

# UTAH STATE BULLETIN

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

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

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

Inquiries concerning the substance or applicability of an administrative rule that appears in the *Bulletin* should be addressed to the contact person for the rule. Questions about the *Bulletin* or the rulemaking process may be addressed to: Office of Administrative Rules, PO Box 141007, Salt Lake City, Utah 84114-1007, telephone 801-538-3003. Additional rulemaking information and electronic versions of all administrative rule publications are available at <https://rules.utah.gov/>.

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

Office of Administrative Rules, Salt Lake City 84114

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# SPECIAL NOTICES

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## Health Health Care Financing, Coverage and Reimbursement Policy

### Notice for October 2019 Medicaid Rate Changes

Effective October 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. Nursing home rate changes to case mix components are consistent with adopted payment methodology. All rate changes are posted to the web and can be viewed at: <http://health.utah.gov/medicaid/stplan/lookup/CoverageLookup.php>.

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## Health Health Care Financing, Coverage and Reimbursement Policy

### Medical Supplies and DME Rebasing

The Division of Medicaid and Health Financing (DMHF) will submit changes to the Medicaid State Plan to state that codes found on the Medicare DME fee schedule will be priced at a percentage of the Medicare price not to exceed 100 percent as of the effective date found on the introduction page of State Plan Attachment 4.19-B. Further, verbiage will be added noting that, in order to ensure access to care, some durable medical equipment (DME) is paid based upon contracts awarded following a competitive bid procurement process. All rates are published at: <http://health.utah.gov/medicaid/stplan/lookup/CoverageLookup.php>.

This State Plan Amendment (SPA 19-0015-UT) is not anticipated to impact total annual expenditures for the Medicaid program.

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

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

**End of the Special Notices Section**



# EXECUTIVE DOCUMENTS

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

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

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## Calling the Sixty-Third Legislature Into the Third Extraordinary Session, Utah Proclamation No. 2019-3E

### PROCLAMATION

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

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

**NOW, THEREFORE**, I, Gary R. Herbert, Governor of the State of Utah, by virtue of the authority vested in me by the Constitution and Laws of the State of Utah, do by this Proclamation call the Senate only of the 63rd Legislature of the State of Utah into the Third Extraordinary Session at the Utah State Capitol in Salt Lake City, Utah, on the 21st day of August 2019, at 4:00 p.m., for the following purpose:

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

**IN TESTIMONY WHEREOF**, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done at the Utah State Capitol in Salt Lake City, Utah, this 19th day of August 2019.

(State Seal)

**Gary R. Herbert**  
Governor

ATTEST:

**Spencer J. Cox**  
Lieutenant Governor

2019/03/E

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**Calling the Sixty-Third Legislature Into the First Special Session, Utah Proclamation No. 2019-1S**

**PROCLAMATION**

**WHEREAS**, since the adjournment of the 2019 General Session of the Sixty-third Legislature of the State of Utah, certain matters have arisen which require immediate legislative attention; and

**WHEREAS**, Article VII, Section 6 of the Constitution of the State of Utah provides that the Governor may, by proclamation, convene the Legislature into Special Session;

**NOW, THEREFORE**, I, Gary R. Herbert, Governor of the State of Utah, by virtue of the authority vested in me by the Constitution and the laws of the State of Utah, do by this Proclamation call the Sixty-third Legislature of the State of Utah into a First Special Session at the Utah State Capitol, in Salt Lake City, Utah, on the 16th day of September 2019, at 6:00 pm, to consider the following:

1. Amendments to medical cannabis laws to repeal requirements regarding a state central fill pharmacy and other amendments necessary to ensure the efficient and safe implementation and operation of the state's medical cannabis program;
2. Amendments to the Utah Election Code regarding the date of the 2020 primary election and technical amendments;
3. Amendments to the Alcoholic Beverage Control Act regarding the transportation and storage of certain heavy beer prior to November 1, 2019;
4. Legislative approval of and appropriations for the settlement of lawsuits against the state;
5. Amendments to certain tax incentives regarding the review required by an independent certified public accountant and technical amendments;
6. Appropriations for the 2020 United States Census; and
7. For the Senate to consent to appointments made by the Governor.

**IN TESTIMONY WHEREOF**, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done at the Utah State Capitol in Salt Lake City, Utah, this 5th day of September 2019.

(State Seal)

**Gary R. Herbert**  
Governor

ATTEST:

**Spencer J. Cox**  
Lieutenant Governor

2019/1/S

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**Wildland Fire Management, Utah Exec. Order No. 2019-4****EXECUTIVE ORDER**

## Wildland Fire Management

**WHEREAS**, the danger from wildland fires is high throughout the State of Utah;

**WHEREAS**, wildfires are currently burning in some areas of the State;

**WHEREAS**, fire restrictions and wildfire warnings are in place across the State;

**WHEREAS**, extreme dry conditions have occurred and are forecasted throughout the State;

**WHEREAS**, some of the areas are extremely remote and inaccessible and the situation has the potential to greatly worsen if left unattended;

**WHEREAS**, we have seen fires that are not immediately extinguished soon after ignition have grown to large fires;

**WHEREAS**, immediate action will be required to suppress fires and mitigate post burn flash floods to protect public safety, property, natural resources and the environment should these dangerous conditions escalate to active wildfires;

**WHEREAS**, these conditions do create the potential for a disaster emergency within the scope of the Disaster Response and Recovery Act of 1981;

**NOW THEREFORE**, I, Gary R. Herbert, Governor of the State of Utah by virtue of the power vested in me by the constitution and the laws of the State of Utah, do hereby order that:

It is found, determined and declared that a "State of Emergency" exists Statewide due to the threat to public safety, property, critical infrastructure, natural resources and the environment, effective for the month of September 2019, requiring aid, assistance and relief available pursuant to the provisions of state statutes, and the State Emergency Operations Plan, which is hereby activated.

**IN TESTIMONY, WHEREOF**, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah this 1st day of September 2019.

(State Seal)

**Gary R. Herbert**  
Governor

Attest:

**Spencer J. Cox**  
Lieutenant Governor

2019/004/EO

**End of the Executive Documents Section**



## NOTICES OF PROPOSED RULES

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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 August 16, 2019, 12:00 a.m., and September 03, 2019, 11:59 p.m. are included in this, the September 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 October 15, 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 January 13, 2020, 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.

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**The Proposed Rules Begin on the Following Page**

**Commerce, Administration**  
**R151-4-901**  
**Availability of Agency Review and**  
**Reconsideration**

**NOTICE OF PROPOSED RULE**

(Amendment)  
 DAR FILE NO.: 44015  
 FILED: 08/23/2019

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule amendment adds the Regulatory Sandbox Program (Program) to the list of proceedings where agency review is not available, and a motion for reconsideration is available. As proceedings for the Program are already held at the Department of Commerce (Department) level, an agency review to the Department would be largely duplicative.

**SUMMARY OF THE RULE OR CHANGE:** Subsection R151-4-901(2)(a) is amended to add the Program to the list of orders or decisions for which agency review is not available.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 13-1-6 and Subsection 63G-4-102(6)

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** This rule provides procedural guidance for the Program proceedings and will therefore not impact state budget, as occasional reconsiderations are consistent with the previously anticipated cost of regulating the Program.
- ◆ **LOCAL GOVERNMENTS:** Because local governments are not involved in the procedures being updated by this amendment, this proposed amendment is not expected to have any impact on local governments' revenues or expenditures.
- ◆ **SMALL BUSINESSES:** This rule change may result in a modest benefit to small businesses involved in the Program administrative proceedings relative to the cost of participation in an agency review. However, as a new program, there is no data available to evaluate the number of proceedings the Program will have over the next three years (if it even has any such proceedings), nor the cost savings of an agency review versus reconsideration. Therefore, the benefit to these small businesses is inestimable.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule change may result in a modest benefit to other persons involved in the Program administrative proceedings relative to the cost of participation in an agency review. However, as a new program, there is no data available to evaluate the number of proceedings the Program will have over the next three years (if it even has any such

proceedings), nor the cost savings of an agency review versus reconsideration. Therefore, the benefit to these other persons is inestimable.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** This proposed amendment is not expected to impose any compliance costs on affected persons as it does not have a regulatory component beyond the statute.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** The Regulatory Sandbox Program (Program) was adopted in the 2019 General Session under H.B. 378. The Program allows a participant to temporarily test an innovative financial product or service on a limited basis without otherwise being licensed or authorized to act under the laws of the state. This rule amendment adds the Program to the list of proceedings where agency review is not available, and a motion for reconsideration is available. As proceedings for the Program are already held at the Department level, an agency review to the Department would be largely duplicative. This amendment may result in a modest benefit to small businesses involved in the Program administrative proceedings relative to the cost of participation in an agency review. However, as a new program, there is no data available to evaluate the number of proceedings the Program will have over the next three years (if it even has any such proceedings), nor the cost savings of an agency review versus reconsideration. Therefore, the benefit to businesses is inestimable.

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

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

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ Jacob Hart by phone at 801-530-6636, or by Internet E-mail at [jfhart@utah.gov](mailto:jfhart@utah.gov)

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/15/2019**

**THIS RULE MAY BECOME EFFECTIVE ON: 10/23/2019**

**AUTHORIZED BY: Jacob Hart, Deputy 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
<b>Total Fiscal Costs:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
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
<b>Total Fiscal Benefits:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

\*This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts for State Government, Local Government, Small Businesses and Other Persons are described in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.

**Appendix 2: Regulatory Impact to Non-Small Businesses**

This rule amendment may result in a modest benefit to non-small businesses involved in Regulatory Sandbox Program administrative proceedings relative to the cost of participation in an agency review. However, as a new program, there is no data available to evaluate the number of proceedings the Regulatory Sandbox Program will have over the next three years (if it even has any such proceedings), nor the cost savings of an agency review versus reconsideration. Therefore, the benefit to these non-small businesses is inestimable.

Francine Giani, Executive Director, has reviewed and approved this fiscal analysis.

**R151. Commerce, Administration.**

**R151-4. Department of Commerce Administrative Procedures Act Rule.**

**R151-4-901. Availability of Agency Review and Reconsideration.**

(1)(a) Except as otherwise provided in Subsection 63G-4-209(3)(c), an aggrieved party may obtain agency review of a final

order by filing a request with the executive director within 30 calendar days after the issuance of the order.

(b) This 30-day deadline is jurisdictional. The three-day mailing rule in Section 151-4-107(3) does not apply and does not extend the jurisdictional deadline.

(c) Pursuant to Subsection 63G-4-102(9), the Executive Director may extend the deadline only for good cause shown. For purposes of this section R151-4-901, good cause to justify an extension means special circumstances beyond the control of the person requesting agency review that prevents a timely filing of the request.

(2)(a) Agency review is not available for an order or decision entered by:

(i) the Utah Motor Vehicle Franchise Advisory Board; ~~or~~

(ii) the Utah Powersport Vehicle Franchise Advisory Board; ~~or~~[-]

(iii) the Utah Department of Commerce under Title 13, Chapter 55, Regulatory Sandbox Program.

(b) Agency review is not available for an order or decision entered by the Division of Occupational and Professional Licensing for:

(i) Prelitigation proceedings under Title 78B, Chapter 3, the Utah Health Care Malpractice Act;

(ii) a request for modification of a disciplinary order; or

(iii) a request under Section 58-1-404(4) for entry into the Diversion Program.

(c) Agency review is not available for an order or decision entered by the Division of Corporations and Commercial Code for:

(i) refusal to file a document under the Utah Revised Business Corporations Act pursuant to Section 16-10a-126;

(ii) revocation of a foreign corporation's authority to transact business pursuant to Section 16-10a-1532;

(iii) refusal to file a document under the Utah Revised Limited Liability Company Act pursuant to Section 48-3a-209; or

(iv) denial of reinstatement under the Uniform Limited Cooperative Association Act pursuant to Section 16-16-1213.

(d)(i) A party may request agency reconsideration pursuant to Section 63G-4-302 for an order or decision exempt from agency review under R151-4-901(2)(a), (2)(b)(ii), and (2)(c).

(ii) Pursuant to Subsections 58-1-404(4)(d) and 78B-3-416(1)(c), agency reconsideration is not available for an order or decision exempt from agency review under R151-4-901(2)(b)(i) and (2)(b)(iii).

**KEY: administrative procedures, adjudicative proceedings, government hearings**

**Date of Enactment or Last Substantive Amendment: [~~October 1, 2018~~]2019**

**Notice of Continuation: March 15, 2016**

**Authorizing, and Implemented or Interpreted Law: 13-1-6; 63G-4-102(6)**

**Commerce, Administration**  
**R151-55**  
**Regulatory Sandbox Program Rule**

**NOTICE OF PROPOSED RULE**

(New Rule)

DAR FILE NO.: 44016

FILED: 08/23/2019

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The Regulatory Sandbox Program (Program) passed in the 2019 General Session under H.B. 378. This rule complies with the Administrative Procedures Act requirements for informal proceedings by designating proceedings as informal, and specifying procedures for informal proceedings under this new Program.

**SUMMARY OF THE RULE OR CHANGE:** Section R151-55-1 designates a title for this new rule. Section R151-55-2 specifies the authority and purpose of this new rule. Section R151-55-3 designates proceedings as informal, notes that the Administrative Procedures Act and Commerce Administrative Procedures Act rules apply, that there will not be hearings held, and that the manager of the Program will act as presiding officer.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Subsection 13-1-6(2)

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** This rule provides procedural guidance for the Program proceedings and will therefore not impact state budget, as occasional informal proceedings were anticipated as a cost of regulating the Program.

◆ **LOCAL GOVERNMENTS:** Because local governments are not typically involved in the procedures being proposed by this rule, this proposed rule is not expected to have any impacts on local governments' revenues or expenditures.

◆ **SMALL BUSINESSES:** This rule may result in a modest benefit to small businesses involved in the Program administrative proceedings relative to the cost of participation in a formal proceeding. However, as a new program, there is no data available to evaluate the number of proceedings the Program will have over the next three years (if it even has any such proceedings), nor the cost savings of a formal versus informal proceeding. Therefore, the benefit to these small businesses is inestimable.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule may result in a modest benefit to other persons involved in the Program administrative proceedings relative to the cost of participation in a formal proceeding. However, as a new program, there is no data available to evaluate the number of proceedings the Program will have over the next three years (if it even has any such proceedings), nor the cost savings of a formal versus informal proceeding. Therefore, the benefit to these other persons is inestimable.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** This proposed rule is not expected to impose any compliance costs for affected persons as it does not have a regulatory

component beyond the statute, it merely designates proceedings as informal.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** The Regulatory Sandbox Program (Program) was adopted in the 2019 General Session under H.B. 378. The Program allows a participant to temporarily test an innovative financial product or service on a limited basis without otherwise being licensed or authorized to act under the laws of the state. This proposed rule complies with the Administrative Procedures Act requirements for informal proceedings by designating proceedings as informal, and specifying procedures for informal proceedings under this new program. This rule may result in a modest benefit to small businesses involved in the Program administrative proceedings relative to the cost of participation in a formal proceeding. However, as a new program, there is no data available to evaluate the number of proceedings the Program will have over the next three years (if it even has any such proceedings), nor the cost of a formal versus informal proceeding. Therefore, the benefit to these small businesses is inestimable.

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

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

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ Jacob Hart by phone at 801-530-6636, or by Internet E-mail at [jfhart@utah.gov](mailto:jfhart@utah.gov)

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/15/2019**

**THIS RULE MAY BECOME EFFECTIVE ON: 10/23/2019**

**AUTHORIZED BY: Jacob Hart, Deputy 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

<b>Total Fiscal Costs:</b>	\$0	\$0	\$0
<b>Fiscal Benefits</b>			
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
<b>Total Fiscal Benefits:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

\*This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts for State Government, Local Government, Small Businesses and Other Persons are described in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.

**Appendix 2: Regulatory Impact to Non-Small Businesses**

This rule may result in a modest benefit to non-small businesses involved in Regulatory Sandbox Program (Program) administrative proceedings relative to the cost of participation in a formal hearing. However, as a new program, there is no data available to evaluate the number of proceedings the Program will have over the next three years (if it even has any such proceedings), nor the cost savings of a formal versus informal proceeding. Therefore, the benefit to these non-small businesses is inestimable.

