authority and Purpose.

Section 62A-7-113 requires the division to create a rule to establish a formula calculating the savings from General Fund appropriations resulting from out-of-home placements for youth offenders with the division.

R547-15-2. Definitions.

(1) Definitions:

(a) Out-of-home placements means division programs consisting of:

(i) Detention as defined in 62A-7-101

(ii) Long-term secure care

(iii) Residential community placements

(b) Lapsing funds means funds unspent during a fiscal year that are not designated as non-lapsing.

(c) Average Nightly Count means the average number of youths enrolled at midnight in a program for a specified time period.

R547-15-3. Formula.

(1) Formula:

(a) For the JJS Programs and Operations line item and the DHS Community Providers Line item:

(i) At the end of each fiscal year, the Division of Finance shall transfer the lesser of the lapsing balance in each line item or:

(ii) An amount to be determined based on calculating the percent reduction in average nightly counts of youth in out of home placements from the base year of 2017 to the current year, multiplied by total year end expenditures.

(A) $((FY17-Current\ FY)/FY17)*Current\ FY$
Expenditures

KEY: human services, reinvestment, formula, Juvenile Justice Services

Date of Enactment or Last Substantive Amendment: June 13, 2019

Authorizing, and Implemented or Interpreted Law: 62A-7-113

End of the Notices of 120-Day (Emergency) Rules Section

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the agency is required to review the rule. This review is intended to help the agency determine, and to notify the public, that the administrative rule in force is still authorized by statute and necessary. Upon reviewing a rule, an agency may: repeal the rule by filing a **PROPOSED RULE**; continue the rule as it is by filing a **FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (REVIEW)**; or amend the rule by filing a **PROPOSED RULE** and by filing a **REVIEW**. By filing a **REVIEW**, the agency indicates that the rule is still necessary.

A **REVIEW** is not followed by the rule text. The rule text that is being continued may be found in the online edition of the *Utah Administrative Code* available at <https://rules.utah.gov/>. The rule text may also be inspected at the agency or the Office of Administrative Rules. **REVIEWS** are effective upon filing.

REVIEWS are governed by Section 63G-3-305.

Administrative Services, Records Committee

R35-1

State Records Committee Appeal Hearing Procedures

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 43760
FILED: 06/03/2019

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 63G-2-502(2)(a) states that the States Records Committee may make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to govern the committee's proceedings.

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 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 details the procedures for facilitating and conducting a records request appeal to the State Records Committee. As such, it promotes efficiency, provides clarity regarding the roles of the State Records Committee members, its secretary, and the parties involved. This makes the process transparent so that members of the public can be

full and equal participants. Therefore, this rule should be continued.

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

ADMINISTRATIVE SERVICES
RECORDS COMMITTEE
ARCHIVES BUILDING
346 S RIO GRANDE
SALT LAKE CITY, UT 84101-1106
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Kendra Yates by phone at 801-531-3856, or by Internet E-mail at kendrayates@utah.gov

AUTHORIZED BY: Kenneth Williams, Director

EFFECTIVE: 06/03/2019

Administrative Services, Records Committee

R35-1a

State Records Committee Definitions

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 43761
FILED: 06/03/2019

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 63G-2-502(2)(a)

states that the State Records Committee may make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to govern the committee's proceedings.

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 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 clarifies the meaning of terms used throughout the other sections of this title. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 ADMINISTRATIVE SERVICES
 RECORDS COMMITTEE
 ARCHIVES BUILDING
 346 S RIO GRANDE
 SALT LAKE CITY, UT 84101-1106
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Kendra Yates by phone at 801-531-3856, or by Internet E-mail at kendrayates@utah.gov

AUTHORIZED BY: Kenneth Williams, Director

EFFECTIVE: 06/03/2019

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 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 provides specific instructions for when hearings may or may not be denied. These details are important because the rights of the petitioners are impacted by the ability to have a hearing, and the rights of the respondents are impacted by whether or not they have the ability to avoid a hearing if they have evidence that the records don't exist. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 ADMINISTRATIVE SERVICES
 RECORDS COMMITTEE
 ARCHIVES BUILDING
 346 S RIO GRANDE
 SALT LAKE CITY, UT 84101-1106
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Kendra Yates by phone at 801-531-3856, or by Internet E-mail at kendrayates@utah.gov

AUTHORIZED BY: Kenneth Williams, Director

EFFECTIVE: 06/03/2019

**Administrative Services, Records
 Committee**

R35-2

Declining Appeal Hearings

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**

DAR FILE NO.: 43762

FILED: 06/03/2019

**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 63G-2-502(2)(a) states that the State Records Committee may make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to govern the committee's proceedings.

