

UTAH STATE BULLETIN

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

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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

Health Health Care Financing, Coverage and Reimbursement Policy

Notice for August 2019 Medicaid Rate Changes

Effective August 1, 2019, Utah Medicaid will adjust its rates consistent with approved methodologies. Rate adjustments include new codes priced consistent with approved Medicaid methodologies as well as potential adjustments to existing codes. All rate changes are posted to the web and can be viewed at: <http://health.utah.gov/medicaid/stplan/lookup/CoverageLookup.php>

End of the Special Notices Section

NOTICES OF PROPOSED RULES

A state agency may file a **PROPOSED RULE** when it determines the need for a substantive change to an existing rule. With a **NOTICE OF PROPOSED RULE**, an agency may create a new rule, amend an existing rule, repeal an existing rule, or repeal an existing rule and reenact a new rule. Filings received between June 15, 2019, 12:00 a.m., and July 01, 2019, 11:59 p.m. are included in this, the July 15, 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 August 14, 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 November 5, 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

Agriculture and Food, Plant Industry R68-29 Quality Assurance Testing on Cannabis

NOTICE OF PROPOSED RULE

(New Rule)
DAR FILE NO.: 43842
FILED: 06/30/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This proposed rule sets forth the standards for cannabis and cannabis product testing and sets limits for pesticides, residual solvents, heavy metals, and other contaminants pursuant to Subsections 4-41-403(1) and 4-41a-701(3).

SUMMARY OF THE RULE OR CHANGE: This proposed rule sets forth the requirements for the testing of cannabis and cannabis products. This rule establishes the levels for pesticides, residual solvents, heavy metals, and other contaminants that products must meet in order to be available.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 4-41-403(1) and Subsection 4-41a-701(3)

MATERIALS INCORPORATED BY REFERENCE:

- ◆ Adds United States Pharmacopeia Section 1111, published by United States Pharmacopeia, 05/01/2009

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There are no cost or benefits to the state as this proposed rule only sets limits for that must be followed by the industry. While the Department of Agriculture and Food (Department) may be asked to conduct quality assurance testing, those cost are funded through other related programs.
- ◆ **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:** In the event that a sample does not pass the quality assurance standards as stated in this rule, a small business will not be able to offer their product for sale in the state. They will also have the cost associated with the destruction of the products lots or batch for failure to pass a test. However, it is impossible at this time for the Department to determine those cost at this time.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This proposed rule establishes limits for pesticides, residual solvents, heavy metals, and other contaminants in cannabis and cannabis products. This proposed rule does not impose

any additional financial requirement on persons, nor generate a cost or savings impact to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: In the event that a sample does not pass the quality assurance standards as stated in this rule, a business will not be able to offer their product for sale in the state. They will also have the cost associated with the destruction of the products lots or batch for failure to pass a test. As cannabis has been previously illegal under state law, the full impact to these businesses cannot be estimated as the necessary data is not available to the Department.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: In the event that a sample does not pass the quality assurance standards as stated in this rule, a small business will not be able to offer their product for sale in the state. They will also have the cost associated with the destruction of the products lots or batch for failure to pass a test. As cannabis has been previously illegal under state law, the full impact to these businesses cannot be estimated as the necessary data is not available to the Department.

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

AGRICULTURE AND FOOD
PLANT INDUSTRY
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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/14/2019

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

- ◆ 08/08/2019 02:00 PM, Dept. of Agriculture and Food, 350 North Redwood Road, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 08/21/2019

AUTHORIZED BY: Kerry Gibson, Commissioner

Appendix: Regulatory Impact Analysis for Small and Non-Small Businesses

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
 Subsection 4-41a-701(3) allows for the Department to establish rules for the quality assurance testing on cannabis. This rule establishes the standards cannabis and cannabis products must pass before they are offered for sale in the state. This is to help make sure the products free from harmful contaminants. As cannabis has been previously illegal under state law, the full impact to these businesses cannot be estimated as the necessary data is not available to the Department.

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

R68. Agriculture and Food, Plant Industry.

R68-29. Quality Assurance Testing on Cannabis.

R68-29-1. Authority and Purpose.

1) Pursuant to sections 4-41-403(1) and 4-41a-701(3), this rule establishes the standards for cannabis and cannabis product testing and sets limits for pesticides, residual solvents, heavy metals, and other contaminants.

R68-29-2. Definitions.

- 1) "Analyte" means a substance or chemical component that is undergoing analysis.
- 2) "Batch" means a quantity of:
 - a) cannabis extract produced on a particular date and time, following clean up until the next clean up during which lots of cannabis are used;

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

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

3) "Cannabinoid product" means a chemical compound extracted from a hemp product that:

a) is processed into a medical dosage form; and
 b) contains less than 0.3% tetrahydrocannabinol by dry weight.

4) "Cannabis" means any part of the marijuana plant.

5) "Cannabis cultivation facility" means a person that:

a) possesses cannabis;
 b) grows or intends to grow cannabis; and
 c) sells or intends to sell cannabis to a cannabis cultivation facility or a cannabis processing facility.

6) "Cannabis processing facility" means a person that:

a) acquires or intends to acquire cannabis from a cannabis production establishment or a holder of an industrial hemp processor license under title 4 chapter 41, Hemp and Cannabidiol Act;

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

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

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

7) "Cannabis product" means a product that:

a) is intended for human use; and
 b) contains cannabis or tetrahydrocannabinol.

8) "Department" means the Utah Department of Agriculture and Food.

9) "Lot" means the quantity of:

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

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

10) "Pest" means:

a) any insect, rodent, nematode, fungus, weed; or
 b) any other form of terrestrial or aquatic plant or animal life, virus, bacteria, or other microorganisms that are injurious to health or to the environment or that the department declares to be a pest.

11) "Pesticide" means any:

a) substance or mixture of substances, including a living organism, that is intended to prevent, destroy, control, repel, attract, or mitigate any insect, rodent, nematode, snail, slug, fungus, weed, or other forms of plant or animal life that are normally considered to be a pest or that the commissioner declares to be a pest;

b) any substance or mixture of substances intended to be used as a plant regulator, defoliant, or desiccant; and

c) any spray adjuvant, such as a wetting agent, spreading agent, deposit builder, adhesive, or emulsifying agent with deflocculating properties of its own used with a pesticide to aid the pesticide's application or effect.

R68-29-3. Required Cannabis and Cannabis Product Tests.

1) Prior to the transfer of cannabis, a cannabis cultivation facility shall have an independent cannabis laboratory test a representative sample of a cannabis lot for microbiological contaminants, heavy metals, and pesticide residue.

2) Prior to offering cannabis or a cannabis product for sale, a cannabis processing facility shall have an independent cannabis laboratory test a representative sample of a batch or lot for microbiological contaminants, heavy metals, pesticide, and residual solvent.

3) A cannabinoid product shall be tested by and independent testing laboratory for microbiological contaminants, heavy metals, pesticides, and residual solvents prior to the products being registered with the department in accordance with Utah Code 4-41-402

4) The department may require an independent laboratory to test for toxins.

5) If the sample of cannabis does not pass the toxin, heavy metal, pesticide, or solvent test based on the standards set forth in this rule, the cannabis cultivation facility or shall dispose of the entire batch or lot from which the sample was taken.

6) If the sample of cannabis does not pass the microbiological test based on the standards set forth in this rule, the cannabis may be used to make a carbon dioxide (CO₂) or solvent-based extract.

7) If the sample of a cannabis product does not pass the microbiological, toxin, heavy metal, pesticide, or residual solvent test based on the standards set forth in this rule, the cannabis processing facility shall dispose of the entire batch or lot from which the sample was taken.

R68-29-4. Microbiological Standards.

1) A sample and related lot or batch of cannabis, cannabis product, or cannabinoid product fail quality assurance testing for microbiological contaminants if the results exceed the limits as set forth in Section 1111 of the United States Pharmacopeia.

2) The Department adopts by reference Section 1111 of the United States Pharmacopeia (May 1,2012).

R68-29-5. Standards for Pesticides.

1) Only pesticides allowed by the department may be used in the production of cannabis, cannabis products, or cannabinoid products.

2) If an independent cannabis laboratory identifies a pesticide that is not allowed under R68-29-5(1) and is above the action levels provided in R68-29-5(3) that lot or batch from which the sample was taken has failed quality assurance testing.

3) A sample and related lot or batch of cannabis or cannabis product fail quality assurance testing for pesticides if the results exceed the limits as set forth on the table below.

Table 1
Pesticide Analytes and Action Levels

Analyte	Chemical Abstract Service (CAS) Registry number	Action Level ppm
Abamectin	71751-41-2	0.5
Acephate	30560-19-1	0.4
Acequinocyl	57960-19-7	2

Acetamiprid	135410-20-7	0.2
Aldicarb	116-06-3	0.4
Azoxystrobin	131860-33-8	0.2
Bifenazate	149877-41-8	0.2
Bifenthrin	82657-04-3	0.2
Boscalid	188425-85-6	0.4
Carbaryl	63-25-2	0.2
Carbofuran	1563-66-2	0.2
Chlorantraniliprole	500008-45-7	0.2
Chlorfenapyr	122453-73-0	1
Chlorpyrifos	2921-88-2	0.2
Clofentezine	74115-24-5	0.2
Cyfluthrin	68359-37-5	1
Cypermethrin	52315-07-8	1
Daminozide	1596-84-5	1
DDVP (Dichlorvos)	62-73-7	0.1
Diazinon	333-41-5	0.2
Dimethoate	60-51-5	0.2
Ethoprophos	13194-48-4	0.2
Etofenprox	80844-07-1	0.4
Etoazole	153233-91-1	0.2
Fenoxycarb	72490-01-8	0.2
Fenproximate	134098-61-6	0.4
Fipronil	120068-37-3	0.4
Flonicamid	158062-67-0	1
Fludioxonil	131341-86-1	0.4
Hexythiazon	78587-05-0	1
Imazal	35554-44-0	0.2
Imidacloprid	138261-41-3	0.4
Kresoxim-methyl	143390-89-0	0.4
Malathion	143390-89-0	0.2
Metaxyl	57837-19-1	0.2
Methiocarb	2032-65-7	0.2
Methomyl	16752-77-5	0.4
Methyl parathion	298-00-0	0.2
MGK-264	113-48-4	0.2
Myclobutanil	88671-89-0	0.2
Naled	300-76-5	0.5
Oxamyl	23135-22-0	1
Paclobutrazol	76738-62-0	0.4
Permethrins	52645-53-1	0.2
Phosmet	732-11-6	0.2
Piperonyl butoxide	51-03-6	2
Prallethrin	23031-36-9	0.2
Propiconazole	60207-90-1	0.4
Propoxur	114-26-1	0.2
Pyrethrins	8003-34-7	1
Pyridaben	96489-71-3	0.2
Spinosad	168316-95-8	0.2
Spiromesifen	283594-90-1	0.2
Spirotetramat	203313-25-1	0.2
Spiroxamine	118134-30-8	0.4
Tebuconazole	80443-41-0	0.4
Thiacloprid	111988-49-9	0.2
Thiamethoxam	153719-23-4	0.2
Trifloxystrobin	141517-21-7	0.2

4) Permethrins should be measured as cumulative residue of cis- and trans-permethrin isomers (CAS numbers 54774-45-7 and 51877-74-8).

5) Pyrethrins should be measured as the cumulative residues of pyrethrin 1 (CAS 121-21-1), cinerin 1 (CAS 25402-06-6), and jasmolin 1 (CAS 4466-14-2).

R68-29-6. Solvents Standards.

1) A sample and related lot or batch of cannabis, cannabis product, or cannabinoid product fails quality assurance testing for residual solvents if the results exceed the limits provided in the table below.

Table 2
List of Solvents and Action Levels

Solvent	Chemical Abstract Service (CAS)Registry number	Action level microg/g
1,2 Dimethoxyethane	110-71-4	100
1,4 Dioxane	123-9	380
1-Butanol	71-36-3	5000
1-Pentanol	71-41-0	5000
1-Propanol	71-23-8	5000
2-Butanol	78-92-2	5000
2-Butanol	78-93-3	5000
2-Ethoxyethanol	110-80-5	160
2-methylbutane	78-78-4	5000
2-Propanol (IPA)	67-63-0	5000
Acetone	67-64-1	5000
Acetonitrile	75-05-8	410
Benzene	71-43-2	2
Butane	106-97-8	5000
Cumene	98-82-8	70
Cyclohexane	110-82-7	3880
Dichloromethane	75-09-2	600
2,2-dimethylbutane	75-83-2	290
2,3-dimethylbutane	79-29-8	290
1,2-dimethylbenzene	95-47-6	See Xylenes
1,3-dimethylbenzene	108-38-3	See Xylenes
1,4-dimethylbenzene	106-42-3	See Xylenes
Dimethyl sulfoxide	67-68-5	5000
Ethanol	64-17-5	5000
Ethyl acetate	141-78-6	5000
Ethylbenzene	100-41-4	See Xylenes
Ethyl ether	60-29-7	5000
Ethylene glycol	107-21-1	620
Ethylene Oxide	75-21-8	50
Heptane	142-82-5	5000
n-Hexane	110-54-3	290
Isopropyl acetate	108-21-4	5000
Methanol	67-56-1	3000
Methylpropane	75-28-5	5000
2-Methylpentane	107-83-5	290
3-Methylpentane	96-14-0	290
N,N-dimethylacetamide	127-19-5	1090
N,N-dimethylformamide	68-12-2	880
Pentane	109-66-0	5000
Propane	74-98-6	5000
Pyridine	110-86-1	100
Sulfolane	126-33-0	160
Tetrahydrofuran	109-99-9	720
Toluene	108-88-3	890
Xylenes	1330-20-7	2170

2) Xylenes is a combination of the following:

- a) 1,2-dimethylbenzene;
- b) 1,3-dimethylbenzene;
- c) 1,4-dimethylbenzene; and
- d) ethyl benzene.

R68-29-7. Heavy Metals.

A sample and related lot or batch of cannabis, cannabis product, or cannabinoid product fail quality assurance testing for heavy metals if the results exceed the limits provided in the table below.

Table 3
Heavy Metals

Metals	Natural Health Products Acceptable limits in parts per million
Arsenic	<2
Cadmium	<0.82
Lead	<1.2
Mercury	<0.4

R68-29.8. Mycotoxin.

A sample and related lot or batch of cannabis or cannabis product fail quality assurance testing for mycotoxin if the results exceed the limits provided in the table below.

Table 4
Mycotoxin

Test	Specification
The total of Aflatoxin B1, Aflatoxin B2, Aflatoxin G1, and Aflatoxin G2	<20 microG/kg of substance
Ochratoxin A.	<20 microG/kg of substance

KEY: cannabis testing, quality assurance, cannabis laboratory

Date of Enactment or Last Substantive Amendment: 2019

Authorizing, and Implemented or Interpreted Law: 4-41a-701(3); 4-41-403(1)

Agriculture and Food, Plant Industry
R68-30
Independent Cannabis Testing
Laboratory

NOTICE OF PROPOSED RULE

(New Rule)
DAR FILE NO.: 43843
FILED: 06/30/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This proposed rule sets forth the licensing and operational requirements for an individual seeking to test medical cannabis in accordance with Title 4, Chapter 41a, Cannabis Production Establishments.

SUMMARY OF THE RULE OR CHANGE: This proposed rule sets forth the licensing requirements for those interested in competing for an independent cannabis testing laboratory. This rule establishes the facility requirements, as well as the additional requirements for the operation plan. In addition, this proposed rule establishes violation categories with the range of fines that may be assessed for violations.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 4-41a-103(5) and Subsection 4-41a-404(3) and Subsection 4-41a-405(2)(b)(iv) and Subsection 4-41a-701(3)

MATERIALS INCORPORATED BY REFERENCE:

- ◆ Adds OECD Principles of Good Laboratory Practice and Compliance Monitoring, published by Organization for Economic Co-operation and Development, 1997

- ◆ Adds Cannabis Inflorescence: Standards of Identity Analysis, and Quality Control, published by American Herbal Pharmacopoeia, 2014

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** As this is a new program, the state will have a significant starting cost for hiring personnel and buying equipment necessary to effectively run the medical cannabis program. The Department of Agriculture and Food (Department) will need to hire and train employees to inspect these facilities. In addition to inspectors, the Department needs to hire administrative staff to help issue the agent registration cards, to do background checks for all employees, and those with 2% or greater financial or voting interest in the independent cannabis testing laboratory. The inspector will need to be out doing inspections of the laboratory and will need the equipment necessary to conduct the inspection. In total the cost of the employees is estimated at \$216,000 for the first year. In addition to the cost of the employees, there is \$30,000 cost for the equipment and training for these employees to effectively regulate this product. Additionally, the Department will need to help with the purchase and upkeep of the electronic verification system as required by Title 4, Chapter 41a. The Department anticipates contributing at least \$13,000 to maintaining the system as it is key to the program. Total cost in the first year is anticipated at \$259,000. In the second year, the Department anticipates that cost will stay much the same with a slight increase in the amount of inspections that are necessary as more of the facilities reach their capacity and the laboratories are conducting more tests. It may be necessary to hire more inspectors as the program grows in the third year, but the Department anticipates that the cost for the program will remain similar to the second year in the third year. The Department anticipates an application fee of \$500 for each applicant. In addition, the successful independent cannabis testing laboratory will have a \$15,000 licensing fee. The Department anticipates there will be at least seven interested parties. Thus, the amount of revenue generated could be at least \$108,500 in application and licensing fees for the first year. The licensee will not have to pay the application fee after having successfully received a license. The revenue for years two and three will decrease to \$105,000.

◆ **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:** This rule allows for the testing of controlled substances for sale in the state of Utah. This is a new and controlled industry in the state. As it has not been allowed, this proposed rule does not place any additional cost to the business aside from the anticipated application fee of \$500 and the licensing fee of \$15,000.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This proposed rule allows for the testing of medical cannabis for sale in the state. It will allow for qualified patients to have access to a quality-controlled product. However, due to the

nature of the industry, it is impossible for the Department to estimate the costs or benefits to the consumer.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is anticipated to be \$500 application fee for all those who chose to apply for a license. Those who are awarded the license will then have a \$15,000 licensing fee. Due to this being a controlled substance and still federally illegal, there has been no prior legal market in the state. Therefore, the only cost to the affected persons is the application and licensing fees. All other costs are the costs of engaging in the testing of medical cannabis.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This is a newly created program which will allow the testing of a controlled substance for medical use. It is necessary for the Department to ensure the safe growing, processing, and transportation of this product for the safety of the qualified patients. The application and licensing fees are necessary for the department to run the program effectively to ensure that qualified patients receive a quality product.

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

AGRICULTURE AND FOOD
 PLANT INDUSTRY
 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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/14/2019

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

- ◆ 08/08/2019 02:00 PM, Dept. of Agriculture and Food, 350 North Redwood Road, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 08/21/2019

AUTHORIZED BY: Kerry Gibson, Commissioner

Appendix: Regulatory Impact Analysis for Small and Non-Small Businesses

Fiscal Costs	FY 2020	FY 2021	FY 2022
State Government	\$259,000	\$259,000	\$259,000
Local Government	\$0	\$0	\$0
Small Businesses	\$108,500	\$105,000	\$105,000

Non-Small Businesses	\$0	\$0	\$0
Other Person	\$0	\$0	\$0
Total Fiscal Costs:	\$367,500	\$364,000	\$364,000
Fiscal Benefits			
State Government	\$108,500	\$105,000	\$105,000
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits:	\$108,500	\$105,000	\$105,000
Net Fiscal Benefits:	-\$259,000	-\$259,000	-\$259,000

*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 above. Inestimable impacts for Non-Small Businesses are described below.

Appendix 2: Regulatory Impact to Non-Small Businesses

Title 4, Chapter 41a, only allows for the issuance of 10 cannabis cultivation facility licenses. This proposed rule will allow for the controlled testing of cannabis to be provide to qualified patients. As the cultivation of cannabis has previously been illegal under state law, the full impact to testing laboratories cannot be estimated as the necessary data is not available to the Department.

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

R68. Agriculture and Food, Plant Industry.
R68-30. Independent Cannabis Testing Laboratory.
R68-30-1. Authority and Purpose.

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

R68-30-2. Definitions.

- 1) "Applicant" means any person or business entity who applies for a cannabis processing facility license.
- 2) "Batch" means a quantity of:
 - a) cannabis extract produced on a particular date and time, following clean up until the next clean up during which lots of cannabis are used;
 - b) cannabis product produced on a particular date and time, following clean up until the next clean up during which cannabis extract is used; or

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

- 3) "Cannabis" means any part of a marijuana plant.
- 4) "Cannabis cultivation facility" means a person that:
 - a) possesses cannabis;
 - b) grows or intends to grow cannabis; and
 - c) sells or intends to sell cannabis to a cannabis cultivation facility or to a cannabis processing facility.

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

- a) acquires or intends to acquire cannabis from a cannabis production establishment or a holder of an industrial hemp processor license under title 4 chapter 41, Hemp and Cannabidiol Act;

- b) possesses cannabis with the intent to manufacture a cannabis product;
- c) manufactures or intends to manufacture a cannabis product from unprocessed cannabis or a cannabis extract; and
- d) sells or intends to sell a cannabis product to a medical cannabis pharmacy or the state central fill medical cannabis pharmacy.

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

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

b) designates the type of cannabis production establishment for which an individual is authorized to act as an agent.

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

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

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

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

- a) is an employee of an independent cannabis testing laboratory; and
- b) holds a valid cannabis production establishment agent registration card.

10) "Lot" means the quantity of:

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

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

R68-30-3. Independent Testing Laboratory License.

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

2) An independent testing laboratory license allows the licensee to receive cannabis from a licensed cannabis processing

facility to conduct testing as required by section 4-41a-701(2) and Utah Admin. Code R68-29.

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

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

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

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

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

8) The license shall expire on December 31st of each year.

9) An application for renewals shall be submitted to the department by December 1st of each year.

10) If the renewal application is not submitted by December 31st the licensee may not continue to operate.

11) A license may not be sold or transferred.

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

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

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

b) supervising laboratory staff.

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

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

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

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

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

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

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

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

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

8) An independent cannabis testing laboratory may be licensed prior to ISO 17025:2017 accreditation provided the independent cannabis testing laboratory:

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

b) becomes ISO 17025:2017 accredited within 18 months.

9) The department incorporates the following materials by reference:

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

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

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

a) fire;

b) chemical spill; or

c) other emergencies at the laboratory.

11) An independent cannabis testing laboratory shall compartmentalize all areas in the facility based on function and shall limit access to the compartments to the appropriate authorized agents.

R68-30-5. Security Requirements.

1) At a minimum, a licensed independent cannabis testing laboratory shall have a security alarm system on all perimeter entry points and perimeter windows.

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

a) with minimum camera resolution of 640 x 470 pixels or pixel equivalent for analog, and

b) that retains footage for at least 45 days;

3) All cameras shall:

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

b) record continuously.

4) Controlled areas included:

a) all entrances and exits;

b) all areas where cannabis or cannabis products are stored,

c) all areas where cannabis or cannabis products are being tested, and

d) all areas where cannabis waste is being moved, processed, stored or destroyed.

5) If an independent cannabis testing facility stores footage locally, the surveillance system storage device shall be secured in the facility in a lockbox, cabinet, closet, or secured in

another manner to protect from employee tampering or criminal theft.

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

7) Any entry point must be lighted in low-light conditions sufficient to record activity occurring.

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

9) All visitors shall be escorted by an independent cannabis facility agent at all times while in the facility.

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

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

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

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

R68-30-6. Inventory Control.

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

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

3) Unique identification numbers may not be reused.

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

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

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

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

- a) the date and time the test sample was received;
- b) all samples used for testing and the test results;
- c) the identity of the agent conducting the test;
- d) a complete inventory of cannabis test samples;
- e) the weight and disposal of cannabis waste materials;
- f) the identity of who disposed of the cannabis waste; and
- f) the theft or loss or suspected theft or loss of test sample.

7) An independent cannabis testing laboratory shall document in the inventory tracking system any test samples received, and any difference between the quantity specified in the transport and quantities received.

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

1) An independent cannabis testing laboratory shall apply to the department for a cannabis establishment agent on a form provided by the department.

2) An application is not considered complete until the background check has been completed and the independent cannabis testing laboratory has paid the registration fee.

3) The cannabis establishment agent registration card shall contain:

- a) the agent's full name;
- b) the name of the cannabis processing establishment;

and

- c) a photograph of the agent.

4) An independent cannabis testing laboratory is responsible to ensure that all agents have received:

- a) the department approved training as specified in Utah Code 4-41a-301; and
- b) any task-specific training as outlined in the operating plan submitted to the department.

5) An independent cannabis testing agent shall have a properly displayed identification badge which has been issued by the department at all times while on the facility premises or while engaged in the transportation of cannabis.

6) All cannabis production establishment agents shall have their state-issued identification card in their possession to certify the information on their badge is correct.

7) An agent's identification badge shall be returned to the department immediately upon termination of their employment with the independent cannabis testing laboratory.

R68-30-8. Transportation.

1) A printed transport manifest shall accompany every transport of cannabis.

2) The manifest shall contain the following information:

- a) the cannabis production establishment address and license number of the departure location;
- b) physical address and license number of the receiving location;
- c) strain name, quantities by weight, and unique identification numbers of each cannabis material to be transported;
- d) date and time of departure;
- e) estimated date and time of arrival; and
- f) name and signature of each agent accompanying the cannabis.

3) The transport manifest may not be voided or changed after departing from the original cannabis production establishment.

4) A copy of the transport manifest shall be given to the independent laboratory.

5) The receiving independent laboratory shall ensure that the cannabis material received is as described in the transport manifest and shall record the amounts received for each strain into the inventory control system.

6) The receiving independent laboratory shall document at the time of receipt any differences between the quantity specified in the transport manifest and the quantities received in the inventory control system.

7) During transport an independent cannabis testing laboratory agent shall ensure the cannabis is:

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

R68-30-9. Cannabis Waste Disposal.

- _____ 1) Solid and liquid wastes generated during cannabis testing shall be stored, managed, and disposed of in accordance with applicable state laws and regulations.
- _____ 2) Waste water generated during cannabis testing shall be disposed of in compliance with applicable state laws and regulations.
- _____ 3) Cannabis waste generated from the cannabis plant, trim, and leaves are not considered hazardous waste unless it has been treated or contaminated with a solvent, or pesticide.
- _____ 4) All cannabis waste shall be rendered unusable prior to leaving the independent cannabis testing laboratory.
- _____ 5) Cannabis waste, which is not designated as hazardous, shall be rendered unusable by grinding and incorporating the cannabis waste with other ground materials so the resulting mixture is at least fifty percent non-cannabis waste by volume or other methods approved by the department before implementation.
- _____ 6) Materials used to grind and incorporate with cannabis fall into two categories:
 - _____ a) compostable; or
 - _____ b) non-compostable.
- _____ 7) Compostable waste is cannabis waste to be disposed of as compost or in another organic waste method mixed with:
 - _____ a) food waste;
 - _____ b) yard waste; or
 - _____ c) vegetable-based grease or oils.
- _____ 8) Non-compostable waste is cannabis waste to be disposed of in a landfill or another disposal method, such as incineration, mixed with:
 - _____ a) paper waste;
 - _____ b) cardboard waste;
 - _____ c) plastic waste; or
 - _____ d) soil.
- _____ 9) Cannabis waste includes:
 - _____ a) cannabis plant waste including roots, stalks, leaves, and stems;
 - _____ b) excess cannabis or cannabis products from any quality assurance testing;
 - _____ c) cannabis or cannabis products that fail to meet testing requirements; and
 - _____ d) cannabis or cannabis products subject to a recall.

R68-28-10. Change in Operation Plans.

- _____ 1) An independent cannabis testing laboratory shall submit a notice, on a form provided by the department, prior to making any changes to:
 - _____ a) ownership or financial backing of the facility;
 - _____ b) the facility's name;
 - _____ c) a change in location;

- _____ d) change in testing methods, equipment, remodeling, expansion, reduction or physical, non-cosmetic alteration of the lab; or
- _____ e) change in written operating procedures.
- _____ 2) An independent cannabis testing laboratory may not implement changes to the approved operation plan without department approval.
- _____ 3) The department shall respond to the request for changes within 15 business days.
- _____ 4) The department shall approve of requested changes unless approval would lead to a violation of the applicable laws and rules of the state.
- _____ 5) The department shall specify the reason for the denial of approval for a change to the operation plan.

R68-30-11. Renewals.

- _____ 1) An independent cannabis testing laboratory shall submit a notice of intent to renew and the licensing fee to the department by December 31st of each year.
- _____ 2) If the licensing fee and intent to renew are not submitted on or before December 31st the licensee may not continue to operate.
- _____ 3) The department shall renew a license unless renewal would lead to a violation of the applicable laws and rules of the state.

R68-30-12. Proficiency Testing.

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

R68-30-13. Violation Categories.

- _____ 1) Public Safety Violations: \$3,000- \$5,000 per violation. This category is for violations which present a direct threat to public health or safety including, but not limited to:
 - _____ a) cannabis sold to an unlicensed source;
 - _____ b) cannabis purchased from an unlicensed source;
 - _____ c) refusal to allow inspection;
 - _____ d) refusal to participate in proficiency testing;
 - _____ e) failure to comply with testing requirements;
 - _____ f) failure to report testing results;
 - _____ g) unauthorized personnel on the premises;
 - _____ h) permitting criminal conduct on the premises;
 - _____ i) engaging in or permitting a violation of the Utah Code 4-41a which amounts to a public safety violation as described in this subsection.
- _____ 2) Regulatory Violations: \$1,000-\$5,000 per violation. This category is for violations involving this rule and other applicable state rules including, but not limited to:
 - _____ a) failure to maintain alarm and security systems;
 - _____ b) failure to keep and maintain records;
 - _____ c) failure to maintain traceability;
 - _____ d) failure to follow transportation requirements;
 - _____ e) failure to follow the waste and disposal requirements;

or

- f) engaging in or permitting a violation of Utah Code 4-41a or this rule which amounts to a regulatory violation as described in this subsection.
- 3) Licensing Violations: \$500- \$5,000 per violation. This category is for violations involving licensing requirements including, but not limited to:
 - a) an unauthorized change to the operating plan;
 - b) failure to notify the department of changes to the operating plan;
 - c) failure to notify the department of changes to financial or voting interests of greater than 2%;
 - d) failure to follow the operating plan as approved by the department;
 - e) engaging in or permitting a violation of this rule or Utah Code 4-41a which amounts to a licensing violation as described in this subsection; or
 - f) failure to respond to violations.
- 4) The department shall calculate penalties based on the level of violation and the adverse effect or potential adverse effect at the time of the incidents giving rise to the violation.

KEY: cannabis laboratory, cannabis testing
Date of Enactment or Last Substantive Amendment: 2019
Authorizing, and Implemented or Interpreted Law: 4-41a-701(3); 4-41a-404(3); 4-41a-405(2)(b)(iv); 4-41a-103(5)

Attorney General, Administration
R105-4
Child Protection Registry

NOTICE OF PROPOSED RULE
 (New Rule)
 DAR FILE NO.: 43836
 FILED: 06/28/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This new rule complies with the new legislative mandate, S.B. 230 (2019 General Session), requiring the Internet Crimes Against Children Unit of the Attorney General's Office to establish and operate the Child Protection Registry.

SUMMARY OF THE RULE OR CHANGE: This new rule transfers the establishment and operation of the Child Protection Registry from the Division of Consumer Protection to the Internet Crimes Against Children Unit of the Utah Attorney General's Office. (EDITOR'S NOTE: The proposed repeal of Rule R152-39 is under Filing No. 43845 in this issue, July 15, 2019, of the Bulletin.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 13, Chapter 39

- ANTICIPATED COST OR SAVINGS TO:**
- ◆ **THE STATE BUDGET:** There will be no net change as this rule transfers the operation of the Child Protection Registry from one state agency to the other.
 - ◆ **LOCAL GOVERNMENTS:** This rule does not have an impact on local governments.
 - ◆ **SMALL BUSINESSES:** This rule does not have an impact on small businesses.
 - ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule does not have an impact on other persons.

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

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The head of the Department, Sean Reyes, Utah Attorney General, has signed off on this analysis.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 ATTORNEY GENERAL
 ADMINISTRATION
 ROOM 230 UTAH STATE CAPITOL
 350 N STATE ST
 SALT LAKE CITY, UT 84114
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ◆ Michelle Kfoury by phone at 801-865-2015, or by Internet E-mail at mkfoury@agutah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/14/2019

THIS RULE MAY BECOME EFFECTIVE ON: 08/21/2019

AUTHORIZED BY: Brian Tarbet, Deputy Attorney General

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

No regulatory impact on non-small businesses. No regulatory changes are being made to this rule. This new rule transfers the operation and enforcement of the Child Protection Registry from one state agency to the other.

R105. Attorney General, Administration.

R105-4. Child Protection Registry.

R105-4-1. Authority and Purpose.

Pursuant to Utah Code Section 13-39-203, these rules (R105-4) are intended to establish the procedures under which:

- (1) A person may register a contact point with the registry; and
- (2) A marketer may verify compliance with the registry.

R105-4-2. Definitions.

As used in these rules (105-4):

- (1) "Attorney General is as defined in Utah Code Section 77-42-102.
- (2) "Contact point" is as defined in Utah Code Section 13-39-102.
- (3) "Marketer" means a person described in Utah Code Section 13-39-201(4).
- (4) "Provider" means the third party with whom the Unit has contracted, pursuant to Utah Code Section 13-39-201(1)(b), to establish and secure the registry.
- (5) "Registry" is as defined in Utah Code Section 13-39-102.
- (6) "Unit" is as defined in Utah Code Section 13-39-102.

R105-4-3. Information Required to Register.