Francine Giani, Executive Director, has reviewed and approved this fiscal analysis.

**R151. Commerce, Administration.**

**R151-55. Regulatory Sandbox Program Rule.**

**R151-55-1. Title.**

This rule shall be known as the "Regulatory Sandbox Program Rule".

**R151-55-2. Authority - Purpose.**

This rule governs adjudicative proceedings under Title 13, Chapter 55, Regulatory Sandbox Program, and is authorized by Utah Code Subsection 13-1-6(2).

**R151-55-3. Adjudicative Proceedings.**

(1) Informal Proceeding. Adjudicative Proceedings before the Department of Commerce under Title 13, chapter 55, Regulatory Sandbox Program are designated as informal adjudicative proceedings.

(2) Applicable Rules. In addition to Title 63G, Chapter 4, Administrative Procedures Act, any adjudicative proceedings under the Regulatory Sandbox Program shall be conducted in accordance with

this rule and with the Department of Commerce Administrative Procedures Act Rule, R151-4.

(3) Hearings. Hearings will not be held in proceedings under the Regulatory Sandbox Program.

(4) Presiding Officer. The Regulatory Sandbox Program Manager is designated as the presiding officer in Regulatory Sandbox Program proceedings.

**KEY: Regulatory Sandbox Program, informal proceedings, adjudicative proceedings**

**Date of Enactment or Last Substantive Amendment: 2019**

**Authorizing, and Implemented or Interpreted Law: 13-1-6(2)**

**Commerce, Occupational and  
Professional Licensing  
R156-15A  
State Construction Code Administration  
and Adoption of Approved State  
Construction Code Rule**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 44030

FILED: 09/03/2019

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** After administering the Ombudsman's Land Use Fund for a year, this rule change clarifies and updates the administration of Land Use Grants for training, including the payment of grant funds for food and hourly staff time, and the deduction of student-paid fees from the total grant amounts awarded.

**SUMMARY OF THE RULE OR CHANGE:** In Section R156-15A-230, the amendment prohibits a Department of Commerce (Department) employee from administering the grant process if they are involved in the entity seeking funds from the Department. In Section R156-15A-231, currently there is a maximum reimbursable grant amount, subject to exception through additional justification, of \$10/hour times the number of student hours of instruction provided. This amendment increases the per student hour reimbursement from \$10/hour to \$15/hour. It also codifies what was already Department practice, including a prohibition on reimbursements for gift cards, door prizes, food for participants, and preparation time. In Section R156-15A-232, this amendment unifies the process for limiting reimbursements in the Ombudsman's Land Use Fund with the other funds administered in Section R156-15A-231. Specifically, the reimbursement limit based on attendee fees has been removed, and a \$15 per student hour cap was implemented, subject to a request for exception. It also provides specific guidance consistent with Department intent

on the issues of reimbursement for food, gift cards, door prizes, preparation time, travel time, and other expenditures that generally do not qualify for reimbursement.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 15A-1-205 and Subsection 15A-1-204(6) and Subsection 58-1-106(1)(a) and Subsection 58-1-202(1)(a)

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** Grants provided under this rule are paid for out of a statutory 1% surcharge on all building permits that are kept in a fund for that purpose. Nothing in this rule will change the amount of fees collected or the cost of administering the program. Therefore, the state budget will not be affected, beyond a minimal cost to the Division of Occupational and Professional Licensing (Division) of approximately \$75 to print and distribute the rule once the proposed amendments are made effective.

◆ **LOCAL GOVERNMENTS:** Local governments have not historically applied for grants under the funds and therefore would not be affected by this rule change.

◆ **SMALL BUSINESSES:** These proposed amendments will apply to any small-business providers who will seek grant money from any of the funds described in these amendments. This may include providers in this industry (NAICS 813910) who will offer code training for licensed inspectors, who will offer code training for construction-related licensees, and who will offer land use training. The Division estimates that there are approximately 38 small businesses who may offer code trainings, and approximately 15 who may offer land use trainings. The benefit or cost to these organizations is inestimable. The increase of the per student hour cap from \$10 to \$15 per hour could result in a benefit to the approximately 38 small businesses that offer code training. However, the preexisting \$10/student hour cap was subject to exception. It is unknown whether this will result in organizations receiving additional funds that would not have qualified for an exception previously. The removal of the deduction based on fees charged to attendees could result in an increased grant in some cases to the approximately 15 organizations that may offer land use training, however there was already a process in place for asking for fees in excess of this amount. In addition, there will also be an imposition of a \$15/per student hour fee cap that did not previously exist. Whether this interaction will result in an increase or decrease in the total amount of grants paid is inestimable. Further, in cases where a charge of over \$15/per student hour is needed, grant applicants may ask for an exception to the cap.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** These proposed amendments will apply to individual providers who will seek grant money from any of the funding accounts described in these amendments. This may include individual providers offering code training for licensed inspectors, individual providers offering code training for construction-related licensees, and individual providers offering land use training. These proposed amendments will

also indirectly affect Utah's approximately 670 licensed building inspectors seeking code training, and to Utah's approximately 53,000 construction-related licensees seeking code training. These proposed amendments will also indirectly affect individuals using the land use education and training funds administered by the Office of the Property Rights Ombudsman. If the increase in the per student hour cap results in higher grant awards, the approximately 670 licensed building inspectors seeking code training, and Utah's approximately 53,000 construction-related licensees seeking code training could see an inestimable indirect benefit through either an increase in the quality of training or through decreased fees from events. It is possible that individuals using the land use education fund could have an inestimable indirect cost if the removal of the grant reduction based on attendee cost results in more organizations choosing to charge for events, however it is unknown whether organizations will choose to increase prices.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** These proposed amendments provide specifics to existing rules relating to fund administration that would not result in an increase in compliance costs beyond what is already in statute and the previous rule.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** After administering the Ombudsman's Land Use Fund for a year, these rule amendments clarify and update the administration of Land Use Grants for training, including the payment of grant funds for food and gifts for training participants, hourly staff time, and the deduction of student-paid fees from the total grant amounts awarded. **Small Businesses (fewer than 50 employees):** These proposed amendments will apply to any small-business providers who will seek grant money from any of the funds described in these amendments. This may include providers in this industry (NAICS 813910) who will offer code training for licensed inspectors, who will offer code training for construction-related licensees, or who will offer land use training. The Division estimates that there are approximately 38 small businesses who may offer code trainings, and approximately 15 who may offer land use trainings. The benefit or cost to these organizations is inestimable. The increase of the per student hour cap from \$10 to \$15 per hour could result in a benefit to the approximately 38 small businesses that offer code training. However, the preexisting \$10/student hour cap was subject to exception. It is unknown whether this will result in organizations receiving additional funds that would not have qualified for an exception previously. The removal of the deduction based on fees charged to attendees could result in an increased grant in some cases to the approximately 15 organizations that may offer land use training, however there was already a process in place for asking for fees in excess of this amount. In addition, there will also be an imposition of a \$15/per student hour fee cap that did not previously exist. Whether this interaction will result in an increase or decrease in the total



amount of grants paid is inestimable. Further, in cases where a charge of over \$15/per student hour is needed, grant applicants may ask for an exception to the cap.

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:

◆ Robyn Barkdull by phone at 801-530-6727, by FAX at 801-530-6511, or by Internet E-mail at rbarkdull@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/15/2019

THIS RULE MAY BECOME EFFECTIVE ON: 10/22/2019

AUTHORIZED BY: Mark Steinagel, Director

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**

Most recipients of grants affected by the proposed amendments have fewer than 50 employees. If larger organizations do apply for grants for land use training, the benefit or cost to these organizations is inestimable for the same reasons stated with regard to small businesses.

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

**R156. Commerce, Occupational and Professional Licensing.  
 R156-15A. State Construction Code Administration and Adoption of Approved State Construction Code Rule.  
 R156-15A-230. Building Code Training Fund Fees and Factory Built Housing Fees.**

(1) In accordance with Subsection 15A-1-209(5)(a), on April 30, July 31, October 31 and January 31 of each year, each state agency and each state political subdivision that assesses a building permit fee shall:

(a) file with the Division a report of building fees and surcharge for the immediately preceding calendar quarter; and  
 (b) remit 85% of the amount of the surcharge collected to the Division.

(2) In accordance with Subsection 15A-1-209(5)(c), the Division shall allocate and deposit the monies received under Subsection 15A-1-209(5)(a)(ii) into the following three separate funding accounts:

(a) 30% to the Division's Building Code Inspector Training Fund, to be held, administered, and distributed pursuant to Section R156-15A-231 to provide education regarding codes and code amendments to building inspectors;

(b) 10% to the Division's Building Code Construction-Related Training Fund, to be held, administered, and distributed pursuant to Section R156-15A-231 to provide education regarding codes and code amendments to individuals licensed in construction trades or related professions; and

(c) 60% to the Ombudsman's Land Use Fund, to be held, administered, and distributed pursuant to Section R156-15A-232 to provide education and training regarding:

(i) the drafting and application of land use laws and regulations; and  
 (ii) land use dispute resolution.

(3) In accordance with Subsection 58-56-17.5(2)(c), the Division shall hold, administer, and distribute a portion of the monies in the Factory Built Housing Fees Account pursuant to Section R156-15A-231 to provide education for factory built housing.

(4) Department of Commerce Employees may not participate in the administration, selection, or payment of grants to an organization under Section R156-15A-231 or R156-15A-232 if the Department of Commerce Employee:

(a) is in a leadership position with the entity, including membership on a board of directors or the equivalent;

(b) is an employee of the entity or has received payment of any kind from the entity in the last five years; or

(c) has any other relationships with the entity or individuals affiliated with the entity that could lead to a reasonable question about the employee's impartiality.

**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
<b>Total Fiscal Costs:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
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
<b>Total Fiscal Benefits:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

\*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

**R156-15A-231. Administration of Building Code Inspector Training Fund, Building Code Construction-Related Training Fund, and Factory Built Housing Fees Account.**

In accordance with Subsections 15A-1-209(5)(c) and 58-56-17.5(2)(c), and Section R156-15A-230, the following procedures, standards, and policies are established to apply to the administration of the Building Code Inspector Training Fund, the Building Code Construction-Related Training Fund, and the Factory Built Housing Fees Account:

(1) The Division shall not approve or deny education grant requests from any separate fund or account until the Uniform Building Code Commission (UBCC) Education Advisory Committee ("the Committee"), created in accordance with Subsections 58-1-203(1)(f) and R156-15A-201(1)(a), has considered and made its recommendations on the requests.

(2) Appropriate funding expenditure categories include:

(a) for the Building Code Inspector Training Fund or the Factory Built Housing Fees Account, grants in the form of reimbursement funding to the following organizations that administer code-related training or factory built housing educational events, seminars, or classes:

(i) schools, colleges, universities, departments of universities, or other institutions of learning;

(ii) construction trade associations;

(iii) professional associations or organizations; and

(iv) governmental agencies;

(b) for the Building Code Construction-Related Training Fund, grants in the form of reimbursement funding to the following organizations that administer code-related training events, seminars, or classes:

(i) construction trade associations; or

(ii) professional associations;

(c) costs or expenses incurred as a result of code events, seminars, or classes directly administered by the Division;

(d) expenses incurred for the salary, benefits, or other compensation and related expenses resulting from the employment of a Board Secretary;

(e) office equipment and associated administrative expenses required for the performance of the duties of the Board Secretary, including but not limited to computer equipment, telecommunication equipment and costs and general office supplies; and

(f) other related expenses as determined by the Division.

(g) Gift cards, door prizes, and the cost of food and food services provided to training participants are not appropriate funding expenditure categories, and may not be paid or reimbursed from any fund.

(3) The following procedure shall be used for submission, review, and payment of funding grants:

(a) A funding grant applicant shall submit a completed application on forms provided for that purpose by the Division, at least 15 days prior to the meeting at which the request is to be considered, and prior to the training event. Applications received less than 15 days prior to a meeting may be denied.

(b) Payment of approved funding grants shall be made as reimbursement after:

(i) the approved event, class, or seminar has been held; and

(ii) the required receipts, invoices, and supporting documentation, including proof of payment if requested by the Division or Committee, have been submitted to the Division.

(c) Approved funding grants shall be reimbursed only for eligible expenditures which have been executed in good faith with the intent to ensure the best reasonable value.

(d)(i) A Request for Reimbursement of an approved funding grant shall be submitted to the Division within 60 days following the approved event, class, or seminar, unless an extenuating circumstance occurs. Written notice shall be given to the Division of such an extenuating circumstance.

(ii) Failure to submit a Request for Reimbursement within 60 days shall result in non-payment of approved funds, unless an extenuating circumstance has been reviewed and accepted by the Division.

(4) The Committee shall consider the following in determining whether to recommend approval of a proposed funding request to the Division:

(a) the fund balance available and whether the proposed request meets the overall training objectives of the fund, including:

(i) the need for training on the subject matter;

(ii) the need for training in the geographical area where the training is offered; and

(iii) the need for training on new codes being considered for adoption;

(b) whether the grant applicant agrees to charge a cost for the training event, class, or seminar which is uniform across all categories of attendees;

(c) the prior record of the program sponsor in providing codes training, including:

(i) whether the subject matter taught was appropriate;

(ii) whether the instructor was appropriately qualified and prepared; and

(iii) whether the program sponsor followed appropriate and adequate procedures and requirements in providing the training and submitting requests for funding;

(d) costs of the facility, including:

(i) the location of a facility or venue, or the type of event, seminar, or class;

(ii) the suitability of said facility or venue with regard to the anticipated attendance at or in connection with additional non-funded portions of an event or conference;

(iii) the duration of the proposed event, seminar, or class; and

(iv) whether the proposed cost of the facility is reasonable compared to the cost of alternative available facilities;

(e) the estimated cost for instructor fees, including:

(i) a reimbursement rate not to exceed \$150 per instruction hour without further review and approval by the Committee. This reimbursement rate represents the total amount reimbursable for instruction activities. Preparation time, event coordination, course development costs, staff time, and travel time are not separately reimbursable;

(ii) the experience or expertise of the instructor in the proposed training area;

(iii) the quality of training based upon events, seminars or classes that have been previously taught by the instructor;

(iv) the drawing power of the instructor, meaning the ability to increase the attendance at the proposed educational event, seminar, or class;

(v) travel expenses; and

(vi) whether the proposed cost for the instructor or instructors is reasonable compared to the costs of similar events, seminars, or classes;

(f) the estimated cost of advertising materials, brochures, registration, and agenda materials, including:

(i) printing costs that may include creative or design expenses;

(ii) whether printed materials comply with Subsection (4) (b); and

(iii) delivery or mailing costs;

(g) other reasonable and comparable cost alternatives for each proposed expense item;

(h) other information the Committee reasonably believes may assist in evaluating a proposed expenditure; and

(i) a total reimbursement rate of the lesser of \$[+0]15 per student hour or the cost of all approved actual expenditures.

(5) The Division, after consideration and recommendation of the Committee, based upon the criteria in Subsection (4), may reimburse the following items in addition to the lesser of \$[+0]15 per student hour or the cost of all approved actual expenditures:

(a) text books, code books, or code update books;

(b) cost of one Division licensee mailing list per provider per two-year renewal period;

(c) cost incurred to upload continuing education hours into the Division's online registry for contractors, plumbers, electricians, or elevator mechanics; and

(d) reasonable cost of advertising materials, brochures, registration and agency materials, including:

(i) printing costs that may include creative or design expenses; and

(ii) delivery or mailing costs.

(6) Joint function.

(a) "Joint function" means a proposed event, class, seminar, or program that provides code or code-related training or factory built housing education, and education or activities in other areas.

(b) Only the prorated portions of a joint function that apply to the purposes of a separate fund are eligible for a funding grant from that fund.

(c) In considering a proposed funding request that involves a joint function, the Committee shall consider whether:

(i) the expenses subject to funding are reasonably prorated for the costs directly related to the purposes of the separate fund; and

(ii) the education being proposed will be reasonable and successful in the training objective in the context of the entire program or event.