**Administrative Services, Records
 Committee**

R35-4

**Compliance with State Records
 Committee Decisions and Orders**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**

DAR FILE NO.: 43763

FILED: 06/03/2019

**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 63G-2-502(2)(a) states that the State Records Committee (SRC) may make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to govern the committee's proceedings.

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 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 details expectations for following the decisions and orders issued by the SRC, and consequences for not complying. It provides clarity regarding the roles of the SRC members, its secretary, and the parties involved, and it gives the SRC an avenue for enforcing its orders. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 ADMINISTRATIVE SERVICES
 RECORDS COMMITTEE
 ARCHIVES BUILDING
 346 S RIO GRANDE
 SALT LAKE CITY, UT 84101-1106
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Kendra Yates by phone at 801-531-3856, or by Internet E-mail at kendrayates@utah.gov

AUTHORIZED BY: Kenneth Williams, Director

EFFECTIVE: 06/03/2019

**Administrative Services, Records
 Committee
 R35-5**

**Subpoenas Issued by the Records
 Committee**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**
 DAR FILE NO.: 43764
 FILED: 06/03/2019

**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 63G-2-502(2)(a) states that the State Records Committee (SRC) may make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to govern the committee's proceedings.

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 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 provides a way for the SRC to subpoena a witness that they need to have testify. This increases the likelihood of a fair hearing and outcome for all parties. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 ADMINISTRATIVE SERVICES
 RECORDS COMMITTEE
 ARCHIVES BUILDING
 346 S RIO GRANDE
 SALT LAKE CITY, UT 84101-1106
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Kendra Yates by phone at 801-531-3856, or by Internet E-mail at kendrayates@utah.gov

AUTHORIZED BY: Kenneth Williams, Director

EFFECTIVE: 06/03/2019

**Administrative Services, Records
 Committee
 R35-6
 Expedited Hearing**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**
 DAR FILE NO.: 43765
 FILED: 06/03/2019

**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 63G-2-502(2)(a) states that the State Records Committee (SRC) may make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to govern the committee's proceedings.

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 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 details the procedures for requesting and facilitating an expedited appeal to the SRC. This is becoming more and more important as the number of appeals continue to increase drastically, thereby increasing the length of time it takes to get an appeal. This rule provides clarity regarding the roles of the SRC members, its secretary, and the parties involved, as well as the conditions under which an appeal can be expedited. Therefore, this rule should be continued.

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

ADMINISTRATIVE SERVICES
RECORDS COMMITTEE
ARCHIVES BUILDING
346 S RIO GRANDE
SALT LAKE CITY, UT 84101-1106
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Kendra Yates by phone at 801-531-3856, or by Internet E-mail at kendrayates@utah.gov

AUTHORIZED BY: Kenneth Williams, Director

EFFECTIVE: 06/03/2019

**Agriculture and Food, Regulatory
Services
R70-310
Grade A Pasteurized Milk**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 43775
FILED: 06/07/2019

**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: This rule is promulgated under Subsection 4-2-102(1)(i) enabling the Utah Department of Agriculture and Food (UDAF) to conduct investigations, subpoena witnesses and records, conduct hearings, issue orders, and make recommendations concerning all matters related to agriculture, specifically, related to dairy issues and

production of grade A, pasteurized milk. UDAF is mandated by the Public Health Service/Food and Drug Administration (PHS/FDA) to adhere specifically to the regulations and guidelines presented in the PHS/FDA 2013 Pasteurized Milk Ordinance (PMO). In order to stay within the parameters of the 2013 PMO, UDAF must have authority to practice the provisions listed in Subsection 4-2-103(1)(i).

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. There have been no comments in opposition to 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: UDAF must be able to continue monitoring, and when necessary, directing the production and distribution of Grade A pasteurized milk in the state of Utah, as long as the dairy industry maintains a presence in the state. Therefore, this rule should be continued.