(1) A person desiring to register a contact point with the registry shall provide the following information to the provider:

- (a) The contact point the person desires to register;
- (b) An affirmation that:
 - (i) the contact point belongs to a minor;
 - (ii) a minor has access to the contact point; or
 - (iii) the contact point is used in a household in which a minor is present;
- (c) an affirmation that the minor referenced in R105-4-3(1)(b) is a Utah resident; and
- (d) an affirmation that the person registering the contact point is:
 - (i) the minor referenced in R105-4-3(1)(b); or
 - (ii) a parent or guardian of the minor referenced in R105-4-3(1)(b).

(2) A contact point may not become a part of the registry until the provider sends a message to the contact point informing the user of the contact point:

- (a) the contact point has been registered; and
- (b) the process for removing the contact point from the registry.

(3) A school or institution desiring to register a domain name shall provide verification to the provider that:

- (a) the school or institution primarily serves minors; and
- (b) the school or institution owns the domain name being registered.

R105-4-4. Information Required to Verify Compliance.

A marketer desiring to verify compliance with the registry shall provide the following information to the provider before the provider compares the marketer's contact point list against the registry:

- (1) the name, address, and telephone number of the marketer;
- (2) the specific legal nature and corporate status of the marketer;
- (3) the name, address, and telephone number of a natural person who consents to service of process for the marketer; and
- (4) an affirmation that the person described in R105-4-4(3) understands that improper use of information obtained from the registry is a second degree felony.

R105-4-5. Compliance.

(1) After a marketer has complied with R105-4-4 and paid the fee established by the Unit under Section 13-39-201(4)(b), the marketer may check the marketer's contact point list with the provider according to the privacy and security measures implemented by the provider.

(2) After a marketer has complied with R105-4-5(1) and paid the fee established by the Unit under Section 13-39-201(4)(b), the provider shall, according to the privacy and security measures implemented by the provider, remove from the marketer's list of contact points any contact points that are contained on the registry.

(3)(a) A marketer who desires to utilize the provisions of Subsection 13-39-202(4) shall:

- (i) provide the Unit with a detailed description of the methods the marketer intends to use to verify compliance with Subsection 13-39-202(4); and

(ii) agree to provide to the Unit, at any time upon request by the Unit, copies of all documentation relating to the marketer's compliance with Subsection 13-39-202(4).

(b) Within thirty calendar days after a marketer complies with R105-4-5(3)(a), the Unit shall inform the marketer in writing whether the Unit considers the marketer's methods sufficient to verify compliance with Subsection 13-39-202(4).

(c)(i) Approval of a verification method for compliance with Subsection 13-39-202(4) does not prevent the Unit from investigating further whether the approved verification method actually guarantees compliance with Subsection 13-39-202(4).

(ii) The Unit may revoke an approval granted pursuant to R105-4-5(3) upon a finding that the verification method does not adequately guarantee compliance with Subsection 13-39-202(4).

R105-4-6. Discounted Fee.

(1) In order for senders to qualify for the discounted fee schedule established pursuant to Subsection 13-39-203(3)(a), a sender must agree to be subject to enhanced security criteria for each subsequent list that they may submit to the state's compliance mechanism. To meet these criteria, senders must affirmatively agree that their scrubbing tasks may be stopped if a particular task deviates from a statistically normal baseline.

(2) The statistical baseline used for comparison will be based on the senders' past histories as well as the totality of the histories of senders that have used the compliance mechanism to scrub their lists.

(3) To restart a task and retrieve the results, senders whose tasks have been stopped must confirm that they in fact initiated the task and that the list submitted is not an attempt to abuse the registry mechanism. Depending on the amount of the deviation from the baseline, this confirmation may come from a telephone call to a pre-established phone number, completing information online, or sending an e-mail to a customer support representative.

(4) The Unit, or its appointed representative, shall have discretion in allowing the retrieval of tasks if the confirmation does not resolve the security concerns.

KEY: Child Protection Registry

Date of Enactment or Last Substantive Amendment: 2019

Authorizing, and Implemented or Interpreted Law: 13-39

**Commerce, Consumer Protection
R152-39
Child Protection Registry Rule**

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 43845

FILED: 07/01/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Title 13, Chapter 39, was amended by S.B. 230, passed in the 2019 General Session, to shift administrative

and enforcement authority regarding the Child Protection Registry to the Office of the Attorney General (OAG) and its Internet Crimes Against Children unit. The Division of Consumer Protection (Division) no longer administers or enforces Title 13, Chapter 39, and is no longer authorized to make related administrative rules. Thus, the Division is repealing this rule. (EDITOR'S NOTE: The proposed new Rule R105-4 is under Filing No. 43836 in this issue, July 15, 2019, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: This rule is repealed in its entirety.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 13-39-101 through 13-39-304

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: This rule is being repealed by the Division, and will be reenacted by the OAG with nonsubstantive amendments reflecting the shift in administrative and enforcement authority from the Division to the OAG. Thus, there is no anticipated net impact to the state budget.

◆ LOCAL GOVERNMENTS: There are no anticipated net costs or savings to local governments. Local governments are not directly involved with the enforcement of this rule or its enabling statute.

◆ SMALL BUSINESSES: There are no anticipated net costs or savings to small businesses. Marketers are charged a \$0.005 fee per email sent, or less when a marketer sends certain volumes of email, as authorized by S.B. 8, passed in the 2019 General Session. This proposed repeal does not impact the authorized fee.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There are no anticipated net costs or savings to other persons. Marketers are charged a \$0.005 fee per email sent, or less when a marketer sends certain volumes of email, as authorized by S.B. 8, passed in the 2019 General Session. This proposed repeal does not impact the authorized fee.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no anticipated change in compliance costs for affected persons. Marketers are charged a \$0.005 fee per email sent, or less when a marketer sends certain volumes of email, as authorized by S.B. 8, passed in the 2019 General Session. This proposed repeal does not impact the authorized fee.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule is being repealed by the Division and will be reenacted by the OAG with nonsubstantive amendments reflecting the shift in administrative and enforcement authority from the Division to the OAG. The proposed repeal of this rule will have no fiscal impact or benefit to small businesses. The OAG will have enforcement responsibility going forward and costs will remain unchanged to small businesses. Similarly, the proposed repeal of this rule will have no fiscal impact or benefit to non-small businesses.

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

COMMERCE
 CONSUMER PROTECTION
 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:

♦ Daniel Larsen by phone at 801-530-6145, or by Internet E-mail at dblarsen@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/14/2019

THIS RULE MAY BECOME EFFECTIVE ON: 08/21/2019

AUTHORIZED BY: Daniel O'Bannon, Director

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 above. Inestimable impacts for Non-Small Businesses are described below.

Appendix 2: Regulatory Impact to Non-Small Businesses

This repeal is not expected to have any fiscal impacts on non-small businesses' revenues or expenditures because the rule is being reenacted by the Office of Attorney General (OAG). The OAG will have enforcement responsibility going forward and costs will remain unchanged to non-small businesses. Further, the repeal of the Division's rule does not impact the fees charged to any business, as the fees have already been authorized by the legislature in S.B. 8 passed in the 2019 General Session.

The head of the Department of Commerce, Francine A. Giani, 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

R152. Commerce, Consumer Protection.

[R152-39. Child Protection Registry Rule.

R152-39-1. Authority and Purpose.

~~Pursuant to Utah Code Section 13-39-203, these rules (R152-39) are intended to establish the procedures under which:~~

- ~~(1) a person may register a contact point with the registry;~~
- ~~and~~
- ~~(2) a marketer may verify compliance with the registry.~~

R152-39-2. Definitions.

~~As used in these rules (R152-39):~~

- ~~(1) "Contact point" is as defined in Utah Code Section 13-39-102.~~
- ~~(2) "Division" is as defined in Utah Code Section 13-39-102.~~
- ~~(3) "Marketer" means a person described in Utah Code Section 13-39-201(4).~~
- ~~(4) "Provider" means the third party with whom the Division has contracted, pursuant to Utah Code Section 13-39-201(1)(b), to establish and secure the registry.~~
- ~~(5) "Registry" is as defined in Utah Code Section 13-39-102.~~

R152-39-3. Information Required to Register:

~~(1) A person desiring to register a contact point with the registry shall provide the following information to the provider:~~

- ~~(a) the contact point the person desires to register;~~
- ~~(b) an affirmation that:

 - ~~(i) the contact point belongs to a minor;~~
 - ~~(ii) a minor has access to the contact point; or~~
 - ~~(iii) the contact point is used in a household in which a minor is present;~~~~
- ~~(c) an affirmation that the minor referenced in R152-39-3(1)(b) is a Utah resident; and~~
- ~~(d) an affirmation that the person registering the contact point is:

 - ~~(i) the minor referenced in R152-39-3(1)(b); or~~
 - ~~(ii) a parent or guardian of the minor referenced in R152-39-3(1)(b).~~~~

_____ (2) A contact point may not become a part of the registry until the provider sends a message to the contact point informing the user of the contact point:

- _____ (a) the contact point has been registered; and
- _____ (b) the process for removing the contact point from the registry:

_____ (3) A school or institution desiring to register a domain name shall provide verification to the provider that:

- _____ (a) the school or institution primarily serves minors; and
- _____ (b) the school or institution owns the domain name being registered.

R152-39-4. Information Required to Verify Compliance.

_____ A marketer desiring to verify compliance with the registry shall provide the following information to the provider before the provider compares the marketer's contact point list against the registry:

- _____ (1) the name, address, and telephone number of the marketer;
- _____ (2) the specific legal nature and corporate status of the marketer;
- _____ (3) the name, address, and telephone number of a natural person who consents to service of process for the marketer; and
- _____ (4) an affirmation that the person described in R152-39-4(3) understands that improper use of information obtained from the registry is a second degree felony.

R152-39-5. Compliance.

_____ (1) After a marketer has complied with R152-39-4 and paid the fee established by the Division under Section 13-39-201(4)(b), the marketer may check the marketer's contact point list with the provider according to the privacy and security measures implemented by the provider.

_____ (2) After a marketer has complied with R152-39-5(1) and paid the fee established by the Division under Section 13-39-201(4)(b), the provider shall, according to the privacy and security measures implemented by the provider, remove from the marketer's list of contact points any contact points that are contained on the registry.

_____ (3)(a) A marketer who desires to utilize the provisions of Subsection 13-39-202(4) shall:

_____ (i) provide the Division with a detailed description of the methods the marketer intends to use to verify compliance with Subsection 13-39-202(4); and

_____ (ii) agree to provide to the Division, at any time upon request by the Division, copies of all documentation relating to the marketer's compliance with Subsection 13-39-202(4).

_____ (b) Within thirty calendar days after a marketer complies with R152-39-5(3)(a), the Division shall inform the marketer in writing whether the Division considers the marketer's methods sufficient to verify compliance with Subsection 13-39-202(4).

_____ (c)(i) Approval of a verification method for compliance with Subsection 13-39-202(4) does not prevent the Division from investigating further whether the approved verification method actually guarantees compliance with Subsection 13-39-202(4).

_____ (ii) The Division may revoke an approval granted pursuant to R152-39-5(3) upon a finding that the verification method does not adequately guarantee compliance with Subsection 13-39-202(4).

R152-39-6. Discounted Fee.

_____ (1) In order for senders to qualify for the discounted fee schedule established pursuant to Subsection 13-39-203(3)(a), a sender must agree to be subject to enhanced security criteria for each subsequent list that they may submit to the state's compliance mechanism. To meet these criteria, senders must affirmatively agree that their scrubbing tasks may be stopped if a particular task deviates from a statistically normal baseline.

_____ (2) The statistical baseline used for comparison will be based on the senders' past histories as well as the totality of the histories of senders that have used the compliance mechanism to scrub their lists.

_____ (3) To restart a task and retrieve the results, senders whose tasks have been stopped must confirm that they in fact initiated the task and that the list submitted is not an attempt to abuse the registry mechanism. Depending on the amount of the deviation from the baseline, this confirmation may come from a telephone call to a pre-established phone number, completing information online, or sending an e-mail to a customer support representative.

_____ (4) The Division, or its appointed representative, shall have discretion in allowing the retrieval of tasks if the confirmation does not resolve the security concerns.

KEY: consumer protection, e-mail, minors, advertising

Date of Enactment or Last Substantive Amendment: December 11, 2006

Notice of Continuation: April 15, 2015

Authorizing, and Implemented or Interpreted Law: 13-39]

Commerce, Occupational and
Professional Licensing
R156-31b
Nurse Practice Act Rule

NOTICE OF PROPOSED RULE
(Amendment)

DAR FILE NO.: 43825
FILED: 06/25/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Board of Nursing (Board) recommends these proposed amendments to further define, clarify, and establish certain standards regarding nurse delegation of tasks in accordance with Subsections 58-31b-102(15), 58-31b-502(9), and R156-1-102a(4). These proposed amendments are based on extensive collaboration between the Board and multiple industry participants so as to incorporate generally accepted professional standards and the best practices in the industry with respect to nurse delegation.

SUMMARY OF THE RULE OR CHANGE: In Subsection R156-31b-102(14), the proposed amendment conforms the

definition of the "delegator" who may delegate certain tasks to another person to the requirements of Subsections 58-31b-102(15) and 58-31b-502(9) of the Nurse Practice Act, and Section R156-31b-701 of the Nurse Practice Act Rule. Instead of the delegator being defined generically as "a person", the delegator is more specifically defined as "a licensed nurse directly responsible for a patient's care". In Subsection R156-31b-102(35), the proposed amendment deletes the citation to Subsection R156-1-102a(4) and instead incorporates the detailed definitions and types of supervision of that subsection. The Board recommends this change to facilitate nurse licensees' understanding of and familiarity with nurse supervision requirements. In Section R156-31b-701, the proposed amendment: 1) makes numerous nonsubstantive formatting changes throughout this section to reorganize and renumber the rule for clarity; 2) provides a method in which the delegating nurse can review initial and ongoing competency documentation; 3) provides direction to the delegating nurse to document physical or verbal demonstrations of delegated tasks if the employing facility or agency does not require demonstration of competency or does not provide competency documentation that is satisfactory to the delegator, or if a delegated task falls outside of tasks in which the delegatee has previously shown competency; and 4) removes the word "physician" to provide generalization for the term medical assistant.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-31b-101 and Subsection 58-1-106(1)(a) and Subsection 58-1-202(1)(a)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** These proposed amendments may indirectly impact state departments who employ nurses as it clarifies the requirements for delegation of duties in nursing, who may delegate and the process for delegation, as well as a requirement for documentation of the competency to perform the duties. It is estimated that these proposed rule changes will almost entirely impact those receiving healthcare in homecare settings. The majority of the healthcare facilities will have delegation practices of patient/resident individualized care as further defined by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) and the Centers of Medicare and Medicaid Services (CMS). Therefore, this analysis will focus on home health, hospice, and personal care agencies. The NAICS code is 621610. The following are estimates related to the state budget costs: There are zero state-owned agencies in Utah out of a possible 332 agencies (source: Department of Workforce Services (DWS) Firm Find, 02/26/2019). However, these proposed rule changes may result in a slight increase in a state surveyor's time in reviewing sample number of charts for home health, hospice, and personal care agencies. These agencies are surveyed every two to three years. Therefore, this updated rule could result in an estimated extra 15 minutes per survey to review the delegation. Therefore, \$27.08/hr X 0.25/hr (15 minutes) per surveying nurse X 332 agencies/3 (estimate that each agency is surveyed once every three years) = \$749.21 cost for the surveying agency

each year. Lastly, there would be a minimal cost to the Division of Occupational and Professional Licensing (Division) of approximately \$75 to print and distribute the rule once these proposed amendments are made effective.

◆ **LOCAL GOVERNMENTS:** These proposed amendments may indirectly impact local governments who employ nurses as it clarifies the requirements for delegation of duties in nursing, who may delegate, and the process for delegation, as well as a requirement for documentation of the competency to perform the duties. It is estimated that these proposed rule changes will almost entirely impact those receiving healthcare in homecare settings. The majority of the healthcare facilities will have delegation policies further defined by JCAHO and CMS. Therefore, this analysis will focus on home health, hospice, and personal care agencies. The NAICS code is 621610. There are an estimated 3 local government-owned agencies in Utah out of a possible 332 healthcare agencies (DWS Firm Find and Health Facility Licensing Certification and Resident Assessment, 02/26/2019). It is estimated that the average wage rate of a nurse that delegates is \$27.08/hr. It is estimated that the 3 county-owned agencies impacted could employ 5 nurses per agency and be impacted by the rule change. It is estimated that the time for a nurse delegator to teach a task would be 5 minutes, 2 minutes for the delegator to listen to the delegatee demonstrate appropriate performance of the task and 3 minutes for delegator to document the demonstration in writing. Therefore, the total additional time is estimated to be 10 minutes per delegated task. It is estimated that each nurse would delegate 6 specialized tasks per year since almost all of the delegated tasks would be considered routine care. If an unlicensed aide proves competency in the skill and the nurse is satisfied with this level of competency, then the actual assignment of the aide to a specific patient or multiple similar patients would involve simply a brief discussion about the unique needs of a given patient to whom the aide is assigned. This would be part of the regular assignment process. Additionally, many agencies already have implemented skill checks upon hire and annually thereafter. Additionally, these proposed rule changes do not prescribe how the documentation is to be carried out, therefore any impact would vary according to individual business policies. The impact for local governments would be estimated to be \$4.51 per 10 minutes of the nurse's time. This equates to 3 agencies affected X 5 nurses employed per agency X 6 specialized tasks per year X \$4.51/task = \$405.90 for an annualized cost. An annualized cost per agency is \$135.30. It is assumed that the cost per task would increase by 1% per year for inflation/wage increases.

◆ **SMALL BUSINESSES:** These proposed amendments may indirectly impact small businesses (less than 50 employees) who employ nurses as it clarifies the requirements for delegation of duties in nursing, who may delegate and the process for delegation, as well as a requirement for documentation of the competency to perform the duties. It is estimated that these proposed rule changes will almost entirely impact those receiving healthcare in homecare settings since the majority of the healthcare facilities will have delegation policies further defined by JCAHO and CMS.

Therefore, this analysis will focus on home health, hospice, and personal care agencies. The NAICS code is 621610. There are an estimated 284 small business (less than 50 employees) owned healthcare agencies in Utah out of a possible 332 (DWS Firm Find, 02/26/2019). It is estimated that the average wage rate of a nurse that delegates is \$27.08/hr. It is estimated that the 284 small businesses impacted could employ 3 nurses/agency and be impacted by the rule change. It is further estimated that the time for a nurse delegator to teach a task would be 5 minutes, 2 minutes for the delegator to listen to the delegatee demonstrate appropriate performance of the task and 3 minutes for delegator to document the demonstration in writing. Therefore, the total additional time is estimated to be 10 minutes per delegated task. It is estimated that each nurse would delegate 6 specialized tasks per year since almost all of the delegated tasks would be considered routine care, if an unlicensed aide proves competency in the skill and the nurse is satisfied with this level of competency, then the actual assignment of the aide to a specific patient or multiple similar patients would involve simply a brief discussion about the unique needs of a given patient to whom the aide is assigned. This would be part of the regular assignment process. Additionally, many agencies have already implemented skill checks upon hire and annually thereafter. Additionally, these proposed rule changes do not prescribe how the documentation is to be carried out, therefore any impact would vary according to individual business policies. The impact for the small businesses would be estimated to be \$4.51 per 10 minutes of the nurse's time. This equates 284 agencies X 3 nurses employed per agency X 6 specialized tasks per year X \$4.51/task = \$23,055.12 for an annualized cost. An annualized per agency cost would be \$81.18. It is assumed that the cost per task would increase by 1% per year for inflation/wage increases.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There are approximately 42,033 licensed nurses in Utah that could potentially be impacted by these proposed amendments, including Licensed Practical Nurses (LPN), Registered Nurses (RN), Certified Nurse Midwives (CNM), Advanced Practice Registered Nurses (APRN) and Certified Registered Nurse Anesthetists (CRNA). Only 1,317 nurses are projected to be impacted annually. There are approximately 10,903 uncertified and certified nursing assistants, 2,890 home health aides and 8,430 personal care aides within Utah. It is estimated that each delegated act will take 2 minutes for the delegatee to demonstrate appropriate performance of the task to the delegator. A blended wage rate is assumed to be \$11.66/hr. Two minutes of an aide's time equates to \$0.39. This equates to 1,317 total nurses providing delegated tasks X 6 specialized tasks per year X \$0.39/task = \$3,081.78 total annualized cost for compliance costs for affected persons (individualized impact). The annualized cost per agency would be \$9.28. It is assumed that the cost per task would increase by 1% per year for inflation/wage increases. These proposed rule changes are

not expected to have any fiscal impact on other persons. There might be a very small cost of processing the additional time by the agency payroll processor linked to overtime, but most agencies utilize computerized timekeeping which would reduce the projected cost to virtually zero.

COMPLIANCE COSTS FOR AFFECTED PERSONS: These proposed amendments are not expected to impose compliance costs on any affected persons except as described above.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Small Businesses: These proposed amendments may indirectly impact small businesses who employ nurses as it clarifies the requirements for delegation of duties in nursing, who may delegate, and the process for delegation, as well as a requirement for documentation of the competency to perform the duties. It is estimated that these proposed rule changes will almost entirely impact those receiving healthcare in homecare settings since the majority of traditional healthcare facilities will have delegation policies further defined by JCAHO and CMS. Therefore, this analysis will focus on home health, hospice and personal care agencies. The NAICS code is 621610. There are an estimated 284 small business-owned healthcare agencies in Utah out of a possible 332 healthcare agencies (DWS Firm Find, 02/26/2019). The impact on small businesses would result in an annual cost of approximately \$23,000. An annualized per healthcare agency cost would be \$81. It is assumed that the cost per task would increase by 1% per year for inflation/wage increases. Non-Small Businesses: There are an estimated 42,033 licensed nurses in Utah and an estimated 45 non-small businesses impacted by these rule changes. Based upon the foregoing assumptions, the impact for non-small businesses would result in an annual cost of approximately \$12,177. An annualized per agency cost would be \$270. It is assumed that the cost per task would increase by 1% per year for inflation/wage increases.

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:

◆ Jeff Busjahn by phone at 801-530-6789, by FAX at 801-530-6511, or by Internet E-mail at jbusjahn@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/14/2019

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

♦ 08/05/2019 09:30 AM, Heber Wells Bldg, 160 E 300 S, Conference Room 475 (fourth floor), Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 08/21/2019

AUTHORIZED BY: Mark Steinagel, Director

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2020	FY 2021	FY 2022
State Government	\$824.21	\$756.70	\$764.27
Local Government	\$405.90	\$409.96	\$414.06
Small Businesses	\$23,055.12	\$23,285.67	\$23,518.53
Non-Small Businesses	\$12,177	\$12,298.77	\$12,421.76
Other Person	\$3,081.78	\$3,112.60	\$3,143.73
Total Fiscal Costs:	\$39,544.01	\$39,863.70	\$40,262.35
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:	-\$39,544.01	-\$39,863.70	-\$40,262.35

*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 an estimated 45 non-small businesses (over 50 employees) in Utah out of a possible 332 agencies (DWS Firm Find, 02/26/2019). The NAICS code is 621610. These proposed amendments may indirectly impact non-small businesses who employ nurses as it clarifies the requirements for delegation of duties in nursing, who may delegate, and the process for delegation, as well as a requirement for documentation of the competency to perform the duties. It is estimated that these proposed rule changes will almost entirely impact those receiving healthcare in homecare settings since the majority of the healthcare facilities will have delegation policies further defined by JCAHO and CMS. Therefore, this analysis will focus on home health, hospice, and personal care agencies. It is estimated that the average wage rate of a nurse that delegates is \$27.08/hr. There are an estimated 42,033 licensed nurses in Utah. It is estimated that the 45 non-small businesses impacted could employ 10 nurses/agency and be impacted by these rule changes.

It is further estimated that the time for a nurse delegator to teach a task would be 5 minutes, 2 minutes for the delegator to listen to the delegatee demonstrate appropriate performance of the task and 3 minutes for delegator to document the demonstration in writing. Therefore, the total additional time is estimated to be 10 minutes per delegated task. It is estimated that each nurse would delegate 6 specialized tasks per year since almost all of the delegated tasks would be considered routine care, if an unlicensed aide proves competency in the skill and the nurse is satisfied with this level of competency, then the actual assignment of the aide to a specific patient or multiple similar patients would involve simply a brief discussion about the unique needs of a given patient to whom the aide is assigned. This would be part of the regular assignment process. Additionally, many agencies have already implemented skill checks upon hire and annually thereafter. Additionally, these proposed rule changes do not prescribe how the documentation is to be carried out, therefore any impact would vary according to individual business policies. The impact for the non-small businesses budget would be

estimated to be \$4.51 per 10 minutes of the nurse's time. This equates to 45 agencies X 10 nurses employed per agency X 6 specialized tasks per year X \$4.51/task = \$12,177 for an annualized cost. An annualized per agency cost would be \$270.60. It is assumed that the cost per task would increase by 1% per year for inflation/wage increases.

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

R156. Commerce, Occupational and Professional Licensing.

R156-31b. Nurse Practice Act Rule.

R156-31b-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 31b, as defined or used in this rule:

(1) "Accreditation" means formal recognition and approval of a nurse education program by an accrediting body for nursing education that is approved by the United States Department of Education.

(2) "Administering" means the direct application of a prescription drug or device, whether by injection, inhalation, ingestion, or by any other means, to the body of a human patient or research subject by another person.

(3) "APRN" means advanced practice registered nurse.

(4) "APRN-CRNA" means advanced practice registered nurse with registered nurse anesthetist certification.

(5) "Approved continuing education" means:

(a) continuing education that has been approved by a nationally or internationally recognized approver of professional continuing education for health-related industries;

(b) nursing education courses offered by an approved education program as defined in Subsection R156-31b-102(7);

(c) health-related coursework taken from an educational institution accredited by a regional or national institutional accrediting body recognized by the U.S. Department of Education;

(d) continuing education approved by any state board of nursing; or

(e) training or educational presentations offered by the Division.

(6) "Approved education program" means any nursing education program that meets the standards established in Section 58-31b-601 or Section R156-31b-602.

(7) "Approved re-entry program" means:

(a) a program designed to evaluate nursing competencies for nurses;

(b) approved by a state board of nursing; or

(c) offered by an accredited nursing education program; and

(d) includes a minimum of 150 hours of supervised clinical learning.

(8) "CGFNS" means the Commission on Graduates of Foreign Nursing Schools.

(9) "Completed a PN, RN, or APRN pre-licensing program" means graduation from the pre-licensing program, verified by official transcripts showing degree and date of program completion.

(10) "Comprehensive nursing assessment" means:

(a) conducting extensive initial and ongoing data collection:

(i) for individuals, families, groups or communities; and

(ii) addressing anticipated changes in patient conditions as well as emergent changes in patient health status;

(b) recognizing alterations to previous patient conditions;

(c) synthesizing the biological, psychological, spiritual, and social aspects of the patient's condition;

(d) evaluating the impact of nursing care; and

(e) using data generated from the assessments conducted pursuant to this Subsection (a) through (d) to:

(i) make independent decisions regarding patient health care needs;

(ii) plan nursing interventions;

(iii) evaluate any possible need for different interventions;

and

(iv) evaluate any possible need to communicate and consult with other health team members.

(11) "Contact hour" in the context of continuing education means 60 minutes, which may include a 10-minute break.

(12) "Delegate" means:

(a) to transfer to another nurse the authority to perform a selected nursing task in a selected situation;

(b) in the course of practice of an APRN who specializes in psychiatric mental health nursing, to transfer to any individual licensed as a mental health therapist selected psychiatric APRN supervisory clinical experiences within generally-accepted industry standards; or

(c) to transfer to an unlicensed person the authority to perform a task that, according to generally-accepted industry standards or law, does not require a nursing assessment as defined in Sections R156-31b-102(10) and ([+4]16).

(13) "Delegatee" means one or more persons assigned by a delegator to act on the delegator's behalf.

(14) "Delegator" means a [person] licensed nurse directly responsible for a patient's care, who assigns to another licensed or unlicensed person the authority to perform a task on behalf of the [person] delegator in accordance with Subsection 58-31b-102(15)(g), Subsection R156-31b-102(12), and Section R156-31b-701.

(15)(a) "Disruptive behavior" means conduct, whether verbal or physical, that:

(i) is demeaning, outrageous, or malicious;

(ii) occurs during the process of delivering patient care; and

(iii) places a patient at risk.

(b) "Disruptive behavior" does not include criticism that is offered in good faith with the aim of improving patient care.

(16) "Focused nursing assessment" means an appraisal of a patient's status and situation at hand, including:

(a) verification and evaluation of orders; and

(b) assessment of:

(i) the patient's nursing care needs;

(ii) the complexity and frequency of the required nursing

care;

(iii) the stability of the patient; and

(iv) the availability and accessibility of resources, including appropriate equipment, adequate supplies, and other appropriate health care personnel to meet the patient's nursing care needs.

(17) "Foreign nurse education program" means any program that originates or occurs outside of the United States.

(18) "Individualized healthcare plan" or "IHP" means a written document that outlines the provision of student healthcare services intended to achieve specific student outcomes.

(19) "Licensure by equivalency" applies only to the licensed practical nurse and may be warranted if the person seeking licensure:

(a)(i) has, within the two-year period preceding the date of application, successfully completed course work in a registered nurse

education program that meets the criteria established in Sections 58-31b-601 and R156-31b-602; and

(ii) has been unsuccessful on the NCLEX-RN at least one time; or

(b)(i) is currently enrolled in an accredited registered nurse education program; and

(ii) has completed course work that is certified by the education program provider as being equivalent to the course work of an ACEN-accredited practical nursing program, as verified by the nursing education program director or administrator.

(20) "LPN" means licensed practical nurse.

(21) "MAC" means medication aide certified.

(22) "Medication" means any prescription or nonprescription drug as defined in Subsections 58-17b-102(24), (37) or (61) of the Pharmacy Practice Act.

(23) "NCLEX" means the National Council Licensure Examination of the National Council of State Boards of Nursing.

(24) "Non-approved education program" means any nurse prelicensing course of study that does not meet the criteria of Section 58-31b-601, including a foreign nurse education program.

(25) "Nurse" means:

(a) an individual licensed under Title 58, Chapter 31b as:

(i) a licensed practical nurse;

(ii) a registered nurse;

(iii) an advanced practice registered nurse; or

(iv) an advanced practice registered nurse-certified registered nurse anesthetist; or

(b) a certified nurse midwife licensed under Title 58, Chapter 44a.

(26) "Other specified health care professionals," as used in Subsection 58-31b-102(15), means an individual, in addition to a registered nurse or a licensed physician, who is permitted to direct the tasks of a licensed practical nurse, and includes:

(a) an advanced practice registered nurse;

(b) a certified nurse midwife;

(c) a chiropractic physician;

(d) a dentist;

(e) an osteopathic physician;

(f) a physician assistant;

(g) a podiatric physician;

(h) an optometrist;

(i) a naturopathic physician; or

(j) a mental health therapist as defined in Subsection 58-60-102(5).

(27) "Patient" means one or more individuals:

(a) who receive medical and/or nursing care; and

(b) to whom a licensee owes a duty of care.

(28) "Patient surrogate" means an individual who has legal authority to act on behalf of a patient when the patient is unable to act or make decisions unaided, including:

(a) a parent;

(b) a foster parent;

(c) a legal guardian; or

(d) a person legally designated as the patient's attorney-in-fact.

(29) "PN" means an unlicensed practical nurse.

(30) "Psychiatric mental health nursing specialty" means an expertise in psychiatric mental health, whether as a clinical nurse specialist or nurse practitioner licensed as an APRN.

(31) "Practica" means working in the nursing field as a student; not exclusive to patient care activities.

(32) "Practitioner" means a person authorized by law to prescribe treatment, medication, or medical devices.

(33) "RN" means a registered nurse.

(34) "School" means any private or public institution of primary or secondary education, including a charter school, pre-school, kindergarten, or special education program.

(35) "Supervision" is ~~[as defined in Subsection R156-1-102a(4)]~~ defined as the following:

(a) "Direct supervision" and "immediate supervision" mean the supervising licensee is present and available for face-to-face communication with the person being supervised when and where occupational or professional services are being provided.

(b) "Indirect supervision" means the supervising licensee:

(i) has given either written or verbal instructions to the person being supervised;

(ii) is present within the facility in which the person being supervised is providing services; and

(iii) is available to provide immediate face-to-face communication with the person being supervised as necessary.

(c) "General supervision" means that the supervising licensee:

(i) has authorized the work to be performed by the person being supervised;

(ii) is available for consultation with the person being supervised by personal face-to-face contact, or direct voice contact by telephone, radio or some other means, without regard to whether the supervising licensee is located on the same premises as the person being supervised; and

(iii) can provide any necessary consultation within a reasonable period of time and personal contact is routine.

(d) "Supervising licensee" means a licensee who has satisfied any requirements to act as a supervisor and has agreed to provide supervision of an unlicensed individual or a licensee in a classification or licensure status that requires supervision in accordance with the provisions of this chapter.

(36) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 31b, is further defined in Section R156-31b-502.

R156-31b-701. Delegation of Nursing Tasks in a Non-school Setting.

In accordance with Subsection 58-31b-102([14]15)(g) and Subsection R156-31b-102(12), the delegation of nursing tasks in a non-school setting is further defined, clarified, or established as follows:

(1)[(a) ~~The~~] A delegator retains accountability for the appropriate delegation of tasks and for the nursing care of the patient.

(2) Tasks Appropriate for Delegation - Prior Assessment Required.

[(b)]a [The]Δ delegator may not delegate to unlicensed assistive personnel, including a [physician's]-medical assistant, any task requiring the specialized knowledge, judgment, or skill of a licensed nurse.[

(c) Before determining which, if any, nursing tasks may be delegated, the delegator shall make a focused nursing assessment of the circumstances.

(d) A delegator may not delegate a task that is:

(i) outside the area of the delegator's responsibility;

_____ (ii) outside the delegator's personal knowledge, skills, or ability; or

_____ (iii) beyond the ability or competence of the delegatee to perform:

_____ (A) as personally known by the delegator; and

_____ (B) as evaluated according to generally accepted nursing practice standards of health, safety, and reasonable prudence.