(7) Advertising materials, brochures, and agenda or training materials for a Building Code Training funded event, seminar, or class shall include a statement that acknowledges that partial funding of the program has been provided by the Utah Division of Occupational and Professional Licensing from the 1% surcharge funds on all building permits.

(8) Advertising materials, brochures, and agenda or training materials for a Factory Built Housing Fees Account funded educational event, seminar, or class shall include a statement that acknowledges that partial funding of the training program has been provided by the Utah Division of Occupational and Professional Licensing from surcharge fees on factory built housing sales.

(9) If an approved event or joint event is not held, no amount is reimbursable except for the costs described in Subsection (5)(d).

#### **R156-15A-232. Administration of the Office of the Property Rights Ombudsman's Land Use Fund.**

In accordance with Subsection 15A-1-209(5)(c)(iii) and Section R156-15A-230, the following procedures, standards, and policies are established for the administration of the Ombudsman's Land Use Fund:

##### (1) Reimbursements to the Office of the Property Rights Ombudsman.

[+](a) The Ombudsman shall use the Land Use Fund to pay its expenses, including personnel salaries, course development costs, travel, and other related expenses as agreed upon by the Ombudsman and the Department of Commerce, that are incurred as a result of:

(i) administering the Land Use Fund;

(ii) conducting training activities under Subsection 13-43-203(1)(g); and

(iii) creating, compiling, and updating model land use ordinances.

(b) Expenses paid to the Ombudsman under this Subsection (1) shall first be approved by:

(i) the Advisory Board; and

(ii) the Department's executive director.

(c) The fact that an expenditure type is reimbursable to the Ombudsman under Subsection (1)(a) does not affect whether an item is reimbursable as a grant under Subsection (2).

(2) The Ombudsman shall use the Land Use Fund to provide grants to providers of land use training programs, as follows:

(a) Eligibility Criteria.

(i) To be eligible to receive funds, the provider's program shall primarily provide training on Utah land use law, and in particular the drafting and application of land use laws and regulations.

(ii) Program training may take the form of live or prerecorded seminars or lectures, continuing education programs, video production, or ~~development and~~ distribution of training materials and written information.

(iii) The following factors shall apply to the consideration of whether to approve, approve with conditions, or deny a grant request:

(A) previous experience in providing training;

(B) cost estimates, including cost-per-attendee estimates;

(C) how well the education fits in with the land use education and training objectives of Subsection 13-43-203(1)(i);

(D) whether the training addresses current Utah land use law, issues, and best practices;

(E) how well the text relates to the course objectives;

(F) the target audience - for example, whether the education is targeted for land use officials such as commissioners, council members, etc.;

(G) the expected number of students, hours of instruction, and the ratio of students per dollar spent;

(H) the location or region of the state targeted by the education;

(I) the percentage of training costs paid for by the student;

(J) any other considerations deemed important by the Advisory Board, the Ombudsman, and the Department; and

(K) available funds.

(b) Reimbursement Criteria.

(i) Funds may be expended only as reimbursement for expenditures incurred in providing land use training.

(ii) The reimbursement rate [Reimbursement] for instructor fees shall be limited to \$150 per instruction hour [per instructor] and up to \$3,000 total for all instructors per day, including airfare, vehicle mileage, [travel] and meals. This fee represents the total amount reimbursable for live or prerecorded instruction activities. Preparation time, course development, event coordination, staff time, and travel time are not separately reimbursable. Any excess instructor fees, including honoraria for keynote speakers, shall require further justification, review, and approval. Instructor fees may not be paid to State or local government employees if the instructor is also being paid wages for the same time period.

(iii) Reimbursement for instructor meals, mileage, and lodging may not exceed current State of Utah rates for mileage and daily travel per diem.

(iv) Reimbursement for other expenses such as workbooks, study guides, textbooks used in the education course, meeting rooms or facilities, audio/visual equipment rental costs, if needed, actual printing costs, reasonable cost of advertising materials [and publication costs], and mailing [;] and postage [and handling] costs, shall be approved as needed.

(v) Gift cards, door prizes, and the cost of food and food services provided to training participants may not be paid or reimbursed from the Ombudsman's Land Use Fund. Any items that do not qualify for state funding, including food and food service, provided to training participants, shall be paid for by the participant or sponsor of the program.

(vi) Programs that receive sponsorships or grants from other sources [charge a fee to attendees] are eligible for reimbursement on a net cost basis after subtracting [collected student fees and] sponsorships or grants from other sources. [Any items that do not qualify for State funding shall be paid for by the participant or sponsor of the program.]

(vii) [The Ombudsman, Land Use Fund manager, and the Department may in their joint discretion grant approval based upon a total per student reimbursement rather than an actual cost reimbursement.] Total reimbursement shall be the lesser of \$15 per student hour or the cost of all approved actual expenditures. Reimbursement in excess of this total requires further justification, review, and approval.

(viii) Notwithstanding Subsection (2)(b)(iii), if an instructor is required to travel to a remote, rural Utah location, the instructor may be compensated up to \$50 an hour for time traveling to and from the event venue in addition to mileage.

(c) Procedures for the submission, review, and payment of funding grants shall be as follows:

(i) A funding grant applicant shall submit a completed Request for Land Use Training Funds application to the Ombudsman on a form provided for that purpose by the Ombudsman. The application shall require a description of the proposed land use training program, including program objectives, instructors, target audience, and budget, and may encompass other criteria including that set forth in Subsection (2)(a).

(ii) The Ombudsman shall submit the completed Request for Land Use Training Funds application to the Advisory Board for selection or proposal by the Advisory Board. The submission, selection, or proposal may be done in person or by electronic means in accordance with Title 63G.

(iii) A Request for Land Use Training Funds application selected or proposed by the Advisory Board shall then be reviewed by the Ombudsman's director, the Land Use Fund's manager, and the Department's executive director, or their designees. They may jointly approve the application, approve the application with conditions, or deny the application.

(iv) To apply for reimbursement based on an approved Request for Land Use Training Funds application, the approved program shall submit one or more completed Request for Reimbursement forms to the Ombudsman as follows:

(A) The Request for Reimbursement shall be on a form provided by the Ombudsman for that purpose, and shall include receipts, invoices, and supporting documentation of expenditures, including proof of payment if requested by the Ombudsman or the Department of Commerce.

(B) The complete Request for Reimbursement shall be submitted within 60 days following the approved event, class, or seminar, unless an extenuating circumstance occurs. Written notice shall be given to the Ombudsman of such an extenuating circumstance. Failure to submit a complete Request for Reimbursement within 60 days shall result in non-payment of approved funds, unless an extenuating circumstance has been reviewed and accepted by the Ombudsman.

(v) A Request for Reimbursement accepted by the Ombudsman for review shall then be reviewed by the Ombudsman director, the Land Use Fund manager, and the Department executive director or their designees, and may be approved, approved with conditions, or denied.

(vi) Reimbursement funds may be paid only:

(A) for eligible expenditures which have been executed in good faith with the intent to ensure the best reasonable value; and

(B) pursuant to a Request for Reimbursement form that has been signed as approved by the Ombudsman director, the Land Use Fund manager, and the Department executive director, or their designees.

**KEY: contractors, building codes, building inspections, licensing**

**Date of Enactment or Last Substantive Amendment: [April 8,] 2019**

**Notice of Continuation: June 20, 2016**

**Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-202(1)(a); 15A-1-204(6); 15A-1-205**

**Commerce, Occupational and  
Professional Licensing  
R156-60  
Mental Health Professional Practice Act  
Rule**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 44031

FILED: 09/03/2019

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** After further research and for purposes of clarification of the language at issue, the Division of Occupational and Professional Licensing (Division) makes this filing to substitute the proposed amendments for the proposed amendments published as OAR File No. 43993 in the September 1, 2019, issue of the Utah State Bulletin, Vol. 2019, No. 17, at pages 9-13. As stated in the previous filing, on June 17, 2019, Governor Herbert directed Francine Giani, the Executive Director of the Utah Department of Commerce (Department) who oversees the Division, to have the Psychologist Licensing Board provide guidance, based on the best available science, for rules on the ethical and professional practice of psychology concerning interventions for minor children regarding their sexual orientation and gender identity. To avoid duplication of efforts and confusion, Governor Herbert directed the Psychologist Licensing Board to take the lead, after which the three other boards that advise the licensing of the mental health professions in Utah -- the Social Worker Licensing Board, the Clinical Mental Health Counselor Licensing Board, and the Marriage and Family Therapist Licensing Board -- were to take up this issue. In July 2019, the Psychologist Licensing Board conducted an extensive review of the professional literature, consulted with national experts, and coordinated with the American Psychological Association to draft amendments to their Rule R156-61. These amendments defined, clarified, and established current professional definitions and standards with respect to sexual orientation and gender identity, and in particular defined as unprofessional conduct the practice of sexual orientation change efforts or gender identity change efforts with a client who is less than 18 years old. Thereafter, the Social Worker Licensing Board, the Clinical Mental Health Counselor Licensing Board, and the Marriage and Family Therapist Licensing Board each separately reviewed these draft rules and language in light of each Board's professional field of study and any guidelines, position statements, studies, etc. considered by their own professional associations. On August 1, 2019, the Social Worker Licensing Board met and conducted an extensive review and discussion of professional literature and research, including the National Association of Social Workers (NASW) May 2015 Position Statement against sexual orientation change efforts and conversion therapy. The Board approved

of the language drafted by the Psychologist Licensing Board and voted to file similar proposed amendments to their own Rule R156-60. (The Social Worker Licensing Board also voted to expand their Rule R156-60's definition of "unprofessional conduct" to include referring clients to practitioners or programs claiming therapies and treatments designed to change sexual orientation or gender identity. However, for consistency and to avoid confusion, the Division has not included in the subject filing this expanded definition of unprofessional conduct to include sexual orientation change efforts (SOCE) or gender identity change efforts (GICE) referrals.) On August 7, 2019, the Clinical Mental Health Counselor Licensing Board met to review these issues, and after discussion that Board also approved of the language drafted by the Psychologist Licensing Board, and voted in favor of filing similar proposed amendments to Rule R156-60. On August 8, 2019, the Marriage and Family Therapist Licensing Board met to review these issues. After an extensive review and discussion, the Board voted to accept the language put forward by the Psychologist Licensing Board for filing similar proposed amendments to Rule R156-60. (Additionally, that Board voted to further review these issues in subsequent meetings, to find a way to support what was put forward but to do it in a way that is mindful in a systemic nature of the issues as they impact families.) (EDITOR'S NOTE: The proposed amendment to Rule R156-61 is under Filing No. 44032 in this issue, September 15, 2019, of the Bulletin.)

**SUMMARY OF THE RULE OR CHANGE:** In Section R156-60-102, the proposed amendments update references, and define the terms "gender identity", "sexual orientation", "gender identity change efforts" (GICE), and "sexual orientation change efforts" (SOCE). In Section R156-60-502, the proposed amendments update references, and add to the definition of unprofessional conduct "engaging in, or attempting to engage in the practice of sexual orientation change efforts or gender identity change efforts with a client who is less than 18 years old".

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 58-60-101 and Subsection 58-1-106(1)(a) and Subsection 58-1-202(1)(a)

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** The Division estimates that these proposed amendments may result in a potential increase of two additional complaints of unprofessional conduct each year, requiring two investigations consisting of approximately 20 hours per investigation. This may result in a cost to Division investigations of approximately \$1,000 per fiscal year ongoing. The amendments are not expected to impact existing Division practices or procedures or other state practices or procedures. Additionally, as described below in the analysis for small business and non-small business, the Division does not expect any state agencies that may be acting as employers of licensed individuals engaging in the practice of mental health therapy to experience any measurable fiscal impacts. Except as described above, the

Division estimates that these proposed amendments will have no measurable impact on state government revenues or expenditures, beyond a minimal cost to the Division of approximately \$75 to disseminate the rule once the proposed amendments are made effective.

◆ **LOCAL GOVERNMENTS:** The Division estimates that these proposed amendments will have no measurable impact on local governments' revenues or expenditures. None of these amendments are expected to impact local governments' practices or procedures. Additionally, as described below in the analysis for small businesses and non-small businesses, the Division does not expect any local governments that may be acting as employers of licensed individuals engaging in the practice of mental health therapy to experience any measurable fiscal impacts.

◆ **SMALL BUSINESSES:** These proposed amendments will regulate individuals licensed under Title 58 who are practicing within their respective licensing acts and engage in the practice of mental health therapy. These amendments may therefore indirectly affect the estimated 1,132 small businesses in Utah comprising establishments of licensees engaged in the practice of mental health therapy or who may employ those engaged in the practice of mental health therapy, such as private or group practices, hospitals, or medical centers (NAICS 621112, 621420, 621330, 622210, 623220, 624190). However, these proposed amendments are not expected to result in any measurable fiscal impact for small businesses. First, the amendments update this rule in accordance with clear practice guidelines and position statements already existing in the industry, including from the American Psychological Association, the American Psychiatric Association, the National Association of Social Workers, and the Substance Abuse and Mental Health Services Administration. The practices of most small businesses are, or should be, already consistent with these existing professional practice guidelines and position statements. Second, the proposed amendments will only affect licensees who violate this rule and are disciplined for unprofessional conduct, and as described below for other persons it is estimated that for the typical licensee, the proposed amendments will have no direct or indirect fiscal impact. Accordingly, any impact from non-compliance will never be uniformly felt across the industry, and most small businesses will never be impacted. Finally, although a small business employing a licensee who is disciplined for unprofessional conduct may face indirect financial costs for such noncompliance, it is impossible to estimate what such indirect costs might be with any accuracy at present, not only because any such violations are unforeseeable, but because any indirect costs from such unforeseen violations that any small business may potentially experience from any potential sanctions will vary widely depending on the unique characteristics of the employer and the individual characteristics and actions of each licensee. This relevant data is unavailable and the cost of acquiring any such data is prohibitively expensive. In sum, the scope of these proposed amendments is so narrow that they will not affect the vast majority of small businesses, and will not result in a measurable fiscal impact to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The following individuals licensed under Title 58 may be affected by these proposed amendments: Approximately 4,209 licensed clinical social workers, 1,384 licensed certified social workers, and 30 licensed certified social worker interns. Approximately 1,485 licensed clinical mental health counselors, 2 licensed volunteer clinical mental health counselors, 382 licensed associate clinical mental health counselors, and 7 licensed associate clinical mental health counselor externs. Approximately 787 licensed marriage and family therapists, 181 licensed associate marriage and family therapists, and 3 associate marriage and family therapist externs. Finally, approximately 135 APRNs (advanced practice registered nurses) specializing in psychiatric mental health nursing, 1,198 osteopathic physicians (DOs) of which 25 are DO psychiatrists, and 11,221 physicians and surgeons (MDs) of which 290 are MD psychiatrists. However, no measurable fiscal impact to any of these persons is expected. First, the proposed amendments will only affect licensees who violate this rule and are sanctioned, so that most licensees will never be impacted. The amendments update this rule in accordance with practice guidelines and position statements already existing across the mental health professions, and the practices of most licensees are or should be already consistent with existing professional practice guidelines and position statements. Further, the goal of this rule is to provide a deterrent, such that there is a \$0 net impact on all parties involved and minimal occasions to sanction a licensee for noncompliance. Therefore, for the typical licensee, the proposed amendments are expected to have no direct or indirect fiscal impact. Second, although a licensee who is disciplined for unprofessional conduct may experience a fiscal impact, it is impossible to estimate what such costs might be with any accuracy at present, both because they would apply only in cases of unforeseeable violations, and because any potential costs would depend on the unique characteristics and actions of each individual licensee. This relevant data is unavailable and the cost of acquiring any such data is prohibitively expensive.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** As described above for other persons, the Division does not anticipate any compliance costs for any affected persons from these proposed amendments.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** In Section R156-60-102, the proposed amendments update references, and define the terms "gender identity", "sexual orientation", "gender identity change efforts" (GICE), and "sexual orientation change efforts" (SOCE). In Section R156-60-502, the proposed amendments update references, and add to the definition of unprofessional conduct "engaging in, or attempting to engage in the practice of sexual orientation change efforts or gender identity change efforts with a client who is less than 18 years old". Small Businesses (fewer than 50 employees): These proposed amendments will regulate individuals licensed under Title 58 who are practicing within

their respective licensing acts and engage in the practice of mental health therapy. These amendments may therefore indirectly affect the estimated 1,132 small businesses in Utah comprising establishments of licensees engaged in the practice of mental health therapy or who may employ those engaged in the practice of mental health therapy, such as private or group practices, hospitals, or medical centers (NAICS 621112, 621420, 621330, 622210, 623220, and 624190). However, these proposed amendments are not expected to result in any measurable fiscal impact for small business. Non-Small Businesses (50 or more employees): These proposed amendments will regulate individuals licensed under Title 58 who are practicing within their respective licensing acts and engage in the practice of mental health therapy. These amendments may therefore indirectly affect the estimated 72 non-small businesses in Utah comprising establishments of licensees engaged in the practice of mental health therapy or who may employ those engaged in the practice of mental health therapy, such as private or group practices, hospitals, or medical centers (NAICS 621112, 621420, 621330, 622210, 623220, and 624190). However, these proposed amendments are not expected to result in any measurable fiscal impact.