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

AGRICULTURE AND FOOD
REGULATORY SERVICES
350 N REDWOOD RD
SALT LAKE CITY, UT 84116-3034
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Kelly Pehrson by phone at 801-538-7102, or by Internet E-mail at kwpehrson@utah.gov
♦ Melissa Ure by phone at 801-538-4978, or by Internet E-mail at mure@utah.gov
♦ Travis Waller by phone at 801-538-7150, by FAX at 801-538-7124, or by Internet E-mail at twaller@utah.gov

AUTHORIZED BY: Kerry Gibson, Commissioner

EFFECTIVE: 06/07/2019

**Commerce, Occupational and
Professional Licensing
R156-60a
Social Worker Licensing Act Rule**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 43799
FILED: 06/13/2019

**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: Title 58, Chapter 60, Part 2, provides for the licensure and regulation of various classifications of social worker. Subsection 58-1-106(1)(a) provides that the Division of Occupational and Professional Licensing (Division) may adopt and enforce rules to administer Title 58. Subsection 58-60-203(3) provides that the Social Worker Licensing Board's duties and responsibilities shall be in accordance with Section 58-1-202. Subsection 58-1-202(1)(a) provides that one of the duties of each board is to recommend appropriate rules to the Division Director. This rule was enacted to clarify the provisions of Title 58, Chapter 60, Part 2, with respect to various classifications of social worker.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Since this rule was last reviewed in August 2014, the rule has been amended one time in 2015. The Division has received no written comments with respect to 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 should be continued as it provides a mechanism to inform potential licensees of the requirements for licensure as allowed under statutory authority provided in Title 58, Chapter 60, Part 2, with respect to various classifications of social workers. This rule should also be continued as it provides information to ensure applicants for licensure are adequately trained and meet minimum licensure requirements and provides licensees with information concerning unprofessional conduct, definitions, and ethical standards relating to the profession.

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:

♦ Jennifer Zaelit by phone at 801-530-7632, or by Internet E-mail at jzaelit@utah.gov

AUTHORIZED BY: Mark Steinagel, Director

EFFECTIVE: 06/13/2019

Commerce, Occupational and
Professional Licensing
R156-60b
Marriage and Family Therapist
Licensing Act Rule

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 43800
FILED: 06/13/2019

**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: Title 58, Chapter 60, Part 3, provides for the licensure and regulation of marriage and family therapists and associate marriage and family therapists. Subsection 58-1-106(1)(a) provides that the Division of Occupational and Professional Licensing (Division) may adopt and enforce rules to administer Title 58. Subsection 58-60-303(3)(a) provides that the Social Worker Licensing Board's duties and responsibilities shall be in accordance with Section 58-1-202. Subsection 58-1-202(1)(a) provides that one of the duties of each board is to recommend appropriate rules to the Division Director. This rule was enacted to clarify the provisions of Title 58, Chapter 60, Part 3, with respect to marriage and family therapists and associate marriage and family therapists.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Since this rule was last reviewed in August 2014, the rule has been amended one time in 2016. The Division has received no written comments with respect to 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 should be continued as it provides a mechanism to inform potential licensees of the requirements for licensure as allowed under statutory authority provided in Title 58, Chapter 60, Part 3, with respect to marriage and family therapists and associate marriage and family therapists. This rule should also be continued as it provides information to ensure applicants for licensure are adequately trained and meet minimum licensure requirements and provides licensees with information concerning unprofessional conduct, definitions, and ethical standards relating to the profession.

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:
 ♦ Jennifer Zaelit by phone at 801-530-7632, or by Internet E-mail at jzaelit@utah.gov

AUTHORIZED BY: Mark Steinagel, Director

EFFECTIVE: 06/13/2019

**Health, Administration
 R380-25**

Submission of Data Through an Electronic Data Interchange

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
 DAR FILE NO.: 43774
 FILED: 06/07/2019

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: Rule R380-25 provides for the submission of information to the Department of Health (Department) through an electronic data interchange (EDI). Subsections 26-1-30(2)(d), 26-1-30(2)(e), 26-1-30(2)(f), 26-1-30(2)(g), 26-1-30(2)(p), and 26-1-30(2)(w), as well as Sections 26-3-5 and 26-3-6 authorize this rule. Subsections 26-1-30(2)(d) through (g), (p), and (w) refer to the Department's core missions to collect specific health related information for reporting, analysis, program management, and other public health related activities. Sections 26-3-5 and 26-3-6 authorize the Department to coordinate data collection and to cooperate with other entities to implement standards for data exchange. Rule R380-25 provides for the use of an electronic data exchange, using established standards, to act as a conduit for reporting information to the Department in furtherance of the Department's public health mission. An amendment will be submitted separately with nonsubstantive changes related to the statutory references. Although the references have been renumbered, the authority has not been altered.