_____ (c) In delegating a nursing task, the delegator shall:

_____ (i) provide instruction and direction necessary to allow the delegatee to safely perform the specific task;

_____ (ii) provide ongoing appropriate supervision and evaluation of the delegatee who is performing the task;

_____ (iii) explain the delegation to ensure that the delegatee understands which patient is to be treated, and according to what time frame;

_____ (iv) instruct the delegatee how to intervene in any foreseeable risks that may be associated with the delegated task;

_____ (v) if the delegated task is to be performed more than once, establish a system for ongoing monitoring of the delegatee; and

_____ (vi)(A) evaluate the following factors to determine the degree of supervision required to ensure safe care:

_____ (I) the stability and condition of the patient;

_____ (II) the training, capability, and willingness of the delegatee to perform the delegated task;

_____ (III) the nature of the task being delegated, including the complexity, irreversibility, predictability of outcome, and potential for harm inherent in the task;

_____ (IV) the proximity and availability to the delegatee of the delegator or other qualified nurse during the time(s) when the task will be performed; and

_____ (V) any immediate risk to the patient if the task is not carried out; and

_____ (B) ensure that the delegator or another qualified nurse is readily available either in person or by telecommunication to:

_____ (I) evaluate the patient's health status;

_____ (II) evaluate the performance of the delegated task;

_____ (III) determine whether goals are being met; and

_____ (IV) determine the appropriateness of continuing delegation of the task.

_____ (2) Nursing tasks that may be delegated shall meet the following criteria as applied to each specific patient situation:

_____ (a) be considered routine care for the specific patient;

_____ (b) pose little potential hazard for the patient;

_____ (c) be generally expected to produce a predictable outcome for the patient;

_____ (d) be administered according to a previously developed plan of care; and

_____ (e) be limited to those tasks that do not inherently involve nursing judgment that cannot be separated from the procedure.

_____ (3) If the nurse, upon review of the patient's condition, the complexity of the task, the ability of the proposed delegatee, and other criteria established in this Subsection, determines that the proposed delegatee cannot safely provide the requisite care, the nurse shall not delegate the task to such proposed delegatee.

_____ (4) A delegatee may not:

_____ (a) further delegate to another person any task delegated to the individual by the delegator; or

_____ (b) expand the scope of the delegated task without the express permission of the delegator.

(5) Tasks that, according to the internal policies or practices of a medical facility, are required or allowed to be performed by an unlicensed person shall not be deemed to have been delegated by a licensee.]

(b) A delegator may not delegate a task that is:

(i) outside the area of the delegator's responsibility;

(ii) outside the delegator's personal knowledge, skills, or ability; or

(iii) beyond the ability or competence of the delegatee to perform:

(A) as personally known by the delegator; and

(B) as evaluated according to generally accepted nursing practice standards of health, safety, and reasonable prudence.

(c) A nursing task may be delegated if it meets the following criteria, as applied to each specific patient situation:

(i) it is considered routine care for the specific patient;

(ii) it poses little potential hazard for the patient;

(iii) it is generally expected to produce a predictable outcome for the patient;

(iv) it is administered according to a previously developed plan of care; and

(v) it does not inherently involve nursing judgment that cannot be separated from the procedure.

(d) Before determining which, if any, nursing tasks may be delegated, the delegator shall make a focused nursing assessment of the circumstances, and evaluate the following factors to determine the degree of supervision required to ensure safe care:

(i) the stability and condition of the patient;

(ii) the training, capability, and willingness of the delegatee to perform the delegated task;

(iii) the nature of the task being delegated, including the complexity, irreversibility, predictability of outcome, and potential for harm inherent in the task;

(iv) the proximity and availability to the delegatee of the delegator or other qualified nurse during the time(s) when the task will be performed; and

(v) any immediate risk to the patient if the task is not carried out.

(e) If a delegator, upon review of the criteria established in this Subsection, determines that a proposed delegatee cannot safely provide the requisite care, the delegator shall not delegate the task to the proposed delegatee.

(3) Instruction and Demonstration of Competency Prior to Delegation.

(a) In delegating a nursing task, the delegator shall:

(i) provide instruction and direction necessary to allow the delegatee to safely perform the specific task;

(ii) explain the delegation to ensure that the delegatee understands which patient is to be treated, and according to what time frame; and

(iii) instruct the delegatee how to intervene in any foreseeable risks that may be associated with the delegated task.

(b)(i) If the employing facility or agency requires initial and ongoing demonstration of competency of direct patient care tasks, and makes competency documentation available to the delegator, the delegator may use that competency documentation.

(ii) If the employing facility or agency does not require demonstration of competency or does not provide competency

documentation that is satisfactory to the delegator, or if a task falls outside tasks in which the proposed delegatee has previously been proven competent, the delegator or qualified educator shall:

(A) require the proposed delegatee to provide to the delegator or qualified educator a physical or verbal demonstration of the delegated task; and

(B) document the observed or spoken demonstration.

(iii) Teaching of a task, demonstration of competency, and documentation may be conducted per individual or in a group training session.

(4) Supervision and Monitoring. During delegation, the delegator shall:

(a) provide ongoing appropriate supervision and evaluation of the delegatee;

(b) ensure that the delegator or another qualified nurse is readily available, either in person or by telecommunication, to:

(i) evaluate the patient's health status;

(ii) evaluate the performance of the delegated task;

(iii) determine whether goals are being met; and

(iv) determine the appropriateness of continuing delegation of the task; and

(c) if the delegated task is to be performed more than once, establish a system for ongoing monitoring of the delegatee.

(5) Further Delegation Prohibited. A delegatee may not:

(a) further delegate to another person any task delegated to the individual by the delegator; or

(b) expand the scope of the delegated task without the express permission of the delegator.

(6) Internal Policies or Practices. Tasks that according to the internal policies or practices of a medical facility are required or allowed to be performed by an unlicensed person, shall not be deemed to have been delegated by a licensee.

KEY: licensing, nurses

Date of Enactment or Last Substantive Amendment: [December 11, 2017]2019

Notice of Continuation: January 8, 2018

Authorizing, and Implemented or Interpreted Law: 58-31b-101; 58-1-106(1)(a); 58-1-202(1)(a)

**Health, Health Care Financing,
Coverage and Reimbursement Policy
R414-1-12
Utilization Review**

**NOTICE OF PROPOSED RULE
(Amendment)**

DAR FILE NO.: 43833

FILED: 06/28/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of these changes are to implement, by rule, Medicaid policy as it relates to utilization review of hospital services.

SUMMARY OF THE RULE OR CHANGE: These amendments update and clarify utilization review of hospital services, and remove criteria that defers to Rule R414-2B. (EDITOR'S NOTE: The proposed repeal of Rule R414-2B is under Filing No. 43835 in the issue, July 15, 2019, of the Bulletin.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-1-5 and Section 26-18-3

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There is no impact to the state budget because these changes only update and clarify policy for utilization review. They do not affect member services nor provider reimbursement.
- ◆ **LOCAL GOVERNMENTS:** There is no impact on local governments because they neither fund nor provide utilization review under the Medicaid program.
- ◆ **SMALL BUSINESSES:** There is no impact on small businesses because these changes only update and clarify policy for utilization review. They do not affect member services nor provider reimbursement.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no impact on Medicaid providers and Medicaid members because these changes only update and clarify policy for utilization review. They do not affect member services nor provider reimbursement.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs to a single Medicaid provider or to a Medicaid member because these changes only update and clarify policy for utilization review. They do not affect member services nor provider reimbursement.

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 changes will not result in a fiscal impact on businesses.

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 143102, 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 08/14/2019

THIS RULE MAY BECOME EFFECTIVE ON: 08/21/2019

AUTHORIZED BY: Joseph Miner, MD, 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

None of the 113 non-small business providers will be impacted because this rule only implements current Medicaid policy for inpatient hospital services. It neither affects member services nor provider reimbursement.

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.

R414-1. Utah Medicaid Program.

R414-1-12. Utilization Review.

(1) The Department conducts hospital utilization review as outlined in the Hospital Services Utah Medicaid Provider Manual in effect at the time service is rendered.

(2) The Department shall determine medical necessity and appropriateness of inpatient admissions [~~during utilization review by use of InterQual Criteria, published by McKesson Corporation~~] through the use of evidence-based criteria.

(3) The standards in [~~the InterQual Criteria~~] any evidence-based criteria shall not apply to services in which a determination has been made to utilize criteria customized by the Department or that are:

(a) excluded as a Medicaid benefit by rule or contract;

~~(b) provided in an intensive physical rehabilitation center as described in Rule R414-2B;]~~ or

(e)[b] organ transplant services as described in Rule R414-10A.

In these exceptions, or where [~~InterQual~~] evidence-based criteria is silent, the Department shall approve or deny services based upon appropriate administrative rules or its own criteria as incorporated in the Medicaid provider manuals.

KEY: Medicaid

Date of Enactment or Last Substantive Amendment: [~~May 8, 2018~~] 2019

Notice of Continuation: February 15, 2017

Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-3; 26-34-2

**Health, Health Care Financing,
Coverage and Reimbursement Policy**

R414-2A

Inpatient Hospital Services

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 43834

FILED: 06/28/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of these changes is to implement, by rule, Medicaid policy for inpatient hospital services.

SUMMARY OF THE RULE OR CHANGE: These changes include a new definition on intensive physical rehabilitation, include a new section on reporting routine services, update

requirements on hospital admission, clarify coverage and limitations, and update criteria for utilization control and review.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: 42 CFR 440.10 and Section 26-1-5 and Section 26-18-3

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There is no impact to the state budget because these changes only update and clarify policy for inpatient hospital services. They neither affect member services nor provider reimbursement.

◆ **LOCAL GOVERNMENTS:** There is no impact on local governments because they neither fund nor provide inpatient hospital services under the Medicaid program.

◆ **SMALL BUSINESSES:** There is no impact on small businesses because these changes only update and clarify policy for inpatient hospital services. They neither affect member services nor provider reimbursement.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no impact on Medicaid providers and Medicaid members because these changes only update and clarify policy for inpatient hospital services. They neither affect member services nor provider reimbursement.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs to a single Medicaid provider or to a Medicaid member because these changes only update and clarify policy for inpatient hospital services. They neither affect member services nor provider reimbursement.

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 changes will not result in a fiscal impact on businesses.

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 143102, 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 08/14/2019

THIS RULE MAY BECOME EFFECTIVE ON: 08/21/2019

AUTHORIZED BY: Joseph Miner, MD, 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
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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

None of the 113 non-small business providers will be impacted because these rule changes only implement current Medicaid policy for inpatient hospital services. They neither affect member services nor provider reimbursement.

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.

R414-2A. Inpatient Hospital Services.

R414-2A-1. Introduction and Authority.

This rule defines the scope of inpatient hospital services that are available to Medicaid members ~~[clients for the treatment of disorders other than mental disease]~~. This rule is authorized under Section 26-18-3 and governs the services allowed under 42 CFR 440.10.

R414-2A-2. Definitions.

(1) "Admission" means the acceptance of a Medicaid member for inpatient hospital care and treatment when the member meets established criteria for severity of illness and intensity of service and the required service cannot be provided in an alternative setting.

(2) "Inpatient" is an individual whose severity of illness and intensity of service requires continuous care in a hospital.

(3) "Inpatient Hospital Intensive Physical Rehabilitation" means an intense program of physical rehabilitation provided in an inpatient rehabilitation hospital or an inpatient rehabilitation unit of a hospital.

~~(3)4~~ "Inpatient Hospital Services" are services that a hospital provides for the care and treatment of inpatients ~~[with disorders other than mental illness.]~~

~~(4)5~~ "Observation services" means services, often less than 24 hours, including use of a bed and monitoring by hospital staff, which are reasonable and necessary to evaluate the medical condition or determine the need for a possible admission to the hospital.

~~(5)6~~ "Prepaid Mental Health Plan" means the Medicaid mental and/or substance use disorder managed care plan that covers inpatient and/or outpatient mental health services and outpatient substance use disorder services for PMHP-enrolled Medicaid members.

R414-2A-3. Member Eligibility Requirements.

Inpatient hospital services are available to categorically and medically needy individuals.

R414-2A-4. Hospital Admission Requirements.

(1) An inpatient hospital must meet Medicare participation requirements.

(2) Each hospital that provides inpatient services must have a utilization review plan as described in 42 CFR 482.30.

(3) Each hospital that accepts a Medicaid member for treatment is responsible to verify that the member receives all medically necessary services from Medicaid providers.

(4) Each hospital is financially responsible for any services a member receives from a non-Medicaid provider.

(5) Inpatient hospital intensive physical rehabilitation participation is subject to 42 CFR 482.56 and 42 CFR 412, Subpart B and Subpart P.

R414-2A-5. Prepaid Mental Health Plan.

Before admitting a Prepaid Mental Health Plan (PMHP) member for an inpatient psychiatric stay, a hospital must obtain prior

authorization from the PMHP serving the member's county of residence. If the hospital is not contracted with the PMHP, the PMHP may choose to transfer the member to a contracted hospital.

R414-2A-6. Service Coverage.

(1) Inpatient hospital services must be medically necessary and ordered by an appropriate Medicaid-enrolled provider for the diagnosis and treatment of a member's illness.

(2) Services performed for a member by the admitting hospital or by an entity wholly-owned or wholly-operated by the hospital within three days of patient admission, are considered inpatient services. This three-day window applies to diagnostic and non-diagnostic services that are clinically related to the reason for the member's inpatient admission regardless of whether the inpatient, outpatient, or observation diagnoses are the same.

(3) Medical supplies, appliances, drugs, and equipment required for the care and treatment of a member during an inpatient stay are ~~[reimbursed as part of payment under the Diagnosis Related Group (DRG)]~~ included in the inpatient reimbursement.

~~[(4) Services associated with pregnancy, labor, and vaginal or C-section delivery are reimbursed as inpatient services as part of payment under the DRG, even if the stay is less than 24 hours.~~

~~(5) Medicaid may pay at least one-day inpatient admission for:~~

- ~~(a) Admission for a normal delivery;~~
- ~~(b) Admitted and expired;~~
- ~~(c) Admitted and transferred to a distinct part of or to another acute care hospital.]~~

~~[(6) Outpatient hospital services during an inpatient episode are [bundled to the DRG]~~ included in the inpatient reimbursement.

~~[(7) Inpatient hospital psychiatric services are available to all Medicaid members. If the member is not enrolled in a PMHP, providers may bill the State directly on a fee-for-service basis. Otherwise, the provider must bill the member's PMHP.~~

~~(6) Inpatient hospital intensive physical rehabilitation services must meet the classification criteria of 42 CFR 412.29.~~

~~(7) Inpatient hospital intensive physical rehabilitation services are covered for acute conditions from birth through any age and are available one time per event.~~

R414-2A-7. Limitations.

Inpatient hospital care is limited to medical treatment of symptoms that lead to medical stabilization of the member. This medical stabilization care is irrespective of any underlying psychiatric diagnosis.

(1) Detoxification for a substance use disorder in a hospital is limited to medical detoxification for acute symptoms of withdrawal when the member is in danger of experiencing severe or life-threatening withdrawal. The Department does not cover any lesser level of detoxification in an inpatient hospital.

(2) Abortion procedures require prior authorization. Refer to Rule R414-1B.

(3) Sterilization and hysterectomy procedures require prior authorization and must meet the requirements of 42 CFR 441, Subpart F.

(4) Organ transplant services are governed by Rule R414-10A.

(5) Take-home supplies, dressings, non-rental durable medical equipment, and drugs are ~~[reimbursed as part of payment under the DRG]~~ included in the inpatient reimbursement.

(6) Coverage of sleep studies requires sleep center accreditation through one of the following nationally recognized accreditation organizations:

- (a) American Academy of Sleep Medicine (AASM);
- (b) Accreditation Commission for Health Care (ACHC);

or

- (c) The Joint Commission (TJC).

(7) Hyperbaric oxygen therapy is limited to service in a facility in which the hyperbaric unit is accredited by the Undersea and Hyperbaric Medical Society. Hyperbaric oxygen therapy is therapy that places the member in an enclosed pressure chamber for medical treatment.

(8) Medicaid does not cover inpatient services solely for pain management. Pain management is adjunct to other Medicaid services.

(9) Inpatient rehabilitation services require prior authorization.

(10) Observation services are limited to cases where observation and evaluation is required to establish a diagnosis and determine the appropriateness of an inpatient admission or discharge. Observation is used to monitor the member's condition, complete diagnostic testing to establish a definitive diagnosis and formulate the treatment plan.

(a) Medicaid covers observation services with a physician's written order that outlines specific medically necessary reasons for the service, such as the member requires more evaluation to determine the severity of illness (e.g. laboratory, imaging, other diagnostic test) and an order to continue monitoring for clinical signs and symptoms to determine improving or declining health status.

(b) Outpatient procedures include uneventful recovery period.

(i) Observation is used to monitor complications of outpatient procedures beyond uneventful recovery period.

(c) Medicaid does not cover observation services for convenience of the hospital, member or family, or when awaiting transfer to another facility.

(d) When an ordered hospital inpatient admission improves to the point of discharge with a stay less than 24 hours, the admission is covered as inpatient when documentation supports the medical necessity.

(e) Inpatient admissions solely for observation or diagnostic evaluation do not qualify for reimbursement under the DRG system.

(11) Medicaid does not cover admission solely for the treatment of eating disorders.

(12) Medicaid does not cover non-physician psychosocial counseling outside of the DRG.

(13) An individual (undocumented immigrant) who does not meet United States residency requirements may only receive emergency services, including emergency labor and delivery, to treat an emergency medical condition.

(a) Medicaid does not cover prenatal and post-partum services for undocumented immigrants.

(b) Medicaid does not cover prescriptions for a member who is eligible to receive emergency services only.

(14) Inpatient hospital intensive physical rehabilitation services are not covered when the condition and prognosis meet the requirements of placement into a long-term facility, skilled nursing facility, or outpatient rehabilitation service.

(15) Admission for deconditioning (e.g. cardiac or pulmonary) is not covered in an inpatient hospital intensive physical rehabilitation facility.

(16) Inpatient hospital intensive physical rehabilitation services for a member who has suffered a stroke or other cerebral vascular accident may be provided only when admission and therapy is initiated within the first 60 days after onset of the incident.

R414-2A-8. Provider-Preventable Conditions.

(1) Medicaid does not pay for Provider Preventable Conditions (PPC).

(a) Medicaid utilizes the Medicaid Severity-Diagnosis Related Group (MS-DRG) to identify a PPC.

(b) For inpatient hospital claims, Medicaid does not cover PPCs in Medicare crossover patients.

(c) To qualify as a PPC, one of the Medicare-listed diagnoses must develop during hospitalization.

(i) When present on admission, these diagnoses are not considered to be a PPC for that hospitalization.

(ii) Providers are expected to identify Present on Admission (POA) status for all diagnoses on each claim according to correct coding standards.

(d) Providers must assure that all PPC-related diagnoses, services, and charges are noted as "non-covered charges" on the claim.

(i) The Department does not use non-covered charges in calculating the hospital reimbursement.

(e) The Department shall deny PPC-related claims that result in an outlier payment and medical records will be required.

(i) Providers will receive Remittance Advice (RA) that confirms the occurrence of a PPC outlier claim.

(ii) The Department requires providers to know which medical records and other required documents are needed.

(iii) Upon RA notification of a PPC, the provider shall submit the following documents within 30 days:

(A) "Outlier PPC Medical Record Documentation Submission Form";

(B) Complete medical records from the associated hospital stay;

(C) Itemized bill (tab de-limited text file or Excel spreadsheet), including a detailed listing of PPC-related charges as non-covered charges, with total charges matching the total charges submitted on the claim.

(f) The Department will review and, if appropriate, reprocess the claim based upon the review of the required documents submitted within the 30-day period of RA notification.

(g) The Department shall deny review of the claim unless the required documentation is submitted within 30 days of RA notification.

(h) The Department requires providers to report PPCs in accordance with Section R414-1-28.

R414-2A-9. Reporting Routine Services.

Routine services in a hospital must be included in a daily service charge, also referred to as room and board. These types of routine services that are not separately reported include:

(1) Room;

(2) Dietary services;

(3) Nursing services;

(4) Minor medical and surgical supplies;

(5) Medical and psychiatric social services;

(6) Use of hospital and facilities;

(7) Drugs, biologicals, supplies, appliances, and equipment, such as:

(a) Anything necessary or otherwise integral to the provision of a specific service, the delivery of services in a specific location, or both;

(b) Items and supplies that may be purchased over the counter;

(c) Reusable items, supplies, and equipment that are provided to all patients admitted to a given treatment area or unit receiving the same service;

(d) Certain other diagnostic or therapeutic services;

(e) Medical or surgical services provided by certain interns or residents-in-training; and

(f) Transportation services, including transport by ambulance.

R414-2A-[9]10. Utilization Control and Review Program for Hospital Services.

The Hospital Utilization Review Program is administered and operated in accordance with Title 63A, Chapter 13.

(1) The purpose of the hospital utilization review program is to ensure:

(a) efficient and effective delivery of services;

(b) services are appropriate and medically necessary;

(c) service quality is maintained; and

(d) The State satisfies federal requirements for a statewide surveillance and utilization control program.

(2) The Hospital Utilization Review Program shall conduct assessments and audits to ensure the appropriateness and medical necessity of the following:

(a) Admissions to a hospital or a designated distinct part unit within a hospital;

(b) Transfers from one acute care hospital to another acute care hospital, or to an inpatient [~~distinct part of a~~]rehabilitation hospital[~~unit~~] or psychiatric unit in another acute care hospital (inter-facility transfer);

(c) Transfers from an acute care setting to an inpatient [~~distinct part~~]rehabilitation unit of a hospital or psychiatric unit within the same facility (intra-facility transfer);

(d) Continued stays;

(e) Services, surgical services and diagnostic procedures;

(f) Principal diagnosis, principal surgical procedure or both, reflected on paid claims to ensure consistency with the attending physician's determination and documentation as found in the member's medical record;

(g) Determine whether co-morbidity, as found on the claim, is correct and consistent with the attending physician's determination and compatible with documentation found in the member's medical record; and

(h) Quality of care.

(3) The Hospital Utilization Review Program shall conduct assessments and audits to determine:

(a) Appropriate utilization;

(b) Compliance with state and federal Medicaid regulations;

(c) Whether documentation meets state and federal requirements for sufficiency, and whether it accurately describes the status of services provided to the member; and

(d) Whether procedures that require prior authorization have been approved before the provision of services, except in cases that meet the criteria listed in the Utah Medicaid Section 1: General Information Provider Manual (Retroactive Authorization).

(4) The Hospital Utilization Review Program shall make determinations of medical necessity~~—medical—necessity~~, appropriateness of care, and suitability of discharge planning in accordance with the following criteria and protocols:

(a) InterQual Criteria;

(b) Administrative rules or criteria developed by Medicaid for programs and services not otherwise addressed; and

(c) DRGs.

(5) Hospital Utilization Readmission Policy and Reviews.

(a) Whenever information available to the reviewer indicates the possibility of readmission to acute care within 30 days of the previous discharge, the staff administering and operating the Hospital Utilization Review Program may review any claim for:

(i) Readmission for the same or a similar diagnosis to the same hospital, or to a different hospital;

(ii) Appropriateness of inter-facility transfers; and

(iii) Appropriateness of intra-facility transfers.

(b) The Hospital Utilization Review Program shall review all suspected readmissions within 30 days of a previous discharge to ensure that Medicaid criteria have been met for severity of illness, intensity of service, and appropriate discharge planning and financial impact to the Department as noted in Subsection R414-2A-[9]10(3).

(c) If a member is readmitted for the same or similar diagnosis within 30 days of discharge and, if after review as described in Subsection R414-2A-[9]10([4]5)(b), program review staff determines that readmission does not meet the criteria in Subsection R414-2A-[9]10(3)(b), then the payment shall be combined into a single DRG payment, unless it is cost effective to pay for two separate admissions. The first DRG (initial admission) shall be the DRG that is paid. This policy does not apply to cases related to pregnancy, neonatal jaundice, or chemotherapy.

(6) Definition, Policy Application.

(a) When applying policy, a similar diagnosis is defined as:

(i) Any diagnoses code with similar descriptors;

(ii) Any exchange or combination of principal and secondary diagnosis; and

(iii) Any other sets of principal diagnoses established to be similar by Utah Medicaid policy in written criteria and published to the hospitals prior to service dates.

(b) The evaluation criteria for utilization control are severity of illness, intensity of service, and cost effectiveness as noted in Subsection R414-2A-[9]10([4]5)(b).

(7) Appropriate remedial action will be initiated for inappropriate readmissions when identified through the hospital utilization post-payment review process.

(8) Applicability to Outpatient Hospital Services.

(a) When a Medicaid member is readmitted to the hospital, or readmitted as an outpatient within 30 days of a previous discharge for the same or similar diagnosis, Medicaid will evaluate both claims to determine if they should be combined into a single payment or paid separately.

(9) Recovery of Funds.

(a) The Department shall recover payment when post-payment review finds that services are not medically necessary, not appropriate, or that quality of service is not suitable.

(b) The Department shall recover payment when it determines there is a violation of the 30-day re-admission policy.

(10) Hospital Utilization Review.

(a) Each month, the Hospital Utilization Review Program shall review at least 5 percent of a selected universe of claims adjudicated in the previous month. At least 2.5 percent of the claims shall be a random sample. Up to 2.5 percent may be a focused review on a specific service. A staff decision to focus on a specific service shall be made no later than the beginning of the sample cycle.

(b) The Department shall select the universe from paid inpatient hospital claims within the Data Warehouse. The universe from which the random sample is selected is defined as all inpatient hospital claims adjudicated before the beginning of the review cycle, except for:

(i) Claims showing, as a principal diagnosis, any International Classification of Diseases, Tenth Revision, Clinical Modification (ICD-10-CM) delivery code in the ICD-10-CM Manual Chapter 15 -- Pregnancy, Childbirth, and the Puerperium, in the range of O00 through O9A.53, and other ICD-10-CM codes or DRG or DRGs as specified by policy or administrative decision.

(ii) Claims that show \$0 payment by Medicaid;

(iii) Medicare crossover claims;

(iv) Claims with other codes or diagnoses determined by the review program staff to be inappropriate for review.

(c) The sample cycle shall begin on the first working day of each month.

(11) Utah State Hospital Utilization Review.

(a) The purpose of this utilization review is to ensure that Medicaid funds, as defined under 42 CFR 456, Subpart D, are expended appropriately and to ensure that services provided to Medicaid members at the Utah State Hospital (USH) are necessary and of high quality. Review program staff shall conduct oversight activities at USH.

(b) Oversight activities include quarterly clinical utilization reviews in which program staff review a sample of members who are under 21 years of age and are 65 years of age or older, and who were reviewed by USH utilization review staff during a previous quarter. These reviews are performed to:

(i) Evaluate the USH utilization process; and

(ii) Address the clinical topic selected for that quarter's review.

(c) Reviews of USH Quality Improvement and Quality Assurance programs are conducted to determine whether:

(i) The programs have been implemented in accordance with written hospital policy;

(ii) The programs are effective in meeting stated goals;

(iii) Improvements or modifications have been made to increase the effectiveness of program design.

(12) Applicability to Inpatient Psychiatric Care and Inpatient Rehabilitation Services.

(a) Provisions in the Hospital Utilization Review Program also apply to inpatient psychiatric care and inpatient rehabilitation services.

R414-2A-1[0]1. Cost Sharing.

A Medicaid member is responsible for a copayment as established in the Utah Medicaid State Plan and incorporated by reference in Rule R414-1.

R414-2A-1[1]2. Reimbursement.

Reimbursement for inpatient hospital services is in accordance with Attachment 4.19-B of the Utah Medicaid State Plan, which is incorporated by reference in Rule R414-1.

KEY: Medicaid

Date of Enactment or Last Substantive Amendment: ~~May 8, 2018~~ **2019**

Notice of Continuation: September 15, 2017

Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-3; 26-18-3.5

Health, Health Care Financing,
Coverage and Reimbursement Policy

R414-2B

Inpatient Intensive Physical
Rehabilitation Services

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 43835

FILED: 06/28/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Department of Health will repeal this rule to consolidate all policy for inpatient hospital services into Rule R414-2A. (EDITOR'S NOTE: The proposed amendment to Rule R414-2A is under Filing No. 43834 in this issue, July 15, 2019, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: This rule is repealed in its entirety and no longer necessary because all policy for inpatient hospital services is implemented by Rule R414-2A.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-1-5 and Section 26-18-3

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** There is no impact to the state budget because this change only consolidates existing policy. It does not affect member services nor provider reimbursement.

♦ **LOCAL GOVERNMENTS:** There is no impact on local governments because they do not fund or provide inpatient hospital services under the Medicaid program.

♦ **SMALL BUSINESSES:** There is no impact on small businesses because this change only consolidates existing policy. It does not affect member services nor provider reimbursement.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no impact on Medicaid providers and Medicaid members because this change only consolidates existing policy. It does not affect member services nor provider reimbursement.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs to a single Medicaid provider or to a Medicaid member because this change only consolidates existing policy. It does not affect member services nor provider reimbursement.

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 repeal will not result in a fiscal impact on businesses.

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 143102, 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 08/14/2019

THIS RULE MAY BECOME EFFECTIVE ON: 08/21/2019

AUTHORIZED BY: Joseph Miner, 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

None of the 113 non-small business providers will be impacted because after conducting a thorough analysis, it was determined that this proposed rule repeal will not result in a fiscal impact on businesses.

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.

[R414-2B. Inpatient Intensive Physical Rehabilitation Services.

R414-2B-1. Introduction.

~~Inpatient intensive physical rehabilitation services are provided for Medicaid recipients in accordance with the Hospital~~

~~Services Utah Medicaid Provider Manual and Attachment 4.19-A of the Medicaid State Plan, as incorporated into Section R414-1-5.~~

~~KEY: Medicaid~~

~~Date of Enactment or Last Substantive Amendment: April 1, 2016~~

~~Notice of Continuation: August 29, 2017~~

~~Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-3(2)]~~

**Health, Health Care Financing,
Coverage and Reimbursement Policy
R414-23
Provider Enrollment**

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 43832

FILED: 06/28/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to implement Medicaid policy for the revalidation of Medicaid providers.

SUMMARY OF THE RULE OR CHANGE: This new rule includes definitions and requirements that implement policy for provider revalidation.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: 42 CFR 455.414 and Sec. 6401 Patient Protection & Affordable Care Act and Section 26-1-5 and Section 26-18-3

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There is no impact to the state budget because this rule only implements current practice for provider revalidation. It neither affects member services nor provider reimbursement.
- ◆ **LOCAL GOVERNMENTS:** There is no impact on local governments because they neither fund nor provide services under the Medicaid program.
- ◆ **SMALL BUSINESSES:** There is no impact on small businesses because this rule only implements current practice for provider revalidation. It neither affects member services nor provider reimbursement.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no new impact on Medicaid providers and Medicaid members because this rule only implements current practice for provider revalidation based on federal regulation. It neither affects member services nor provider reimbursement.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no additional costs to a single Medicaid provider or to a

Medicaid member because this rule only implements current practice for provider revalidation based on federal regulation. It neither affects member services nor provider reimbursement.

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:

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 143102, 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 08/14/2019

THIS RULE MAY BECOME EFFECTIVE ON: 08/21/2019

AUTHORIZED BY: Joseph Miner, MD, 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

Non-small businesses will not be impacted because this rule only implements current policy for revalidation of Medicaid providers. It neither affects member services nor provider reimbursement.

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.

R414-23. Provider Enrollment.

R414-23-1. Introduction and Authority.

This rule is authorized by Sections 26-1-5 and 26-18-3, and implements requirements for provider revalidation as set forth in the Code of Federal Regulations and in the Patient Protection and Affordable Care Act.

R414-23-2. Definitions.

(1) "Provider" means an individual or entity that has been approved by the Department to provide services to Medicaid members, and has signed a provider agreement with the Department.

(2) "Revalidation" means the mandatory process of screening enrolled providers of medical services, other items, and suppliers, as required by Section 6401 of the Patient Protection and Affordable Care Act.

(3) "PRISM" means Provider Reimbursement Information System for Medicaid.

(4) "CFR" means Code of Federal Regulations.

R414-23-3. Revalidation Requirements.

(1) An enrolled provider must revalidate with Medicaid through PRISM at intervals not to exceed five years as required by 42 CFR 424.515, depending on the provider's risk level.

(2) The Department shall notify a provider, when it is time to revalidate, with a letter mailed to the pay-to address in the PRISM system.

(3) A provider must complete and submit the revalidation process within 60 days from the date of the letter, or the Department will place a temporary payment hold on the provider account.

(4) The Department shall terminate a provider that fails to revalidate within 90 days from the date on the letter. The provider, however, has the option to request a fair hearing.

(5) A provider terminated for any reason must reenroll and be approved as a new provider.

(6) The Department may only reimburse a provider for services rendered during an enrollment period.

KEY: Medicaid

Date of Enactment or Last Substantive Amendment: 2019

Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-3

**Health, Health Care Financing,
Coverage and Reimbursement Policy
R414-71
Early and Periodic Screening,
Diagnostic and Treatment Program**

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 43837

FILED: 06/28/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to implement, by rule, Medicaid policy for the Early and Periodic Screening, Diagnostic and Treatment (EPSDT) Program.

SUMMARY OF THE RULE OR CHANGE: This new rule specifies criteria for eligibility and access to the EPSDT Program. It also outlines coverage for Medicaid members who are eligible to receive EPSDT services.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: 42 CFR 440.40(b) and Section 26-1-5 and Section 26-18-3

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: There is no impact to the state budget because this rule only implements current policy for the EPSDT Program. It neither affects member services nor provider reimbursement.

◆ LOCAL GOVERNMENTS: There is no impact on local governments because they neither fund nor provide services under the EPSDT Program.