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:

◆ Larry Marx by phone at 801-530-6254, by FAX at 801-530-6511, or by Internet E-mail at lmarx@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/15/2019

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

◆ 09/26/2019 09:00 AM, Heber Wells Bldg, 160 E 300 S, North Conference Room (first floor), Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 10/22/2019

AUTHORIZED BY: Mark Steinagel, Director

Appendix 1: Regulatory Impact Summary Table\*

Fiscal Costs	FY 2020	FY 2021	FY 2022
State Government	\$1,075	\$1,000	\$1,000
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Person	\$0	\$0	\$0

Total Fiscal Costs:	\$1,075	\$1,000	\$1,000
<b>Fiscal Benefits</b>			
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
<b>Total Fiscal Benefits:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits:</b>	<b>(\$1,075)</b>	<b>(\$1,000)</b>	<b>(\$1,000)</b>

\*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 will regulate individuals licensed under Title 58 who are practicing within their respective licensing acts and engage in the practice of mental health therapy. These amendments may therefore, indirectly affect the estimated 72 non-small businesses in Utah comprising establishments of licensees engaged in the practice of mental health therapy or who may employ those engaged in the practice of mental health therapy, such as private or group practices, hospitals, or medical centers (NAICS 621112, 621420, 621330, 622210, 623220, 624190). However, these proposed amendments are not expected to result in any measurable fiscal impact for non-small business. First, these amendments update the rule in accordance with clear practice guidelines and position statements already existing in the industry, including from the American Psychological Association, the American Psychiatric Association, the National Association of Social Workers, and the Substance Abuse and Mental Health Services Administration. The practices of most non-small businesses are, or should be, already consistent with existing professional practice guidelines and position statements. Second, these proposed amendments will only affect licensees who violate the rules and are disciplined for unprofessional conduct, and as described for other persons it is estimated that for the typical licensee, the proposed amendments will have no direct or indirect fiscal impact. Accordingly, any impact from non-compliance will never be uniformly felt across the industry, and most non-small businesses will never be impacted. Finally, although a non-small business employing a licensee who is disciplined for unprofessional conduct may face indirect financial costs for such noncompliance, it is impossible to estimate what such indirect costs might be with any accuracy at present, not only because any such violations are unforeseeable, but because any indirect costs from such unforeseen violations that any non-small business may potentially experience from any potential sanctions will vary widely depending on the unique characteristics of the employer and the individual characteristics and actions of each licensee. This relevant data is unavailable and the cost of acquiring any such data is prohibitively expensive. In sum, the scope of these proposed amendments is so narrow that they will not affect the vast majority of non-small business, and will not result in a measurable fiscal impact to non-small business.

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

**R156. Commerce, Occupational and Professional Licensing.**

**R156-60. Mental Health Professional Practice Act Rule.**

**R156-60-102. Definitions.**

In addition to the definitions in Title 58, Chapters 1 and 60, as used in Title 58, Chapters 1 and 60, or this rule:

(1) "Approved diagnostic and statistical manual for mental disorders" means the following:

(a) Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition: DSM-5 [~~or Fourth Edition: DSM-IV~~] published by the American Psychiatric Association;

(b) [~~2013~~2015 ICD-9]10-CM for Physicians, [Volumes 1 and 2] Professional Edition published by the American Medical Association; or

(c) ICD-10-CM [~~2013~~2019]: The Complete Official Draft Code Set published by the American Medical Association.

(2) "Client or patient" means an individual who, when competent requests, or when not competent to request is lawfully provided professional services by a mental health therapist when the mental health therapist agrees verbally or in writing to provide professional services to that individual, or without an overt agreement does in fact provide professional services to that individual.

(3) "Direct supervision" of a supervisee in training, as used in Subsection 58-60-205(1)(f), 58-60-305(1)(f), and 58-60-405(1)(f), means:

(a) a supervisor meeting with the supervisee when both are physically present in the same room at the same time; or

(b) a supervisor meeting with the supervisee remotely via real-time electronic methods that allow for visual and audio interaction between the supervisor and supervisee under the following conditions:

(i) the supervisor and supervisee shall enter into a written supervisory agreement which, at a minimum, establishes the following:

(A) frequency, duration, reason for, and objectives of electronic meetings between the supervisor and supervisee;

(B) a plan to ensure accessibility of the supervisor to the supervisee despite the physical distance between their offices;

(C) a plan to address potential conflicts between clinical recommendations of the supervisor and the representatives of the agency employing the supervisee;

(D) a plan to inform a supervisee's client or patient and employer regarding the supervisee's use of remote supervision;

(E) a plan to comply with the supervisor's duties and responsibilities as established in rule; and

(F) a plan to physically visit the location where the supervisee practices on at least a quarterly basis during the period of supervision or at a lesser frequency as approved by the Division in collaboration with the Board;

(ii) the supervisee submits the supervisory agreement to the Division and obtains approval before counting direct supervision completed via live real-time methods toward the 100 hour direct supervision requirement; and

(iii) in evaluating a supervisory agreement, the Division shall consider whether it adequately protects the health, safety, and welfare of the public.

(4) "Employee" means an individual who is or should be treated as a W-2 employee by the Internal Revenue Service.

(5) "Gender expression" means an individual's presentation and behaviors that express aspects of gender including gender identity or gender role.

(6) "Gender identity" means an individual's experience of their gender, including one's view of oneself as a man, woman, or any other gender.

(7) "Gender identity change efforts" means methods, practices, procedures, or techniques with the goal of changing an individual's gender identity or gender expression.

([5]8) "General supervision" means that the supervisor is available for consultation with the supervisee by personal face to face contact, or direct voice contact by telephone, radio, or some other means within a reasonable time consistent with the acts and practices in which the supervisee is engaged.

([6]9) "On-the-job training program" means a program that:

(a) is applicable to individuals who have completed all courses required for graduation in a degree or formal training program that would qualify for licensure under this chapter;

(b) starts immediately upon completion of all courses required for graduation;

(c) ends 45 days from the date it begins, or upon licensure, whichever is earlier, and may not be extended or used a second time;

(d) is completed while the individual is an employee of a public or private agency engaged in mental health therapy or substance use disorder counseling; and

(e) is under supervision by a qualified individual licensed under this chapter which includes supervision meetings on at least a weekly basis when the supervisee and supervisor are physically present in the same room at the same time.

(10) "Sexual orientation" means an individual's gendered patterns in attraction, feelings, or behavior, or identity related to these patterns.

(11) "Sexual orientation change efforts" means methods, practices, procedures, or techniques with the goal of changing an individual's sexual orientation, including gendered patterns in attraction, feelings, or behavior, or identity related to these patterns.

(12)(a) Methods, practices, procedures, or techniques that are neutral with respect to the sexual orientation and gender identity of the individual do not constitute "sexual orientation change efforts" or "gender identity change efforts".

(b) Methods, practices, procedures, or techniques that are neutral with respect to the sexual orientation and gender identity of the individual include, but are not limited to, the following interventions, as long as the interventions do not have the goal of changing an individual's sexual orientation or gender identity:

(i) reducing an individual's internalized stigma;

(ii) providing acceptance, support, and comprehensive assessment of an individual;

(iii) facilitating an individual's active coping, social support, and identity exploration and development;

(iv) assisting an individual considering or undergoing gender transition; or

(v) preventing or addressing an individual's unlawful conduct or unsafe sexual practices.

#### **R156-60-502. Unprofessional Conduct.**

"Unprofessional conduct" includes:

(1) when providing services remotely:

([+])a) failing to practice according to professional standards of care in the delivery of services remotely;



- ([2]b) failing to protect the security of electronic, confidential data and information; or
- ([3]c) failing to appropriately store and dispose of electronic, confidential data and information; or
- (2) engaging in, or attempting to engage in the practice of sexual orientation change efforts or gender identity change efforts with a client who is less than 18 years old.

**KEY: licensing, mental health, therapists**  
**Date of Enactment or Last Substantive Amendment:**  
**[September 21, 2015]2019**  
**Notice of Continuation: February 26, 2019**  
**Authorizing, and Implemented or Interpreted Law: 58-1-106(1)**  
**(a); 58-1-202(1)(a); 58-60-101**

**Commerce, Occupational and  
 Professional Licensing  
 R156-61  
 Psychologist Licensing Act Rule**

**NOTICE OF PROPOSED RULE  
 (Amendment)  
 DAR FILE NO.: 44032  
 FILED: 09/03/2019**

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: After further research and for purposes of clarification of the language at issue, the Division of Occupational and Professional Licensing (Division) makes this filing to substitute the proposed amendments for the proposed amendments published as OAR File No. 43994 in the September 1, 2019, issue of the Utah State Bulletin, Vol. 2019, No. 17, at pages 13-18. As stated in the previous filing, on June 17, 2019, Governor Herbert directed Francine Giani, the Executive Director of the Utah Department of Commerce (Department) who oversees the Division, to have the Psychologist Licensing Board provide guidance, based on the best available science, for rules on the ethical and professional practice of psychology concerning interventions for minor children regarding their sexual orientation and gender identity. After an extensive review of the professional literature, consultation with national experts, and coordination with the American Psychological Association, the Utah Psychologist Licensing Board recommends these amendments to update the rule to define, clarify, and establish current professional definitions and standards with respect to sexual orientation and gender identity, and in particular to define as unprofessional conduct the practice of sexual orientation change efforts or gender identity change efforts with a client who is less than 18 years old. In support of this filing, the Psychologist Licensing Board declares as follows: "It is our conclusion that practices intended to change sexual orientation or gender identity are not demonstrated to be effective, and are associated with harm

and the risk of harm, including significant increases in depression, suicidal ideation, and suicide attempts in minors. Interventions undertaken in the name of mental health treatment that harm — and risk harm — to others are contrary to the ethical principles and standards of our profession; chief among these ethical imperatives is our responsibility to "Do No Harm". As such, it is our determination that psychologists participating in these practices are engaging in unprofessional conduct. These conclusions are consistent with practice guidelines and position statements by the American Psychological Association, the American Psychiatric Association, the National Association of Social Workers, the Substance Abuse and Mental Health Services Administration, and many other health and mental health organizations. Therefore, we have drafted a proposed rule change to address this issue."

SUMMARY OF THE RULE OR CHANGE: In Section R156-61-102, the proposed amendments update references, and define the terms "gender identity", "sexual orientation", "gender identity change efforts" (GICE), and "sexual orientation change efforts" (SOCE). In Section R156-61-502, the proposed amendments update references and add to the definition of unprofessional conduct "engaging in, or attempting to engage in the practice of sexual orientation change efforts or gender identity change efforts with a client who is less than 18 years old".

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-61-101 and Subsection 58-1-106(1) (a) and Subsection 58-1-202(1)(a)

- MATERIALS INCORPORATED BY REFERENCE:
- ◆ Updates ASPPB Code of Conduct, published by Association of State and Provincial Psychology Boards (ASPPB), January 1, 2018
  - ◆ Updates Ethical Principles of Psychologists and Code of Conduct, published by American Psychological Association (APA), January 1, 2017

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: The Division estimates that these proposed amendments may result in a potential increase of two additional complaints of unprofessional conduct each year, requiring two investigations consisting of approximately 20 hours per investigation. This may result in a cost to Division investigations of approximately \$1,000 per fiscal year ongoing. The amendments are not expected to impact existing Division practices or procedures or other state practices or procedures. Additionally, as described below in the analysis for small businesses and non-small businesses, the Division does not expect any state agencies that may be acting as employers of licensed psychologists to experience any measurable fiscal impacts. Except as described above, the Division estimates that these proposed amendments will have no measurable impact on state government revenues or expenditures, beyond a minimal cost to the Division of approximately \$75 to disseminate the rule once the proposed amendments are made effective.

◆ **LOCAL GOVERNMENTS:** The Division estimates that these proposed amendments will have no measurable impact on local governments' revenues or expenditures. None of these amendments are expected to impact local governments' practices or procedures. Additionally, as described below in the analysis for small businesses and non-small businesses, the Division does not expect any local governments that may be acting as employers of licensed psychologists to experience any measurable fiscal impacts.

◆ **SMALL BUSINESSES:** These proposed amendments will regulate licensed psychologists practicing in Utah, which may indirectly affect the estimated 1,132 small businesses in Utah comprising establishments of licensees engaged in the practice of psychology or who may employ licensed psychologists, such as private or group practices, hospitals, or medical centers (NAICS 621112, 621420, 621330, 622210, 623220, 624190). However, these proposed amendments are not expected to result in any measurable fiscal impact for small businesses. First, the amendments update the rule in accordance with clear practice guidelines and position statements already existing in the industry, including from the American Psychological Association, the American Psychiatric Association, the National Association of Social Workers, and the Substance Abuse and Mental Health Services Administration. The practices of most small businesses are, or should be, already consistent with existing professional practice guidelines and position statements. Second, the proposed amendments will only affect licensees who violate the rules and are disciplined for unprofessional conduct, and as described below for other persons it is estimated that for the typical licensee, the proposed amendments will have no direct or indirect fiscal impact. Accordingly, any impact from non-compliance will never be uniformly felt across the industry, and most small businesses will never be impacted. Finally, although a small business employing a licensee who is disciplined for unprofessional conduct may face indirect financial costs for such noncompliance, it is impossible to estimate what such indirect costs might be with any accuracy at present, not only because any such violations are unforeseeable, but because any indirect costs from such unforeseen violations that any small business may potentially experience from any potential sanctions will vary widely depending on the unique characteristics of the employer and the individual characteristics and actions of each licensee. This relevant data is unavailable and the cost of acquiring any such data is prohibitively expensive. In sum, the scope of these proposed amendments is so narrow that they will not affect the vast majority of small businesses, and will not result in a measurable fiscal impact to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are approximately 1,058 licensed psychologists and 36 licensed psychology residents in Utah that will be affected by these proposed amendments. No measurable fiscal impact to these persons is expected. First, the proposed amendments will only affect licensees who violate the rules and are sanctioned, so that most licensees will never be impacted. The amendments update this rule in accordance

with clear practice guidelines and position statements already existing in the industry, and the practices of most licensees are or should be already consistent with existing professional practice guidelines and position statements. Further, the goal of this rule is to provide a deterrent, such that there is a \$0 net impact on all parties involved and minimal occasions to sanction a licensee for noncompliance. Therefore, for the typical licensee, the proposed amendments are expected to have no direct or indirect fiscal impact. Second, although a licensee who is disciplined for unprofessional conduct may experience a fiscal impact, it is impossible to estimate what such costs might be with any accuracy at present, both because they would apply only in cases of unforeseeable violations, and because any potential costs would depend on the unique characteristics and actions of each individual licensee. This relevant data is unavailable and the cost of acquiring any such data is prohibitively expensive.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** As described above for other persons, the Division does not anticipate any compliance costs for any affected persons from these proposed amendments.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** The Utah Psychologist Licensing Board recommends these amendments to update this rule to define, clarify and establish current professional definitions and standards with respect to sexual orientation and gender identity, and in particular to define as unprofessional conduct the practice of sexual orientation change efforts or gender identity change efforts with a client who is less than 18 years old. **Small Businesses (fewer than 50 employees):** These proposed amendments will regulate licensed psychologists in Utah, which may indirectly affect the estimated 1,132 small businesses in Utah comprising establishments of licensees engaged in the practice of psychology or who may employ licensed psychologists, such as private or group practices, hospitals, or medical centers (NAICS 621112, 621420, 621330, 622210, 623220, and 624190). However, these proposed amendments are not expected to result in any measurable fiscal impact for small businesses. **Non-Small Businesses (50 or more employees):** These proposed amendments will regulate licensed psychologists practicing in Utah, which may indirectly affect the estimated 72 non-small businesses in Utah comprising establishments of licensees engaged in the practice of psychology or who may employ licensed psychologists, such as private or group practices, hospitals, or medical centers (NAICS 621112, 621420, 621330, 622210, 623220, and 624190). However, these proposed amendments are not expected to result in any measurable fiscal impact for non-small businesses.