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 have been received during the previous renewal period.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: If this rule was removed, any entity wanting to be a conduit for data submissions to the Department would not have the appropriate authority. Therefore, this rule should be continued.

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

HEALTH
 ADMINISTRATION
 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:
 ♦ Navina Forsythe by phone at 801-538-7072, or by Internet E-mail at nforsythe@utah.gov

AUTHORIZED BY: Joseph Miner, MD, Executive Director

EFFECTIVE: 06/07/2019

**Health, Health Care Financing,
 Coverage and Reimbursement Policy
 R414-36
 Rehabilitative Mental Health and
 Substance Use Disorder Services**

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
 DAR FILE NO.: 43771
 FILED: 06/05/2019

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 26-18-3 requires the Department of Health (Department) to implement the Medicaid program through administrative rules. Implementation includes the provision of rehabilitative and substance use disorder services for eligible Medicaid members.

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 Department did not receive any written or oral comments 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: The Department will continue this rule because it implements rehabilitative mental health and substance use disorder services as described in the Medicaid provider manual and in the Medicaid State Plan.

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

HEALTH
HEALTH CARE FINANCING,
COVERAGE AND REIMBURSEMENT POLICY
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:

◆ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

AUTHORIZED BY: Joseph Miner, MD, Executive Director

EFFECTIVE: 06/05/2019

**Health, Health Care Financing,
Coverage and Reimbursement Policy
R414-140
Choice of Health Care Delivery
Program**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 43772
FILED: 06/05/2019

**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: 42 U.S.C. Sec 1396n(b) authorizes the Department of Health (Department) to implement waivers, which promote cost-effective and efficient health care for Medicaid members. Section 26-1-5 also grants the Department the authority to adopt rules as necessary to implement the Medicaid program, and Section

26-18-3 requires the Department to implement the Medicaid program through administrative rules.

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 Department did not receive any written or oral comments 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: The Department will continue this rule because the Choice of Health Care Delivery Program provides access to quality and cost-effective health care for certain Medicaid members who live in urban counties of the state.

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

HEALTH
HEALTH CARE FINANCING,
COVERAGE AND REIMBURSEMENT POLICY
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:

◆ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

AUTHORIZED BY: Joseph Miner, MD, Executive Director

EFFECTIVE: 06/05/2019

**Health, Health Care Financing,
Coverage and Reimbursement Policy
R414-501
Preadmission Authorization,
Retroactive Authorization, and
Continued Stay Review**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 43770
FILED: 06/05/2019

**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 26-1-5 grants the Department of Health (Department) the authority to adopt rules as necessary to implement the Medicaid program, and Section 26-18-3 requires the Department to implement the Medicaid program through administrative rules. Additionally, 42 U.S.C. Sec 1396r sets forth eligibility and treatment requirements for patients who reside in nursing 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: The Department did not receive any written or oral comments 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: The Department will continue this rule because it implements nursing facility and utilization requirements to evaluate each resident's need for admission and continued stay in a nursing facility.

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

HEALTH
HEALTH CARE FINANCING,
COVERAGE AND REIMBURSEMENT POLICY
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:

♦ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

AUTHORIZED BY: Joseph Miner, MD, Executive Director

EFFECTIVE: 06/05/2019

Insurance, Administration

R590-192

Unfair Accident and Health Claims Settlement Practices

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 43785

FILED: 06/10/2019

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: Subsections 31A-2-201(1) and 31A-2-201(3)(a) authorize the Insurance Commissioner to administer, enforce, and make rules to implement the provisions of the Insurance Code, Title 31A. Subsection 31A-26-301(1) authorizes the Insurance Commissioner to write rules to ensure the timely payment of claims. Section 31A-26-301 and Subsection 31A-21-312(5) authorize the Insurance Commissioner to write rules regarding notice of loss and proof of loss. Subsection 31A-26-303(4) authorizes the Insurance Commissioner to define by rule acts that are considered to be unfair claim settlement practices. Subsections 31A-2-202(4) and 31A-2-202(6) authorize the Insurance Commissioner to require timely, accurate, and complete responses to the Commissioner.