◆ SMALL BUSINESSES: There is no impact on small businesses because this rule only implements current policy for the EPSDT Program. It neither affects member services nor provider reimbursement.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no impact on Medicaid providers and Medicaid members because this rule only implements current policy for the EPSDT Program. It neither affects member services nor provider reimbursement.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs to a single Medicaid provider or to a Medicaid member because this rule only implements current policy for the EPSDT Program. It neither affects member services nor provider reimbursement.

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:

HEALTH
HEALTH CARE FINANCING,
COVERAGE AND REIMBURSEMENT POLICY
CANNON HEALTH BLDG
288 N 1460 W
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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 143102, 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 08/14/2019

THIS RULE MAY BECOME EFFECTIVE ON: 08/21/2019

AUTHORIZED BY: Joseph Miner, MD, Executive Director

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2020	FY 2021	FY 2022
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Small Businesses	\$0	\$0	\$0
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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

None of the approximate 27,000 non-small business providers of Early and Periodic Screening, Diagnostic and Treatment (EPSDT) services will be impacted because this new rule because it only implements current policy for the EPSDT program.

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.

R414-71. Early and Periodic Screening, Diagnostic and Treatment Program.

R414-71-1. Introduction and Authority.

(1) The Early and Periodic Screening, Diagnostic and Treatment (EPSDT) Program provides comprehensive prevention, diagnostic, and treatment services for Medicaid members.

(a) Treatment or services that are necessary to correct or ameliorate defects and physical and mental illnesses or conditions.

(2) EPSDT services provide coverage of all medically necessary services included within the categories of mandatory and optional services listed in Subsection 1905(a) of the Social Security Act.

(3) The EPSDT Program is authorized by Subsections 1902(a)(43) and 1905(a)(4)(B) of the Social Security Act, 42 CFR 440.40(b), and 42 CFR Part 441, Subpart B.

R414-71-2. Definitions.

In addition to the definitions in Section R414-1-2, the following definition applies to this rule:

(1) "EPSDT" means "Early and Periodic Screening, Diagnosis, and Treatment" used to determine physical or mental defects in members. The EPSDT Program provides:

- (a) health care;
- (b) treatment; and

(c) other measures to correct or ameliorate any defects and chronic conditions discovered.

R414-71-3. Member Eligibility Requirements.

(1) Eligible members who are enrolled in Traditional Medicaid, and are zero through 20 years of age, may receive EPSDT services.

(2) Individuals who are 19 through 20 years of age and enrolled in Non-Traditional Medicaid, Adult Expansion Medicaid, or Targeted Adult Medicaid, are not eligible for EPSDT services.

R414-71-4. Program Access Requirements.

(1) An eligible member must obtain EPSDT services from a Utah Medicaid enrolled provider.

(2) A member enrolled in a managed care entity must obtain EPSDT services through that entity.

R414-71-5. Service Coverage and Limitations.

(1) Screening and diagnostic services to determine physical or mental defects.

(2) Screening services include:

(a) a comprehensive health and developmental history, including the assessment of physical and mental development;

(b) dental and oral health screening;

(c) comprehensive physical examination;

(d) vision screening;

(e) hearing assessment;

(f) speech and language development;

(g) appropriate immunizations according to age and health history;

(h) laboratory tests, including blood lead level assessment appropriate to age and risk; and

(i) health education, including anticipatory guidance.

(3) When a screening indicates the need for further evaluation, diagnostic services must be provided.

(4) Medically necessary services are available for treatment of all physical and mental illnesses or conditions discovered by any screening or diagnostic procedures.

(5) Additional services include:

(a) chiropractic services;

(b) orthodontia;

(c) occupational therapy;

(d) physical therapy;

(e) speech-language services;

(f) private duty nursing;

(g) at a minimum, diagnosis and treatment for defects in vision, including eyeglasses;

(h) at a minimum, dental services for the relief of pain and infections, restoration of teeth, maintenance of dental health, including examinations, cleanings, and fluoride treatments;

(i) at a minimum, diagnosis and treatment for hearing defects, including hearing aids; and

(j) additional health care services coverable under Subsection 1905(a) of the Social Security Act and found to be medically necessary to treat, correct, or ameliorate illness and conditions discovered regardless of whether the service is covered in the Medicaid State Plan.

(6) The Department determines whether a service is medically necessary.

- (7) Medically necessary services do not include:
 - (a) experimental or investigational treatments;
 - (b) reconstructive and cosmetic procedures as noted in Section R414-1-29;
 - (c) services for caregivers or for provider convenience; or
 - (d) duplicative services.
- (8) The Department may consider the relative cost effectiveness of alternatives as part of the prior authorization process described in Section R414-1-2.

KEY: Medicaid

Date of Enactment or Last Substantive Amendment: 2019

Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-3

**Health, Health Care Financing,
Coverage and Reimbursement Policy
R414-516
Nursing Facility Non-State
Government-Owned Upper Payment
Limit Quality Improvement Program**

**NOTICE OF PROPOSED RULE
(Amendment)**

DAR FILE NO.: 43830
FILED: 06/28/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of these changes is to clarify requirements for Medicaid residents, qualified providers, and nursing facility programs to participate in the Quality Improvement (QI) Program.

SUMMARY OF THE RULE OR CHANGE: These amendments specify when programs must submit a compliance form to the Division of Medicaid and Health Financing (DMHF). They also clarify Range of Motion (ROM) program requirements, specify which providers must complete ROM and mobility assessments for residents, and further clarify how programs may earn QI points.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-1-5 and Section 26-18-3

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There is no impact to the state budget because these changes only clarify requirements for participation in the QI Program.
- ◆ **LOCAL GOVERNMENTS:** There is no impact on local governments because these changes only clarify requirements for participation in the QI Program.

- ◆ **SMALL BUSINESSES:** There is no impact on small businesses because these changes only clarify requirements for participation in the QI Program.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no impact on Medicaid providers and residents because these changes only clarify requirements for participation in the QI Program.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs to a single Medicaid provider or to a resident because these changes only clarify requirements for participation in the QI Program.

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 changes will not result in a fiscal impact to businesses.

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 143102, 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 08/14/2019

THIS RULE MAY BECOME EFFECTIVE ON: 08/21/2019

AUTHORIZED BY: Joseph Miner, MD, 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
 These clarifications will not impact non-small business providers in any of the 61 non-state government-owned nursing facilities.

R414. Health, Health Care Financing, coverage and Reimbursement Policy.

R414-516. Nursing Facility Non-State Government-Owned Upper Payment Limit Quality Improvement Program.

R414-516-3. Quality Improvement Program Requirements of Participation.

(1) A program is required to earn quality improvement (QI) points to participate in the NF NSGO UPL Program. A program shall earn and document:

- (a) In Calendar Year 2018, 10 or more QI points with a minimum of five QI points from Section R414-516-6;
- (b) In Calendar Year 2019, 12 or more QI points with a minimum of six QI points from Section R414-516-6;
- (c) In Calendar Year 2020 and beyond, 14 or more QI points with a minimum of seven from Section R414-516-6.

(2) QI points may be earned from any combination of the QI Program Categories as long as the minimum number of QI points are earned from Section R414-516-6.

(3) When calculating compliance under Section R414-516-6, a program shall not count residents who are in the facility less than 14 days.

(4)(a) Each program shall submit to the Division a compliance form, using the current Division form, [within 30 days of

the end of the calendar year] on or before January 31 following the end of the calendar year, documenting that the program qualifies to earn points under the selected QI program categories.

(b) A compliance form must be mailed or electronically mailed to the correct address found at <https://health.utah.gov/stplan/longtermcare/fqi.htm>.

(c) In all cases, no additional compliance forms, documentation, unless requested as part of an audit, or explanation will be accepted if submitted after the annual submission deadline.

(d) Any program that does not submit its compliance form by the deadline shall receive zero points for that program year.

(5) The Division does not require a provider that enters the NF NSGO UPL program for only part of a calendar year, based on provider participation start date, to comply with the QI provisions of Section R414-516-3 in the first program calendar year.

R414-516-6. Direct Resident Services.

A program may earn QI points by providing Direct Resident Services as follows:

(1) Providing a denture replacement policy. A program may earn one QI point by providing a denture replacement policy where the program will replace lost or damaged dentures for residents within 90 days of the loss or damage.

(2) Providing optional dining services. A program may earn up to three QI points for dining service options provided in the categories below:

(a) A program may earn one QI point for providing a menu option of at least five meal choices outside of the planned meal;

(b) A program may earn one QI point for providing a cook-to-order menu;

(c) A program may earn three QI points for providing a five-meal program for the entire calendar year; or

(d) A program may earn one QI point for providing a four-meal program for the entire calendar year.

(3) Providing a Preferred Snack Program with 80 percent compliance. A program may earn two QI points by providing distinct resident preferences for snacks.

(a) A program shall provide a snack survey including food and beverage options, snack time options, the date of the survey, and the name of the person completing the survey.

(b) The program shall complete the survey within two weeks of admission or by March 31, 2018, whichever is later.

(c) A program shall provide the snack and beverage at each resident's preferred time.

(d) If a resident requires assistance for feeding, the facility shall provide a dining assistant during the snack.

(e) A program shall complete a snack survey for each distinct resident quarterly or as requested by the resident.

(f) The program shall calculate compliance by dividing the number of distinct residents who complete a preferred snack survey (numerator) by the number of distinct residents during the quarter, who desired to complete a snack survey (denominator).

(4) Providing a Preferred Bedtime Program with 80 percent compliance. A program may earn two QI points by providing resident preferences for bedtime.

(a) The program shall provide a bedtime survey, in which the resident was asked about preferred bedtime options and preferred rituals. The program must include the date of the survey and the name of the person who completed it.

(b) The program shall complete the survey within two weeks of admission or by March 31, 2018, whichever is later.

(c) The program shall provide each resident their preferred bedtime options and rituals.

(d) The program shall complete a bedtime survey annually or as requested by the resident.

(e) The program shall calculate compliance by dividing the number of distinct residents who complete a bedtime survey (numerator) by the number of distinct residents during the calendar year, subtracted by the distinct residents who declined to complete a bedtime survey (difference is denominator).

(5) Providing consistent CNA or nursing staff assignments to residents with 80 percent compliance. A program may earn up to five QI points by providing consistent CNA or nursing staff assignments to residents. The points may be earned by providing the same CNA or nurse for a distinct resident for 32 waking hours during a standard Sunday through Saturday week.

(a) A program may earn one QI point for having a staffing schedule providing consistent CNA's and nurses for the entire program.

(b) The program may earn one QI point for providing consistent CNA assignment to a distinct hall containing at least 10 residents.

(c) The program may earn two QI points for providing consistent CNA assignment to an entire program.

(d) The program may earn one point for providing consistent nurse assignment to a hall containing at least 10 residents.

(e) A program may earn two QI points for providing consistent nurse assignment to an entire program.

(f) The program shall provide the consistent assignment for 40 of 52 weeks during the calendar year.

(g) The program shall calculate compliance by dividing the number of distinct residents who have consistent assignment in the hall or program (numerator) by the number of distinct residents during the calendar year in the hall or program (denominator).

(6) Providing a Range of Motion (ROM) program to residents with 80 percent compliance. A program may earn four QI points by providing a ROM [assessments]program to residents semi-annually by a qualified clinician; or, may earn two QI points by providing a ROM [assessment]program to residents semi-annually by a restorative nurse aid under the direct supervision of a qualified clinician.

(a) The program shall include a ROM assessment, completed by a qualified clinician, for passive range of motion (PROM) or ~~an~~ active range of motion (AROM) ~~[assessment]~~ for shoulder, elbow, wrist, digits of the hand, hip, knee, and ankle joints. The program shall also include a ROM assessment of which joint has limitations, the reduced anatomical motion to the joint, how the restriction limits function, the title and name of the person completing the plan of care (POC), and the date of the POC.

(b) If a reduction in ROM is found and the clinician recommends a ROM POC, the POC shall include:

(i) a goal to return the resident to the highest practicable level of function;

(ii) the frequency and duration of the POC;

(iii) the title and name of the person completing the POC;

and

(iv) the date of the POC.

(c) If the program develops a POC for a resident, a qualified clinician or another qualified professional shall complete the POC under the supervision of a qualified clinician.

(d) If a resident qualifies for a ROM POC, but desires not to participate, the qualified clinician shall document the refusal and provide a ROM assessment semi-annually.

(e) The program shall calculate compliance by dividing the number of distinct residents who received a ROM assessment semi-annually plus the number of residents refusing to complete a ROM assessment semi-annually (sum is numerator) by the number of distinct residents during the calendar year (denominator).

(7) Providing a One-on-One Activity program with 80% compliance. A program may earn up to four QI points by providing a one-on-one activity program. A one-on-one activity program shall provide a 30-minute minimum individual activity onsite or within the community each month for each resident; and

(a) A program may earn one QI point by providing a schedule for one-on-one activity participation for residents desiring to participate;

(b) A program may earn three QI points if compliant with providing one-on-one activities;

(c) A qualified activity professional shall complete an activity interest (AI) survey for each resident including recreational, educational, physical, arts and crafts, and any additional activity options preferred by the resident. The AI survey shall include the name and title of the surveyor and the date the survey was completed;

(d) For each resident who desires to participate in a one-on-one activity program:

(e) A qualified activity professional shall develop a POC including the preferred list of activities and a method of grading the importance of the activities to the resident. The activity POC shall include:

(i) the activities to be completed during the one-on-one activity;

(ii) the goal of the activity;

(iii) what the activity is promoting

(iv) the date the POC was completed; and

(v) the title and name of the person completing the POC.

(f) The person who completes the activity with the resident shall document:

(i) the preferred activity completed;

(ii) the duration of the activity;

(iii) the goal of the activity;

(iv) which quality of life measures were promoted; and

(v) any relevant comments made by the resident.

(g) The qualified activity professional shall modify the POC as appropriate or when requested by the resident.

(h) If a resident who desires to participate in the one-on-one activity program cannot participate in a given month, the nursing facility program shall document the refusal.

(i) If a resident refuses to participate in the one-on-one activity program, the qualified activity professional shall document the refusal and continue to complete an AI survey with the resident and offer the one-on-one activity program annually.

(j) If a resident who initially refuses to participate in a one-on-one activity program and desires to participate before the annual AI survey, the qualified activity professional shall complete the steps noted for residents desiring to participate in a one-on-one activity program.

(k) The program shall calculate compliance by adding the number of distinct residents who participated in but declined a monthly one-on-one activity, the number of distinct residents who completed the program, and the number of distinct residents who declined to complete the program (distinct sum is numerator) divided by the number of distinct residents during the calendar year (denominator).

(8) Providing a Mobility Program to qualifying residents with 80 percent compliance. A program may earn four QI points by providing a mobility program to qualifying residents. The nursing facility program shall offer residents who qualify for a walking program a walking activity five of seven days in a standard week for 40 out of 52 weeks during the calendar year.

(a) A nurse or qualified physician shall complete ~~the mobility and sit-stand survey and a one-step command (OSC) survey. The Division shall provide the mobility surveys]~~ Section GG0170 Mobility of the MDS Version 3.0 for each Medicaid resident.

(b) A resident who achieves a ~~combined score of eight or higher on the mobility and sit-stand surveys and a score of one on the OSC survey]~~ score of 04, 05, or 06 on Sections D and J qualifies to participate in a walking program.

(c) The nurse or qualified physician who completes the mobility ~~surveys]~~ section] shall establish a POC for the walking program to determine:

- (i) the distance of the walk;
- (ii) duration of the walk; and

(iii) the amount of assistance required by the resident, including mobility devices to be provided by the staff.

(d) The nursing facility program shall provide weekly documentation to illustrate program completion, including modifications to a residents walking program.

(e) If a resident qualifies for but refuses to participate in a walking program, the nurse shall document the refusal and complete the mobility, sit-stand, and one-step command surveys annually.

(f) If a resident initially declines to participate in a walking program and then requests to engage in a walking program before the annual follow-up surveys, the program shall complete the survey and develop a walking POC for the resident.

(g) The nursing facility program shall calculate compliance by adding the number of distinct residents who completed the walking program with the distinct residents who qualified for but requested limited participation in the program, and residents who qualified for but declined participation in the walking program (distinct sum is numerator) by the number of distinct residents who qualified for a walking program during the calendar year (denominator).

R414-516-7. Quality Metrics.

(1) A program may earn up to six QI points for demonstrating quality metric scores equal to or better than the industry average noted.

(a) Quality metrics shall include:

(i) CMS 5-Star quality measure rating, for long-stay residents, obtained from CMS online data sources. The industry average is 3.62[%]. To qualify, the nursing facility program must equal or exceed the industry average.

(ii) CASPER Quality Measures for urinary tract infections obtained from CMS online data sources. The industry average is 6.68%. To qualify, the nursing facility program must have less than or equal to the industry average.

(iii) CASPER Quality Measures for pressure ulcers obtained from CMS online data sources. The industry average is 6.15%. To qualify, the nursing facility program must have less than or equal to the industry average.

(iv) CASPER Quality Measures for falls with a major injury obtained from CMS online data sources. The industry average is 4.17%. To qualify, the nursing facility program must have less than or equal to the industry average.

(v) Nurse staffing hours per resident day obtained from CMS online data sources. The industry average is 3.81[%]. To qualify, the nursing facility program must equal or exceed the industry average.

(vi) Survey deficiency scope and severity obtained from the Utah Bureau of Health Facility Licensing, Certification and Resident Assessment. The industry average is 3.57[%]. To qualify, the nursing facility program must have less than or equal to the industry average.

(b) A program may earn QI points as follows:

(i) Four QI points may be earned for achieving metrics scores equal to or superior to the industry average in greater than four of six targets;

(ii) Three QI points may be earned for achieving metrics scores equal to or superior to the industry average in four of six targets; or

(iii) Two QI points may be earned for achieving metrics scores equal to or superior to the industry average in three of six targets.

(c) A program may earn QI points from demonstrating metrics score improvement as follows:

(i) Two QI points may be earned by demonstrating metrics score improvement in greater than four of six targets; or

(ii) One QI point may be earned by demonstrating metrics score improvement in four of six targets.

(2) One QI point may be earned by demonstrating a 20% improvement in two specific quality metrics scores on the CASPER report at the end of the 12-month data (October through September) period as compared to the prior 12-month data period.

KEY: Medicaid

Date of Enactment or Last Substantive Amendment: [March 21,] 2019

Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-3

Health, Center for Health Data, Vital Records and Statistics **R436-55** Hemp Extraction Registration

NOTICE OF PROPOSED RULE (Repeal)

DAR FILE NO.: 43831

FILED: 06/28/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Subsequent to the five-year review, the Utah Department of Health is repealing this rule due to the Utah Medical Cannabis Act under H.B. 3001 being passed in the 2018 Third Special Session that repealed the Hemp Extraction Registration Act effective January 2019.

SUMMARY OF THE RULE OR CHANGE: This rule is repealed in its entirety because the Medical Cannabis Act outlines different requirements for the use of cannabis products.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 61a

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There will be a loss of the fees collected for the registration.
- ◆ **LOCAL GOVERNMENTS:** No impact on local governments because they do not issue hemp extraction cards.
- ◆ **SMALL BUSINESSES:** No impact on small businesses, as they neither received, nor paid funds for, extraction registration cards.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Individuals will not be required to pay the \$200 initial fee or the \$50 annual fee for the hemp extraction card.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Individuals will no longer need to purchase or renew a hemp extraction registration card.

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 rule repeal will not result in fiscal impact to businesses.

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

HEALTH
 CENTER FOR HEALTH DATA,
 VITAL RECORDS AND STATISTICS
 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:

◆ Linda Wininger by phone at 801-538-6262, or by Internet E-mail at lindaw@utah.gov or mail at PO Box 141012, Salt Lake City, UT 84114-1012

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/14/2019

THIS RULE MAY BECOME EFFECTIVE ON: 08/21/2019

AUTHORIZED BY: Joseph Miner, MD, Executive Director

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2020	FY 2021	FY 2022
State Government	-\$18,000	-\$18,000	-\$18,000
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Person	\$0	\$0	\$0
Total Fiscal Costs:	\$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:	-\$18,000	-\$18,000	-\$18,000

*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

There are no associated fiscal impacts for non-small businesses. The amount indicated is the amount of revenue received through the hemp extraction card registration fee and includes both the initial fee and renewal fees.

R436. Health, Center for Health Data, Vital Records and Statistics.

[R436-55. Hemp Extract Registration.

R436-55-1. Legal Authority.

~~This rule is promulgated under authority granted in Utah Code Title 26, Chapter 55.~~

R436-55-2. Purpose.

~~This rule establishes the general procedures and requirements that an individual must follow to obtain and maintain a hemp extract registration card.~~

R436-55-3. Definitions.

~~For purposes of this rule, the definitions in Section 26-55-102 apply, in addition:~~

~~(1) "Applicant" means any individual applying for a hemp extract registration card.~~

~~(2) "Evaluation record" means the neurologist's clinical evaluation and observation records as described in Subsection 26-55-103(7).~~

~~(3) "Higher education institute" as defined in 20 U.S.C. Sec. 1001.~~

~~(4) "Institutional Review Board" or "IRB" means a multi-disciplinary committee which reviews proposed research involving human subjects.~~

~~(5) "Qualifying patient" means an individual who has been diagnosed by a neurologist as having intractable epilepsy.~~

~~(6) "Written certification" means a non-prescription statement signed by a neurologist that indicates the qualifying patient suffers from intractable epilepsy and may benefit from the use of hemp extract. The statement may be on a form prescribed by the department or in another format.~~

R436-55-4. Application for a Hemp Extract Registration Card.

~~(1) For an applicant who is a qualifying patient and is at least 18 years of age, the applicant shall submit the following to the department:~~

~~(a) an application on a form prescribed by the department that includes:~~

~~(i) the applicant's name, date of birth, and address; and~~

~~(ii) the name, address, and telephone number of the neurologist providing the written certification;~~

~~(b) a copy of the applicant's photographic identification;~~

~~(c) proof of Utah residency;~~

~~(d) a written certification; and~~

~~(e) the applicable fee.~~

~~(2) To apply for a hemp extract registration card for a qualifying patient who is under 18 years of age, the qualifying patient's parent shall submit the following to the department:~~

~~(a) an application on a form prescribed by the department that includes:~~

~~(i) the qualifying patient's name, date of birth, and address;~~

~~(ii) the parent's name and address;~~

~~(iii) the name, address, and telephone number of the neurologist providing the written certification;~~

~~(b) a copy of the parent's photographic identification;~~

~~(c) proof of the parent's Utah residency;~~

~~(d) an attestation that the parent is responsible for health care decisions for the qualifying patient;~~

~~(e) a written certification; and~~

~~(f) the applicable fee.~~

R436-55-5. Submission of an Evaluation Record.

~~(1) The neurologist shall transmit the evaluation record to the department by first class mail or through secure electronic transmission within five business days after signing a written certification or upon request by the department.~~

~~(2) The evaluation record must include at least the following:~~

~~(a) the qualifying patient's name and date of birth;~~

~~(b) date of clinic office visit;~~

~~(c) the neurologist's name, Department of Professional Licensing number and expiration date;~~

~~(d) diagnosis of epilepsy; and~~

~~(e) if evaluation record is submitted for the initial registration, an indication that qualifying patient currently suffers from intractable epilepsy; or~~

~~(f) if evaluation record is submitted after registration of a hemp extract registration card:~~

~~(i) the hemp extract's effect on seizure control; and~~

~~(ii) any adverse effects or other effects that may be attributed to use of the hemp extract.~~

~~(3) In addition to the requirements listed in subsection (2), the department recommends the evaluation record include, which may be based on self-reporting to the neurologist by the qualified patient, the following:~~

~~(a) hemp extract information, such as the supplier, product description, dosage, frequency of use, and duration of use by the qualifying patient;~~

~~(b) frequency of seizures before and after use of hemp extract;~~

~~(c) evidence supporting the diagnosis of intractable epilepsy; and~~

~~(d) information about other treatments or medications, including dosage, frequency and dates of use, used to treat or control qualifying patient's epilepsy.~~

~~(4) For an evaluation record, a neurologist may either complete the evaluation record on a form prescribed by the department or may provide it in another format.~~

R436-55-6. Issuance, Expiration, and Renewal of Hemp Extraction Registration Card.

~~(1) If an application is approved, the department shall issue a hemp extract registration card to the applicant. The hemp extract registration card must include the following:~~

~~(a) the registrant's name, date of birth, and address;~~

~~(b) the qualifying patient's name, date of birth, and address, if the qualifying patient is under 18 years of age;~~

~~(c) an issuance date and expiration date;~~

~~(d) the neurologist's name, Department of Professional Licensing number and expiration date; and~~

~~(e) a department-issued registry identification number.~~

~~(2) A hemp extract registration card issued to a registrant is valid for one year after the issuance date unless revoked or surrendered.~~

~~(3) To maintain a valid hemp extract registration card, a registrant shall submit at least fifteen business days prior to the expiration date on the hemp extract registration card the following to the department:~~

- ~~_____ (a) a renewal application on a form prescribed by the department;~~
- ~~_____ (b) a new written certification; and~~
- ~~_____ (c) the renewal fee.~~

~~R436-55-7. Application Denial; Revocation of Hemp Extract Registration Card.~~

- ~~_____ (1) The Department shall deny an application for a hemp extract registration card that:

 - ~~_____ (a) contains false information, including a false name, address, written certification, date of birth, or photo identification; or~~
 - ~~_____ (b) fails to provide an evaluation record or any of the information required by Section R436-55-4.~~~~
- ~~_____ (2) The Department shall return the denied application to the applicant, accompanied by an explanation of the reason for its return.~~
- ~~_____ (3) The Department shall revoke a hemp extract registration card upon finding that a registrant or neurologist submitted false information to the department.~~

~~R436-55-8. Interim Changes.~~

- ~~_____ (1) When there has been a change in the qualifying patient's name, address, or neurologist, the registrant must notify the department within ten business days by submitting a form as prescribed by the department.~~
- ~~_____ (2) A registrant shall report to the department upon discovery that the registrant's hemp extract registration card is lost, stolen, or damaged. The registrant may request a replacement card.~~
- ~~_____ (3) If the department issues a new hemp extract registration card to a registrant based on a request for a replacement card or an application to update information on the hemp extract registration card, the replacement card shall have the same expiration date as the hemp extract registration card being replaced or updated.~~

~~R436-55-9. Verification of Registry to Law Enforcement.~~

~~The department may verify to a law enforcement agency whether an individual is a lawful possessor of a hemp extract registration card, without disclosing more information than is reasonably necessary to verify the authenticity of the hemp extract registration card.~~

~~R436-55-10. Review and Approval of Research Requests.~~

- ~~_____ (1) If the researcher requests statistical information, the department shall provide the higher education institution with the requested statistical information upon receipt of the written request and payment of the associated costs.~~
- ~~_____ (2) If the research involves the use of identifiable health data, the request must be in writing and must be signed by the researcher of the higher education institution. In addition:

 - ~~_____ (a) The request must outline the research protocol to be used. Approval by an Institutional Review Board must be included with the request.~~
 - ~~_____ (b) If the research involves a follow-back or follow-up study, the request must describe who is to be contacted, how, by whom, and what questions will be asked. If a survey is planned, a copy of the survey must be submitted.~~
 - ~~_____ (c) If the research involves linking data files, the variables to be used to determine the match must be identified.~~
 - ~~_____ (d) The researcher and all persons who may have access to~~~~

~~the identifying health data in the evaluation records shall sign a confidentiality agreement, which is available from the department.~~

- ~~_____ (e) The researcher may not use or allow other persons to use the evaluation records for any purpose other than the approved research.~~
- ~~_____ (f) The department shall review each research request and notify the requestor one of the following:

 - ~~_____ (i) The request is approved and the researcher is notified in writing of the approval and of the associated costs.~~
 - ~~_____ (ii) The request is given tentative approval and the researcher:

 - ~~_____ (A) is notified in writing of the approval and associated costs; and~~
 - ~~_____ (B) discusses and resolves concerns identified by the department.~~
 - ~~_____ (iii) The request is not approved and the researcher is:

 - ~~_____ (A) notified in writing the reasons for the disapproval;~~
 - ~~_____ (B) notified of the areas of concern with the request;~~
 - ~~_____ (C) allowed to address the areas of concern and resubmit the request; and~~
 - ~~_____ (D) notified that the decision to deny may be appealed to the Executive Director of the Department of Health.~~~~~~~~

~~KEY: hemp extract registration~~

~~Date of Enactment or Last Substantive Amendment: July 8, 2014 Authorizing, and Implemented or Interpreted Law: 26-55]~~

Human Services, Substance Abuse
and Mental Health
R523-7
Certification of Designated Examiners
and Case Managers

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 43850
FILED: 07/01/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: These amendments were originally proposed to increase the quality of case management for homeless individuals, and to strengthen and clarify the case management certification process and requirements. After the original rule changes were submitted, the Division of Substance Abuse and Mental Health (Division) received significant and valuable input from agencies that would be greatly affected by the amendments as they stood, so the original rule change has been abandoned, and this new proposed amendment is being submitted for consideration and public review. The Division will proceed with this amendment and let the amendment under Filing No. 43605 lapse, and also withdraw the nonsubstantive change under Filing No. 43667 that was submitted to clean up issues with

the original amendment. (EDITOR'S NOTE: The original proposed amendment to Rule R523-7 was published in the April 15, 2019, Bulletin under Filing No. 43605. The nonsubstantive change for Rule R523-7 that was submitted 04/26/2019 under Filing No. 43667 has been withdrawn.)

SUMMARY OF THE RULE OR CHANGE: The changes are: a) "Certified" is added to the title; b) "Case managers" is added to the purpose; c) citations to the Utah Medicaid Provider Manual are updated; d) homeless services and service providers are added as a sector that now requires certification for case managers; e) acceptable supervision of certified case managers is clarified; f) certification itself is clarified as being required for non-licensed professionals; g) experience is clarified to be specifically 400 hours in human services or related fields prior to application; h) a bachelor's degree is added as a qualifying scholastic credential experience; i) the required case management practicum is clarified to be 40 hours and Division approved; j) continuing education unit (CEU) credits are replaced with training hours; k) applications and requests to waive requirements can only be approved by the Division director or designee; l) certification follows the case manager between jobs if the provider is a qualifying employer; m) a more defined corrective action process is described; n) continuing education is clarified to required four hours ethics and three hours suicide prevention; o) request for information about conduct must be provided within 30 days or certification is automatically revoked; p) failure of the Division administered exam has been clarified to twice within 30; and q) agencies are no longer required to notify the Division when a certified case manager separates from employment.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-15-105 and Subsection 62A-15-602(3)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There are potential costs to the Department of Human Services/Division in printing and mailing certificates, and time in reviewing applications and providing certificates. The Division does not have clear understanding of how many potential new applications will be received due to the expansion of certification for homeless service agencies, but the cost to create a certificate is about \$0.90 per certificate which includes bonded paper, gold seal, printing, signature and mail costs. Per-event time costs can be set at around 17 minutes per application. This calculation includes review of the application, receipt of information that a passing score was achieved, recording of the certification in the Division database, production of the certificate, signing the certificate and mailing the certificate. Based on these calculations, it will cost the Division an additional \$0.90 and 17 minutes to process all new case management certifications that are generated by the changes in this rule. There is no way to calculate the number of new applicants at this time, so the total costs to the Division are inestimable. These rule changes have the potential of benefiting Division of Child and Family Services (DCFS) and the Division of

Juvenile Justice Services (DJJS). Both agencies receive a portion of the child Medicaid carve out funding that was instituted by the Department of Human Services, to provide behavioral health services to children and youths through the Local Mental Health and Substance Abuse Authorities. Neither agency is currently able to bill Medicaid for Targeted Case Management in behavioral health, because certification for case managers has been limited to the local authorities, and Case Management Certification is required to bill behavioral health Targeted Case Management. The changes being proposed at this time, open Case Management Certification to any agency providing Targeted Case Management services. Gaining access to this money would be a slight challenge, because it would require both DCFS and DJJS to enter into some type of billing agreements with the local authorities in their areas, allowing them to bill the local authority directly if they offer behavioral health case management. The reason for this process is that the local authorities are the agencies that currently hold and control the Capitated Medicaid Behavioral Health contracts and the only ones to receive Medicaid reimbursements from the federal government. The billing rate would be \$13.64 per quarter hour of service. The Division has contacted both sister agencies and has been informed that neither one is interested in negotiating Targeted Case Management payments from the local authorities at this time.

◆ **LOCAL GOVERNMENTS:** These amendments are mostly clarifying in nature and do not require any additional actions from local governments than already exist.

◆ **SMALL BUSINESSES:** There are both a potential cost and benefits to agencies (624221 Temporary Shelters) receiving funds for homeless services. Anticipated costs are time, financial and unmeasurable. Anticipated time costs include the amount of time it will take an employee to study and take the Division approved test, the amount of time that each employee will need to complete and document the 30 hours of training to maintain their certification, and the time needed for the employee's supervisor to review, grade and report on the Division approved test that will be administered. Anticipated financial costs include and reimbursement for training hour classes that might be offered to an employer. The anticipated unmeasurable cost is the agency productivity loss, in any one employee, because of reallocated time to certify and maintain certification. The Division has been unable to estimate these costs because there are too many variables. The benefit to these agencies is \$13.64 per quarter hour that can be billed to Medicaid for Targeted Case Management, and the number of agencies that qualify for this benefit is 20, based on the 20 agencies receiving homeless services funds. There are again, too many variables to determine which agencies will be billing Medicaid and the total number of clients and billable hours to estimate a total benefit to these agencies.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are both a potential cost and benefit to individuals who receive a Case Management Certification, and work for a homeless shelter that receive homeless service funds. Costs are both time and financial. Anticipated time costs include the

amount of time it will take an individual to study, and take the Division approved test, and the amount of time needed to complete, document, and report the 30 hours of training hours to maintain certification. The anticipated financial costs include and costs of training hour courses if reimbursement from the employer is not available. The Division has been unable to estimate these costs because there are too many variables. The financial benefit to these individuals include possible increases in pay by obtaining certification, and the opportunity to move into a better paying job across agencies because the individual holds a Case Management Certification. The Division has been unable to estimate these benefits because there are too many variables.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are potential compliance costs associated to these amendments, but that cost is inestimable.