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

COMMERCE  
OCCUPATIONAL AND PROFESSIONAL  
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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:**  
 ♦ Larry Marx by phone at 801-530-6254, by FAX at 801-530-6511, or by Internet E-mail at lmarx@utah.gov

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/15/2019**

**INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:**  
 ♦ 09/26/2019 09:00 AM, Heber Wells Bldg, 160 E 300 S, North Conference Room (first floor), Salt Lake City, UT

**THIS RULE MAY BECOME EFFECTIVE ON: 10/22/2019**

**AUTHORIZED BY: Mark Steinagel, Director**

**Appendix 1: Regulatory Impact Summary Table\***

Fiscal Costs	FY 2020	FY 2021	FY 2022
State Government	\$1,075	\$1,000	\$1,000
Local Government	\$0	\$0	\$0
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Non-Small Businesses	\$0	\$0	\$0
Other Person	\$0	\$0	\$0
<b>Total Fiscal Costs:</b>	<b>\$1,075</b>	<b>\$1,000</b>	<b>\$1,000</b>
<b>Fiscal Benefits</b>			
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
<b>Total Fiscal Benefits:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits:</b>	<b>(\$1,075)</b>	<b>(\$1,000)</b>	<b>(\$1,000)</b>

\*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 will regulate licensed psychologists practicing in Utah, which may indirectly affect the estimated 72 non-small businesses in Utah comprising establishments of licensees engaged in the practice of psychology or who may employ licensed psychologists, such as private or group practices, hospitals, or medical centers (NAICS 621112, 621420, 621330, 622210, 623220, 624190). However, these proposed amendments are not expected to

result in any measurable fiscal impact for non-small business. First, these amendments update this rule in accordance with clear practice guidelines and position statements already existing in the industry, including from the American Psychological Association, the American Psychiatric Association, the National Association of Social Workers, and the Substance Abuse and Mental Health Services Administration. The practices of most non-small businesses are, or should be, already consistent with existing professional practice guidelines and position statements. Second, these proposed amendments will only affect licensees who violate this rule and are disciplined for unprofessional conduct, and as described above for other persons it is estimated that for the typical licensee, the proposed amendments will have no direct or indirect fiscal impact. Accordingly, any impact from non-compliance will never be uniformly felt across the industry, and most non-small businesses will never be impacted. Finally, although a non-small business employing a licensee who is disciplined for unprofessional conduct may face indirect financial costs for such noncompliance, it is impossible to estimate what such indirect costs might be with any accuracy at present, not only because any such violations are unforeseeable, but because any indirect costs from such unforeseen violations that any non-small business may potentially experience from any potential sanctions will vary widely depending on the unique characteristics of the employer and the individual characteristics and actions of each licensee. This relevant data is unavailable and the cost of acquiring any such data is prohibitively expensive. In sum, the scope of these proposed amendments is so narrow that they will not affect the vast majority of non-small business, and will not result in a measurable fiscal impact to non-small business.

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

**R156. Commerce, Occupational and Professional Licensing.**

**R156-61. Psychologist Licensing Act Rule.**

**R156-61-102. Definitions.**

In addition to the definitions in Title 58, Chapters 1 and 61, as used in Title 58, Chapters 1 and 61 or this rule:

(1) "Approved diagnostic and statistical manual for mental disorders" means the following:

(a) Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition: DSM-5 [~~or Fourth Edition: DSM-IV~~] published by the American Psychiatric Association;

(b) [~~2013~~2015 ICD-9]10-CM for Physicians, [Volumes 1 and 2] Professional Edition published by the American Medical Association; or

(c) ICD-10-CM [~~2013~~2019]: The Complete Official Draft Code Set published by the American Medical Association.

(2) "CoA" means Committee on Accreditation of the American Psychological Association.

(3) "Direct supervision" of a supervisee in training, as used in Subsection 58-61-304(1)(f), means:

(a) a supervisor meeting with the supervisee when both are physically present in the same room at the same time; or

(b) a supervisor meeting with the supervisee remotely via real-time electronic methods that allow for visual and audio interaction between the supervisor and supervisee under the following conditions:

(i) the supervisor and supervisee shall enter into a written supervisory agreement which, at a minimum, establishes the following:

(A) frequency, duration, reason for, and objectives of electronic meetings between the supervisor and supervisee;

(B) a plan to ensure accessibility of the supervisor to the supervisee despite the physical distance between their offices;

(C) a plan to address potential conflicts between clinical recommendations of the supervisor and the representatives of the agency employing the supervisee;

(D) a plan to inform a supervisee's client or patient and employer regarding the supervisee's use of remote supervision;

(E) a plan to comply with the supervisor's duties and responsibilities as established in rule; and

(F) a plan to physically visit the location where the supervisee practices on at least a quarterly basis during the period of supervision or at a lesser frequency as approved by the Division in collaboration with the Board;

(ii) the supervisee submits the supervisory agreement to the Division and obtains approval before counting direct supervision completed via live real-time methods toward the 40 hour direct supervision requirement; and

(iii) in evaluating a supervisory agreement, the Division shall consider whether it adequately protects the health, safety, and welfare of the public.

(4) "Gender expression" means an individual's presentation and behaviors that express aspects of gender including gender identity or gender role.

(5) "Gender identity" means an individual's experience of their gender, including one's view of oneself as a man, woman, or any other gender.

(6) "Gender identity change efforts" means methods, practices, procedures, or techniques with the goal of changing an individual's gender identity or gender expression.

~~(4)7~~ "On-the-job training program approved by the Division", as used in Subsection 58-61-301(1)(b), means a program that meets the standards established in Section R156-61-601.

~~(5)8~~(a) "Predoctoral internship" refers to a formal training program that meets the minimum requirements of the Association of Psychology Postdoctoral and Internship Centers (APPIC) offered to culminate a doctoral degree in clinical, counseling, or school psychology.

(b) A training program may be a full-time one year program or a half-time two year program.

~~(6)9~~(a) "Program accredited by the CoA", as used in Subsections R156-61-302a(1), means a psychology department program that, as of the date on which a student completes a doctoral psychology degree program:

(i) has obtained an accreditation from the CoA; or

(ii)(A) has applied to the CoA for accreditation;

(B) has been approved by the CoA for a site visit, which is to occur within the ensuing six years; and

(C) has not previously been denied accreditation by the CoA.

~~(7)10~~(a) "Program of respecialization", as used in Subsection R156-61-302a(3), is a formal program designed to prepare someone with a doctoral degree in psychology with the necessary skills to practice psychology.

(b) The respecialization activities shall include substantial requirements that are formally offered as an organized sequence of course work and supervised practicum leading to a certificate (or similar recognition) by an educational body that offers a doctoral degree qualifying for licensure in the same area of practice as that of the certificate.

(11)(a) "Psychology training", as used in Subsection 58-61-304(1)(e), means practical training experience providing direct

services in the practice of mental health therapy and psychology under supervision. All activities in full-time internships and full-time post-doctoral positions devoted solely to mental health delivery meet this definition.

(b) Activities not directly related to the practice of psychology, even if commonly performed by psychologists, do not meet the definition of psychology training under Subsection 58-61-304(1)(e). Examples of ineligible activities include psychology coursework, analog clinical activities (e.g. role plays), activities required for business purposes (e.g. billing), supervision of others engaged in activities other than practice of psychology (e.g. supervising adolescents in wilderness settings), and activities commonly performed by non-psychologists (e.g. teaching of psychology on topics not of a professional nature).

~~(8)12~~ "Qualified faculty", as used in Subsection 58-1-307(1)(b), means a university faculty member who provides pre-doctoral supervision of clinical or counseling experience in a university setting who:

(i) is licensed in Utah as a psychologist; and

(ii) is training students in the context of a doctoral program leading to licensure.

~~(9)13~~ "Residency program", as used in Subsection 58-61-301(1)(b), means a program of post-doctoral supervised clinical training necessary to meet licensing requirements as a psychologist.

~~(10)(a) "Psychology training", as used in Subsection 58-61-304(1)(e), means practical training experience providing direct services in the practice of mental health therapy and psychology under supervision. All activities in full-time internships and full-time post-doctoral positions devoted solely to mental health delivery meet this definition.~~

~~(b) Activities not directly related to the practice of psychology, even if commonly performed by psychologists, do not meet the definition of psychology training under Subsection 58-61-304(1)(e). Examples of ineligible activities include psychology coursework, analog clinical activities (e.g. role plays), activities required for business purposes (e.g. billing), supervision of others engaged in activities other than practice of psychology (e.g. supervising adolescents in wilderness settings), and activities commonly performed by non-psychologists (e.g. teaching of psychology on topics not of a professional nature).]~~

(14) "Sexual orientation" means an individual's gendered patterns in attraction, feelings, or behavior or identity related to these patterns.

(15) "Sexual orientation change efforts" means methods, practices, procedures, or techniques with the goal of changing an individual's sexual orientation, including gendered patterns in attraction, feelings, or behavior, or identity related to these patterns.

(16)(a) Methods, practices, procedures, or techniques that are neutral with respect to the sexual orientation and gender identity of the individual do not constitute "sexual orientation change efforts" or "gender identity change efforts".

(b) Methods, practices, procedures, or techniques that are neutral with respect to the sexual orientation and gender identity of the individual include, but are not limited to, the following interventions, as long as the interventions do not have the goal of changing an individual's sexual orientation or gender identity:

(i) reducing an individual's internalized stigma;

(ii) providing acceptance, support, and comprehensive assessment of an individual;

(iii) facilitating an individual's active coping, social support, and identity exploration and development;

(v) assisting an individual considering or undergoing gender transition; or

(v) preventing or addressing an individual's unlawful conduct or unsafe sexual practices.

**R156-61-502. Unprofessional Conduct.**

"Unprofessional conduct" includes:

(1) violation of any provision of the "Ethical Principles of Psychologists and Code of Conduct" of the American Psychological Association (APA) as adopted by the APA, [~~June 1, 2010~~ January 1, 2017 edition, which is adopted and incorporated by reference;

(2) violation of any provision of the "ASPPB Code of Conduct" of the Association of State and Provincial Psychology Boards (ASPPB) as adopted by the ASPPB, [~~2005~~ January 1, 2018 edition, which is adopted and incorporated by reference;

(3) acting as a supervisor or accepting supervision of a supervisor without complying with or ensuring the compliance with the requirements of Sections R156-61-302d and R156-61-302e;

(4) engaging in and aiding or abetting conduct or practices which are dishonest, deceptive or fraudulent;

(5) engaging in or aiding or abetting deceptive or fraudulent billing practices;

(6) failing to establish and maintain appropriate professional boundaries with a client or former client;

(7) engaging in dual or multiple relationships with a client or former client in which there is a risk of exploitation or potential harm to the client;

(8) engaging in sexual activities or sexual contact with a client with or without client consent;

(9) engaging in sexual activities or sexual contact with a former client within two years of documented termination of services;

(10) engaging in sexual activities or sexual contact at any time with a former client who is especially vulnerable or susceptible to being disadvantaged because of the client's personal history, current mental status, or any condition which could reasonably be expected to place the client at a disadvantage recognizing the power imbalance which exists or may exist between the psychologist and the client;

(11) engaging in sexual activities or sexual contact with client's relatives or other individuals with whom the client maintains a relationship when that individual is especially vulnerable or susceptible to being disadvantaged because of his personal history, current mental status, or any condition which could reasonably be expected to place that individual at a disadvantage recognizing the power imbalance which exists or may exist between the psychologist and that individual;

(12) physical contact with a client when there is a risk of exploitation or potential harm to the client resulting from the contact;

(13) engaging in or aiding or abetting sexual harassment or any conduct which is exploitive or abusive with respect to a student, trainee, employee, or colleague with whom the licensee has supervisory or management responsibility;

(14) failing to render impartial, objective, and informed services, recommendations or opinions with respect to custodial or parental rights, divorce, domestic relationships, adoptions, sanity, competency, mental health or any other determination concerning an individual's civil or legal rights;

(15) exploiting a client for personal gain;

(16) using a professional client relationship to exploit a client or other person for personal gain;

(17) failing to maintain appropriate client records for a period of not less than ten years from the documented termination of services to the client;

(18) failing to obtain informed consent from the client or legal guardian before taping, recording or permitting third party observations of client care or records;

(19) failure to cooperate with the Division during an investigation

(20) participating in a residency program or other post degree experience without being certified as a psychology resident for post-doctoral training and experience;

(21) supervising a residency program of an individual who is not certified as a psychology resident; [~~or~~]

(22) when providing services remotely:

(a) failing to practice according to professional standards of care in the delivery of services remotely;

(b) failing to protect the security of electronic, confidential data and information; or

(c) failing to appropriately store and dispose of electronic, confidential data and information; or

(23) engaging in, or attempting to engage in the practice of sexual orientation change efforts or gender identity change efforts with a client who is less than 18 years old.

**KEY: licensing, psychologists**

**Date of Enactment or Last Substantive Amendment:** [~~June 15, 2015~~ 2019]

**Notice of Continuation:** September 18, 2018

**Authorizing, and Implemented or Interpreted Law:** 58-1-106(1)(a); 58-1-202(1)(a); 58-61-101

**Commerce, Real Estate**  
**R162-2c-204**  
**License Renewal, Reinstatement, and**  
**Reapplication**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 44011

FILED: 08/22/2019

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The first purpose of these proposed rule amendments is to adjust the timing of the required continuing education (CE) course for mortgage loan originators.

Adjusting the timing will allow the nationwide licensing system to automatically track each new loan originator relative to the requirement for the CE course. The second purpose of these proposed rule amendments is to require an applicant for reinstatement of a mortgage loan originator license obtained after May 6, 2017, to complete the required CE course for new loan originators prior to reinstatement, consistent with the requirement already in place for mortgage loan originators renewing their license.

**SUMMARY OF THE RULE OR CHANGE:** A mortgage loan originator licensed after May 6, 2017, is required by the current rule to take a Division of Real Estate (Division)-approved CE course for new loan originators prior to renewing their license. These proposed rule amendments would adjust the timing of the required CE course to allow the nationwide licensing system to automatically track each new loan originator relative to the requirement for the CE course. If no adjustment is made to the timing for the CE course, Division staff must manually track each new loan originator for completion of the CE course. Manually tracking the new loan originators is a time consuming process with the possibility of errors occurring. Only the timing for completion of the CE course is affected by this part of the proposed rule amendment. There is no new obligation created for loan originators. In Subsection R162-2c-204(3)(b), these proposed rule amendments would require an applicant for reinstatement of an expired mortgage loan originator license obtained after May 6, 2017, to complete the required CE course for new loan originators prior to reinstatement, consistent with the requirement already in place for mortgage loan originators renewing their license.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 61-2c-203 and Section 61-2c-204.1 and Section 61-2c-205 and Subsection 61-2c-103(3)

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** The Division has the staff and budget in place to administer these proposed amendments. After conducting a thorough analysis, it was determined that these proposed rule amendments will not result in a fiscal impact affect those resources or result in any additional cost or savings to the state budget.