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 is a major consumer protection regulation. It sets parameters and timelines for payment of health insurance claims. 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: 06/10/2019

Insurance, Administration
R590-244
Individual and Agency Licensing
Requirements

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 43786
FILED: 06/10/2019

**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 adopt rules to implement the provisions of the Insurance Code, Title 31A. Subsections 31A-23a-104(2), 31A-23a-110(1), 31A-25-201(1), 31A-26-202(1), 31A-23b-203(2), 31A-23b-208(1), 31A-35-104, 31A-35-301(1), and 31A-35-401(2) authorize the Insurance Commissioner to prescribe the forms and manner in which an initial or renewal individual, or agency license application under Chapters 23a, 23b, 25, 26, and 35 is to be made to the Insurance Commissioner. Subsections 31A-23a-111(10), 31A-23b-401(9), 31A-25-208(9), 31A-26-213(10), and 31A-35-406(1) authorize the Insurance Commissioner to adopt a rule prescribing license renewal and reinstatement requirements for individual and agency licenses under Chapters 23a, 23b, 25, 26, and 35. Subsections 31A-23a-108(1), 31A-23b-205(2), 31A-23b-205(3), and 31A-26-207(1) authorize the Insurance Commissioner to adopt a rule prescribing how examination and training requirements may be administered to licensees under Chapters 23a, 23b, and 26. Subsection 31A-23a-115(1) authorizes the Insurance Commissioner to adopt a rule prescribing reporting requirements to be utilized by an insurer for the initial appointment, or the termination of the appointment of a person authorized to act on behalf of the insurer under Chapter 23a. Subsection 31A-23a-203.5(3) authorizes the Insurance Commissioner to adopt a rule prescribing the terms and conditions of any required legal liability insurance coverage to be maintained by, or on behalf of, a licensed resident individual producer. Subsection 31A-23b-207(1) authorizes the Insurance Commissioner to adopt a rule prescribing the amount of any surety bond required to be maintained by a licensed navigator to cover the legal liability of a navigator as the result of an erroneous act or failure to act in the navigator's capacity as a navigator. Subsections 31A-23a-302(2), 31A-23b-209(3), and 31A-26-201(1) authorize the Insurance Commissioner to adopt a rule prescribing the reporting requirements to be utilized by an agency for the initial designation or the termination of designation, of a person authorized to act on behalf of the agency under Chapters 23a, 23b, and 26.

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) amended this rule in 2014 and received one industry comment at that time. The comment was a request to change proposed language regarding the timeframe for appointing agents. The Department declined to change the language because the proposed language was less restrictive than the commenter's suggestion and would provide more flexibility to the industry.

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 important because it provides standards for the licensing of individuals and agencies and for making other amendments to a license as needed. Standardized licensing requirements are important so that everyone who wants to apply for a license will know the standards, and consumers will know that if a person is licensed they have passed the required tests and had the required background checks. Therefore, this rule should be continued.

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: 06/10/2019

Insurance, Title and Escrow
Commission
R592-6
Unfair Inducements and Marketing
Practices in Obtaining Title Insurance
Business

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 43781
FILED: 06/10/2019

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-2-404(2) authorizes the Title and Escrow Commission to make rules for the administration of the Insurance Code related to title insurance, including rules related to standards of conduct for a title insurer, agency, or producer.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: In 2015, the Insurance Department (Department) amended this rule at the behest of the Title and Escrow Commission. The Department received two industry comments during the public comment period. While both were supportive of making changes to this rule, one thought the changes went too far, and the other thought they didn't go far enough. The Title and Escrow Commission discussed these comments at its August 2015 meeting, noting that the parties who submitted the comments were part of the process to create the amendments. The commission decided, with a vote of 5-0, to make the rule effective.

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 provides guidance to title agents and agencies regarding the actions that are considered to be unfair inducements and unfair marketing practices. This rule is meant to maintain fair competition among licensees and to protect insurance consumers against unfair practices used to obtain their business. The Title and Escrow Commission directed that this rule should be continued by a vote of 4-0 at its 05/28/2019 meeting.

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

INSURANCE
TITLE AND ESCROW COMMISSION
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: 06/10/2019

Insurance, Title and Escrow
Commission
R592-7
Title Insurance Continuing Education

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 43782
FILED: 06/10/2019

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: Subsections 31A-2-404(2)(a) and (g) direct the Title and Escrow Commission to make rules for the administration of the provisions in the Insurance Code related to title insurance, and the approval of continuing education (CE) programs related to title insurance.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: In 2018, the Insurance Department (Department) repealed and reenacted this rule at the behest of the Title and Escrow Commission. The Department received two comments during the public comment period. The first was from an insurer requesting that the words "or agency" be added to a specific section of the rule. The Department reviewed the request and declined to make the change because it was unnecessary -- changes to the wording of the section in question were made intentionally to meet the Title and Escrow Commission's goals. The second comment was submitted by the Department's assistant attorney general, who stated that it is unclear whether the Title and Escrow Commission is able to delegate its authority to the Department, but that the Insurance Commission staffing the Title and Escrow Commission may make it possible.