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 changes will result in a fiscal impact to small businesses, but that cost is inestimable.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Jonah Shaw by phone at 801-538-4219, by FAX at 801-538-3942, or by Internet E-mail at jshaw@utah.gov
 ♦ Thomas Dunford by phone at 801-538-4181, by FAX at 801-538-4696, or by Internet E-mail at tdunford@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/14/2019

THIS RULE MAY BECOME EFFECTIVE ON: 08/21/2019

AUTHORIZED BY: Doug Thomas, 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	\$0	\$0	\$0
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits:	\$0	\$0	\$0
Net Fiscal Benefits:	\$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 fiscal impacts on non-small businesses' revenues or expenditures. No non-small businesses currently do, nor is it anticipated they will in the future, become contractors or subcontractors to the Department of Human Services to provide homeless services; therefore, case manager certification will not be a requirement for their employees through this rule.

After conducting a thorough analysis, it was determined that these proposed rule changes will result in a fiscal impact to small businesses, but that cost is inestimable. Ann Williamson, Executive Director

R523. Human Services, Substance Abuse and Mental Health.

R523-7. Certification of Designated Examiners and Certified Case Managers.

R523-7-1. Authority.

(1) This rule is promulgated under authority of Section 62A-15-105(2).

R523-7-2. Purpose.

(1) The purpose of this rule is to provide guidance on the process for designated examiners and case managers to attain certification from the Division of Substance Abuse and Mental Health (Division).

R523-7-3. Designated Examiners Certification.

(1) A "Designated Examiner" is a licensed physician or other licensed mental health professional designated by the Division as specially qualified by training or experience in the diagnosis of mental or related illness, as defined in Subsection 62A-15-602(3).

(a) The Division shall certify that a designated examiner is qualified by training and experience in the diagnosis of mental or related illness. Certification will require at least five years continual experience in the treatment of mental or related illness in addition to successful completion of training provided by the Division.

(b) Application for certification will be achieved by the applicant making a written request to the Division for their consideration. Upon receipt of a written application, the Director will initiate a review and examination of the applicant's qualifications.

(c) The applicant must meet the following minimum standards in order to be certified.

(i) The applicant must be a licensed mental health professional.

(ii) The applicant must be a resident of the State of Utah.

(iii) The applicant must demonstrate a complete and thorough understanding of abnormal psychology and abnormal behavior, to be determined by training, experience and written examination.

(iv) The applicant must demonstrate a fundamental and working knowledge of the mental health law. In particular, the applicant must demonstrate a thorough understanding of the conditions which must be met to warrant involuntary commitment, to be determined by training, experience and written examination.

(v) The applicant must be able to discriminate between abnormal behavior due to mental illness which poses a substantial likelihood of serious harm to self or others from those forms of abnormal behavior which do not represent such a threat. Such knowledge will be determined by experience, training and written examination.

(vi) The applicant must be able to demonstrate a general knowledge of the court process and the conduct of commitment hearings. The applicant must demonstrate an ability to provide the court with a thorough and complete oral and written evaluation that addresses the standards and questions set forth in the law, to be determined by experience, training and written and oral examination.

(vii) The applicant shall attend the training for the certification of designated examiners that is provided by the Division and pass the exam at the completion of the training with a minimum of 70% correct.

(d) The Division Director or designee will determine if experience and qualifications are satisfactory to meet the required standards. The Division Director or designee will also determine if there are any training requirements that may be waived due to prior experience and training to grant an exception of any of the above requirements.

(e) Upon satisfactory completion of the required experience and training, the Division Director or designee will certify the qualifications of the applicant, make record of such certification and issue a certificate to the applicant reflecting his status as a designated examiner and authorize the use of privileges and responsibilities as prescribed by law.

R523-7-4. Certified Case [Management]Manager Certification.

(1) Definitions.

(a) Targeted Case Management is a service that assists Medicaid recipients in the target group to gain access to needed, medical, social, educational, and other services. The overall goal of the service is not only to help Medicaid recipients access needed services, but to ensure that services are coordinated among all agencies and providers involved.

(b) Case Management services include coordinating, advocating, linking and monitoring services to help individuals access needed medical healthcare, behavioral healthcare, basic needs, housing, educational, social, and other services. Case Managers assess

individual needs and develop a plan designed to help the individual obtain access to a coordinated array of services.

(c) Certified Case [Management]Manager Certification means the process by which [an]a non-licensed individual obtains certification from the Division. [that allows them to provide case]Case [management]manager certification allows the Certified Case Manager to provide services for individuals with mental illness, [and/or]substance use disorders, and/or individuals experiencing homelessness.

(+)(2) Case Management services can be provided by:

(A)(a) A qualified provider, as defined in the Utah Medicaid Provider Manual, found at <https://medicaid.utah.gov/Documents/manuals/pdfs/Medicaid%20Provider%20Manuals/Targeted%20Case%20Management/Serious%20Mental%20Illness/SeriousMentalIllness1-19.pdf> [<https://medicaid.utah.gov/Documents/manuals/pdfs/Medicaid%20Provider%20Manuals/Targeted%20Case%20Management/Serious%20Mental%20Illness/Archive/2014/SeriousMentalIllness1-14.pdf>] for Targeted Case Management for individuals with Serious Mental Illness; or

(B)(b) An individual under the supervision of a qualified provider employed or [contracted by the local mental health or substance abuse authority. The qualified provider shall be responsible for coordinating, advocating, linking and monitoring the Case Manager]contracted by the Utah Department of Human Services, (DHS) a local mental health authority, a local substance abuse authority, a DHS licensed homeless shelter, or a targeted homeless service program defined as: public or private not-for-profit organizations, faith-based organizations, state departments and agencies, units of local governments and Indian tribal governments, who provide services to children, individuals, and/or families who are experiencing homeless or at risk of experiencing homeless contracted by the Department of Workforce Services (DWS).

(+)(3) Supervisors of case managers billing Medicaid for case management services must be qualified providers as defined in (2) (a).

(4) Supervisors of case managers not providing Medicaid billable services must have one of the following:

(a) A Bachelor's Degree in human services or a related field and two years of experience in human services;

(b) An Associate's Degree in human services or a related field and three years of experience in human services; or

(c) Five years of experience in human services.

(5) Certified Case Manager [tasks]duties include activities that assist individuals with:

(+)(a) Serious mental illness;

(+)(b) Serious emotional [disorder, and]disturbance;

(+)(c) [Individuals with substance]Substance use disorders[-]; and

(d) Services related to homelessness;

[-----] (e) Case Managers tasks include:

(+)(e) Accessing medical and related therapeutic services; and

(+)(f) [To promote]Promoting the individual's general health and their ability to function independently and successfully in the community.

(2) A certified case manager must meet the following minimum standards:

(a) Be at least 18 years of age;

~~(b) Have at least a high school degree or a GED;~~
~~(c) Have at least have at least two years experience in Human Services or related field (may include relevant education/volunteer activities);~~

~~(d) Be employed or subcontracted by a local mental health authority or a local substance abuse authority;](6) A Certified Case Manager must meet the following minimum standards:~~

~~(a) Be at least 18 years of age;~~

~~(b) Have at least a high school degree or a General Education Diploma(GED); and~~

~~(c) Be employed or subcontracted by DHS, a local mental health authority or a local substance abuse authority, a DHS licensed homeless shelter, or a targeted homeless program as defined in R523-7-4(2)(b); and~~

~~(d) Meet one of the following:~~

~~(i) Prior to applying for the Case Management Certification, obtain 400 hours experience within the previous 10 years of application submission in human services or related fields, which may include relevant education/volunteer activities; or~~

~~(ii) Be a Certified Peer Support Specialist or Family Resource Facilitator and have been actively working in the humans services field for at least 400 hours within the previous 10 years of the application submission date; or~~

~~(iii) Have at least a bachelor's degree in Human Services or a related field of study;~~

~~(e)](e) Pass a Division exam which tests basic knowledge, ethics, attitudes and case management skills with a score of 70 percent or above; and~~

~~(f)](f) Have completed [an]a Division approved 40-hour supervised case management practicum.~~

~~(3)](7) [An individual applying to become a certified case manager may request a waiver of the minimum standards in Subsection R523-7-4(2) based on their prior experience and training. The individual shall submit the request in writing to the Division. The Division shall review the documentation and issue a written decision regarding the request for waiver.]The Division Director or designee shall determine if experience and qualifications are satisfactory to exceed the required standards, and if there are any training requirements that may be waived due to prior experience and training to grant an exemption of any of the above requirements. In order to qualify for an exemption, the applicant must provide documentation of qualifications exceeding those required by this certification.~~

~~(4)](8) Applications and instructions to apply for certification to become a [ease manager]Certified Case Manager can be obtained from the Division. Only complete applications supported by all necessary documents shall be considered.~~

~~(a) Applicants or the agency submitting the application shall respond to any Division requests for additional information regarding the application within 30 days or the Certified Case Managers certification may be denied.~~

~~(a)](b) Individuals [will]shall be notified in writing of disposition and determination to grant or deny the application within 30 days of [completion of case management requirements]submission including response to Division requests for additional information of the Certified Case Manager's application. The Division shall issue a certificate verifying the certification is valid for three years, and the certificate shall be transferable across qualified employers.~~

~~(b)](c) If the application is denied the individual may file a written appeal within 30 days to the Division Director or designee.~~

~~(5)](9) Each [certified case manager]Certified Case Manager is required to complete and document [eight]30 training hours [of continuing education (CEU) credits each calendar year related to mental health, substance use disorder or related topics]related to mental health, substance use disorder homelessness, trauma informed care or related topics over the 3 year certification period. Training hours must include at least 4 hours of ethics and 3 hours of suicide prevention training.~~

~~(a) A [certified case manager]Certified Case Manager shall retain [CEU]training documentation. Documentation should not be sent to the Division unless requested for an audit.~~

~~(b) Documents to verify [CEU credits]training include:~~

~~(i) A certificate of completion documenting continuing education validation furnished by the presenter[:];~~

~~(ii) A letter of certificate from the sponsoring agency verifying the name of the program, presenter, and number of hours attended and participants; or~~

~~(iii) An official grade transcript verifying completion of an undergraduate or graduate course(s) of study.~~

~~(6) Certified case managers shall abide by the Provider Code of Conduct pursuant to Section R495-876, and as also found in the Department of Human Services Provider Code of Conduct Policy.~~

~~(a) Each employer shall notify the Division within 30 days, if a certified case manager engages in unprofessional or unlawful conduct.~~

~~(b) The Division shall revoke, refuse to certify or renew a certification to an individual who is substantiated to have engaged in unprofessional or unlawful conduct.~~

~~(c) An individual who has been served a Notice of Agency Action that the certification has been revoked or will not be renewed may request a Request for Review to the Division Director or designee within 30 days of receipt of notice.~~

~~(d) The Division Director or designee will review the findings of the Notice of Agency Action and shall determine to uphold, amend or revise the action of denial or revocation of the certification.]~~

~~(10) Certified Case Managers shall abide by the Provider Code of Conduct pursuant to Section R495-876, and as also found in the DHS Provider Code of Conduct Policy.~~

~~(a) Each employer that becomes aware of a Certified Case Manager engaging in unprofessional or unlawful conduct, or has violated the provider code of conduct shall:~~

~~(i) immediately take action to review the allegations,~~

~~(ii) take steps to ensure that all individuals involved with the allegation are protected, and~~

~~(iii) notify the Division within 30 days.~~

~~(b) Termination of certification shall be made effective immediately if the alleged violation(s) results in one or more of the following:~~

~~(i) personal financial gain through deception, or a business transaction with a client, by the Certified Case Manager,~~

~~(ii) physical or emotional harm to a person that is caused by the Certified Case Manager, or~~

~~(iii) a financial loss to a client, the State, or another employee that is caused by the Certified Case Manager.~~

~~(c) The Division shall take the following actions when it becomes aware of a Certified Case Manager in violation of the provider code of conduct that does not result in immediate termination:~~

~~(i) Within 30 days of becoming aware of the violation(s), the Division shall notify the Certified Case Manager, in writing,~~

through a Notice of Agency Action specifying the area(s) of noncompliance.

(ii) Within 30 days of receiving a notice of Agency Action, the Certified Case Manager shall submit an acceptable written plan to the Division explaining how they will achieve compliance.

(iii) All plans shall demonstrate how the Certified Case Manager shall be in compliance within 30 days after receiving the Notice of Agency Action.

(iv) If an acceptable plan of action is not received by the Division within 30 days of sending the Notice of Agency Action, the Certified Case Manager shall be notified that their certification has been suspended until an acceptable plan is submitted to the Division.

(v) A Certified Case Manager must cease providing any and all case management services until a suspension is lifted.

(d) The Division shall revoke the certification of any Certified Case Manager for the following reasons:

(i) The Certified Case Manager fails to provide the Division with written evidence of compliance to a plan of action within 30 days after receiving a Notice of Agency Action that their certification has been suspended.

(ii) The Certified Case Manager continues to provide case management services during the period of a suspension; or

(iii) The Certified Case Manager receives more than two notices of noncompliance with the Provider Code of Conduct in a one-year period.

(e) Any Certified Case Manager whose certification has been revoked may request an informal hearing with the Division Director or designee, in writing, within 10 business days of receiving notice of revocation.

(f) The Division Director or designee shall review the request and determine to uphold, amend or reverse the action within 10 business days, and the Division shall inform the Certified Case Manager of the decision in writing.

(g) Any Certified Case Manager with a revoked certification may not reapply for recertification for a period of 12 months.

[(7)](11) If a [certified case manager] Certified Case Manager fails to complete the requirements for [CEUs] training hours, their certificate will be revoked or allowed to expire, and will not be renewed unless the required training hours have been completed and submitted to the Division for approval within 30 days of expiration.

(a) If any Certified Case Manager's certification is not renewed within the required time frame, they may not reapply for certification within 60 days of the expiration date.

[(8)](12) If an individual fails the Division examination twice within a 30 day period of time, they must wait 30 days before taking the examination again. [The individual may only attempt to pass the examination two times within a twelve-month period.]

(9) The case manager's certification shall be posted and available upon request.

(10) The LMHA/LSAA shall notify the Division in writing when a Case Manager is no longer employed or subcontracted. The Case Manager certification shall be void upon separation of employment or termination of contract with the LMHA/LSAA.]

(13) The Division Director or designee shall determine if there are any training requirements that may be waived due to prior experience and training to grant an exception of any of the above requirements.

(14) The Certified Case Manager's certification shall be posted and available upon request.

KEY: designated examiners, involuntary commitment, case managers, case manager certification

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

Authorizing, and Implemented or Interpreted Law: 62A-15-105(2); 62A-15-602[(3)](5)

Natural Resources, Wildlife Resources R657-12

Hunting and Fishing Accommodations for People with Disabilities

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 43816

FILED: 06/17/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended pursuant to Regional Advisory Council and Wildlife Board meetings conducted annually for taking public input and reviewing the Division of Wildlife Resources' (DWR) administrative rules.

SUMMARY OF THE RULE OR CHANGE: H.B. 246, Hunting and Fishing License Amendments, passed during the 2019 General Session, authorizing the addition of a veteran hunting license and veteran combination license with a 25% discount fee. These rule amendments allow for the new license and cost in rule.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 23-14-18 and Section 23-19-1 and Section 23-19-36 and Section 23-20-12

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** These amendments are a direct result of legislative action. DWR has determined that these amendments will create a cost or savings impact to DWR's budget or the state budget. A conservative estimate is \$22,896 loss in revenue per year.

♦ **LOCAL GOVERNMENTS:** This filing does not create any direct cost or savings impact to local governments because they are not directly affected by these amendments. Nor are local governments indirectly impacted because these amendments do not create a situation requiring services from local governments.

♦ **SMALL BUSINESSES:** This filing does not create any direct cost or savings impact to small businesses because they are not directly affected by these amendments. Nor are small businesses indirectly impacted because these amendments do not create a situation requiring services from small businesses.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: These amendments will create a savings impact to those who qualify as veterans and wish to purchase a hunting or combination license at a reduced fee. Each veteran would save \$8.50 and \$9.50 respectively. These amendments do not impose any additional requirements on other persons and will not generate a cost or savings impact to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: These amendments are a direct result of H.B. 246 (2019). There are additional compliance costs associated with these amendments.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendments to this rule do not create an impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 NATURAL RESOURCES
 WILDLIFE RESOURCES
 1594 W NORTH TEMPLE
 SALT LAKE CITY, UT 84116-3154
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ◆ Staci Coons by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/14/2019

THIS RULE MAY BECOME EFFECTIVE ON: 08/21/2019

AUTHORIZED BY: Mike Fowlks, Director

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2020	FY 2021	FY 2022
State Government	\$22,896	\$22,896	\$22,896
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Person	\$0	\$0	\$0
Total Fiscal Costs:	\$22,896	\$22,896	\$22,896
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	\$22,896	\$22,896	\$22,896
Total Fiscal Benefits:	\$0	\$0	\$0
Net Fiscal Benefits:	\$22,896	\$22,896	\$22,896

*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 a total of 636 active veteran fishing license holders as of 2018. The customer number used to reflect the revenue loss for the increased license opportunities provided by offering both a discounted Hunting and Combination license was doubled for hunters (1,272).

Hunting	636x2=1,272	\$34x25%=\$8.50	1,272x\$8.50=\$10,812
Combination	636x2=1,272	\$38x25%=\$9.50	1,272x\$9.50=\$12,084
			\$22,896

This is our best estimate of fiscal impact. It is difficult to estimate how many veterans may be interested in these reduced cost licenses. Wildlife Resources believes many veterans do hunt in Utah.

The head of department of Natural Resources, Brian Steed, has reviewed and approved this fiscal analysis.

**R657. Natural Resources, Wildlife Resources.
 R657-12. Hunting and Fishing Accommodations for People With Disabilities.
 R657-12-1. Purpose and Authority.**

Under authority of Sections 23-14-18, 23-19-1, 23-19-36, 23-20-12 and 63G-3-201, this rule provides the standards and procedures for a person with disabilities to:

- (1) obtain a certificate of registration for taking wildlife from a vehicle;
- (2) obtain a fishing license as authorized under Section 23-19-36(1);
- (3) obtain a certificate of registration to participate in companion hunting;
- (4) obtain a certificate of registration to receive a limited entry season extension;
- (5) obtain a certificate of registration to receive a general deer or elk season extension;
- (6) obtain a certificate of registration to hunt with a crossbow or draw-lock; or
- (7) obtain a certificate of registration to use telescopic sights on a weapon when otherwise prohibited.

R657-12-10. [Fishing]Discounted Licenses for Veterans with Disabilities.

(1)(a) A resident who has a service-connected disability of 20% or more [and is not eligible to fish without a license under Section 23-19-14 or to receive a free fishing license under Section 23-19-36] may purchase a discounted 365-day or multi-year hunting, fishing, or combination license upon furnishing verification of a service-connected disability and paying the fee established in the approved fee schedule.

(b) Fees for multi-year service-connected disability licenses will be calculated according to the process identified in R657-45-3(2)(c).

(2)(a) "Armed Forces" means the United States Army, Navy, Marine Corps, Air Force, and Coast Guard, including the reserve components thereof and the Army and Air National Guard of the United States.

(b) "Service-connected disability" means injury or illness incurred or aggravated:

(i) while in Armed Forces service; and

(ii) that is recognized by the United States Department of Veterans Affairs or by a branch of the Armed Forces.

(c) "Verification of Service-Connected Disability" means an official written letter, statement, or card issued by the Department of Veterans Affairs or by a branch of the Armed Forces certifying that the person has a service-connected disability with a disability rating of 20% or higher.

~~[(2) The discount provided in this section on the purchase of a fishing license does not apply to combination licenses.]~~

(3)(a) A service-connected disability fishing license is not available to an individual who is eligible to fish without a license under Section 23-19-14 or to receive a free fishing license under Section 23-19-36.

~~[(3) — Veteran fishing] (b) Applications for service-connected disability licenses ~~[shall] may~~ be ~~[issued] submitted~~ at division offices and may be issued by mail, online or at license agents.~~

(4) The purchaser may be required to complete an affidavit of the service-connected disability at the time of ~~[purchase] application.~~

KEY: wildlife, wildlife law, disabled persons, fishing

Date of Enactment or last Substantive Amendment: ~~[February 10, 2014] 2019~~

Notice of Continuation: August 15, 2017

Authorizing, and Implemented or Interpreted Law: 23-20-12; 63G-3-201

Natural Resources, Wildlife Resources R657-45

Wildlife License, Permit, and Certificate of Registration Forms and Terms

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 43817

FILED: 06/17/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended pursuant to Regional Advisory Council and Wildlife Board meetings conducted annually for taking public input and reviewing the Division of Wildlife Resources' (DWR) rule pursuant to wildlife license, permit, and certificate of registration forms.

SUMMARY OF THE RULE OR CHANGE: Provisions of this rule are being amended to comply with H.B. 246, Hunting and Fishing License Amendments, passed during the 2019 General Session. These amendments are technical in nature.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 23-14-19 and Section 23-19-2

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** This rule is being amended to comply with H.B. 246 (2019) and is technical in nature. DWR has determined that there is not a cost or savings impact to the state budget or DWR's budget associated with these amendments.

◆ **LOCAL GOVERNMENTS:** None--This filing does not create any direct cost or savings impact to local governments because they are not directly affected by this rule. Nor are local governments indirectly impacted because this rule does not create a situation requiring services from local governments.

◆ **SMALL BUSINESSES:** None--This filing does not create any direct cost or savings impact to small businesses because they are not directly affected by this rule. Nor are small businesses indirectly impacted because this rule does not create a situation requiring services from small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule is being amended to comply with H.B. 246 (2019). DWR feels these amendments would not generate a savings impact to persons wishing to participate.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule is being amended to comply with H.B. 246 (2019). The changes to this rule would not create a cost savings or impact for those wishing to participate.

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 changes will not result in a fiscal impact to businesses.

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

NATURAL RESOURCES
WILDLIFE RESOURCES
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Staci Coons by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/14/2019

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2019

AUTHORIZED BY: Mike Fowlks, 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 proposed rule changes are not expected to have any fiscal impact on non-small businesses' revenues or expenditures, because they do not have the ability to create a fiscal impact. The changes simply correct rule language in order to comply with H.B. 246, Hunting and Fishing License Amendments.

The head of department of Natural Resources, Brian Steed, has reviewed and approved this fiscal analysis.

R657. Natural Resources, Wildlife Resources.

R657-45. Wildlife License, Permit, and Certificate of Registration Forms and Terms.

R657-45-1. Purpose and Authority.

Under authority of Sections 23-14-18, 23-14-19, 23-19-2 and 23-19-7 the Wildlife Board has established this rule for prescribing the forms and terms of a wildlife license, permit, and certificate of registration.

R657-45-3. License Terms and Renewal.

(1)(a) Upon paying the prescribed fee and satisfying the criteria for issuance, a person may obtain a resident or nonresident fishing, hunting, or combination license valid for:

- (i) 365 days (one year);
- (ii) 730 days (two years);
- (iii) 1095 days (three years); (iv) 1460 days (four years); or (v) 1825 days (five years).

(b) In addition to the license term prescribed in Subsection (1)(a), a person may obtain a:

- (i) three or seven day resident or nonresident fishing license; or
- (ii) three day nonresident hunting license.

(2)(a) Except as provided in Subsections (b) through (d), a multi-year fishing, hunting, and combination license under Subsection (1)(a) is available to residents and nonresidents at a discounted, adult license fee rate based on residency, license type and license term.

(i) A multi-year license is available to youth only at the adult license fee rate.

(b) A resident senior, age 65 and older, may obtain a multi-year fishing, hunting, or combination license at the 365 day, senior license fee rate multiplied by the number of years in the license term.

(c) A resident disabled veteran that is eligible for a ~~[discounted fishing]~~ service-connected disability license under Section 23-19-38.3 and R657-12-10, may obtain a multi-year ~~[fishing]~~ license at the reduced 365 day license fee rate multiplied by the number of years in the license term.

(3) A person with a current, one to five year hunting, fishing, or combination license may renew the license by purchasing:

- (a) a new license on or after its expiration date; or
- (b) the same license for a term prescribed in Subsection

(1)(a) within six months of the expiration date on the unexpired license.

(i) A license renewed under Subsection (3)(b) is effective on the date of purchase and remains valid for a period equal to the sum of the remaining days on the unexpired license and the applicable term on the renewal license.

(4) Except as provided in Subsections (4)(a), a fishing, hunting, or combination license issued under this Section remains valid if the licensee subsequently changes residency during the term of license.

(a) A Utah resident license is invalid if a resident license for hunting, fishing, or trapping is purchased in any other state or country.

(5)(a) A resident that establishes a new domicile outside Utah during the unexpired term of a Utah resident fishing, hunting, or combination license, shall notify the Division of the change prior to purchasing a resident hunting, fishing, or trapping license in any other state or country.

(b) Upon receiving notice of a domicile change under Subsection (5)(a), the Division will issue a free nonresident replacement license for the remaining term of the resident license.

(c) The Division may charge a handling fee for a residency based license exchange under this Subsection.

(d) The pro rata difference between the nonresident and resident license fee will not be refunded to a person that establishes Utah residency during the term of a nonresident license.

(6) A person that purchases a hunting permit and subsequently changes residency may lawfully use that permit for the applicable hunting season without notifying the Division of residency change.

KEY: license, permit, certificate of registration
Date of Enactment or Last substantive Amendment:
[November 10, 2015]2019
Notice of Continuation: April 12, 2018
Authorizing, and implemented or Interpreted Law: 23-19-2

Tax Commission, Administration
R861-1A-9

State Board of Equalization Procedures
Pursuant to Utah Code Ann. Sections
59-2-212, 59-2-1004, and 59-2-1006

NOTICE OF PROPOSED RULE
 (Amendment)

DAR FILE NO.: 43838
 FILED: 06/28/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed amendments correct a technical error consistent with current practice and interpretation.

SUMMARY OF THE RULE OR CHANGE: The proposed amendments clarify language related to when the commission may remand an appeal to the county Board of Equalization (BOE). The changes are consistent with current practice and interpretation.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 59-2-1004 and Section 59-2-1006 and Section 59-2-212

ANTICIPATED COST OR SAVINGS TO:
 ♦ **THE STATE BUDGET:** None--These changes are consistent with current practice and interpretation.
 ♦ **LOCAL GOVERNMENTS:** None--These changes are consistent with current practice and interpretation.

♦ **SMALL BUSINESSES:** None--These changes are consistent with current practice and interpretation.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** None--These changes are consistent with current practice and interpretation.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--These changes are consistent with current practice and interpretation.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Because these changes conform to current practice and interpretation, there is no impact on businesses.

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

TAX COMMISSION
 ADMINISTRATION
 210 N 1950 W
 SALT LAKE CITY, UT 84134-0002
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Jennifer Franklin by phone at 801-297-3901, or by Internet E-mail at jenniferfranklin@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/14/2019

THIS RULE MAY BECOME EFFECTIVE ON: 08/21/2019

AUTHORIZED BY: Rebecca Rockwell, Commissioner

Appendix 1: Regulatory Impact Summary Table*

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

Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits:	\$0	\$0	\$0
Net Fiscal Benefits:	\$0	\$0	\$0

***This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts for State Government, Local Government, Small Businesses and Other Persons are described above. Inestimable impacts for Non-Small Businesses are described below.**

Appendix 2: Regulatory Impact to Non-Small Businesses

These proposed amendments are not expected to have any fiscal impacts on non-small businesses' revenues or expenditures because it does not change current administration.

Commissioner of the Utah State Tax Commission, Rebecca L. Rockwell, has reviewed and approved this fiscal analysis.

R861. Tax Commission, Administration.

R861-1A. Administrative Procedures.

R861-1A-9. State Board of Equalization Procedures Pursuant to Utah Code Ann. Sections 59-2-212, 59-2-1004, and 59-2-1006.

(1) The commission sits as the state board of equalization in discharge of the equalization responsibilities given it by law. The commission may sit on its own initiative to correct the valuation of property that has been overassessed, underassessed, or nonassessed as described in Section 59-2-212, and as a board of appeal from the various county boards of equalization described in Section 59-2-1004.

(2) Appeals to the commission shall include:

(a) a copy of the recommendation of a hearing officer if a hearing officer heard the appeal;

(b) a copy of the notice required under Section 59-2-919.1;

(c) a copy of the minutes of the board of equalization;

(d) a copy of the property record maintained by the assessor;

(e) if the county board of equalization does not include the record in its minutes, a copy of the record of the appeal required under R884-24P-66;

(f) a copy of the evidence submitted by the parties to the board of equalization;

(g) a copy of the petition for redetermination; and

(h) a copy of the decision of the board of equalization.

(3) A notice of appeal filed by the taxpayer with the auditor pursuant to Section 59-2-1006 shall be presumed to have been timely filed unless the county provides convincing evidence to the contrary. In the absence of evidence of the date of mailing of the county board of

equalization decision by the county auditor to the taxpayer, it shall be presumed that the decision was mailed three days after the meeting of the county board of equalization at which the decision was made.

(4) Appeals to the commission shall be scheduled for hearing pursuant to commission rules.

(5) Appeals to the commission shall be on the merits except for the following:

(a) dismissal for lack of jurisdiction;

(b) dismissal for lack of timeliness;

(c) dismissal for lack of evidence to support a claim for relief.

(6)(a) The commission shall consider, but is not limited to, the facts and evidence submitted to the county board.

(b) A party may raise a new issue before the commission.

(7) On an appeal from a dismissal by a county board for the exceptions under Subsection (5), the only matter that will be reviewed by the commission is the dismissal itself, not the merits of the appeal.

(8) An appeal filed with the commission may be remanded to the county board of equalization for further proceedings if the commission determines that:

(a) dismissal under ~~[Subsection]~~Subsections (5)(a) ~~[or]~~through (c) is improper;

(b) the taxpayer failed to exhaust all administrative remedies at the county level;

(c) in the interest of administrative efficiency, the matter can best be resolved by the county board;

(d) the commission determines that dismissal under ~~[Subsection]~~Subsections (5)(a) through (c) is improper under R884-24P-66; or

(e) a new issue is raised before the commission by a party.

(9) The provisions of this rule apply only to appeals to the commission as the state board of equalization. For information regarding appeals to the county board of equalization, ~~[please]~~see Section 59-2-1004 and R884-24P-66.

KEY: developmental disabilities, grievance procedures, taxation, disclosure requirements

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

Notice of Continuation: November 10, 2016

Authorizing, and Implemented or Interpreted Law: 10-1-405; 41-1a-209; 52-4-207; 59-1-205; 59-1-207; 59-1-210; 59-1-301; 59-1-302.1; 59-1-304; 59-1-401; 59-1-403; 59-1-404; 59-1-405; 59-1-501; 59-1-502.5; 59-1-602; 59-1-611; 59-1-705; 59-1-706; 59-1-1004; 59-1-1404; 59-7-505; 59-10-512; 59-10-532; 59-10-533; 59-10-535; 59-12-107; 59-12-114; 59-12-118; 59-13-206; 59-13-210; 59-13-307; 59-10-544; 59-14-404; 59-2-212; 59-2-701; 59-2-705; 59-2-1003; 59-2-1004; 59-2-1006; 59-2-1007; 59-2-704; 59-2-924; 59-7-517; 63G-3-301; 63G-4-102; 76-8-502; 76-8-503; 59-2-701; 63G-4-201; 63G-4-202; 63G-4-203; 63G-4-204; 63G-4-205 through 63G-4-209; 63G-4-302; 63G-4-401; 63G-4-503; 63G-3-201(2); 68-3-7; 68-3-8.5; 69-2-5; 42 USC 12201; 28 CFR 25.107 1992 Edition

Tax Commission, Auditing
R865-91-2
Determination of Utah Resident
Individual Status Pursuant to Utah
Code Ann. Sections 59-10-103 and 59-
10-136

NOTICE OF PROPOSED RULE

(Amendment)
 DAR FILE NO.: 43839
 FILED: 06/28/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment conforms this section to statutory changes under S.B. 13, Income Tax Domicile Amendments, passed in the 2019 General Session.

SUMMARY OF THE RULE OR CHANGE: The proposed amendment eliminates the reference to Section 59-10-103 because that section is no longer relevant to this section as a result of S.B. 13 (2019).

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 59-10-136

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** The amendment will not impact the state budget because it does not change current administration.
- ◆ **LOCAL GOVERNMENTS:** The amendment will not impact local governments because it does not change current administration.
- ◆ **SMALL BUSINESSES:** The amendment will not impact the small businesses because it does not change current administration.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The amendment will not impact other persons because it does not change current administration.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendment eliminates an unnecessary reference to a Utah Code section that is no longer applicable. The amendment will not result in additional compliance costs for affected persons because it does not change current administration.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Because this amendment does not change current practice, it will not result in a fiscal impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 TAX COMMISSION
 AUDITING
 210 N 1950 W
 SALT LAKE CITY, UT 84134
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ◆ Jennifer Franklin by phone at 801-297-3901, or by Internet E-mail at jenniferfranklin@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/14/2019

THIS RULE MAY BECOME EFFECTIVE ON: 08/21/2019

AUTHORIZED BY: Rebecca Rockwell, Commissioner

Appendix 1: Regulatory Impact Summary Table*

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

*This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts for State Government, Local Government, Small Businesses and Other Persons are described above. Inestimable impacts for Non-Small Businesses are described below.

Appendix 2: Regulatory Impact to Non-Small Businesses

This proposed amendment is not expected to have any fiscal impacts on non-small businesses; revenues or expenditures because it does not change current administration

Commissioner of the Utah State Tax Commission, Rebecca L. Rockwell, has reviewed and approved this fiscal analysis.

R865. Tax Commission, Auditing.

R865-9I. Income Tax.

R865-9I-2. Determination of Utah Resident Individual Status Pursuant to Utah Code Ann. [~~Sections 59-10-103 and~~Section 59-10-136.