◆ **LOCAL GOVERNMENTS:** Local governments are not required to comply with or enforce the Utah Residential Mortgage Practices and Licensing rules. After conducting a thorough analysis, it was determined that these proposed rule amendments will not result in a fiscal impact to local governments.

◆ **SMALL BUSINESSES:** These proposed amendments do not create new obligations for small businesses nor does it increase the cost associated with any existing obligation. After conducting a thorough analysis, it was determined that these proposed rule amendments will not result in a fiscal impact to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** These proposed amendments do not create new obligations for persons other than small businesses, businesses, or local government entities nor does it increase the cost associated with any existing obligation. After conducting a thorough analysis, it was determined that these proposed rule amendments will not result in a fiscal impact to persons other than small businesses, businesses, or local government entities.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The proposed rule amendments will adjust the timing of the required CE course. There is no new obligation created for loan originators renewing their license and therefore, renewing licensees will not incur a fiscal impact or compliance cost from these proposed rule amendments. In Subsection R162-2c-204(3)(b), these proposed rule amendments will require an applicant for reinstatement of an expired mortgage loan originator license obtained after May 6, 2017, to complete the required CE course for new loan originators prior to reinstatement. This new requirement is consistent with the requirement already in place for mortgage loan originators renewing their license. These proposed rule amendments will have no fiscal impact on a licensee if the licensee completes the renewal process on time prior to expiration of the license.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** No fiscal impact to small businesses is expected because the first purpose of these amendments only impact the timing of when the CE course is taken, in order to ease the tracking burden to the Division. No new or additional CE course is required. No fiscal impact is expected by reason of the second purpose of these amendments because a small business that timely renews its license will not be required to take the CE course as a prerequisite to restatement. It is not possible to determine how many mortgage loan originators will let their licenses lapse. Compliant licensees will incur no additional expense.

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

COMMERCE  
REAL ESTATE  
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:**

◆ Justin Barney by phone at 801-530-6603, or by Internet E-mail at [justinbarney@utah.gov](mailto:justinbarney@utah.gov)

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/15/2019**

THIS RULE MAY BECOME EFFECTIVE ON: 10/22/2019

AUTHORIZED BY: Jonathan Stewart, 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
<b>Total Fiscal Costs:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
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
<b>Total Fiscal Benefits:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

\*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**

For the reasons that no fiscal impact is occasioned by small businesses, the Division estimates that non-small businesses will likewise not experience any fiscal impact.

Francine A. Giani, Executive Director of the Commerce Department has reviewed and approved this fiscal analysis.

**R162. Commerce, Real Estate.**

**R162-2c. Utah Residential Mortgage Practices and Licensing Rules.**

**R162-2c-204. License Renewal, Reinstatement, and Reapplication.**

(1) Deadlines.

(a) License renewal.

(i) To renew on time, a person who holds an active license as of October 31 shall renew by December 31 of the same calendar year.

(ii)(A) A person who obtains a license on or after November 1 shall renew by December 31 of the following calendar year.

(B) A person who is not required to renew in the first year of licensure pursuant to this Subsection (1)(a)(ii)(A) shall nevertheless complete, prior to December 31 of the first year of licensure, continuing education as required for renewal pursuant to Subsection R162-2c-204(3)(a) if the individual did not complete the mortgage loan originator national pre-licensing education during the calendar year.

(b) Reinstatement. The deadline to reinstate a license that expires on December 31 is February 28 of the year following the date of expiration.

(c) After the reinstatement deadline passes, a person shall reapply for licensure pursuant to Subsection R162-2c-204(3)(c).

(2) Qualification for renewal.

(a) Character.

(i) Individuals applying to renew or reinstate a license shall evidence that they maintain good moral character, honesty, integrity, and truthfulness as required for initial licensure.

(ii)(A) An individual applying for a renewed license may not have:

(I) a felony that resulted in a conviction or plea agreement during the renewal period; or

(II) a finding of fraud, misrepresentation, or deceit entered against the applicant by a court of competent jurisdiction or a government agency and occurring within the renewal period.

(B) A licensee shall submit a fingerprint background report in order to renew a license every fifth year following the renewal period beginning November 1, 2015.

(iii) The division may deny an individual applicant a renewed license upon evidence, as outlined in Subsection R162-2c-202(1)(b), of circumstances that reflect negatively on the applicant's character, honesty, integrity, or truthfulness and that:

(A) occurred during the renewal period; or

(B) were not disclosed and considered in a previous application or renewal.

(iv) The division may deny an entity applicant a renewed license upon evidence that a control person fails to meet the standards for character, honesty, integrity, and truthfulness required of individual applicants.

(b) Competency.

(i) Individual applicants and control persons shall evidence that they maintain the competency required for initial licensure.

(ii) The division may deny an individual applicant a renewed license upon evidence, as outlined in Subsection R162-2c-202(2), of circumstances that reflect negatively on the applicant's competency and that:

(A) occurred during the renewal period; or

(B) were not disclosed and considered in a previous application or renewal.

(iii) The division may deny an entity applicant a renewed license upon evidence that a control person fails to meet the standard for competency required of individual applicants.

(c) Financial responsibility. A licensee shall submit a credit report in order to renew a license every fifth year following the renewal period beginning November 1, 2015.

(3) Education requirements for renewal, reinstatement, and reapplication.

(a) License renewal.

(i) Except as provided in this Subsection (3)(a)(ii), an individual who holds an active license as of January 1 of the calendar year shall complete, within the calendar year in which the individual's license is scheduled to expire, the following courses, none of which may be duplicative of courses taken in the same or preceding renewal period:

(A) a division-approved course on Utah law, completed annually; and

(B) eight hours of continuing education approved through the nationwide database, as follows:

(I) three hours federal laws and regulations;

(II) two hours ethics (fraud, consumer protection, fair lending issues);

(III) two hours training related to lending standards for non-traditional mortgage products; and

(IV) one hour undefined instruction on mortgage origination.

(C) In addition to other required continuing education, a mortgage loan originator licensed with the State of Utah on or after May 8, 2017, shall, beginning January 1, 2020, complete a division-approved continuing education course for new loan originators prior to their first renewal. [~~renewing at the end of the first full calendar year of licensure.~~]

(ii) An individual who completes the mortgage loan originator nationwide pre-licensing education between January 1 and December 31 in their initial license renewal for the renewal period ending December 31 is exempt from the nationwide database continuing education requirements and the division-approved course on Utah law. [~~An individual who completes the mortgage loan originator national pre-licensing education between January 1 and December 31 of the calendar year is exempt from continuing education, including the division-approved courses for new loan originators and on Utah law specified in Subsections (3)(a)(i)(A) and (3)(a)(i)(C), for the renewal period ending December 31 of the same calendar year.~~]

(b) Reinstatement. To reinstate an expired mortgage loan originator or lending manager license, an individual shall, by February 28 of the calendar year following the date on which the license expired, complete:

(i) the division-approved course on Utah law specified in Subsection (3)(a)(i)(A); [~~and~~]

(ii) eight hours of continuing education:

(A) in topics listed in this Subsection (3)(a)(i)(B); and

(B)(I) approved by the nationwide database as "continuing education" if completed prior to the date of expiration; or

(II) approved by the nationwide database as "late continuing education" if completed between the date of expiration and the deadline for reinstatement; and[-]

(iii) if the new mortgage loan originator continuing education course was required for renewal prior to the expiration of their license, in addition to other required continuing education, a mortgage loan originator licensed with the State of Utah shall complete the division-approved continuing education course for new loan originators prior to reinstatement.

(c) Reapplication.

(i) To reapply for licensure after the reinstatement deadline passes and by or before December 31 of the calendar year following the date on which the license expired, an individual shall complete the division-approved course on Utah law and continuing education requirement outlined in this Subsection (3)(b).

(ii) To reapply for licensure after the deadline described in this Subsection (3)(c)(i) passes, an individual shall:

(A) complete eight hours of continuing education:

(I) in topics listed in this Subsection (3)(a)(i); and

(II) approved by the nationwide database as "late continuing education"; and

(B) within the 12-month period preceding the date of reapplication, take and pass:

(I) the 15-hour Utah-specific mortgage loan originator pre-licensing education, if the terminated license was a mortgage loan originator license; or

(II) the 40-hour Utah-specific lending manager pre-licensing education and associated examination, if the terminated license was a lending manager license; and

(C) complete the division-approved course on Utah law specified in Subsection (3)(a)(i)(A).

(4) Renewal, reinstatement, and reapplication procedures.

(a) An individual licensee shall:

(i) evidence having completed education as required by Subsection R162-2c-204(3);

(ii) submit to the division the jurisdiction-specific documents and information required by the nationwide database; and

(iii) submit through the nationwide database:

(A) a request for renewal, if renewing or reinstating a license; or

(B) a request for a new license, if reapplying; and

(iv) pay all fees as required by the division and by the nationwide database, including all applicable late fees.

(b) An entity licensee shall:

(i) submit through the nationwide database a request for renewal;

(ii) submit to the division the jurisdiction-specific documents and information required by the nationwide database;

(iii) renew the registration of any branch office or other trade name registered under the entity license; and

(iv) pay through the nationwide database all fees, including all applicable late fees, required by the division and by the nationwide database.

**KEY: residential mortgage, loan origination, licensing, enforcement**

**Date of Enactment or Last Substantive Amendment: [July 13, 2018]2019**

**Notice of Continuation: March 31, 2015**

**Authorizing, and Implemented or Interpreted Law: 61-2c-103(3); 61-2c-402(4)(a)**



**Commerce, Real Estate**  
**R162-2g**  
**Real Estate Appraiser Licensing and**  
**Certification Administrative Rules**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 44021

FILED: 08/28/2019

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of these proposed rule amendments is to provide an exemption for an appraiser who performs an evaluation. When performing an evaluation, the appraiser would be exempt from complying with Standards 1 through 3 of the Uniform Standards of Professional Appraisal Practice (USPAP). This exemption is authorized by S.B. 140 adopted earlier this year in the 2019 General Session, see Subsection 61-2g-205(5)(c). A secondary purpose of these proposed rule amendments is to clarify the requirement for appraiser schools and continuing education providers to upload student information after the student has completed a course. The proposal was initiated by the Division of Real Estate (Division) following the passage of S.B. 140 (2019).

**SUMMARY OF THE RULE OR CHANGE:** In Section R162-2g-502a, an appraiser who performs an evaluation is exempt from complying with Standards 1 through 3 of the USPAP. Section R162-2g-502a also clarifies the requirement for appraiser schools and continuing education providers to upload student information after the student has completed a course. In Section R162-2g-304d, the Real Estate Appraiser Licensing and Certification Board may not award experience hours to an appraiser for the performance of an evaluation which does not comply with USPAP.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 61-2g-201 and Section 61-2g-205 and Section 61-2g-311 and Section 61-2g-313 and Section 61-2g-314

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** The Division has the staff and budget in place to administer these proposed amendments. After conducting a thorough analysis, it was determined that these proposed rule amendments will not result in a fiscal impact affecting those resources or result in any additional cost or savings to the state budget.

◆ **LOCAL GOVERNMENTS:** Local governments are not required to comply with or enforce the Real Estate Appraiser Licensing and Certification administrative rules. After conducting a thorough analysis, it was determined that these proposed rule amendments will not result in a fiscal impact on local governments.

◆ **SMALL BUSINESSES:** These proposed amendments do not create new obligations for small businesses nor does it increase the cost associated with any existing obligation. After conducting a thorough analysis, it was determined that these proposed rule amendments will not result in a fiscal impact to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** These proposed amendments do not create new obligations for persons other than small businesses, businesses, or local government entities nor do they increase the cost associated with any existing obligation. After conducting a thorough analysis, it was determined that these proposed rule amendments will not result in a fiscal impact to persons other than small businesses, businesses, or local government entities.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** These proposed rule amendments do not create new obligations for affected persons subject to the administrative rules nor do they increase the cost associated with any existing obligation. After conducting a thorough analysis, it was determined that these proposed rule amendments will not result in a fiscal impact to affected persons.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** The Division estimates that no non-small businesses will be impacted by these proposed rule amendments.

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

COMMERCE  
 REAL ESTATE  
 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:**

◆ Justin Barney by phone at 801-530-6603, or by Internet E-mail at [justinbarney@utah.gov](mailto:justinbarney@utah.gov)

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/15/2019**

**THIS RULE MAY BECOME EFFECTIVE ON: 10/22/2019**

**AUTHORIZED BY: Jonathan Stewart, 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
<b>Total Fiscal Costs:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
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
<b>Total Fiscal Benefits:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits:</b>			
	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

\*This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts for State Government, Local Government, Small Businesses and Other Persons are described in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.

**Appendix 2: Regulatory Impact to Non-Small Businesses**

The Division estimates that no non-small businesses will be impacted by these proposed rule amendments. After conducting a thorough analysis, it was determined that these proposed rule amendments will not result in a fiscal impact to persons other than small businesses, businesses, or local government entities.

Francine A. Giani, Executive Director of the Commerce Department has reviewed and approved this fiscal analysis.

**R162. Commerce, Real Estate.**

**R162-2g. Real Estate Appraiser Licensing and Certification Administrative Rules.**

**R162-2g-304d. Experience Hours.**

(1)(a) Except as provided in this Subsection (1)(b), appraisal experience shall be measured in hours according to the appraisal experience hours schedules found in Appendices 1 through 3.

(b)(i) An applicant who has experience in categories other than those shown on the appraisal experience hours schedules, or who believes the schedules do not adequately reflect the applicant's experience or the complexity or time spent on an appraisal, may petition the board on an individual basis for [evaluation and] approval

of the experience as being substantially equivalent to that required for licensure or certification.

(ii) Upon a finding that an applicant's experience is substantially equivalent to that required for licensure or certification, the board may award the applicant an appropriate number of hours for the alternate experience.

(2) General restrictions.

(a) An applicant may not accrue more than 2,000 experience hours in any 12-month period.

(b) The board may not award credit for:

(i) appraisal experience earned more than five years prior to the date of application;

(ii) appraisals that were performed in violation of:

(A) Utah law;

(B) the law of another jurisdiction; or

(C) the administrative rules adopted by the division and the board;

(iii) appraisals that fail to comply with USPAP;

(iv) the performance of an evaluation as defined in the Real Estate Appraiser and Certification Act which does not comply with USPAP:

(v) [(+)] appraisals of the value of a business as distinguished from the appraisal of commercial real estate;

(vi) [(+)] personal property appraisals; or

(vii) [(+)] an appraisal that fails to clearly and conspicuously disclose the contribution made by the applicant in completing the assignment.

(c) At least 50% of the appraisals submitted for experience credit shall be appraisals of properties located in Utah.

(d) With regard to experience hours claimed from the schedules found in Appendices 1 and 2, no more than 25% of the total experience required for licensure or certification may be earned from appraisals where the interior of the subject property is not inspected.

(e) A maximum of 50% of required experience hours may be earned from appraisal of vacant land.

(f) Experience gained for work without a traditional client may qualify for experience hours but cannot exceed 50% of the total experience requirement. Work without a traditional client includes the following:

(i) a client hiring an appraiser for a business purpose; or

(ii) a practicum course so long as the course is approved by the AQB Course Approval Program and, if the course is taught in Utah either live or by distance education, also approved by the division.

(g) An applicant may receive credit only for experience hours actually worked by the applicant and as limited by the maximum experience hours described in these rules.

(3) Specific restrictions applicable to trainees applying for licensure.

(a)(i) A registered trainee may not claim experience hours for any appraisal work performed after January 1, 2015 unless the trainee and the trainee's supervisor(s) have completed the division-approved Supervisory Appraiser and Appraiser Trainee Course prior to performing the work to be claimed.

(ii) A trainee and the trainee's supervisor who signs the experience log shall document on the log the specific duties that the trainee performs for each appraisal.