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 delegates from the Title and Escrow Commission to the Insurance Commissioner the authority to approve CE courses related to title insurance, and requires that the Insurance Commissioner provide to the Title and Escrow Commission a quarterly report of the CE courses approved by the Department. This rule also specifies the CE requirements that must be met by title insurance producers. It is important that the Department continue to provide this service for the Commission to alleviate the burden from Title

and Escrow Commission members who may not know all the rules and have time to delegate the process. It is important to leave this duty with the Department because they have the personnel and process in place to review, approve, and disapprove CE courses in a timely, efficient way. The Title and Escrow Commission directed that this rule should be continued by a vote of 4-0 at its May 28, 2019 meeting.

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

INSURANCE
TITLE AND ESCROW COMMISSION
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: 06/10/2019

**Insurance, Title and Escrow
Commission
R592-8**

**Application Process for an Attorney
Exemption for Agency Title Insurance
Producer Licensing**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 43783
FILED: 06/10/2019

**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-2-404 authorizes the Title and Escrow Commission to make rules to administer the provisions of the Insurance Code related to title insurance. Section 31A-23a-204 authorizes the Title and Escrow Commission to exempt attorneys with real estate experience from the three-year licensing requirement to license an agency title insurance producer.

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 delegates the preliminary process of approving or denying requests from attorneys for exemption from the licensing requirement in Subsection 31A-23a-204(1) (a). This rule provides a process to apply for the exemption and to appeal a denial. Without this rule, the Title and Escrow Commission would be responsible for handling attorney exemptions, which would require the Commission having a budget to hire personnel to process the exemptions. This rule is also necessary to provide attorneys with a process for filing an exemption and appealing a denial. The Title and Escrow Commission directed that this rule should be continued by a vote of 4-0 at its 05/28/2019 meeting.

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

INSURANCE
TITLE AND ESCROW COMMISSION
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: 06/10/2019

**Insurance, Title and Escrow
Commission
R592-9**

**Title Insurance Recovery, Education,
and Research Fund Assessment Rule**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 43784
FILED: 06/10/2019

**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-41-202 requires the Title and Escrow Commission to determine the assessments required from individual title and agency title insurance

producers to provide funding for the recovery, education, and research fund.

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: The Recovery, Education, and Research Fund pays for claims related to an illegal transaction by a title licensee. Money is used to investigate violations by title licensees, conduct education and research, and to examine licensees. The fund pays for the education of staff who handle title issues. The amount to be taken from the account due to fraudulent acts of licensees can only be determined by a court of law. Without this fund, an individual who has a claim against a licensee who has defrauded, misrepresented, or deceived the individual would have no other recourse for

reimbursement. The Title and Escrow Commission directed that this rule should be continued by a vote of 4-0 at its 05/28/2019 meeting.

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

INSURANCE
TITLE AND ESCROW COMMISSION
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: 06/10/2019

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

Capitol Preservation Board (State)

Administration

No. 43517 (AMD): R131-13. Health Reform -- Health

Insurance Coverage in State Contracts -- Implementation

Published: 03/01/2019

Effective: 06/13/2019

Environmental Quality

Air Quality

No. 43589 (AMD): R307-401-10. Source Category

Exemptions

Published: 04/01/2019

Effective: 06/06/2019

Insurance

Administration

No. 43659 (AMD): R590-146. Medicare Supplement

Insurance Standards

Published: 05/01/2019

Effective: 06/07/2019

No. 43486 (AMD): R590-155. Utah Life and Health

Insurance Guaranty Association Summary Document

Published: 02/15/2019

Effective: 06/07/2019

No. 43486 (CPR): R590-155. Utah Life and Health

Insurance Guaranty Association Summary Document

Published: 05/01/2019

Effective: 06/07/2019

No. 43653 (REP): R590-218. Permitted Language for

Reservation of Discretion Clauses

Published: 05/01/2019

Effective: 06/07/2019

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 June 14, 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).

EDITOR'S NOTE: Due to technical issues, the Indexes are not included in this Bulletin.

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/>).