For purposes of determining whether an individual spends in the aggregate 183 or more days of the taxable year in this state, a "day" means a day in which the individual spends more time in this state than in any other state.

KEY: historic preservation, income tax, tax returns, enterprise zones

Date of Enactment or Last Substantive Amendment: [~~November 13, 2018~~]2019

Notice of Continuation: November 10, 2016

Authorizing, and Implemented or Interpreted Law: 31A-32A-106; 53B-8a-112; 59-1-1301 through 59-1-1309; 59-2-1201 through 59-2-1220; 59-6-102; 59-7-3; 59-10; 59-10-103; 59-10-108 through 59-10-122; 59-10-108.5; 59-10-114; 59-10-124; 59-10-127; 59-10-128; 59-10-129; 59-10-130; 59-10-207; 59-10-210; 59-10-303; 59-10-401 through 59-10-403; 59-10-405.5; 59-10-406 through 59-10-408; 59-10-501; 59-10-503; 59-10-504; 59-10-507; 59-10-512; 58-10-514; 59-10-516; 59-10-517; 59-10-522; 59-10-533; 59-10-536; 59-10-602; 59-10-603; 59-10-1003; 59-10-1006; 59-10-1014; 59-10-1017; 59-10-1021; 59-10-1023; 59-10-1106; 59-10-1403; 59-10-1403.2; 59-10-1405; 59-13-202; 59-13-301; 59-13-302; 63M-1; 63N-2-201 through 63N-2-215

**Tax Commission, Motor Vehicle
R873-22M-17
Standards for State Impound Lots
Pursuant to Utah Code Ann. Section
41-1a-1101**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 43840

FILED: 06/28/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: These amendments are to reflect statutory

changes pursuant to H.B. 228, Towing Revisions, passed in the 2019 General Session.

SUMMARY OF THE RULE OR CHANGE: Pursuant to H.B. 228 (2019), these changes include a requirement that a state impound yard have opaque fencing, which may include chain link fencing, on any side that has frontage with a highway; and make other technical changes.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 41-1a-1101

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** These proposed amendments are not expected to have any fiscal impact on state government revenues or expenditures because any fiscal impact would have been addressed in the fiscal note of H.B. 228 (2019).
- ◆ **LOCAL GOVERNMENTS:** These proposed amendments are not expected to have any fiscal impact on local governments' revenues or expenditures because any fiscal impact would have been addressed in the fiscal note of H.B. 228 (2019).
- ◆ **SMALL BUSINESSES:** These proposed amendments are not expected to have any fiscal impact on small businesses' revenues or expenditures because any fiscal impact would have been addressed in the fiscal note of H.B. 228 (2019).
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** These proposed amendments are not expected to have any fiscal impact on other persons' revenues or expenditures because any fiscal impact would have been addressed in the fiscal note of H.B. 228 (2019).

COMPLIANCE COSTS FOR AFFECTED PERSONS: These proposed amendments require that a state impound yard have opaque fencing, which may include chain link fencing, on any side that has frontage with a highway. These proposed amendments are not expected to impose any compliance costs on affected persons because any regulatory burdens would have been addressed in the fiscal note of H.B. 228 (2019).

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Any fiscal impact on businesses would have been addressed in the fiscal note of H.B. 228 (2019).

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

TAX COMMISSION
MOTOR VEHICLE
210 N 1950 W
SALT LAKE CITY, UT 84134
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Jennifer Franklin by phone at 801-297-3901, or by Internet E-mail at jenniferfranklin@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/14/2019

THIS RULE MAY BECOME EFFECTIVE ON: 08/21/2019

AUTHORIZED BY: Rebecca Rockwell, Commissioner

Appendix 1: Regulatory Impact Summary Table*

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

*This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts for State Government, Local Government, Small Businesses and Other Persons are described above. Inestimable impacts for Non-Small Businesses are described below.

Appendix 2: Regulatory Impact to Non-Small Businesses

These proposed amendments are not expected to have any fiscal impact on non-small businesses' revenues or expenditures because any fiscal impact would have been addressed in the fiscal note in H.B. 228 (2019).

Commissioner of the Utah State Tax Commission, Rebecca L. Rockwell, has reviewed and approved this fiscal analysis.

R873. Tax Commission, Motor Vehicle.

R873-22M. Motor Vehicle.

R873-22M-17. Standards for State Impound Lots Pursuant to Utah Code Ann. Section 41-1a-1101.

~~[A-](1)~~ An impound yard may be used by the Motor Vehicle Division and peace officers only if all of the following requirements are satisfied:

~~[1-](a)~~ The yard must be identified by a conspicuously placed, well-maintained sign that:

~~[a-](i)~~ is at least 24 square feet in size;

~~[b-](ii)~~ includes the business name, address, phone number, and hours of business; and

~~[e-](iii)~~ displays the impound yard identification number issued by the Motor Vehicle Division in characters at least four inches high.

~~[2-](b)~~ The yard shall maintain a hard-surfaced storage area of concrete, black top, gravel, road base, or other similar material.

~~[3-](c)~~ The yard must have adequate lighting.

~~[4-](d)~~ A six-foot chain link or other similar fence that is topped with three strands of barbed wire or razor security wire must surround the yard.

~~(e)~~ The yard must have opaque fencing, which may be opaque chain link fencing, on any side that has frontage with a highway.

~~[5-](f)~~ Spacing between vehicles must be adequate to allow opening of vehicle doors without interfering with other vehicles or objects.

~~[6-](g)~~ An office shall be located on the premises of the yard.

~~[a-](i)~~ The yard office shall be staffed and open for public business during normal business hours, Monday through Friday, except for designated state and federal holidays.

~~[b-](ii)~~ If the yard maintains multiple storage areas, authorization may be requested from the Motor Vehicle Division to maintain a central office facility in a location not to exceed a 10 mile radius from any of its storage areas.

~~[e-](iii)~~ If a central office facility is ~~[approved]~~ authorized under Subsection ~~[6-b-](1)(g)(ii)~~ ~~[-above]~~, the signs of all storage areas must provide the location of the office.

~~[7-](h)~~ The yard shall provide compressed air and battery boosting capabilities at no additional cost.

~~[B-](2)~~ Persons who can demonstrate an ownership interest in a car held at a state impound yard are allowed to enter the vehicle during normal business hours and remove personal property not attached to the vehicle upon signing a receipt for the property with the yard.

~~[1-](a)~~ An individual has ownership interest in the vehicle if he:

~~[a-](i)~~ is listed as a registered owner or lessee of the vehicle;

or

~~[b-](ii)~~ has possession of the vehicle title.

~~[2-](b)~~ An individual must show picture identification as evidence of his ownership interest.

~~[3-](c)~~ The storage yard shall maintain a log of individuals who have been given access to vehicles for the purpose of removing personal property.

~~[C-](3)~~ Impound yards holding five or less vehicles in a month may be required to tow those vehicles to another yard for the

purpose of centralizing sales of vehicles or, at the discretion of the Motor Vehicle Division, be required to hold the vehicles until additional impounded vehicles may be included.

~~(D)~~(4) Operators of impound yards shall remove license plates from impounded vehicles prior to the time of sale and turn them over to the ~~[Tax Commission]~~commission at the time the vehicles are sold.

~~(E)~~(5) The Motor Vehicle Division has the authority to review the qualifications of state impound yards to assure compliance with the requirements set forth in this rule. Any yard not in compliance shall be notified in writing and given 30 days from that notice to rectify any noncompliance. If no action or insufficient action is taken by the impound yard, the Motor Vehicle Division may order it to be suspended as a state impound yard. Any yard contesting suspension, or any yard directly and adversely affected by the Motor Vehicle Division's refusal to designate it a state impound yard, has the right to appeal that suspension to the ~~[Tax Commission]~~commission.

KEY: taxation, motor vehicles, aircraft, license plates

Date of Enactment or Last Substantive Amendment: ~~[July 27, 2017]~~2019

Notice of Continuation: November 10, 2016

Authorizing, and Implemented or Interpreted Law: 41-1a-102; 41-1a-104; 41-1a-108; 41-1a-116; 41-1a-211; 41-1a-215; 41-1a-214; 41-1a-401; 41-1a-402; 41-1a-411; 41-1a-413; 41-1a-414; 41-1a-416; 41-1a-418; 41-1a-419; 41-1a-420; 41-1a-421; 41-1a-422; 41-1a-522; 41-1a-701; 41-1a-1001; 41-1a-1002; 41-1a-1004; 41-1a-1005; 41-1a-1009 through 41-1a-1011; 41-1a-1101; 41-1a-1209; 41-1a-1211; 41-1a-1220; 41-6-44; 53-8-205; 59-12-104; 59-2-103; 72-10-109 through 72-10-112; 72-10-102

Transportation, Program Development R926-17 Road Usage Charge Program

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 43847

FILED: 07/01/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This new rule is to administer the state's road usage charge program.

SUMMARY OF THE RULE OR CHANGE: This new rule establishes procedures the Department of Transportation (Department) will follow when administering the state's road usage charge (RUC) program in accordance with the RUC program established by Section 72-1-213. The RUC program is a mileage-based revenue system intended to function as an alternative to the fuel tax.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 72-1-213.1

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** This proposed new rule will lead to a fiscal impact on the state's budget. The fiscal note that accompanied S.B. 72 passed in the 2019 General Session (Utah Laws Ch. 479), estimates establishing the RUC program, of which this new rule is a part, may cost the Department \$870,000 from the Transportation Fund in FY 2020, and \$115,000 ongoing from the Transportation Fund beginning in FY 2021 to pay a private vendor to manage RUC accounts, and it could cost the Department \$120,000 ongoing from federal funds beginning in FY 2021 to operate the RUC program.

◆ **LOCAL GOVERNMENTS:** This new rule will not lead to a fiscal impact on local governments. Local governments are exempt from fuel taxes and RUC fees.

◆ **SMALL BUSINESSES:** This new rule, employed in conjunction with new Rule R940-8, which establishes procedures the Transportation Commission (Commission) will follow when setting RUC rates, may lead to a fiscal impact on businesses in Utah, which may be a net savings. Businesses that decide to use alternative fuel vehicles for business purposes and participate in the RUC program will have the option of paying a flat fee annually, which is set by the Tax Commission and not set by this rule, or participate in the RUC program and pay 1.5 cents per mile driven up to an amount equal to the amount of the flat fee. If the flat fee is set at \$150, a vehicle will need to travel 10,000 miles to be assessed a \$150 RUC. RUC participants will not be assessed a RUC for miles traveled in excess of 10,000. RUC participants that travel less than 10,000 miles in a year will realize a net savings compared to paying the flat fee. (EDITOR'S NOTE: The proposed new Rule R940-8 is under Filing No. 43846 in this issue, July 15, 2019, of the Bulletin.)

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This new rule, employed in conjunction with new Rule R940-8, which establishes procedures the Commission will follow when setting RUC rates, may lead to a fiscal impact on individuals in Utah, which may be a net savings. Individuals that decide to use alternative fuel vehicles for business or personal purposes and participate in the RUC program will have the option of paying a flat fee annually, which is set by the Tax Commission and not set by this rule, or participate in the RUC program and pay 1.5 cents per mile driven up to an amount equal to the amount of the flat fee. If the flat fee is set at \$150, a vehicle will need to travel 10,000 miles to be assessed a \$150 RUC. RUC participants will not be assessed a RUC for miles traveled in excess of 10,000. RUC participants that travel less than 10,000 miles in a year will realize a net savings compared to paying the flat fee.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No individual or business in Utah will face compliance costs because of this new rule. This new rule establishes procedures the Department will follow when administering the state's RUC program in accordance with the RUC program. It does not require anything from any individual or business.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This new rule will not have a fiscal impact on businesses.

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

TRANSPORTATION
PROGRAM DEVELOPMENT
CALVIN L RAMPTON COMPLEX
4501 S 2700 W
SALT LAKE CITY, UT 84119-5998
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Christine Newman by phone at 801-965-4026, by FAX at 801-965-4338, or by Internet E-mail at cwnewman@utah.gov
- ◆ James Palmer by phone at 801-965-4000, by FAX at 801-965-4338, or by Internet E-mail at jimpalmer@utah.gov
- ◆ Josh Dangel by phone at 269-217-7091, or by Internet E-mail at jdangel@utah.gov
- ◆ Linda Hull by phone at 801-965-4253, or by Internet E-mail at lhull@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/14/2019

THIS RULE MAY BECOME EFFECTIVE ON: 08/21/2019

AUTHORIZED BY: Carlos Braceras, Executive Director

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2020	FY 2021	FY 2022
State Government	\$870,000	\$235,000	\$235,000
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Person	\$0	\$0	\$0
Total Fiscal Costs:	\$870,000	\$235,000	\$235,000
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits:	\$0	\$0	\$0
Net Fiscal Benefits:	\$(870,000)	\$(235,000)	\$(235,000)

*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

1) This is a proposed new rule. It establishes procedures the Utah Department of Transportation (UDOT) will follow when administering the state's road usage charge (RUC) program in accordance with the RUC program established by Section 72-1-213. The RUC program is a mileage-based revenue system intended to function as an alternative to the fuel tax.

2) The RUC is a user fee based on the number of miles driven instead of the gallons of fuel consumed. Similar to utilities, drivers pay for what they use. It is a potential replacement for the gas tax. In the 2018 General Session, S.B. 136 was passed by the Legislature which directed UDOT to implement a RUC program for alternative fuel vehicles by January 1, 2020. This new rule is necessary to implement and administer the RUC program.

3) The RUC system is a voluntary program that alternative fuel vehicle owners may opt into at the time of their annual registration renewal instead of paying a flat fee. Participants sign up with a third-party account manager that collects data and reports miles driven to the account manager using in-vehicle technology the account manager provides. Participants place a credit card on file and set up a pre-paid wallet from which mileage fees are deducted periodically. Payment of the per-mile fee stops once the accumulated total for the year is equal to the annual flat fee. The account manager provides a phone app or other method for submission of an odometer capture photo at enrollment and a yearly "true-up" photo to make sure that mileage on file corresponds to actual odometer readings. Participation in the program is not mandatory. People with privacy concerns may opt for limited data retention or pay the flat fee.

4) UDOT will coordinate with the Division of Motor Vehicles (DMV) and the account manager to notify owners or lessees of alternative fuel vehicles that they are eligible to enroll in the program as an alternative to paying the flat fee applicable to their vehicle. UDOT will provide a means of directing owners/lessees who want to enroll in the program to an account manager under contract with UDOT that will manage all aspects of enrollment in the program.

5) This new rule, employed in conjunction with new Rule R940-8, which establishes procedures the Transportation Commission (Commission) will follow when setting RUC rates, may lead to a fiscal impact on businesses and individuals in Utah, which may be a net savings. Businesses and individuals that decide to use alternative fuel vehicles for business or personal purposes and participate in the RUC program will have the option of paying a flat fee annually, which is set by the Legislature administered by the Tax Commission and not affected by this rule, or participate in the RUC program and pay 1.5 cents per mile driven up to an amount equal to the amount of the flat fee. If the flat fee is set at \$150, a vehicle will need to travel 10,000 miles to be assessed a \$150 RUC. RUC participants will not be assessed a RUC for miles traveled in excess of 10,000. RUC participants that travel less than 10,000 miles in a year will realize a net savings compared to paying the flat fee.

6) The executive director of UDOT, Carlos Braceras, has reviewed and approves this analysis.

R926. Transportation, Program Development.

R926-17. Road Usage Charge Program.

R926-17-1. Purpose and Authority.

(1) Purpose. This rule is to administer the State's Road Usage Charge Program.

(2) Authority. Utah Code Section 72-1-213.1 grants the Department authority to promulgate this rule.

R926-17-2. Definitions.

(1) "Account manager" means an entity under contract with the Department to operate and manage the road usage charge program on its behalf.

(2) "Alternative fuel vehicle" means the same as that term is defined in Section 41-1a-102.

(3) "Chargeable miles" means the number of miles for which the RUC participant will be charged under the program parameters in place at the time the miles are driven.

(4) "Department" means the Utah Department of Transportation.

(5) "DMV" means the Utah Division of Motor Vehicles.

(6) "Flat fee" means the additional registration fee applied to alternative fuel vehicles as defined in Utah Code Subsections 41-1a-1206(1)(h) and 1206(2)(b).

(7) "Payment period" means the interval during which an owner/lessee is required to report mileage and pay the appropriate RUC fee according to the terms of the program.

(8) "Program" means the RUC program established and described in this section.

(9) "RUC" means "road usage charge".

(10) "RUC fee" means the accrued amount owed to an account manager. It is calculated as the number of chargeable miles driven multiplied by the RUC rate.

(11) "RUC participant" means the owner or lessee of an alternative fuel vehicle that is enrolled in the program.

(12) "RUC rate" means the amount of money per mile driven that RUC participants are required to pay, and which has been approved by the Transportation Commission to be used in the program.

(13) "Value-added services" means amenities that an account manager may want to offer RUC participants, but which are ancillary to the core RUC purpose of collecting and reporting miles driven.

R926-17-3. Enrollment, Voluntary Withdrawal and Removal Processes and Terms.

(1) The Department will coordinate with the DMV and the account manager to notify owners or lessees of alternative fuel vehicles that they are eligible to enroll in the program as an alternative to paying the flat fee applicable to their vehicle.

(2) The Department will provide a means of directing owners/lessees who want to enroll in the program to an account manager under contract with the Department that will manage all aspects of enrollment in the program.

(3) Owners/lessees who want to enroll in the program must submit vehicle information that includes the license plate number and vehicle identification number (VIN) to the account manager for verification that the participant's vehicle is eligible for enrollment in the program.

(4) RUC participants may withdraw a vehicle from the program at any time.

(5) RUC participants who withdraw a vehicle prior to full completion of the current annual registration cycle must pay the flat fee amount applicable to that vehicle, less any RUC fees paid to date during that registration cycle.

(6) The process for withdrawing from the program prior to completion of a full registration cycle is as follows:

(a) RUC participant notifies the account manager that they wish to withdraw from the program.

(b) RUC participant fulfills any terms in their user agreement related to return of electronic mileage collection devices.

(7) RUC participants who complete a full registration cycle prior to withdrawing from the program, and have accrued a RUC fee amount less than the applicable annual flat fee, will not be required as a condition of withdrawal to pay the difference between the flat fee amount and the RUC fees they have already accrued.

(8) RUC participants who withdraw after completing their full registration cycle will revert to paying the flat fee to the DMV until such time as they opt into the RUC program again.

(9) Involuntary removal of RUC participants from the program is addressed in Section R926-17-8.

R926-17-4. RUC Participant Payment Methods, Periods, and Procedures.

(1) RUC participants must provide electronic payment information and set up a prepaid wallet at enrollment. The wallet value will decrease as the value of miles accrues against the balance. A nominal amount, which will be agreed to by the RUC participant and account manager and stated in the user agreement, will be added by the RUC participant to the wallet once the balance drops below a predetermined minimum threshold.

(2) Only electronic payments will be accepted.

(3) Account managers will send RUC participants a monthly statement showing at a minimum miles driven, RUC fees accrued, and amount of money added to the wallet during the previous month.

(4) Account managers will cease accruing RUC fees against a vehicle once the cumulative amount accrued for the current registration cycle is equal to the flat fee applicable to that vehicle type. Fee accrual will resume at the beginning of the next registration cycle if the RUC participant remains in the program.

(5) Once a RUC Participant's total accrued RUC fee for the year is equal to their flat fee, the RUC Participant will no longer accrue additional RUC fees until the beginning of their new registration cycle if they remain in the program.

(6) Penalties for violation of terms and conditions, if applicable, may still result in accrual of fees against a RUC participant's account even after the annual mileage cap has been reached.

R926-17-5. Mileage Reporting Mechanism Standards.

(1) Account managers may offer various reporting mechanisms to RUC participants for collection of their mileage. All mechanisms must be approved by the Department prior to use by account managers.

(2) Such mechanisms may include but are not limited to devices installed in cars, smartphone applications, embedded telematics, and odometer image capture. For mechanisms such as OBD-II devices and embedded telematics that may be able to support mileage collection either through location tracking or a simple report of the odometer reading, the Department may dictate its preferences through account manager contract terms.

(3) Mileage reporting mechanisms will be capable of automatically transmitting mileage data directly to an account manager through wireless means. The program may not provide for any manual reporting of mileage by RUC participants.

(4) The Department may dictate mileage aggregation and reporting frequencies (e.g. hourly, daily, monthly) through account manager contract terms.

R926-17-6. Privacy and Data Sharing Processes and Procedures.

(1) All aspects of program operations will comply with the statutes related to privacy found in Utah Code Sections 63G-2-305 and 77-23c-102.

(2) An account manager must explain activities involving collection and storage of location data to RUC participants as part of the enrollment process.

(3) User agreements between account managers and RUC participants, must be approved by the Department prior to use and must require explicit consent for collection and storage of RUC participants' location data.

(4) RUC participants will be able to view their data being collected and stored by the account manager. They may also dispute mileage charges that they consider to be erroneous.

(5) RUC participants' location data and personal information is protected from public disclosure by the Government Records Access and Management Act (GRAMA).

R926-17-7. Security Processes and Procedures.

The account manager will process all card payment data and transactions in accordance with the Payment Card Industry Data Security Standard (PCI DSS), which applies to the electronic payment card industry as a whole. Automated clearing house payment data and transactions will be processed according to the rules published by the National Automated Clearing House Association (NACHA), which apply to the electronic payment card industry as a whole.

R926-17-8. User Agreements Between Account Managers and RUC Participants.

(1) The Department must approve user agreements used by account managers to enroll RUC participants prior to usage of those agreements.

(2) The user agreement will clearly explain location tracking, data retention, and privacy protection components of the program. It will also require explicit consent on the part of the participant to accept any terms related to tracking and retention.

(3) The user agreement will include but is not limited to the following components:

(a) Mileage reporting mechanism to be used for the vehicle being enrolled and commitment from the RUC participant to keep the mechanism operable at all times so that no interruptions in data collection and transmission occur.

(b) Electronic payment mechanism chosen by the RUC participant, consent to have a bank account or credit card debited when the wallet balance drops below a defined minimum threshold, and commitment to keep payment information current while enrolled in the program.

(c) Refund procedures for situations where a RUC participant completes a full registration cycle within the program but does not accrue enough mileage charges to consume the entire flat fee, thus leaving a positive wallet balance.

(d) Requirements, if any, for return of mileage reporting devices to the account manager after a RUC participant is no longer enrolled.

(e) Length of time that raw location data will be retained by the account manager.

(f) Information about how data may be aggregated, anonymized, or shared.

(g) Process for RUC participants to view their collected data and lodge a dispute if they believe charges have accrued to their accounts erroneously.

(h) Processes and consequences of withdrawal from the program both prior to and after full completion of the current annual registration cycle applicable to the enrolled vehicle, as detailed in Section R926-17-3.

(4) The user agreement will explain penalties associated with violation of its terms. Failure to comply with terms such as payment of RUC fees, return of devices (or payment for lost devices), or intentional tampering with mileage reporting mechanisms may result in the following enforcement actions:

(a) An initial warning about the violation and steps for becoming compliant.

(b) A penalty fee, which will be agreed to by the RUC participant and account manager and stated in the user agreement, will be assessed to the RUC participant's electronic wallet if a warning doesn't result in compliance.

(c) Billing of the RUC participant's electronic wallet for all outstanding fees owed and removal from the program if compliance is still not achieved after penalty assessment.

(d) Notification by the account manager to the DMV that a former RUC participant has unpaid fees owed to the account manager, and subsequent placement of a registration hold by the DMV on the formerly enrolled vehicle if the RUC participant's electronic payment information is invalid or does not have enough balance to successfully pay the total fees owed. Former RUC participants with registration holds assessed will be required to successfully settle their RUC account with the account manager prior to having the hold released by the DMV and being able to register the vehicle again.

R926-17-9. Contractual Terms Between the Department and Account Managers.

(1) The Department will provide account manager oversight through a contractual relationship governing what the account manager is authorized to do on behalf of the Department.

(2) Contracts between the Department and account managers will contain, at a minimum, guidelines for the following:

(a) RUC participant enrollment, withdrawal, and removal processes.

(b) Structure and content of user agreements between account managers and RUC participants.

(c) Descriptions of mileage reporting mechanisms that account managers are authorized to offer to RUC participants.

(d) Payment collection, transaction processing, and revenue remittance protocols.

(e) Stipulation that any value-added services offered by an account manager must be approved by the Department prior to use by RUC participants.

(f) Privacy and security protection processes, including parameters for data collection, retention, destruction, anonymization, aggregation, and sharing.

(g) System testing and certification approach.

(h) Customer service level expectations and performance standards.

(i) Requirements for coordination and interfacing with the DMV.

(j) Reporting of data collected through the program.

(k) Audit procedures for verifying account manager performance in areas such as privacy protection, data destruction, data collection accuracy, and remittance of funds to the State.

(l) Remedies available to the Department if an account manager fails to fulfill contractual terms.

KEY: road usage charge (RUC), alternative fuel vehicles, RUC program

Date of Enactment or Last Substantive Amendment: 2019

Authorizing, and Implemented or Interpreted Law: 72-1-213.1

**Transportation Commission,
Administration
R940-1
Establishment of Toll Rates**

**NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 43841
FILED: 06/28/2019**

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: These proposed rule changes update the existing rule to align it with changes to the Transportation Code. The Legislature delegated authority for setting toll rates and ranges to the Transportation Commission (Commission) in S.B. 72, passed during the 2019 General Session (2019 Utah Laws Ch. 479).

SUMMARY OF THE RULE OR CHANGE: These proposed rule changes set the maximum toll rate at \$4 per payment zone for roads in Utah. However, the actual toll rate for payment zone is set by the Commission according to a schedule of optimal toll rates on its Internet web site, which will be accessible by the public at: <http://www.udot.utah.gov/PaymentZoneTollSchedule>. The Legislature delegated authority for setting toll rates and ranges to the Transportation Commission in S.B. 72 (2019).

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 72-6-118

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** These proposed rule changes will not lead to fiscal impact to the state's budget. These proposed changes do not increase or decrease tolls.

♦ **LOCAL GOVERNMENTS:** These proposed rule changes will not lead to a fiscal impact for local governments. Local governments are exempt from tolls.

♦ **SMALL BUSINESSES:** As Rule R940-1 provides the procedure by which the Transportation Commission sets toll rates, and sets toll rates for using toll roads and lanes in Utah, it may potentially affect every business, small and non-small, and every individual who drives on Utah roads. However, these proposed rule changes should have no fiscal impact on individuals, businesses, or governments in Utah. They do not increase or decrease tolls for using Utah roads.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** These proposed rule changes will not lead to any fiscal impact or increased compliance costs for any businesses or individuals. They do not increase or decrease tolls for using Utah roads.

COMPLIANCE COSTS FOR AFFECTED PERSONS: These proposed rule changes will not lead to any fiscal impact or increased compliance costs for any businesses or individuals. They do not increase or decrease tolls for using Utah roads.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: These proposed rule changes will not have a fiscal impact on businesses.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Christine Newman by phone at 801-965-4026, by FAX at 801-965-4338, or by Internet E-mail at cwnewman@utah.gov
♦ James Palmer by phone at 801-965-4000, by FAX at 801-965-4338, or by Internet E-mail at jimpalmer@utah.gov
♦ Linda Hull by phone at 801-965-4253, or by Internet E-mail at lhull@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/14/2019

THIS RULE MAY BECOME EFFECTIVE ON: 08/21/2019

AUTHORIZED BY: Carlos Braceras, 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

1) These proposed rule changes update the existing rule to align it with changes to the Transportation Code by the Legislature with passage of S.B. 72 in the 2019 General Session.

2) The Department of Workforce Services Firm Find database lists 105,145 companies doing business in Utah. Of these, 99,626 (95%) are small businesses by definition (fewer than 50 employees) and 5,519 are non-small businesses. As Rule R940-1 provides the procedure by which the Transportation Commission sets toll rates and sets toll rates for using toll roads and lanes in Utah, it may potentially affect every business, small and non-small, and every individual who drives on Utah roads. However, these proposed rule changes should have no fiscal impact on individuals, businesses, or governments in Utah.

3) This rule sets the maximum toll rate at \$4 per payment zone for roads in Utah. However, the actual toll rate for payment zone is set by the Commission according to a schedule of optimal toll rates on its Internet web site, which will be accessible by the public at: [http://www.udot.utah.gov/Payment Zone Toll Schedule](http://www.udot.utah.gov/PaymentZoneTollSchedule).

4) Presently, the Commission has set the maximum optimal toll rate at \$2. These proposed rule changes do not change that maximum optimal toll rate. These proposed rule changes will not lead to any fiscal impact or increased compliance costs for any business or individual.

5) The executive director of the Department has reviewed and approves this analysis.

R940. Transportation Commission, Administration.

R940-1. Establishment of Toll Rates.

R940-1-1. Purpose and Authority.

The purpose of this rule is to establish procedures for the setting of toll rates. This rule is authorized by Utah Code Section 72-6-118.

R940-1-2. Definitions.

(1) "Commission" means the Transportation Commission, which is created in Utah Code Section 72-1-301;

(2) "Department" means the Utah Department of Transportation, which is created in Section 72-1-101;

~~(3) "HOT Lane" means a High Occupancy Vehicle Lane as designated pursuant to Section 41-6a-702 and R926-9.]~~

~~(4)~~(3) "Toll" means the toll or user fees that the operator of a motor vehicle must pay for the privilege of driving on a tollway, including the toll or user fees that the operator of a single-occupant motor vehicle must pay for the privilege of driving on a ~~[HOT]~~high occupancy toll [H]ane.

~~(5)~~(4) "Tollway" has the meaning described in Section 72-6-118.

~~(6)~~(5) "Tollway development agreement" has the meaning described in Utah Code Section 72-6-202.

R940-1-3. Setting Toll Rates.

(1) The Commission shall be responsible for setting toll rates on state highways as specified in this rule.

(2) Toll rates for facilities included in a tollway development agreement shall be set in accordance with the terms and conditions of the tollway development agreement. Terms and conditions relating to toll rates are required to be presented to the Commission in connection with award of the tollway development agreement, and any modifications to such terms and conditions will be considered a substantial modification or amendment requiring Commission approval under Section R940-1-3.

(3) The Commission may, in its sole discretion, increase the toll rates for a facility subject to a tollway development agreement above the amount allowed under the tollway development agreement.

R940-1-4. ~~[Base Toll Rates] and Range for HOT Lanes.~~

~~(1) [In deciding what Toll is appropriate for HOT Lanes that are not subject to tollway development agreements, the Commission balances the need to obtain revenue against the effect that a certain Toll amount will have on demand. The goal is to set a price that encourages optimal use of the HOT Lane.]~~

~~(2) For HOT Lanes the toll is \$0.25 to \$1.00 per payment zone. The Department will manage the amount of the toll necessary to~~

~~keep the lane freely flowing.]The Commission will set tolls at a rate designed to keep traffic freely flowing in each payment zone. The Department will calculate the optimal toll rate for each payment zone and create a schedule of optimal toll rates. The Department will submit the schedule of optimal toll rates to the Commission for prior approval. The Department will review the schedule of optimal toll rates as often as necessary to maintain the optimal traffic flow in each payment zone, but at least every 6 months. The Department will post the schedule of optimal toll rates on its Internet web site, which will be accessible by the public at: [http://www.udot.utah.gov/Payment_Zone Toll Schedule/](http://www.udot.utah.gov/Payment_Zone_Toll_Schedule/). The toll rate in effect shall be posted on variable message signs at each payment zone.~~

~~(2) The maximum toll rate is \$4.00 per payment zone.~~

~~(3) Toll rates [for HOT Lanes]for roads that are subject to a tollway development agreement shall be set in the tollway development agreement.~~

R940-1-5. Tollway Restricted Special Revenue Fund.

(1) Pursuant to state law, tolls collected by the department and certain funds received by the department through a tollway development agreement are deposited in the Tollway Special Revenue Fund established in Section 72-2-120.

~~(2) Monies from the fund may be used [to establish and operate tollways and related facilities, including design, construction, reconstruction, operation, maintenance, enforcement, impacts from tollways, and acquisition of right-of-way,]pursuant to Section 72-2-120.~~

KEY: transportation, tolls, ~~[HOT]high occupancy toll [L]lanes, tollways~~

Date of Enactment or Last Substantive Amendment: ~~[April 21, 2019]~~ 2019

Notice of Continuation: June 2, 2016

Authorizing, and Implemented or Interpreted Law: 72-2-120; 72-6-118

Transportation Commission,
Administration

R940-8

Establishment of Road Usage Charge
(RUC) Rates

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 43846

FILED: 07/01/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to establish procedures for setting road usage charge (RUC) rates in accordance with the RUC program established by Section 72-1-213, and to set a RUC rate. The RUC program is a mileage-based revenue system intended to function as an alternative to the fuel tax.

SUMMARY OF THE RULE OR CHANGE: Through authority delegated by Section 72-1-213.1, this new rule authorizes the Transportation Commission (Commission) to establish RUC rates. Pursuant to this grant of authority, the Commission establishes the RUC rate at 1.5 cents per mile. The Commission will adjust the RUC rate annually on January 1 in an amount equal to the percentage change during the previous fiscal year in the Consumer Price Index (CPI) as determined by the Utah Tax Commission for the per gallon motor fuel tax rate pursuant to Subsection 59-13-201(1).

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 72-1-213.1

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** This proposed new rule should not cause a fiscal impact to the state's budget. This new rule only provides authority and a procedure for the Commission to follow when setting RUC rates. Any fiscal impact related to the RUC program is disclosed in the corresponding proposed Rule R926-17, which provides procedures the Department will follow to establish and administer the RUC program. (EDITOR'S NOTE: The proposed new Rule R926-17 is under Filing No. 43847 in this issue, July 15, 2019, of the Bulletin.)

◆ **LOCAL GOVERNMENTS:** This new rule will not lead to fiscal impact to local governments. Local governments are exempt from fuel taxes and RUC fees.