(b) For each duty performed, the trainee shall be awarded a percentage of the total experience hours that may be awarded for the property type being appraised:

(i) pursuant to the appraisal experience hour schedules found in Appendices 1 through 3; and

(ii) with the following limitations for Appendix 2:

(A) participation in highest and best use analysis: 10% of total hours;

(B) participation in neighborhood description and analysis: 10% of total hours;

(C) property inspection: 20% of total hours, pursuant to this Subsection (3)(c);

(D) participation in land value estimate: 20% of total hours;

(E) participation in sales comparison property selection and analysis: 30% of total hours;

(F) participation in cost analysis: 20% of total hours;

(G) participation in income analysis: 30% of total hours;

(H) participation in the final reconciliation of value: 10% of total hours; and

(I) participation in report preparation: 20% of total hours.

(J) The applicant may claim up to 100% of the total hours allowed for the tasks listed in this Subsection(A) through (I).

(c) In order for a trainee to claim credit for an inspection pursuant to this Subsection (3)(b)(ii)(C):

(i) as to the first 35 residential appraisals or first 20 non-residential appraisals completed, as applicable to the license or certification being sought, the inspection must include:

(A) exterior measurement of the relatively permanent structures located on the subject property that are designed or intended for support, enclosure, shelter, or protection of persons, animals, or property having a permanent roof supported by columns or walls; and

(B) inspection of the exterior of a property that is used as a comparable in an appraisal; and

(ii) as to appraisals after the first 35 residential appraisals or first 20 non-residential appraisals completed, as applicable to the license or certification being sought, the inspection must satisfy all scope of work requirements.

(d) No more than one-third of the experience hours submitted toward licensure may come from any one of the categories identified in this Subsection (3)(b)(ii).

(4) Specific restrictions applicable to applicants for certification.

(a) An individual who obtained a license from the division through reciprocity shall provide to the division all records necessary for the division to verify that the individual satisfies the experience requirements outlined in these rules.

(b) The board may not award credit:

(i) for any appraisal where the applicant cannot prove more than 50% participation in the:

(A) data collection;

(B) verification of data;

(C) reconciliation;

(D) analysis;

(E) identification of property and property interests;

(F) compliance with USPAP standards; and

(G) preparation and development of the appraisal report; or

(ii) to more than one licensed appraiser per completed appraisal, except as provided in this Subsection (5).

(c)(i) An individual applying for certification as a state-certified residential appraiser shall document at least 75% of the hours submitted from:

(A) the residential experience hours schedule found in Appendix 1; or

(B) the residential portion of the mass appraisal hours schedule found in Appendix 3.

(ii) No more than 25% of the total hours submitted may be from:

(A) the general experience hours schedule found in Appendix 2; or

(B) properties other than 1- to 4-unit residential properties identified in the mass appraisal hours schedule found in Appendix 3.

(d) An individual applying for certification as a state-certified general appraiser shall document at least 1,500 experience hours as having been earned from:

(i) the general experience hours schedule found in Appendix 2; or

(ii) properties other than 1- to 4-unit residential properties identified in the mass appraisal hours schedule found in Appendix 3.

(5) Specific restrictions applicable to mass appraisers.

(a) Single-property appraisals performed under USPAP Standards 1 and 2 by mass appraisers shall be awarded full credit pursuant to Appendices 1 and 2.

(b) Review and supervision of appraisals by mass appraisers shall be awarded credit pursuant to this Subsection (6)(b)-(c).

(c)(i) Mass appraisers and mass appraiser trainees who perform 60% or more of the appraisal work shall be awarded full credit pursuant to Appendix 3.

(ii) Mass appraisers and mass appraiser trainees who perform between 25% and 59% of the appraisal work shall be awarded 50% credit pursuant to Appendix 3.

(iii) Mass appraisers and mass appraisal trainees who perform less than 25% of the appraisal work shall be awarded no credit for the appraisal assignment.

(d) In addition to submitting proof of required experience and samples, randomly selected from the experience log, of work conforming to USPAP Standards 5 and 6:

(i) a state-licensed appraiser applicant whose experience is earned primarily through mass appraisal shall submit proof of having performed at least five appraisals conforming to USPAP Standards 1 and 2 equaling at least 65 experience hours;

(ii) a state-certified residential appraiser applicant whose experience is earned primarily through mass appraisal shall submit proof of having performed at least eight residential appraisals equaling at least 110 experience hours:

(A) conforming to USPAP Standards 1 and 2; and

(B) including at least two of each of the following property types:

(I) vacant residential or agricultural land;

(II) two- to four-unit dwelling;

(III) single-family unit; and

(IV) complex one to four unit residential dwellings; and

(iii) a state-certified general appraiser applicant whose experience is earned primarily through mass appraisal shall submit proof of having performed at least eight appraisals from Appendix 2 conforming to USPAP Standards 1 and 2 equaling at least 300 experience hours.

(e) No more than 200 hours for qualification for a state-licensed credential, 500 hours for a state-certified residential credential, or 1,800 hours for a certified general credential may be earned from any combination of appraisal assignments related to:

- (i) property improvement inspection;
- (ii) land segregation (division);
- (iii) CAMA data entry; and
- (iv) sale ratio study.

(f)(i) Mass appraisal of property with a personal property component of less than 50% of value shall be awarded full credit pursuant to Appendix 3 for the type of property appraised.

(ii) Mass appraisal of property with a personal property component of 50% to 75% of value shall be awarded 50% credit pursuant to Appendix 3 for the type of property appraised.

(iii) Mass appraisal of property with a personal property component greater than 75%, but less than 100%, shall be awarded 25% credit pursuant to Appendix 3 for the type of property appraised.

(iv) Mass appraisal of property with no real property component shall be awarded no credit.

(g) The appraisals submitted for review pursuant to this Subsection (5)(d) shall be selected from the applicant's most recent work.

(6) Special circumstances - condemnation appraisals, review appraisals, supervision of appraisers, other real estate experience, and government agency experience.

(a) Condemnation appraisals. A condemnation appraisal shall be awarded an additional 50% of the hours normally awarded for the appraisal if the condemnation appraisal includes a before-and-after appraisal because of a partial taking of the property.

(b) Review appraisals.

(i) Review appraisals shall be awarded experience credit when the appraiser performs technical reviews of appraisals prepared by employees, associates, or others, provided the appraiser complies with USPAP Standards 3 and 4 when the appraiser is required to comply with the rule.

(ii) Except as provided in this Subsection (6)(e)(i), the following credit shall be awarded for review of appraisals:

(A) desk review: 30% of the hours that would be awarded if a separate written review appraisal report were prepared, up to a maximum of 500 hours; and

(B) field review: 50% of the hours that would be awarded if a separate written review appraisal report were prepared, up to a maximum of 500 hours.

(c) Supervision of appraisers. Except as provided in this Subsection (6)(e)(i), supervision of appraisers shall be awarded 20% of the hours that would be awarded to the appraisal, up to a maximum of 500 hours.

(d) Other real estate experience acceptable for certification.

(i) Provided that an applicant demonstrates to the satisfaction of the board that the applicant has the ability to arrive at a fair market value of property and to properly document value conclusions, the following activities may be used to satisfy up to 50% of the experience required for certification:

- (A) preliminary valuation estimates;
- (B) range of value estimates or similar studies;
- (C) other real estate-related experience gained by:
  - (I) bankers;
  - (II) builders;
  - (III) city planners and managers; or
  - (IV) other individuals.

(ii) A comparative market analysis by an individual licensed under Section 61-2f et seq. may be granted up to 100% experience credit toward certification if:

(A) the analysis conforms with USPAP Standards Rules 1 and 2; and

(B) the individual demonstrates to the board that the individual uses similar techniques as appraisers to value properties and effectively utilize the appraisal process.

(iii) Except as provided in this Subsection (6)(e)(i), no more than 50% of the total experience required for certification may be earned through any combination of experience described in this Subsection (6)(b)-(d).

(e) Government agency experience.

(i) An individual who obtains experience hours in conjunction with investigation by a government agency is not subject to the hour limitations of this Subsection (6).

(ii) In addition to submitting proof of required experience, an applicant whose experience is earned primarily in conjunction with investigations by government agencies and through review of appraisals, with no opinion of value developed, shall submit proof of having complied with USPAP Standards 1 and 2 in performing appraisals as follows:

(A) if applying for state-licensed appraiser with experience reviewing residential appraisals, five appraisals of one-unit dwellings;

(B) if applying for state-certified residential appraiser with experience reviewing residential appraisals, eight appraisals of one-unit dwellings; and

(C) if applying for state-certified general appraiser with experience reviewing appraisals of property types listed in Appendix 2, at least eight appraisals of property types identified in Appendix 2.

(7) The board, at its discretion, may request the division to verify the claimed experience by any of the following methods:

(a) verification with the clients;

(b) submission of selected reports to the board; and

(c) field inspection of reports identified by the applicant at the applicant's office during normal business hours.

#### **R162-2g-502a. Standards of Conduct and Practice.**

(1) Affirmative duties in general. A person registered, licensed, or certified by the division shall:

(a) if employing an unlicensed assistant who is not registered as a trainee pursuant to Subsection R162-2g-302:

(i) actively supervise the unlicensed assistant; and

(ii) ensure that the assistant performs only clerical duties, including:

(A) typing research notes or reports completed by a trainee or an appraiser;

(B) taking photographs of properties; and

(C) obtaining copies of public records;

(b) ~~(i)~~ except as provided in ~~this~~ Subsection (2); ~~(a)~~;

~~(i)~~ comply with the current edition of USPAP; and

~~(ii)~~ observe the advisory opinions of USPAP;

(c) in order to authorize another individual to sign an appraisal report on behalf of the individual who completes the report:

(i) grant authority to the signer in writing;

(ii) limit the signing authority to a specific property address;

(iii) explicitly disclose within the appraisal report that the signer is authorized by the appraiser to sign the report on the appraiser's behalf;

(iv) attach a copy of the written permission required pursuant to this Subsection (1)(c)(i) to the report; and

(v) ensure that the signer signs the appraiser's name, followed by the word "by," and then followed by the signer's own name;

(d) if using a digital signature in place of a handwritten signature, ensure that:

(i) the software program that generates the digital signature has a security feature; and

(ii) no one other than the appraiser has control of the signature;

(e) retain a photocopy or other exact copy of each report as it is provided to the client, including the appraiser's signature;

(f) analyze and report the sales and listing history of the subject property for the three years preceding the appraisal if such information is available to the appraiser from a multiple listing service, listing agent(s), property owner, or other verifiable source(s);

(g)(i) include in each appraisal report a statement indicating whether or not the subject property was inspected as part of the appraisal process; and

(ii) if any inspections were done, include the following information concerning each inspection:

(A) the names of all appraisers and trainees who participated in the inspection;

(B) whether the inspection was an exterior inspection only or both an exterior and an interior inspection; and

(C) the date that the inspection was performed; and

(h) unless Subsection (2)(b) applies, respond within ten business days to division notification:

(i) of a complaint against the individual; or

(ii) that information is needed from the individual.

(2) Exceptions.

(a) An individual is exempt from complying with all provisions of USPAP when acting in an official capacity as:

(i) a division staff member or employee;

(ii) a member of the experience review committee as appointed and approved by the board;

(iii) a member of the technical review panel as appointed and approved by the board;

(iv) a hearing officer;

(v) a member of a county board of equalization;

(vi) an administrative law judge;

(vii) a member of the Utah State Tax Commission; or

(viii) a member of the board.

(b) If a deadline for response under this Subsection (1)(h) falls on a day when the division is closed, the deadline shall be extended to the next business day.

(c) When performing an evaluation as defined in the Real Estate Appraiser and Certification Act, an appraiser trainee or a licensed or certified appraiser is exempt from complying with Standards 1 through 3 of USPAP.

(3) A trainee shall:

(a) using forms provided by the division, maintain a separate log of experience hours for each supervising appraiser with whom the trainee works; and

(b) include in each log the following information for each appraisal:

(i) file number;

(ii) report date;

(iii) subject address;

(iv) client name;

(v) type of property;

(vi) report form number or type;

(vii) number of work hours;

(viii) description of work performed by the trainee; and

(ix) scope of the review and supervision of the supervising appraiser.

(4)(a) A supervisory appraiser shall delegate to a trainee only such duties as the trainee is authorized to perform under Subsection R162-2g-311(1).

(b) A supervisory appraiser shall directly train and supervise the trainee in the performance of assigned duties by:

(i) critically observing and directing all aspects of the appraisal process;

(ii) accepting full responsibility for the appraisal and the contents of the appraisal report by signing and certifying the appraisal complies with USPAP; and

(iii) reviewing and signing the trainee appraisal reports.

(c) A supervisory appraiser shall personally inspect:

(i) each property that is appraised with a trainee until the supervisory appraiser determines the trainee is competent to inspect the property in accordance with the competency rule of USPAP for the property type, and the trainee has performed at least:

(A) 35 residential inspections as provided in Subsection R162-2g-311(1)(c)(i); and

(B) 20 non-residential inspections as provided in Subsection R162-2g-311(1)(b)(ii); and

(ii) any property for which the appraisal report scope of work or certification requires appraiser inspection.

(d) A supervisory appraiser shall be state-certified and in good standing with the division for a period of at least three years prior to being eligible to become a supervisory appraiser.

(e) An appraiser may not act as a supervisory appraiser if the appraiser has been subject to a disciplinary action in any jurisdiction:

(i) within the three year period preceding the date on which the appraiser proposes to act as a supervisor; and

(ii) where the supervisory appraiser's legal eligibility to engage in the appraisal practice was impacted or impaired.

(f) A supervisory appraiser subject to a disciplinary action will be considered to be in good standing three years after the successful completion or termination of the sanction imposed against the appraiser.

(g) A supervisory appraiser shall comply with the competency rule of USPAP for the property type and geographic location for which the trainee appraiser is being supervised.

(h) Although a trainee is permitted to have more than one supervisory appraiser, a supervisory appraiser may not supervise more than three trainees at one time, unless a division program provides for progress monitoring, supervisory certified appraiser qualifications, and supervision and oversight requirements for supervisory appraisers.

(i) An appraisal experience log shall be maintained jointly by the supervisory appraiser and the trainee. It is the responsibility of both the supervisory appraiser and the trainee to ensure the experience log is accurate, current, and complies with division requirements.

(5) A school or continuing education provider shall:

(a) maintain a record of each student's attendance for a minimum of five years after the student enrolls;

(b) display the certification number of all continuing education courses in advertising and marketing;

(c) upload course completion information as to each student who provides the school or continuing education provider the student's name according to division records and the student's license number: [as to each student who provides the school with an accurate name or license number, bank course completion information:]

- (i) within 10 days after the end of a course offering; and
- (ii) to the database specified by the division;
- (d) upon request of the division, substantiate any claim made in advertising or marketing;
- (e) within 15 calendar days of any material change in the information outlined in R162-2g-307b(1), provide to the division written notice of the change;
- (f) with regard to the criminal history disclosure required under R162-2g-307b(2)(c)(iii):
  - (i) obtain each student's signature before allowing the student to participate in course instruction;
  - (ii) retain each signed criminal history disclosure for a minimum of two years; and
  - (iii) make any signed criminal history disclosure available to the division upon request;
  - (g) maintain a high quality of instruction;
  - (h) adhere to all state laws and administrative rules regarding school and instructor certification;
  - (i) provide the instructor(s) for each course with the required course content outline;
  - (j) require instructors to adhere to the approved course content;
  - (k) comply with a division request for information within 10 business days of the date of the request; and
  - (l) verify that the material is current in any course taught on:
    - (i) Utah statutes;
    - (ii) Utah administrative rules;
    - (iii) Federal laws; and
    - (iv) Federal regulations.
  - (6) An instructor shall adhere to the approved outline for any course taught.

**KEY: real estate appraisals, school certification, instructor certification, education options**

**Date of Enactment or Last Substantive Amendment: [September 4, 2018]2019**

**Notice of Continuation: August 18, 2016**

**Authorizing, and Implemented or Interpreted Law: 61-2g-201(2)(h); 61-2g-202(1); 61-2g-205(5)(c); 61-2g-307(3); 61-2g-401(5)**

## Commerce, Real Estate R162-57a-9

### Renewal and Reinstatement of Project Registration

#### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 44013

FILED: 08/22/2019

#### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this proposed rule amendment is to extend the window of opportunity to reinstate an expired project registration from 30 calendar days to 90 calendar days.