◆ **SMALL BUSINESSES:** This new rule may lead to a fiscal impact on businesses in Utah, which may be a net savings. Businesses that decide to use alternative fuel vehicles for business or personal purposes will have the option of paying a flat fee annually, which is set by the Tax Commission and not set by this rule, or participate in the RUC program and pay 1.5 cents per mile driven up to an amount equal to the amount of the flat fee. If the flat fee is set at \$150, a vehicle will need to travel 10,000 miles to be assessed a \$150 RUC. RUC participants will not be assessed a RUC for miles traveled in excess of 10,000. RUC participants that travel less than 10,000 miles in a year will realize a net savings compared to paying the flat fee. As the RUC program is not yet operational, and participation in the program is voluntary, the fiscal impact to small businesses cannot yet be estimated.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This new rule may lead to a fiscal impact on individuals in Utah, which may be a net savings. Individuals that decide to use alternative fuel vehicles for business or personal purposes will have the option of paying a flat fee annually, which is set by the Tax Commission and not set by this rule, or participate in the RUC program and pay 1.5 cents per mile driven up to an amount equal to the amount of the flat fee. If the flat fee is set at \$150, a vehicle will need to travel 10,000 miles to be assessed a \$150 RUC. RUC participants will not be assessed a RUC for miles traveled in excess of 10,000. RUC participants that travel less than 10,000 miles in a year will realize a net savings compared to paying the flat fee. As the RUC program is not yet operational, and participation in the program is voluntary the fiscal impact to individuals cannot yet be estimated.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs associated with this new rule. Participation in the RUC program is voluntary. This rule does not require individuals or businesses to do anything.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This new rule will not have a fiscal impact on businesses.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Christine Newman by phone at 801-965-4026, by FAX at 801-965-4338, or by Internet E-mail at cwnewman@utah.gov
 ♦ James Palmer by phone at 801-965-4000, by FAX at 801-965-4338, or by Internet E-mail at jimpalmer@utah.gov
 ♦ Linda Hull by phone at 801-965-4253, or by Internet E-mail at lhull@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/14/2019

THIS RULE MAY BECOME EFFECTIVE ON: 08/21/2019

AUTHORIZED BY: Carlos Braceras, 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

1) This is a proposed new rule. It establishes procedures the Transportation Commission (Commission) will follow when setting road usage charge (RUC) rates in accordance with the RUC program established by Section 72-1-213, and to set the RUC rate. The RUC program is a mileage-based revenue system intended to function as an alternative to the fuel tax.

2) The RUC is a user fee based on the number of miles driven instead of the gallons of fuel consumed. Similar to utilities, drivers pay for what they use. It is a potential replacement for the gas tax. In the 2018 General Session, S.B. 136 was passed by the Legislature which directed the Utah Department of Transportation (UDOT) to implement a RUC program for alternative fuel vehicles by January 1, 2020. This new rule is necessary to implement the RUC program.

3) The RUC system is a voluntary program that alternative fuel vehicle owners may opt into at the time of their annual registration renewal instead of paying a flat fee. Participants sign up with a third-party account manager that collects data and reports miles driven to the account manager using in-vehicle technology the account manager provides. Participants place a credit card on file and set up a pre-paid wallet from which mileage fees are deducted periodically. Payment of the per-mile fee stops once the accumulated total for the year is equal to the annual flat fee. The account manager provides a phone app or other method for submission of an odometer capture photo at enrollment and a yearly "true-up" photo to make sure that mileage on file corresponds to actual odometer readings. Participation in the program is not mandatory. People with privacy concerns may opt for limited data retention or pay the flat fee.

4) Through authority delegated by Section 72-1-213.1, this new rule authorizes the Commission to establish RUC rates. Pursuant to this grant of authority the Commission establishes the RUC rate at 1.5 cents per mile. The Commission will adjust the RUC rate will adjust annually on January 1 in an amount equal to the percentage change during the previous fiscal year in the Consumer Price Index (CPI) as determined by the Utah Tax Commission for the per gallon motor fuel tax rate pursuant to Subsection 59-13-201(1). By November 1 of each year, the Commission will obtain from the Tax Commission the CPI percentage. This CPI percentage will be applied to the RUC rate and the increase will be published by December 1 with the adjusted rate taking effect on January 1.

5) This new rule may lead to a fiscal impact on businesses and individuals in Utah, which may be a net savings. Businesses and individuals that decide to use alternative fuel vehicles for business or personal purposes will have the option of paying a flat fee annually, which is set by the Tax Commission and not set by this rule, or participate in the RUC program and pay 1.5 cents per mile driven up to an amount equal to the amount of the flat fee. If the flat fee is set at \$150, a vehicle will need to travel 10,000 miles to be assessed a \$150 RUC. RUC participants will not be assessed a RUC for miles traveled in excess of 10,000. RUC participants that travel less than 10,000 miles in a year will realize a net savings compared to paying the flat fee.

6) The executive director of UDOT, Carlos Braceros, has reviewed and approves this analysis.

R940. Transportation Commission, Administration.

R940-8. Establishment of Road Usage Charge (RUC) Rates.

R940-8-1. Purpose and Authority.

(1) The purpose of this rule is to establish procedures for setting road usage charge (RUC) rates in accordance with the RUC

program established by Utah Code Section 72-1-213, and to set a RUC rate. The RUC program is a mileage-based revenue system intended to function as an alternative to the fuel tax.

(2) Authority for this rule is found in Utah Code Section 72-1-213.1.

R940-8-2. Definitions.

(1) "Commission" means the Transportation Commission, which is created in Utah Code Section 72-1-301;

(2) The "Department" means the Utah Department of Transportation, which is created in Utah Code Section 72-1-101;

(3) "RUC" means Road Usage Charge as designated pursuant to Section 72-1-213.

(4) "Rate" means the per-mile usage fee that the owner of a motor vehicle enrolled in the RUC program must pay.

R940-8-3. Responsibility for Setting RUC Rates.

(1) The Commission will be responsible for setting RUC rates as specified in this rule.

(2) The Commission may, at its sole discretion, change the RUC rate.

R940-8-4. Process of Setting RUC Rates.

(1) The Commission will consider the Department's recommendations for RUC rates.

(2) The Commission may consider relevant data and information from any reliable source to help it determine RUC rates.

R940-8-5. Depositing of Collected Funds.

(1) Pursuant to State law, RUC fees collected by the Department will be deposited in the Transportation Fund established by Utah Code Section 72-2-102 and subject to the calculation pursuant to Utah Code Section 72-2-107.

(2) Monies from the fund may be used to pay for costs of administering the RUC program, pursuant to Utah Code Section 72-1-213.

R940-8-6. Road Usage Charge Rate.

(1) The RUC rate is 1.5 cents per mile effective January 1, 2020.

(2) The RUC rate will adjust annually on January 1 equal to the percentage change during the previous fiscal year in the Consumer Price Index (CPI), as determined by the Utah Tax Commission for the per gallon motor fuel tax rate pursuant to 59-13-201.

(3) By November 1 of each year the Commission will obtain from the Tax Commission the CPI percentage. This CPI percentage will be applied to the RUC rate and the increase will be published by December 1 with the adjusted rate taking effect on January 1.

KEY: road usage charge (RUC), alternative fuel vehicles, RUC rates

Date of Enactment or Last Substantive Amendment: 2019

Authorizing, and Implemented or Interpreted Law: 72-1-213.1

**Workforce Services, Housing and
Community Development
R990-300
Evaluation Process for Plan for
Moderate Income Housing Reports**

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 43849

FILED: 07/01/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This proposed rule describes the evaluation process for moderate income housing reports to the Utah Department of Workforce Services, Housing and Community Development Division (HCDD) as required under Affordable Housing Modifications, S.B. 34 from the 2019 General Session.

SUMMARY OF THE RULE OR CHANGE: Under S.B. 34 (2019), certain municipalities and counties are required to make reports to HCDD regarding the moderate income housing plan element of their general plan. This proposed rule describes the plan requirements that HCDD will evaluate and the evaluation process.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 10-9a-408 and Section 17-27a-408 and Subsection 35A-8-803(3)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** This proposed rule is not expected to have any fiscal impact on state revenues or expenditures because the rule does not deal directly with or impact state government entities.

◆ **LOCAL GOVERNMENTS:** This proposed rule is not expected to have any fiscal impact on local governments' revenues or expenditures because the rule simply outlines how such entities may comply with existing statutory reporting requirements. This rule also provides a means for a local government to receive assistance from HCDD in improving the moderate income housing plan element of its general plan. Any costs associated with this rule are costs anticipated by S.B. 34 (2019) which requires the affected local governments to create the general plan and related reports.

◆ **SMALL BUSINESSES:** This proposed rule is not expected to have any fiscal impact on small businesses' revenues or expenditures because the program does not deal directly with or impact small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This proposed rule is not expected to cause any costs or savings on persons other than small businesses, businesses,

or local government entities because the rule only impacts local governments.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons as there are currently no fees associated with this rule. Any costs associated with this rule are costs anticipated by S.B. 34 (2019), which requires the affected local governments to create the general plan and related reports.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: After 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:
 WORKFORCE SERVICES
 HOUSING AND COMMUNITY DEVELOPMENT
 140 E BROADWAY
 SALT LAKE CITY, UT 84111-2333
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Amanda McPeck by phone at 801-517-4709, or by Internet E-mail at ampeck@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/14/2019

THIS RULE MAY BECOME EFFECTIVE ON: 08/21/2019

AUTHORIZED BY: Jon Pierpont, Executive Director

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 impact on non-small businesses' revenues or expenditures because the program does not deal directly with or impact non-small businesses.

The executive director of the Department of Workforce Services, Jon Pierpont, has reviewed and approved this fiscal analysis.

R990. Workforce Services, Housing and Community Development.

R990-300. Evaluation Process for Plan for Moderate Income Housing Reports.

R990-300-1. Authority.

This rule is authorized under Section 35A-8-803(3), which directs the Utah Department of Workforce Services, Housing and Community Development Division (HCDD) to make rules describing the evaluation process for moderate income housing reports.

R990-300-2. Purpose.

Pursuant to Section 35A-8-803(1) HCDD will advise political subdivisions of serious housing problems existing within their jurisdiction that require concerted public action for solution; assist political subdivisions in defining housing objectives and preparing for adoption of a five-year action plan designed to accomplish housing objectives within their jurisdiction; and, for entities required to submit an annual moderate income housing report to the Department as described in Sections 10-9a-408 and 17-27a-408, assist in the creation of the reports and evaluate the reports for the purposes of Sections 72-2-124(5) and (6).

R990-300-3. Definitions.

Terms used in these rules are defined in Sections 10-9a-103 and 17-27a-103. In addition:

(1) "Annual moderate income housing reporting form" means a form for annually reporting progress of the moderate-income housing element of the general plan.

(2) "Plan for moderate income housing" means a written document adopted by an entity's legislative body that includes:

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

(a) an estimate of the existing supply of moderate-income housing located within the entity;

(b) an estimate of the need for moderate income housing in the entity for the next five years;

(c) a survey of total residential land use;

(d) an evaluation of how existing land uses and zones affect opportunities for moderate income housing; and

(e) a description of entity's program to encourage an adequate supply of moderate income housing.

R990-300-4. Entities Required to Report.

Entities required to submit an annual report are described in Sections 10-9a-401 and 17-27a-401.

R990-300-5. Evaluation Process for Plan for Moderate Income Housing.

(1) On or before December 1, 2019, an entity identified in Section 10-9a-401(3)(b) or Section 17-27a-401(3)(b) shall amend the general plan to comply with the respective Section and submit the plan for moderate income housing to HCDD as provided in Sections 10-9a-408 and 17-27a-408. A plan submitted to HCDD will be reviewed to ensure the following are included in the plan:

(a) Updated 5-year estimates of moderate-income housing needs.

(b) The moderate-income housing element and its implementation, based on three strategic affordable housing development policies that address the following:

(i) The strategic policy goal the entity selected for inclusion in the moderate-income housing element of its general plan, as described in Sections 10-9a-403(2)(b) and 17-27a-403(2)(b).

(ii) The specific outcomes the goal intends to accomplish.

(iii) A description of how the entity will monitor its annual progress toward achieving the goal.

(iv) A description of the resources the entity must allocate to complete this goal.

(v) A description of the barriers, if any, the entity is encountering in working toward the goal.

(c) For an entity that has a fixed guideway public transit station, in addition to the three strategies in R990-300-5(1)(b), the implementation either:

(i) encourages higher density or moderate-income residential development near major transit investment corridors, or

(ii) eliminates or reduces parking requirements for residential development where a resident is less likely to rely on the resident's own vehicle, such as residential development near major transit investment corridors or senior living facilities.

(2) Beginning December 1, 2020 and annually thereafter, the legislative body of each entity described in Sections 10-9a-401 and 17-27a-401 shall complete an annual moderate income housing reporting form and submit the complete form to HCDD.

(a) HCDD will review the plan's effectiveness in achieving the entity's strategic policy goal, based on the parameters the entity has selected to define success.

(b) HCDD will review each reporting form for completeness and compliance with Sections 10-9a-403, 10-9a-408, 17-27a-403 and 17-27a-408.

(3) After reviewing a plan, HCDD will provide the entity a copy of the review.

(4) Additional planning requirements are detailed in Section 10, Part 9a and Section 17, part 27a. Certain planning requirements are not part of the plan for moderate income housing and are not subject to annual reporting to HCDD.

R990-300-6. Evaluation Process for Plan for Moderate Income Housing.

In accordance with Section 72-2-124, HCDD will communicate compliance with the annual report requirements as described in Sections 10-9a-408 or 17-27a-408 to the Department of Transportation in conjunction with the prioritization process timeline.

KEY: moderate income housing reports

Date of Enactment or Last Substantive Amendment: 2019

Authorizing, Implemented, or Interpreted Law: 35A-8-803; 10-9a-408; 17-27a-408

End of the Notices of Proposed Rules Section

NOTICES OF CHANGES IN PROPOSED RULES

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

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

While the law does not designate a comment period for a **CHANGE IN PROPOSED RULE**, it does provide for a 30-day waiting period. An agency may accept additional comments during this period and, at its option, may designate a comment period or may hold a public hearing. The 30-day waiting period for **CHANGES IN PROPOSED RULES** published in this issue of the *Utah State Bulletin* ends August 14, 2019.

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

From the end of the 30-day waiting period through November 5, 2019, an agency may notify the Office of Administrative Rules that it wants to make the **CHANGE IN PROPOSED RULE** effective. When an agency submits a **NOTICE OF EFFECTIVE DATE** for a **CHANGE IN PROPOSED RULE**, the **PROPOSED RULE** as amended by the **CHANGE IN PROPOSED RULE** becomes the effective rule. The agency sets the effective date. The date may be no fewer than 30 days nor more than 120 days after the publication date of the **CHANGE IN PROPOSED RULE**. If the agency designates a public comment period, the effective date may be no fewer than seven calendar days after the close of the public comment period nor more than 120 days after the publication date. Alternatively, the agency may file another **CHANGE IN PROPOSED RULE** in response to additional comments received. If the Office of Administrative Rules does not receive a **NOTICE OF EFFECTIVE DATE** or another **CHANGE IN PROPOSED RULE** by the end of the 120-day period after publication, the **CHANGE IN PROPOSED RULE** filing, along with its associated **PROPOSED RULE**, lapses.

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

The Changes in Proposed Rules Begin on the Following Page

Agriculture and Food, Plant Industry R68-27 Cannabis Cultivation

NOTICE OF CHANGE IN PROPOSED RULE

DAR FILE NO.: 43684

FILED: 06/30/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: These changes to the proposed rule change some of the requirements for licensing and operation of a cannabis cultivation facility.

SUMMARY OF THE RULE OR CHANGE: These changes to the proposed rule include the removal of the state residency requirement. Additionally, they clarify the facilities security requirements as well the facility's responsibilities for transportation. (EDITOR'S NOTE: The original proposed new rule upon which this change in proposed rule (CPR) was based was published in the May 15, 2019, issue of the Utah State Bulletin, on page 4. Underlining in the rule below indicates text that has been added since the publication of the proposed new rule mentioned above; strike-out indicates text that has been deleted. You must view the CPR and the proposed new rule together to understand all of the changes that will be enforceable should the agency make this rule effective.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 4-2-103(1)(i) and Subsection 4-41a-103(5) and Subsection 4-41a-302(3)(b)(ii) and Subsection 4-41a-404(3) and Subsection 4-41a-405(2)(b)(iv) and Subsection 4-41a-701(3) and Subsection 4-41a-801(1)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** As this is a new program, the state will have a significant starting cost for hiring personnel and buying equipment necessary to effectively run the medical cannabis program. The Department of Agriculture and Food (Department) will need to hire and train employees to inspect these facilities. In addition to inspectors, the Department needs to hire administrative staff to help issue the agent registration cards, to do background checks for all employees, and those with 2% or greater financial or voting interest in the cannabis cultivation facility. The inspector will need to be out doing quarterly inspections of the facilities and will need the equipment necessary to conduct the inspection. In total, the cost of the employees is estimated at \$973,000 for the first year. In addition to the cost of the employees, there is \$133,500 cost for the equipment and training for these employees to effectively regulate this product. Additionally, the Department will need to help with the purchase and upkeep of the electronic verification system as required by Title 4, Chapter 41a. The Department anticipates contributing at least \$58,500 to maintaining the system as it is

key to the program. Total cost in the first year is anticipated at \$1,165,000. In the second year, the Department anticipates that cost will stay much the same with a slight increase in the amount of inspections that are necessary as more of the facilities reach their capacity. It may be necessary to hire more inspectors as the program grows in the third year, but the Department anticipates that the cost for the program will remain similar to the second year in the third year. The Department anticipates an application fee of \$2,500 for each applicant. In addition, the successful cannabis cultivation facility will have a \$100,000 licensing fee. By statute, the Department may not issue more than ten cannabis cultivation licenses. While the Department cannot anticipate the number of entities who will apply for a license, it is anticipated that there will be at least ten interested parties. Thus, the amount of revenue generated could be at least \$1,025,000 in application and licensing fees for the first year. The licensee will not have to pay the application fee after having successfully received a license. The revenue for years two and three will decrease to \$1,000,000.

◆ **LOCAL GOVERNMENTS:** Local governments may experience an increase in law enforcement costs due to the nature of the crop being grown. However, the Department cannot adequately estimate the costs or benefits to local governments.

◆ **SMALL BUSINESSES:** This rule allows for the growth of a controlled substances in the state of Utah. This is a new and controlled industry in the state. As it has not been allowed in the past, this proposed rule does not place any additional cost to the business aside from the anticipated application fee of \$2,500 and the licensing fee of \$100,000.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This proposed rule allows for the growth of medical cannabis in the state. It will allow for qualified patients to have access to a quality-controlled product. However, due to the nature of the industry, it is impossible for the Department to estimate the costs or benefits to the consumer.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is anticipated to be \$2,500 application fee for all those who chose to apply for a license. Those who are awarded the license will then have a \$100,000 licensing fee. Due to this being a controlled substance and still federally illegal, there has been no prior legal growing in the state. Therefore, the only cost to the affected persons is the application and licensing fees. All other costs are the costs of engaging in the growing of medical cannabis.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This is a newly created program which will allow the growth of a controlled substance for medical use. It is necessary for the Department to ensure the safe growing, processing, and transportation of this product for the safety of the qualified patients. The application and licensing fees are necessary for the Department to run the program effectively to ensure that qualified patients receive a quality product.

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

AGRICULTURE AND FOOD
 PLANT INDUSTRY
 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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/14/2019

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
 ♦ 07/17/2019 02:00 PM, Dept. of Agriculture and Food, 350 North Redwood Road, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 08/21/2019

AUTHORIZED BY: Kerry Gibson, Commissioner

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

R68. Agriculture and Food, Plant Industry[~~and Conservation~~].
R68-27. Cannabis Cultivation.

R68-27-1. Authority and Purpose.

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

R68-27-2. Definitions.

As used in [~~the~~]this rule:

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

2[3]a) "Cannabis" means any part of a marijuana plant:

b) "Cannabis" does not mean, for purposes of this rule, industrial hemp.

3) "Cannabis cultivation facility" means a person that:

a) possesses cannabis;

b) grows or intends to grow cannabis; and

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

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

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

b) designates the type of cannabis production establishment for which an individual is authorized to act as an agent.

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

6) "Indoor cannabis cultivation" means cultivation of cannabis within a fully enclosed secure indoor facility or greenhouse with rigid walls, a roof, and doors.

7) "Lot" means the quantity of:

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

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

8) "Outdoor cannabis cultivation" means an open or cleared ground fully enclosed at the perimeter by a securable, sight obscure wall or fence at least eight feet high.

R68-27-3. Cannabis Cultivation Facility License.

1) A cannabis cultivation license allows the licensee to propagate, cultivate, harvest, trim, dry, cure, and package cannabis into lots for sale or transfer to a cannabis production facility.

2) A cannabis cultivation facility may produce and sell cannabis plants, seed, and plant tissue culture to other licensed cannabis cultivation facilities.

[3]—An applicant shall be a resident of the State of Utah, as defined by Utah State Tax Commission rules.

—4[3] A complete application shall include the required fee, statements, forms, diagrams, operation plans, and other

Appendix 1: Regulatory Impact Summary Table

Fiscal Costs	FY 2020	FY 2021	FY 2022
State Government	\$1,116,500	\$1,165,000	\$1,165,000
Local Government	\$0	\$0	\$0
Small Businesses	\$1,025,000	\$1,000,000	\$1,100,000
Non-Small Businesses	\$0	\$0	\$0
Other Person	\$0	\$0	\$0
Total Fiscal Costs:	\$2,141,500	\$2,165,000	\$2,165,000
Fiscal Benefits			
State Government	\$1,025,000	\$1,000,000	\$1,000,000
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits:	\$1,025,000	\$1,000,000	\$1,000,000
Net Fiscal Benefits:	-\$1,165,500	-\$1,165,000	-\$1,165,000

*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 above. Inestimable impacts for Non-Small Businesses are described below.

Appendix 2: Regulatory Impact to Non-Small Businesses

Title 4, Chapter 41a, only allows for the issuance of 10 cannabis cultivation facility licenses. These proposed rule changes will allow for the controlled growing cannabis to provide to qualified patients. As the cultivation of cannabis has previously been illegal under state law, the full impact to these businesses cannot be estimated as the necessary data is not available to the Department.

applicable documents required in the application packet to be accepted and processed by the department.

~~(5)~~4) Prior to approving an application, the department may contact any applicant and request additional supporting documentation or information.

~~(6)~~5) Prior to issuing a license, the department shall inspect the proposed premises to determine if the applicant complies with state laws and rules.

~~(7)~~6) The department may conduct face-to-face interviews with an applicant if needed to determine the best qualified applicant for the number of licenses that will be issued.

~~(8)~~7) The license shall expire on December 31st.

~~(9)~~8) A license may not be sold or transferred.

R68-27-4. Cannabis Cultivation Facility Requirements.

1) A cannabis cultivation facility operating plan shall contain a blue print or diagrams of the facility containing the following information:

- a) for indoor cannabis cultivation, the square footage of the areas where cannabis is to be propagated;
- b) for indoor cannabis cultivation, the square footage of the areas where cannabis is to be grown;
- c) the square footage of the areas where cannabis is to be harvested;
- d) the areas where cannabis is to be dried, trimmed and cured;
- e) the square footage of the areas where cannabis is to be packaged for wholesale;
- f) the total square footage of the cultivation facility;
- g) the square footage and location of areas to be used as storerooms;
- h) the location of the toilet facilities and hand washing facilities;
- i) the location of a break room and location of personal belonging lockers; and
- j) the location of the areas to be used for loading and unloading of cannabis products for transportation.

2) For outdoor cannabis cultivation, the operating plan shall contain a detailed aerial photograph of the area on which the following information is shown:

- a) the area where cannabis to be propagated; and
- b) the area where cannabis is to be grown.

3) A cannabis cultivation facility operating plan shall detail the drying and curing methods to be used by the cannabis cultivation facility.

4) An outdoor cannabis cultivation facility shall outline the measures to be taken to ensure that product is kept from deterioration and contamination.

5) A cannabis cultivation facility shall have written emergency procedures to be followed in case of:

- a) fire;
- b) chemical spill; or
- c) other ~~[emergency]~~emergencies at the facility

6) A cannabis cultivation facility operating plan shall include:

- a) a pest management plan;
- b) when and how fertilizers are to be applied during the production process;

c) water usage and waste water disposal; and

d) a waste disposal plan.

7) A cannabis cultivation facility shall have a written plan to handle potential recall and destruction of cannabis because of contamination.

8) A cannabis cultivation facility shall use a standardized scale which is registered with the department when cannabis is:

- a) packaged for sale by weight;
- b) bought and sold by weight;
- c) weighed for entry into the inventory control system.

9) A cannabis cultivation facility shall ensure that sanitary conditions are maintained on the premises including proper and timely removal of all litter and waste.

10) The cannabis cultivation facility shall compartmentalize all areas in the facility based on function.

11) A cannabis cultivation facility shall limit access to the compartments to appropriate agents.

R68-27-5. Security Requirements.

1) At a minimum, each cannabis cultivation facility shall have a security alarm system on all perimeter entry points and perimeter windows.

2) At a minimum, a licensed cannabis cultivation facility shall have a complete video surveillance system:

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

~~3) [All cameras shall be fixed and placement shall allow for the clear and certain identification of any person and activities in controlled areas.]~~All cameras at a cannabis cultivation facility shall:

- a) be fixed and placement shall allow for the clear and certain identification of any person and activities in controlled areas; and
- b) record continuously.

~~4) [All entrances and exits, or ingress and egress vantage points shall be recorded.]~~Controlled areas include:

- a) all entrances and exits, or ingress and egress vantage points;
- b) all areas within an indoor or outdoor room or area where cannabis is propagated, grown, harvested, dried, or trimmed;
- c) all areas where cannabis is stored; or
- d) all areas where cannabis waste is being moved, processed, stored, or destroyed.

~~[5) All cameras shall record continuously.~~

~~6)~~5) If a cannabis cultivation facility stores footage locally,~~[For locally stored footage,]~~ the surveillance system storage device shall be secured in the facility in a lockbox, cabinet, closet, or secured in another manner to protect from employee tampering or criminal theft.

~~[7)~~6) ~~[For footage stored on a remote server]~~If a cannabis cultivation facility stores footage on a remote server, access shall be restricted to protect from employee tampering.

~~[8) Controlled areas included an area within an indoor or outdoor room or area where cannabis is propagated, grown, harvested, dried, trimmed, or stored or where cannabis waste is being moved, processed, stored, or destroyed.~~

~~9)~~7) Any gate or entry point must be lighted in low-light conditions.

[40]8) All visitors to a cannabis cultivation facility shall be required to have a properly displayed identification badge issued by the facility at all times while on the premises of the facility.

[14]9) All cannabis cultivation facility visitors shall be escorted by a facility agent at all times while in the facility.

[12]10) A cannabis cultivation facility shall keep and maintain a log [~~shall be kept~~] showing:

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

[13]11) The visitor log shall be maintained by the cannabis cultivation facility for a minimum of one year.

[14]12) The cannabis cultivation facility shall make visitor log [~~shall be made~~] available to the department upon request.

R68-27-6. Inventory Control.

1) Every cannabis plant that reaches eight inches in height with a root ball shall be issued a unique identification number in the inventory control system, which follows the plant through all phases of production.

2) Every cannabis plant, lot of usable cannabis trim, leaves, and other plant matter, test lot, and harvest lot shall be issued a unique identification number in the inventory control system.

3) Unique identification numbers cannot be reused.

4) Each cannabis plant, lots of usable cannabis trim, leaves, and other plant matter cannabis products, test lots, harvest lots, and process lot that has been issued a unique identification number shall have a physical tag with the unique identification number.

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

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

- a) movement of seedling or clone to the vegetation production area;
- b) when plants are partially or fully harvested or destroyed;
- c) when cannabis is being transported to other facilities;
- d) all samples used for testing and the testing results;
- e) a complete inventory of all cannabis, cannabis seeds, plant tissue, seedlings, clones, plants, trim or other plant material;
- f) the weight of all harvested cannabis plants immediately after harvest;
- g) the weight and disposal of post-harvest waste materials;
- h) the identity of who disposed of the waste and the location of waste receptacle; and
- i) theft or loss, or suspected theft or loss, of cannabis.

7) A receiving cannabis cultivation facility shall document in the inventory tracking system any cannabis received, and any differences between the quantity specified in the transport manifest and the quantities received.

8) For plants under eight inches, the cultivation facility shall keep record of:

- a) the number of cannabis seeds or cuttings planted;

- b) the date on which they were planted;
- c) the date the plants were moved into the vegetation area and tagged;
- d) the strain of the seeds or cuttings;
- e) the number of plants grown to maturity;
- f) the number of plants disposed of; and
- g) the date of disposal.

R68-27-7. Cannabis Cultivation Facility Agents.

1) A cannabis cultivation facility shall apply to the department for a cannabis cultivation facility agent registration card on a form provided by the department.

2) An application is not considered complete until the background check has been completed and the facility has paid the fee.

3) The cannabis production establishment agent registration card shall contain:

- a) the agent's full name;
- b) the name of the cannabis cultivation establishment;
- c) the type of cannabis production establishment;
- d) the job title or position of the agent; and
- e) a photograph of the agent.

4) A cannabis cultivation facility is responsible to ensure that all agents have received the department approved training as specified in Utah Code 4-41a-301.

5) A cannabis cultivation facility agent shall have a properly displayed identification badge which has been issued by the department at all times while on the facility premises or while engaged in the transportation of cannabis.

6) All cannabis facility agents shall have their state issued identification in their possession to certify the information on their badge is correct.

7) An agent's identification badge shall be returned to the department immediately upon termination of their employment with the cannabis cultivation facility.

R68-27-8. Pesticide and Fertilizer Use

1) A cannabis cultivation facility shall maintain:

- a) the material safety data sheet for all pesticides, fertilizers, or other agricultural chemicals used in the production of cannabis which shall be accessible to all agents;
- b) the original label or a copy thereof for all pesticides, fertilizers, or other agricultural chemicals used in the production of cannabis; and
- c) a log of all pesticides, fertilizers, or other agricultural chemicals used in the production of cannabis.

2) Pesticides approved by the department may be used in the production, processing, and handling of cannabis.

3) Pesticides, fertilizers, and other agricultural chemicals are to be stored in a separate location apart from cannabis.

4) Pesticides shall be used consistent with the label requirements.

5) Commercial fertilizers registered with the department under the Utah Fertilizer Act may be used in the production and handling of cannabis

6) Cannabis exposed to unauthorized pesticides, soil amendments, or fertilizers is subject to destruction at the cost of the cannabis cultivation facility.

R68-27-9. Transportation.

- 1) A printed transport manifest shall accompany every transport of cannabis.
- 2) The manifest shall contain the following information:
 - a) the cannabis production establishment address and license number of the departure location;
 - b) physical address and license number of the receiving location;
 - c) strain name, quantities by weight, and unique identification numbers of each cannabis material to be transported;
 - d) date and time of departure;
 - e) estimated date and time of arrival; and
 - f) name and signature of each agent accompanying the cannabis.
- 3) The transport manifest may not be voided or changed after departing from the original cannabis cultivation facility.
- 4) A copy of the transport manifest shall be given to the receiving cannabis production establishment.
- 5) The receiving cannabis establishment shall ensure that the cannabis material received is as described in the transport manifest and shall record the amounts received for each strain into the inventory control system.
- 6) The receiving cannabis establishment shall document at the time of receipt any differences between the quantity specified in the transport manifest and the quantities received in the inventory control system.
- 7) ~~[Cannabis shall be]~~During transport a cannabis cultivation facility shall ensure the cannabis is:
 - a) shielded from the public view~~[- during transportation]~~;
 - b) secured~~[- during transportation]~~; and
 - c) temperature controlled if perishable~~[- during transportation]~~.
- 8) A cannabis cultivation facility shall contact the department within 24 hours if a vehicle transporting cannabis is involved in an accident that involves product loss.
- 9) Only the registered agents of the cannabis cultivation facility may occupy a transporting vehicle.

R68-27-10. Recall Protocol.

- 1) The department may initiate a recall of cannabis or cannabis products if :
 - a) evidence exists that pesticides not approved by the department are present on or in the cannabis or cannabis products;
 - b) evidence exists that residual solvents are present on or in cannabis or cannabis products;
 - c) evidence exists that harmful contaminants are present on or in cannabis or cannabis products; or
 - d) the department believes or has reason to believe the cannabis or cannabis products are unfit for human consumption.
- 2) A cannabis cultivation facility's recall plan shall include, at a minimum:
 - a) designation of at least one member of the staff who serves as the recall coordinator;
 - b) procedures for identifying and isolating product to prevent or minimize distribution to patients;
 - c) procedures to retrieve and destroy product; and
 - d) a communications plan to notify those affected by the recall.

3) The facility must track the total amount of affected cannabis or cannabis product and the amount of affected cannabis or cannabis product returned to the facility as part of the recall.

4) The cannabis cultivation facility shall coordinate the destruction of the cannabis or cannabis product with the department and allow the department to oversee the destruction of the affected product.

5) The department shall periodically check on the progress of the recall until the department declares an end to the recall.

6) A cannabis cultivation facility shall notify the department before initiating a voluntary recall.

R68-27-11. Minimum Requirements for the Storage and Handling of Cannabis.

- 1) All storage areas shall provide adequate lighting, sanitation, temperature, humidity, space, equipment, and security conditions for the storage of cannabis.
- 2) All stored cannabis shall be at least six inches off the ground.
- 3) All cannabis shall be stored away from all other chemicals, lubricants, pesticides, fertilizers, or other potential contaminants.
- 4) Cannabis that is outdated, damaged, deteriorated, misbranded, adulterated shall be stored separately until it is destroyed.

R68-27-12. Cannabis Waste Disposal.

- 1) Solid and liquid wastes generated during cannabis cultivation shall be stored, managed, and disposed of in accordance with applicable state laws and regulations.
- 2) Wastewater generated during the cannabis production and processing shall be disposed of in compliance with applicable state laws and regulations.
- 3) Cannabis waste generated from the cannabis plant, trim, and leaves ~~[is]~~are not considered hazardous waste unless it has been treated or contaminated with a solvent, or pesticide.
- 4) All cannabis waste shall be rendered unusable prior to leaving the cannabis cultivation facility.
- 5) Cannabis waste, which is not designated as hazardous, shall be rendered unusable by grinding and incorporating the cannabis plant waste with other ground materials so the resulting mixture is at least fifty percent non-cannabis waste by volume or other methods approved by the department before implementation.
- 6) Materials used to grind with cannabis fall into two categories:
 - a) compostable; or
 - b) non-compostable.
- 7) Compostable waste is cannabis waste to be disposed of as compost or in another organic waste method mixed with:
 - a) food waste;
 - b) yard waste; or
 - c) vegetable~~[-]~~-based grease or oils.
- 8) Non-compostable waste is cannabis waste to be disposed of in a landfill or another disposal method, such as incineration, mixed with:
 - a) paper waste;
 - b) cardboard waste;

- c) plastic waste; or
- d) soil.
- 9) Cannabis waste includes:
 - a) cannabis plant waste including roots, stalks, leaves, and stems;
 - b) excess cannabis or cannabis products from any quality assurance testing;
 - c) cannabis or cannabis products that fail to meet testing requirements; and
 - d) cannabis or cannabis products subject to a recall.

R68-27-13. Change in Operation Plans.

- 1) A cannabis cultivation facility shall submit a notice, on a form provided by the department, prior to making any changes to:
 - a) ownership or financial backing of the facility;
 - b) the facility's name;
 - c) a change in location;
 - d) any modification, remodeling, expansion, reduction or physical, non-cosmetic alteration of a facility; or
 - e) change in square footage or acreage of cannabis intended to be cultivated.
- 2) A cultivation facility may not implement changes to the approved operation plan without department approval.
- 3) The department shall respond to the request for changes within 15 business days.
- 4) The department shall approve of requested changes unless approval would lead to a violation of the applicable laws and rules of the state.
- 5) The department shall specify the reason for the denial of approval for a change to the operation plan.

R68-27-14. Renewals.

- 1) A cannabis cultivation facility shall submit a notice of intent to renew and the licensing fee to the department by December 1st.
- 2) If the licensing fee and intent to renew are not submitted by December 31st the licensee may not continue to operate.
- 3) The department ~~[may take into consideration violations issued in determining license renewals]~~ renew a license unless renewal would lead to a violation of the applicable laws and rules of the state.

R68-27-15. Violations Categories.

- 1) Public Safety Violations: \$3,000- \$5,000 per violation. This category is for violations which present a direct threat to public health or safety including, but not limited to:
 - a) use of unapproved pesticides or unapproved agricultural soil amendments;
 - b) cannabis sold to an unlicensed source;
 - c) cannabis purchased from an unlicensed source;
 - d) refusal to allow inspection;
 - e) failure to comply with testing requirements;
 - f) a test result for high pesticide residue in the cannabis produced or cannabis product ;
 - g) unauthorized personnel on the premises;
 - h) permitting criminal conduct on the premises; or
 - i) engaging in or permitting a violation of the Utah Code 4-41a.

- 2) Regulatory Violations: \$1,000 - \$5,000 per violation. This category is for violations involving this rule and other applicable state rules including, but not limited to:
 - a) failure to maintain alarm and security systems;
 - b) failure to keep and maintain records;
 - c) failure to maintain traceability;
 - d) failure to follow transportation requirements;
 - e) failure to follow the waste and disposal requirements;
 - f) engaging in or permitting a violation of Utah Code 4-41a or this rule; or
 - g) failure to maintain standardized scales.
- 3) Licensing Violations: \$500- \$5,000 per violation. This category is for violations involving licensing requirements including, but not limited to:
 - a) an unauthorized change to the operating plan;
 - b) failure to notify the department of changes to the operating plan;
 - c) failure to notify the department of changes to financial or voting interests of greater than 2%;
 - d) failure to follow the operating plan as approved by the department;
 - e) engaging in or permitting a violation of this rule or Utah Code 4-41a; or
 - f) failure to respond to violations.
- 4) The department shall calculate penalties based on the level of violation and the adverse effect or potential adverse effect at the time of the incidents giving rise to the violation.
- 5) The department may consider enhancing or reducing the penalty based on the seriousness of the violation.

KEY: marijuana, cannabis cultivation facility

Date of Enactment or Last Substantive Amendment: 2019
Authorizing, and Implemented or Interpreted Law: 4-41a-404(3); 4-41a-103(5); 4-41a-302(3)(b)(ii); 4-41a-701(2); 4-41a-405(2)(b)(iv); 4-2-103(1)(i); 4-41a-801(1)

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

NOTICE OF CHANGE IN PROPOSED RULE

DAR FILE NO.: 43587
 FILED: 06/25/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended to change the effective date to match the Air Quality Board date of adoption for amendments to Section XX, Parts A and D(6), of the Utah State Implementation Plan (SIP).

SUMMARY OF THE RULE OR CHANGE: This change in proposed rule amends the date of adoption from 06/05/2019 to 06/24/2019. (EDITOR'S NOTE: The original proposed amendment upon which this change in proposed rule (CPR) was based was published in the April 1, 2019, issue of the

Utah State Bulletin, on page 4. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike-out indicates text that has been deleted. You must view the CPR and the proposed amendment together to understand all of the changes that will be enforceable should the agency make this rule effective.)

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

MATERIALS INCORPORATED BY REFERENCE:
 ♦ Updates Utah State Implementation Plan, Regional Haze, Section XX, Parts A and D, published by Utah Division of Air Quality, 06/24/2019

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 change in 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:
 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

THIS RULE MAY BECOME EFFECTIVE ON: 08/13/2019

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	\$	\$	\$
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 change in propose rule only amends the date within the rule. This date change does not change the original fiscal analysis.

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

R307. Environmental Quality, Air Quality.**R307-110. General Requirements: State Implementation Plan.****R307-110-28. Regional Haze.**

The Utah State Implementation Plan, Section XX, Regional Haze, as most recently amended by the Utah Air Quality Board on June [5]24, 2019, 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: 2019****Notice of Continuation: January 27, 2017****Authorizing, and Implemented or Interpreted Law: 19-2-104**

End of the Notices of Changes in Proposed Rules Section

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the agency is required to review the rule. This review is intended to help the agency determine, and to notify the public, that the administrative rule in force is still authorized by statute and necessary. Upon reviewing a rule, an agency may: repeal the rule by filing a **PROPOSED RULE**; continue the rule as it is by filing a **FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (REVIEW)**; or amend the rule by filing a **PROPOSED RULE** and by filing a **REVIEW**. By filing a **REVIEW**, the agency indicates that the rule is still necessary.

A **REVIEW** is not followed by the rule text. The rule text that is being continued may be found in the online edition of the *Utah Administrative Code* available at <https://rules.utah.gov/>. The rule text may also be inspected at the agency or the Office of Administrative Rules. **REVIEWS** are effective upon filing.

REVIEWS are governed by Section 63G-3-305.

Commerce, Occupational and Professional Licensing **R156-31c** Nurse Licensure Compact Rule

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 43822
FILED: 06/17/2019

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 31c, provides for the Nurse Licensure Compact. 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. Section 58-31c-103 provides that the Division may adopt rules necessary to implement the provisions of the chapter. This rule was enacted to clarify the provisions of Title 58, Chapter 31c, with respect to the Nurse Licensure Compact (NLC).

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, it has been amended one time in December 2014. No written comments have been received by the Division 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 uniform manner in which implementation of the NLC must be done. This rule adheres to the model compact rule developed by the NLC administrators and allows Utah to continue to participate in the NLC.

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:

♦ Jeff Busjahn by phone at 801-530-6789, by FAX at 801-530-6511, or by Internet E-mail at jbusjahn@utah.gov

AUTHORIZED BY: Mark Steinagel, Director

EFFECTIVE: 06/17/2019

Education, Administration **R277-710** Intergenerational Poverty Interventions in Public Schools

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 43824
FILED: 06/21/2019

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized by the Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the State Board of Education (Board); 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 Subsection 53F-5-207(4), which directs the Board to accept proposals and award grants under the program.

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 were received during or since the last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The purpose of this rule is to provide for distribution of funds to LEAs; and to provide for out-of-school educational services that assist students affected by intergenerational poverty in achieving academic success. This rule provides eligibility criteria, provides minimum application criteria, provides timelines, and provides for Superintendent oversight and reporting. Therefore, this rule should be continued.

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

EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY, UT 84111-3272
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Angela Stallings by phone at 801-538-7550, by FAX at 801-538-7768, or by Internet E-mail at angie.stallings@schools.utah.gov

AUTHORIZED BY: Angela Stallings, Deputy Superintendent of Policy

EFFECTIVE: 06/21/2019

Insurance, Administration
R590-254
Annual Financial Reporting Rule

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 43826
FILED: 06/26/2019

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(1) authorizes the Insurance Commissioner to make rules to implement the provisions of the Insurance Code, Title 31A. Subsections 31A-2-203(6)(b)(ii) and 31A-5-412(2)(f) authorize the Insurance Commissioner to make rules pertaining to annual financial reporting requirements.

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 of 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 important in fulfilling a major responsibility of the Department: To maintain oversight of the financial condition of insurers licensed to do business in Utah. One way this is done is by requiring insurers to submit annual reports and documents relating to their financial stability, as specified in this rule. Ensuring the financial strength of insurers doing business in Utah is important to maintaining the optimal operation of the market so policyholders can be made whole when they file covered 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: 06/26/2019

Public Safety, Administration
R698-5

State Hazardous Chemical Emergency
Response Commission Advisory
Committee

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 43828
FILED: 06/26/2019

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Subsection 53-2a-702(2), which requires the Department of Public Safety (Department) to make rules necessary for implementation of the federal Emergency Planning and Community Right To Know Act of 1986.

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 has not received any written comments since the last five-year review of the rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is required under Subsection 53-2a-702(2), in connection with implementation of the federal Emergency Planning and Community Right To Know Act of 1986. This rule establishes the State Hazardous Chemical Emergency Response Commission Advisory Committee, outlines procedures for the creation, modification or dissolution of a Local Emergency Planning Committee, and outlines the procedures for adjudicative proceedings. Therefore, this rule should be continued.

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

PUBLIC SAFETY
ADMINISTRATION
CALVIN L RAMPTON COMPLEX
4501 S 2700 W 1ST FLR
SALT LAKE CITY, UT 84119-5994
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Kim Gibb by phone at 801-556-8198, by FAX at 801-964-4482, or by Internet E-mail at kgibb@utah.gov
- ◆ Tara Behunin by phone at 801-538-3426, by FAX at 801-538-3770, or by Internet E-mail at tarabehunin@utah.gov

AUTHORIZED BY: Jess Anderson, Commissioner

EFFECTIVE: 06/26/2019

Public Safety, Emergency Management
R704-1

Search and Rescue Financial
Assistance Program

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 43827
FILED: 06/26/2019

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized by Subsection 53-2a-1102(7), which requires the Division of Emergency Management (Division), with the approval of the Search and Rescue Advisory Board, to make rules for the administration of the Utah Search and Rescue Financial Assistance Program, and the Utah Search and Rescue Assistance Card Program.

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 Division has not received any written comments regarding this rule since the last five-year review of the rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is required under Subsection 53-2a-1102(7), and is needed in order to establish costs that qualify as reimbursable expenses, define procedures for counties to submit expenses and be reimbursed, define participants in the assistance card program, define procedures for issuance of the assistance card, define excluded expenses not eligible for reimbursement, establish the renewal cycle of the assistance card, establish the frequency for review of the fee schedule, and provide a formula to govern the distribution of available money among the counties for uncompensated search and rescue expenses. Therefore, this rule should be continued.

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

PUBLIC SAFETY
EMERGENCY MANAGEMENT
ROOM 1110 STATE OFFICE BUILDING

450 N STATE ST
SALT LAKE CITY, UT 84114-1201
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Kim Gibb by phone at 801-556-8198, by FAX at 801-964-4482, or by Internet E-mail at kgibb@utah.gov
♦ Tara Behunin by phone at 801-538-3426, by FAX at 801-538-3770, or by Internet E-mail at tarabehunin@utah.gov

AUTHORIZED BY: Kris Hamlet, Director

EFFECTIVE: 06/26/2019

**Public Safety, Highway Patrol
R714-600
Performance Standards for Tow Truck
Motor Carriers**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 43844
FILED: 07/01/2019

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized by Subsection 41-6a-1406(10), which provides that the Department of Public Safety (Department) shall make rules setting the performance standards for towing companies to be used by the Department.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have not been any written comments received regarding this rule since the last five-year review of the rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is required under Subsection 41-6a-1406(10), which requires the Department to make rules setting the performance standards for towing companies to be used by the Department. This rule establishes standards for the dispatch of a tow truck, the creation and maintenance of a towing rotation list, and dispatch of tow truck motor carriers by the Department. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
PUBLIC SAFETY
HIGHWAY PATROL
CALVIN L RAMPTON COMPLEX
4501 S 2700 W
SALT LAKE CITY, UT 84119-5994
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Kim Gibb by phone at 801-556-8198, by FAX at 801-964-4482, or by Internet E-mail at kgibb@utah.gov
♦ Matt Spillman by phone at 801-292-3304, or by Internet E-mail at mspillman@utah.gov
♦ Steven Winward by phone at 801-550-6163, or by Internet E-mail at swinward@utah.gov

AUTHORIZED BY: Steven Winward, Captain

EFFECTIVE: 07/01/2019

**Workforce Services, Unemployment
Insurance
R994-309
Nonprofit Organizations**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 43818
FILED: 06/17/2019

**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 provision provides information to a nonprofit organization about when it can become a reimbursable employer, how benefits are paid as a reimbursable employer, and which nonprofits can become reimbursable employers as provided in Section 35A-4-309. This rule sets forth criteria for addressing more specific situations related to benefit payments in lieu of contributions that are not squarely addressed by statute. The statute does not provide a structure for the means by which a nonprofit organization may elect reimbursable employer status, liability when an employer changes its status, or the method of determining a reimbursable employer's liability for benefits paid. This rule therefore provides a mechanism for making such elections and determinations. The rule also establishes the time frame the Department of Workforce Services will maintain records of benefits paid to former employees of

reimbursable employers and the information to be provided in monthly billing to reimbursable employers.

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 during the last five years or since the last five-year review.

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 necessary to help all nonprofit organizations know which organizations can become reimbursable and how a reimbursable nonprofit will pay for benefit costs. It is essential to help a nonprofit understand its responsibilities and benefits under unemployment. This rule also explains how a reimbursable employer can change to a contributory employer and the impact of such a change including liability as an employer. Therefore, this rule should be continued.

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

WORKFORCE SERVICES
 UNEMPLOYMENT INSURANCE
 140 E 300 S
 SALT LAKE CITY, UT 84111-2333
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Amanda McPeck by phone at 801-517-4709, or by Internet E-mail at ampeck@utah.gov

AUTHORIZED BY: Jon Pierpont, Executive Director

EFFECTIVE: 06/17/2019

**Workforce Services, Unemployment
 Insurance
 R994-310
 Coverage**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**
 DAR FILE NO.: 43819
 FILED: 06/17/2019

**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 35A-4-310 provides

which employing units are subject to the Employment Security Act (Act). This rule explains when an employer must activate an account and when it will become inactive.

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 of Workforce Services (Department) has not received any written comments during the last five years or since the last five-year review.

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 explains to subject employment units when they need to activate an employer account with the Department and when they can make the account inactive. This rule is essential to provide necessary information to employers to help them comply with the Act. Therefore, this rule should be continued.

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

WORKFORCE SERVICES
 UNEMPLOYMENT INSURANCE
 140 E 300 S
 SALT LAKE CITY, UT 84111-2333
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Amanda McPeck by phone at 801-517-4709, or by Internet E-mail at ampeck@utah.gov

AUTHORIZED BY: Jon Pierpont, Executive Director

EFFECTIVE: 06/17/2019

**Workforce Services, Unemployment
 Insurance
 R994-311
 Governmental Units and Indian Tribes**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**
 DAR FILE NO.: 43820
 FILED: 06/17/2019

**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 provides valuable information regarding which entities are governmental units

under Section 35A-4-311 and the responsibilities and liabilities of those units. This rule pertains to billing, liability, and definitions of which organizations can be deemed a governmental unit or an Indian tribe unit under the Employment Security Act.

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 of Workforce Services (Department) has not received any written comments during the last five years or since the last five-year review.

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 explains how governmental units and Indian tribes can elect to be a reimbursable employer, and how to change that election and the consequences for changing. It also explains how the Department will bill for benefits and how they should be paid. Finally, this rule provides that charter schools can be covered under this rule as a reimbursable employer. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 WORKFORCE SERVICES
 UNEMPLOYMENT INSURANCE
 140 E 300 S
 SALT LAKE CITY, UT 84111-2333
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Amanda McPeck by phone at 801-517-4709, or by Internet E-mail at ampeck@utah.gov

AUTHORIZED BY: Jon Pierpont, Executive Director

EFFECTIVE: 06/17/2019

**Workforce Services, Unemployment
 Insurance
 R994-312
 Employing Units Records**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION
 DAR FILE NO.: 43821
 FILED: 06/17/2019**

**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 describes the record keeping requirements of the Department of Workforce Services (Department), as well as the Department's confidentiality rules pursuant to Section 35A-4- 312, which sets forth the requirement that employers keep records and that those records be available to the Department. The statutory provision also provides when those records can be disclosed.

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 has not received any written comments during the last five years or since the last five-year review period.

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 essential to tell employers what records must be kept and that the Department is authorized to inspect those records. This rule also provides when and under what circumstances any records will be available and to whom. Most employer records are private but can be used for limited purposes when necessary for the administration of the program. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 WORKFORCE SERVICES
 UNEMPLOYMENT INSURANCE
 140 E 300 S
 SALT LAKE CITY, UT 84111-2333
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Amanda McPeck by phone at 801-517-4709, or by Internet E-mail at ampeck@utah.gov

AUTHORIZED BY: Jon Pierpont, Executive Director

EFFECTIVE: 06/17/2019

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

Administrative Services

Finance
No. 43656 (AMD): R25-7. Travel-Related Reimbursements for State Employees
Published: 05/01/2019
Effective: 07/01/2019

Commerce

Real Estate
No. 43643 (AMD): R162-2f. Real Estate Licensing and Practices Rules
Published: 05/01/2019
Effective: 06/19/2019

Environmental Quality

Air Quality
No. 43588 (AMD): R307-150-3. Applicability
Published: 04/01/2019
Effective: 06/25/2019

Water Quality

No. 43585 (AMD): R317-1-1. Definitions
Published: 04/01/2019
Effective: 07/01/2019

No. 43586 (AMD): R317-2. Standards of Quality for Waters of the State
Published: 04/01/2019
Effective: 07/01/2019

Health

Health Care Financing, Coverage and Reimbursement Policy
No. 43687 (AMD): R414-401. Nursing Care Facility Assessment
Published: 05/15/2019
Effective: 07/01/2019

No. 43689 (NEW): R414-522. Electronic Visit Verification Requirements for Personal Care and Home Health Care Services
Published: 05/15/2019
Effective: 07/01/2019

Human Resource Management

Administration
No. 43670 (AMD): R477-1. Definitions
Published: 05/15/2019
Effective: 07/01/2019

No. 43671 (AMD): R477-4. Filling Positions
Published: 05/15/2019
Effective: 07/01/2019

No. 43672 (AMD): R477-5. Employee Status and Probation
Published: 05/15/2019
Effective: 07/01/2019

No. 43673 (AMD): R477-6. Compensation
Published: 05/15/2019
Effective: 07/01/2019

No. 43674 (AMD): R477-7. Leave
Published: 05/15/2019
Effective: 07/01/2019

No. 43675 (AMD): R477-8. Working Conditions
Published: 05/15/2019
Effective: 07/01/2019

NOTICES OF RULE EFFECTIVE DATES

No. 43676 (AMD): R477-9. Employee Conduct
Published: 05/15/2019
Effective: 07/01/2019

No. 43677 (AMD): R477-11. Discipline
Published: 05/15/2019
Effective: 07/01/2019

No. 43678 (AMD): R477-12. Separations
Published: 05/15/2019
Effective: 07/01/2019

No. 43679 (AMD): R477-13. Volunteer Programs
Published: 05/15/2019
Effective: 07/01/2019

No. 43669 (AMD): R477-14. Substance Abuse and Drug-Free Workplace
Published: 05/15/2019
Effective: 07/01/2019

No. 43680 (AMD): R477-15. Workplace Harassment Prevention
Published: 05/15/2019
Effective: 07/01/2019

Insurance

Administration

No. 43694 (AMD): R590-186. Bail Bond Surety Business
Published: 05/15/2019
Effective: 06/21/2019

No. 43693 (AMD): R590-238-4. Annual Reporting Requirements
Published: 05/15/2019
Effective: 06/21/2019

No. 43692 (AMD): R590-268. Small Employer Stop-Loss Insurance
Published: 05/15/2019
Effective: 06/21/2019

No. 43695 (AMD): R590-278. Consent Requests Under 18 USC 1033(e)(2)

Published: 05/15/2019
Effective: 06/21/2019

No. 43696 (NEW): R590-281. License Applications Submitted by Individuals Who Have a Criminal Conviction
Published: 05/15/2019
Effective: 06/21/2019

Public Safety

Emergency Management

No. 43668 (AMD): R704-1. Search and Rescue Financial Assistance Program
Published: 05/15/2019
Effective: 06/24/2019

Criminal Investigations and Technical Services, Criminal Identification

No. 43665 (AMD): R722-900. Access to Bureau Records
Published: 05/15/2019
Effective: 06/24/2019

Peace Officer Standards and Training

No. 43666 (AMD): R728-409. Suspension, Revocation, or Relinquishment of Certification
Published: 05/15/2019
Effective: 06/24/2019

Technology Services

Administration

No. 43681 (REP): R895-13. Access to the Identity Theft Reporting Information System Database
Published: 05/15/2019
Effective: 06/21/2019

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 July 01, 2019. The Rules Index is published in the Utah State Bulletin and in the annual Utah Administrative Rules Index of Changes. Nonsubstantive changes, while not published in the Bulletin, do become part of the Utah Administrative Code (Code) and are included in this Index, as well as 120-Day (Emergency) rules that do not become part of the Code. The rules are indexed by Agency (Code Number) and Keyword (Subject).

Questions regarding the index and the information it contains should be addressed to the Office of Administrative Rules (801-538-3003).

A copy of the **RULES INDEX** is available for public inspection at the Office of Administrative Rules (5110 State Office Building, Salt Lake City, UT), or may be viewed online at the Office's web site (<https://rules.utah.gov/>).

RULES INDEX - BY AGENCY (CODE NUMBER)

ABBREVIATIONS

AMD = Amendment (Proposed Rule)	LNR = Legislative Nonreauthorization
CPR = Change in Proposed Rule	NEW = New Rule (Proposed Rule)
EMR = 120-Day (Emergency) Rule	NSC = Nonsubstantive Rule Change
EXD = Expired Rule	R&R = Repeal and Reenact (Proposed Rule)
EXP = Expedited Rule	REP = Repeal (Proposed Rule)
EXT = Five-Year Review Extension	5YR = Five-Year Notice of Review and Statement of Continuation
GEX = Governor's Extension	

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
ADMINISTRATIVE SERVICES					
<u>Administration</u>					
R13-2	Management of Records and Access to Records	43744	5YR	05/29/2019	2019-12/135
<u>Facilities Construction and Management</u>					
R23-3	Planning, Programming, Request for Capital Development Projects and Operation and Maintenance Reporting for State Owned Facilities	43524	NSC	03/01/2019	Not Printed
R23-3	Planning, Programming, Request for Capital Development Projects and Operation and Maintenance Reporting for State Owned Facilities	43569	5YR	03/06/2019	2019-7/59
R23-23	Health Reform -- Health Insurance Coverage in State Contracts -- Implementation	43642	5YR	04/11/2019	2019-9/79
R23-29	Delegation of Project Management	43525	NSC	03/01/2019	Not Printed
R23-29	Delegation of Project Management	43567	5YR	03/06/2019	2019-7/60
R23-33	Rules for the Prioritization and Scoring of Capital Improvements by the Utah State Building Board	43568	5YR	03/06/2019	2019-7/60
<u>Finance</u>					
R25-7	Travel-Related Reimbursements for State Employees	43656	AMD	07/01/2019	2019-9/4
R25-10	State Entities' Posting of Financial Information to the Utah Public Finance Website	43404	AMD	01/23/2019	2018-24/6
R25-11	Utah Transparency Advisory Board, Procedures for Electronic Meetings	43471	5YR	01/07/2019	2019-3/43
<u>Records Committee</u>					
R35-1	State Records Committee Appeal Hearing Procedures	43760	5YR	06/03/2019	2019-13/111
R35-1a	State Records Committee Definitions	43761	5YR	06/03/2019	2019-13/111
R35-2	Declining Appeal Hearings	43762	5YR	06/03/2019	2019-13/112
R35-4	Compliance with State Records Committee Decisions and Orders	43763	5YR	06/03/2019	2019-13/112
R35-4-1	Authority and Purpose	43766	NSC	06/12/2019	Not Printed
R35-5	Subpoenas Issued by the Records Committee	43764	5YR	06/03/2019	2019-13/113
R35-6	Expedited Hearing	43765	5YR	06/03/2019	2019-13/113
<u>Risk Management</u>					
R37-4	Adjusted Utah Governmental Immunity Act Limitations on Judgments	43235	AMD	01/18/2019	2018-21/2

AGRICULTURE AND FOOD

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R58-20 Domesticated Elk Hunting Parks 43469 5YR 01/07/2019 2019-3/43

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ABBREVIATIONS

AMD = Amendment (Proposed Rule)	LNR = Legislative Nonreauthorization
CPR = Change in Proposed Rule	NEW = New Rule (Proposed Rule)
EMR = 120-Day (Emergency) Rule	NSC = Nonsubstantive Rule Change
EXD = Expired Rule	R&R = Repeal and Reenact (Proposed Rule)
EXP = Expedited Rule	REP = Repeal (Proposed Rule)
EXT = Five-Year Review Extension	5YR = Five-Year Notice of Review and Statement of Continuation
GEX = Governor's Extension	

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	43712	R277-480	5YR	05/13/2019	2019-11/41
	43399	R277-481	REP	01/09/2019	2018-23/12
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	43393	R277-551	NEW	01/09/2019	2018-23/24
	43478	R277-551	AMD	03/13/2019	2019-3/10
	43401	R277-553	NEW	01/09/2019	2018-23/31
	43395	R277-554	NEW	01/09/2019	2018-23/34
	43396	R277-555	NEW	01/09/2019	2018-23/38
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greenhouse gases

Environmental Quality, Air Quality	43589	R307-401-10	AMD	06/06/2019	2019-7/6
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grievances

Human Resource Management, Administration	43677	R477-11	AMD	07/01/2019	2019-10/58
	43678	R477-12	AMD	07/01/2019	2019-10/60

Hatch Act

Human Resource Management, Administration	43676	R477-9	AMD	07/01/2019	2019-10/54
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hazardous materials

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	43828	R698-5	5YR	06/26/2019	Not Printed
Public Safety, Fire Marshal	43455	R710-12	NEW	04/09/2019	2019-2/14

hazardous waste

Environmental Quality, Waste Management and Radiation Control, Waste Management	43526	R315-260	AMD	04/15/2019	2019-5/56
	43527	R315-261	AMD	04/15/2019	2019-5/67
	43528	R315-262	AMD	04/15/2019	2019-5/83
	43252	R315-273	AMD	01/14/2019	2018-21/55

health

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Health, Center for Health Data, Health Care Statistics	43544	R428-1	AMD	05/01/2019	2019-6/12

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	43559	R432-8	5YR	02/28/2019	2019-6/44
	43560	R432-9	5YR	02/28/2019	2019-6/44
	43563	R432-10	5YR	03/04/2019	2019-7/62
	43564	R432-11	5YR	03/04/2019	2019-7/62
	43565	R432-12	5YR	03/04/2019	2019-7/63
	43598	R432-13	5YR	03/21/2019	2019-8/103
	43599	R432-14	5YR	03/21/2019	2019-8/103
	43597	R432-30	5YR	03/21/2019	2019-8/104
	43614	R432-32	5YR	04/01/2019	2019-8/104
	43630	R432-45	5YR	04/05/2019	2019-9/83

	43533	R432-270	5YR	02/20/2019	2019-6/45
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Environmental Quality, Drinking Water	43386	R309-220-4	AMD	01/15/2019	2018-23/99
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Administrative Services, Facilities Construction and Management	43642	R23-23	5YR	04/11/2019	2019-9/79
Capitol Preservation Board (State), Administration	43662	R131-13	5YR	04/17/2019	2019-10/115
	43517	R131-13	AMD	06/13/2019	2019-5/6
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Insurance, Administration	43520	R590-220	5YR	02/13/2019	2019-5/98
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Health, Center for Health Data, Health Care Statistics	43544	R428-1	AMD	05/01/2019	2019-6/12
<u>health policy</u>					
Health, Center for Health Data, Health Care Statistics	43544	R428-1	AMD	05/01/2019	2019-6/12
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Workforce Services, Employment Development	43481	R986-100-117	AMD	06/01/2019	2019-3/33
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Labor Commission, Adjudication	43574	R602-2-1	AMD	05/08/2019	2019-7/30
<u>Help America Vote Act</u>					
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<u>hemp oil</u>					
Agriculture and Food, Plant Industry	43571	R68-25	NSC	03/21/2019	Not Printed
<u>hemp products</u>					
Agriculture and Food, Plant Industry	43571	R68-25	NSC	03/21/2019	Not Printed
<u>higher education</u>					
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	43646	R628-20	5YR	04/12/2019	2019-9/88
Regents (Board of), Administration	43405	R765-615	NEW	03/14/2019	2018-24/33
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	43234	R501-8	AMD	01/17/2019	2018-21/89
	43718	R501-14	EMR	05/14/2019	2019-11/33
	43237	R501-21	AMD	02/12/2019	2018-21/91
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Agriculture and Food, Animal Industry	43469	R58-20	5YR	01/07/2019	2019-3/43
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Technology Services, Administration	43681	R895-13	REP	06/21/2019	2019-10/105
<u>ignition interlock systems</u>					
Public Safety, Driver License	43592	R708-31	5YR	03/15/2019	2019-7/66
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Education, Administration	43395	R277-554	NEW	01/09/2019	2018-23/34
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Public Safety, Peace Officer Standards and Training	43534	R728-502	5YR	02/21/2019	2019-6/45
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Governor, Energy Development (Office of)	43223	R362-4	AMD	02/05/2019	2018-20/18
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Education, Administration	43439	R277-912	NEW	02/07/2019	2019-1/26
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	43486	R590-155	AMD	06/07/2019	2019-4/5
	43486	R590-155	CPR	06/07/2019	2019-9/72
	43626	R590-166	5YR	04/03/2019	2019-9/85
	43514	R590-170	5YR	02/11/2019	2019-5/97
	43737	R590-171	5YR	05/23/2019	2019-12/140
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	43429	R590-186-5	AMD	02/07/2019	2019-1/31
	43653	R590-218	REP	06/07/2019	2019-9/67
	43695	R590-278	AMD	06/21/2019	2019-10/88
	43561	R590-280	NEW	04/23/2019	2019-6/25
	43696	R590-281	NEW	06/21/2019	2019-10/90

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<u>intervention</u> Education, Administration	43824	R277-710	5YR	06/21/2019	Not Printed
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	43189	R156-28	AMD	03/25/2019	2018-19/7
	43189	R156-28	CPR	03/25/2019	2019-4/40
	43822	R156-31c	5YR	06/17/2019	Not Printed
	43542	R156-55e	AMD	04/22/2019	2019-6/4
	43543	R156-60	5YR	02/26/2019	2019-6/41
	43799	R156-60a	5YR	06/13/2019	2019-13/114
	43800	R156-60b	5YR	06/13/2019	2019-13/115
	43318	R156-63a	AMD	05/13/2019	2018-22/89
	43318	R156-63a	CPR	05/13/2019	2019-7/48
	43577	R156-63a	NSC	05/14/2019	Not Printed
	43319	R156-63b	AMD	05/13/2019	2018-22/96
	43319	R156-63b	CPR	05/13/2019	2019-7/53
	43578	R156-63b	NSC	05/14/2019	Not Printed
	43465	R156-80a	5YR	01/02/2019	2019-2/19
Human Services, Administration, Administrative Services, Licensing	43330	R501-1	AMD	01/17/2019	2018-22/119
	43356	R501-7	AMD	02/12/2019	2018-23/105
	43234	R501-8	AMD	01/17/2019	2018-21/89
	43718	R501-14	EMR	05/14/2019	2019-11/33
	43237	R501-21	AMD	02/12/2019	2018-21/91
Insurance, Administration	43696	R590-281	NEW	06/21/2019	2019-10/90
Public Safety, Driver License	43590	R708-10	5YR	03/15/2019	2019-7/65
	43607	R708-24	5YR	03/28/2019	2019-8/106
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	43530	R313-28-31	AMD	04/15/2019	2019-5/50	
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<u>Medicaid</u>						
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	43483	R414-516	AMD	03/21/2019	2019-3/23
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Health, Disease Control and Prevention, Epidemiology	43468	R386-900	AMD	05/15/2019	2019-3/16
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	43371	R884-24P-27	AMD	01/10/2019	2018-23/119
	43698	R884-24P-62	NSC	05/17/2019	Not Printed
	43438	R884-24P-74	AMD	03/28/2019	2019-1/54
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	43394	R277-552	NEW	01/09/2019	2018-23/26	
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	43394	R277-552	NEW	01/09/2019	2018-23/26	
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