**SUMMARY OF THE RULE OR CHANGE:** This proposed rule amendment would extend the window of opportunity to reinstate an expired project registration from 30 calendar days to 90 calendar days.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 57-19-3

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** The Division of Real Estate (Division) has the staff and budget in place to administer this proposed amendment. After conducting a thorough analysis, it was determined that this proposed rule amendment will not result in a fiscal impact affecting those resources, or result in any additional cost or savings to the state budget.

◆ **LOCAL GOVERNMENTS:** Local governments are not required to comply with or enforce the Timeshare and Camp Resort rule. After conducting a thorough analysis, it was determined that this proposed rule amendment will not result in a fiscal impact to local governments.

◆ **SMALL BUSINESSES:** This proposed amendment does not create new obligations for small businesses nor does it increase the cost associated with any existing obligation. After conducting a thorough analysis, it was determined that this proposed rule amendment will not result in a fiscal impact to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This proposed amendment does not create new obligations for persons other than small businesses, businesses, or local government entities nor does it increase the cost associated with any existing obligation. After conducting a thorough analysis, it was determined that this proposed rule amendment will not result in a fiscal impact to persons other than small businesses, businesses, or local government entities.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** This proposed rule amendment does not create new obligations for affected persons subject to the administrative rules nor does it increase the cost associated with any existing obligation. After conducting a thorough analysis, it was determined that this proposed rule amendment will not result in a fiscal impact to affected persons.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** For the same reasons that no fiscal impact is occasioned by small businesses, non-small business will likewise not experience any fiscal impact.

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

COMMERCE  
 REAL ESTATE  
 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:  
 ♦ Justin Barney by phone at 801-530-6603, or by Internet E-mail at justinbarney@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/15/2019

THIS RULE MAY BECOME EFFECTIVE ON: 10/22/2019

AUTHORIZED BY: Jonathan Stewart, 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 in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.

**Appendix 2: Regulatory Impact to Non-Small Businesses**

The Division estimates that no non-small businesses will be impacted by this proposed rule amendment. After conducting a thorough analysis, it was determined that this proposed rule amendment will not result in a fiscal impact to persons other than small businesses, businesses, or local government entities.

Francine A. Giani, Executive Director of the Commerce Department 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
<b>Total Fiscal Costs:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
Fiscal Benefits	FY 2020	FY 2021	FY 2022
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**R162. Commerce, Real Estate.**

**R162-57a. Timeshare and Camp Resort Rules.**

**R162-57a-9. Renewal and Reinstatement of Project Registration.**

(1) Project registration renewal. To renew a registration of a project, a person shall submit to the division, no later than the expiration date set forth on the order of registration:

- (a) an annual report;
- (b)(i) an updated property report, with changes underlined in red; or
- (ii) a statement that no changes have occurred in the property report that is on record with the division;
- (c) a description of any change in the information provided in the application for registration;
- (d) documentation of any judicial proceeding or regulatory investigation instituted by complaint of a purchaser against the developer and arising out of or relating to:
  - (i) the advertising or sale of an interest;
  - (ii) disclosures required under Section 57-19-11;
  - (iii) rescission rights;
  - (iv) fraud; or
  - (v) misrepresentation of interests represented by the registration; and

(e) a nonrefundable renewal fee.

(2) Reinstatement.

(a) To reinstate an expired project registration, a person shall submit to the division, no later than 90~~30~~ calendar days following the expiration of the registration:

- (i) all materials required for a timely renewal; and
- (ii) a nonrefundable late fee.

(b) A registration that is expired more than 90~~30~~ days may not be renewed or reinstated. To obtain a registration, a person shall apply as a new applicant.

**KEY: timeshare, camp resort, registration, professional conduct**

**Date of Enactment or Last Substantive Amendment: [December 9, 2015]2019**

**Notice of Continuation: April 21, 2015**

**Authorizing, and Implemented or Interpreted Law: 57-19-3; 57-19-5 through 57-19-26**

# Environmental Quality, Drinking Water **R309-400** Water System Rating Criteria

**NOTICE OF PROPOSED RULE**  
(Repeal and Reenact)  
DAR FILE NO.: 44020  
FILED: 08/28/2019

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The reason for these rule changes is to emphasize the importance of significant deficiencies, align better with federal regulations, clarify director discretion to escalate risks to public health, and ensure that risk to public health is the driving force behind this rule.

**SUMMARY OF THE RULE OR CHANGE:** These rule changes standardize all violation and deficiency points by threat to public health, clarify this rule with the Improvement Priority System tables for violations and deficiencies, and reclassify deficiency types to align with federal regulations, enforcement, and threat to public health.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 19-4-104

**MATERIALS INCORPORATED BY REFERENCE:**  
♦ Adds Improvement Priority System Program, published by Division of Drinking Water, 08/27/2019

**ANTICIPATED COST OR SAVINGS TO:**  
♦ **THE STATE BUDGET:** Aggregate costs for state budget are not expected to change because no additional requirements are being added to this rule.  
♦ **LOCAL GOVERNMENTS:** Aggregate costs for local governments are not expected to change because no additional requirements are being added to this rule.  
♦ **SMALL BUSINESSES:** Aggregate costs for small businesses are not expected to change because no additional requirements are being added to this rule.  
♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Aggregate costs for persons other than small businesses, businesses, or local government entities are not expected to change because no additional requirements are being added to this rule.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Compliance costs for affected persons, water systems, are not expected to change because no additional requirements are being added to this rule.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** This rule change is not expected to have any fiscal impact on

businesses. This rule enforces drinking water regulations and does not add any additional requirements.

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

**DIRECT QUESTIONS REGARDING THIS RULE TO:**  
♦ Jennifer Yee by phone at 801-536-4216, by FAX at 801-536-4211, or by Internet E-mail at [jyee@utah.gov](mailto:jyee@utah.gov)  
♦ Rachael Cassady by phone at 801-536-4467, by FAX at 801-536-4211, or by Internet E-mail at [rcassady@utah.gov](mailto:rcassady@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/15/2019

THIS RULE MAY BECOME EFFECTIVE ON: 01/01/2020

AUTHORIZED BY: Scott Baird, Interim 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
<b>Total Fiscal Costs:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
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
<b>Total Fiscal Benefits:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

\*This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts for State Government, Local Government, Small Businesses and Other Persons are described in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.

**Appendix 2: Regulatory Impact to Non-Small Businesses**

This rule change is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because this rule enforces drinking water regulations, it does not add any additional requirements to this rule.

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

**R309. Environmental Quality, Drinking Water.**

**[R309-400. Water System Rating Criteria.**

**R309-400-1. Authority.**

Under authority of Utah Code Annotated, Section 19-4-104, the Drinking Water Board adopts this rule in order to evaluate a public water system's standard of operation and service delivered in compliance with R309-100 through R309-705 hereinafter referred to as Rules.

**R309-400-2. Extent of Coverage.**

This rule shall apply to all public water systems as defined in R309-100.

**R309-400-3. Definitions.**

Definitions for certain terms used in this rule are given in R309-110 but may be further clarified herein:

**Corrective Action Plan**—an agreement between the Division of Drinking Water and a public drinking water system establishing conditions and timelines for addressing significant deficiencies or E. coli contamination of a drinking water source.

**Treatment Technique**—A required process intended to reduce the level of a contaminant in drinking water.

**Treatment Technique Violation**—failure to correct significant deficiencies, address E. coli positive source contamination or adhere to specific terms of a Corrective Action Plan.

**R309-400-4. Water System Ratings.**

(1) The Director shall assign a rating to each public water system in order to provide a concise indication of its condition and performance. This rating shall be assigned based on the evaluation of the operation and performance of the water system in accordance with the requirements of the Rules. Points shall be assessed to water systems for each violation of these requirements (R309-100 through R309-705) as the requirements apply to each individual water system. The number of points that shall be assessed is outlined in the following

sections of this rule. The number of points represents the threat to the quality of the water and thereby public health.

(2) Points are assessed in the following categories: Quality; Monitoring and Public Notification; Physical Deficiencies; Operator Certification; Cross Connection Control; Drinking Water Source Protection; Administrative Issues; and, Reporting and Record Maintenance.

(3) Based upon the accumulation of points, the public water system shall be assigned one of the following ratings:

(a) **Approved**—In order to qualify for an Approved rating, the public water system must maintain a point total less than the following:

(i) Community water system—150 points;

(ii) Non-Transient Non-Community water system—120 points; and

(iii) Non-Community water system—100 points.

(b) **Not Approved**—In order for a public water system to receive a Not Approved rating the accumulation of points for the water system must exceed the totals listed above.

(c) **Corrective Action**—In order to qualify for a Corrective Action rating the public water system must submit the following:

(i) A written agreement to the Director stating a willingness to comply with the requirements set forth in the Rules; and,

(ii) A compliance schedule and time table agreed upon by the Director outlining the necessary construction or changes to correct any physical deficiencies or monitoring failures; and,

(iii) Proof of the financial ability of the water system or that the financial arrangements are in place to correct the water system deficiencies.

(iv) The Corrective Action rating shall continue until the total project is completed or until a suitable construction inspection or sanitary survey is conducted to determine the effectiveness of the improvements or the accumulation of points drops below the threshold for a not approved rating whichever is later.

(4) The water system point accumulation shall be adjusted on a quarterly basis or as current information is available to the Director. The appropriate water system rating shall then be adjusted to reflect the current point total.

(5) The Director may at any time rate a water system Not Approved, if an immediate threat to public health exists. This rating shall remain in place until such time as the threat is alleviated and the cause is corrected.

(6) Any water system may appeal its assigned rating or assessed points as provided in R305-7.

**R309-400-5. Quality, Monitoring and Public Notification Violations.**

(1) **Total Coliform Rule**: All points assessed to public water systems via this subsection are based on violations of the quality standards in R309-200-5(6); or the monitoring requirements in R309-210-5; and the associated public notification requirements in R309-220. The bacteriological points assessed shall be updated on a monthly basis with the total number of points reflecting the most recent twelve month period or the most recent 4 quarters for those water systems that collect bacteriological samples quarterly, unless otherwise noted.

(a) For each major bacteriological routine monitoring violation, 35 points shall be assessed. For each failure to perform the associated public notification 5 points shall be assessed.

~~\_\_\_\_\_ (b) For each minor bacteriological routine monitoring violation, 10 points shall be assessed. For each failure to perform the associated public notification 2 points shall be assessed.~~

~~\_\_\_\_\_ (c) For each major bacteriological repeat monitoring violation, 40 points shall be assessed. For each failure to perform the associated public notification 5 points shall be assessed.~~

~~\_\_\_\_\_ (d) For each minor bacteriological repeat monitoring violation, 10 points shall be assessed. For each failure to perform the associated public notification 2 points shall be assessed.~~

~~\_\_\_\_\_ (e) For each additional monitoring violation (R309-210-5(2)(e)), 10 points shall be assessed. For each failure to perform the associated public notification 2 points shall be assessed.~~

~~\_\_\_\_\_ (f) For each non-acute bacteriological MCL violation (R309-200-5(6)(a)), 40 points shall be assessed. For each failure to perform the associated public notification 10 points shall be assessed.~~

~~\_\_\_\_\_ (g) For each acute bacteriological MCL violation (R309-200-5(6)(b)), 50 points shall be assessed. For each failure to perform the associated public notification 10 points shall be assessed.~~

~~\_\_\_\_\_ (2) Ground Water Rule: All points assessed to public water systems via this subsection are based on violations of the standards in R309-215-16. Points assessed for any significant deficiency shall be deleted as the deficiencies are corrected and are reported to the Director. The bacteriological points assessed shall be updated on a monthly basis with the total number of points reflecting the most recent 12-month period or the most recent four quarters for those water systems that collect bacteriological samples quarterly, unless otherwise noted.~~

~~\_\_\_\_\_ (a) For failure to collect triggered source samples in violation of R309-215-16(2)(a)(i)(A) and (a)(i)(B), 40 points shall be assessed. For each failure to perform the associated public notification, 2 points shall be assessed.~~

~~\_\_\_\_\_ (b) For failure to collect assessment source samples in violation of R309-215-16(2)(b)(i), 5 points shall be assessed. For each failure to perform the associated public notification, 2 points shall be assessed.~~

~~\_\_\_\_\_ (c) For failure to correct a significant deficiency in violation of R309-215-16(4)(a)(i) and (ii), R309-215-16(4)(e) or R309-215-16(4)(d), 35 points shall be assessed. For each failure to perform the associated public notification, 2 points shall be assessed.~~

~~\_\_\_\_\_ (d) For an Escherichia coli. in violation of R309-215-16(4)(b)(i) and (ii), 40 points shall be assessed. For each failure to perform the associated public notification, 2 points shall be assessed.~~

~~\_\_\_\_\_ (3) Chemical: All points assessed to public water systems via this subsection are based on violations of the quality standards in R309-200-5; or the monitoring requirements in R309-205, 210 and 215; and the associated public notification requirements in R309-220. The chemical assessments shall be updated on a quarterly basis with the total number of points reflecting the most recent compliance period unless otherwise specified. Points for any chemical MCL violation shall remain on record until the quality issue is resolved. Points for any monitoring violation shall be deleted as the required chemical samples are taken and the analytical results are reported to the Director.~~

~~\_\_\_\_\_ (a) Inorganic and Metal Contaminants:~~

~~\_\_\_\_\_ (i) For each major chemical monitoring violation for inorganic and metal contaminants, 20 points shall be assessed. For each failure to perform the associated public notification, 3 points shall be assessed.~~

~~\_\_\_\_\_ (ii) For each minor chemical monitoring violation for inorganic and metal contaminants, 10 points shall be assessed. For~~

~~each failure to perform the associated public notification, 1 point shall be assessed.~~

~~\_\_\_\_\_ (iii) For each MCL exceedance for inorganic and metal contaminants, 30 points shall be assessed. For each failure to perform the associated public notification, 5 points shall be assessed.~~

~~\_\_\_\_\_ (b) Sulfate (for non-community water systems only):~~

~~\_\_\_\_\_ (i) For each major chemical monitoring violation for sulfate, 20 points shall be assessed. For each failure to perform the associated public notification, 3 points shall be assessed.~~

~~\_\_\_\_\_ (ii) For each minor chemical monitoring violation for sulfate, 10 points shall be assessed. For each failure to perform the associated public notification, 1 point shall be assessed.~~

~~\_\_\_\_\_ (iii) For each MCL exceedance for sulfate, 30 points shall be assessed. For each failure to perform the associated public notification, 5 points shall be assessed.~~

~~\_\_\_\_\_ (c) Radiologic Contaminants:~~

~~\_\_\_\_\_ (i) For each major chemical monitoring violation for radiological contaminants, 20 points shall be assessed. For each failure to perform the associated public notification, 3 points shall be assessed.~~

~~\_\_\_\_\_ (ii) For each minor chemical monitoring violation for radiological contaminants, 10 points shall be assessed. For each failure to perform the associated public notification, 1 point shall be assessed.~~

~~\_\_\_\_\_ (iii) For each MCL exceedance for radiological contaminants, 30 points shall be assessed. For each failure to perform the associated public notification, 5 points shall be assessed.~~

~~\_\_\_\_\_ (d) Asbestos Contaminants:~~

~~\_\_\_\_\_ (i) For each major chemical monitoring violation for source water or distribution system asbestos, 20 points shall be assessed. For each failure to perform the associated public notification, 3 points shall be assessed.~~

~~\_\_\_\_\_ (ii) For each minor chemical monitoring violation for source water or distribution system asbestos, 10 points shall be assessed. For each failure to perform the associated public notification, 1 point shall be assessed.~~

~~\_\_\_\_\_ (iii) For each MCL exceedance for source water or distribution system asbestos, 30 points shall be assessed. For each failure to perform the associated public notification, 5 points shall be assessed.~~

~~\_\_\_\_\_ (e) Nitrate:~~

~~\_\_\_\_\_ (i) For each routine chemical monitoring violation for nitrate, 50 points shall be assessed. For each failure to perform the associated public notification, 5 points shall be assessed.~~

~~\_\_\_\_\_ (ii) For each MCL exceedance of nitrate, 60 points shall be assessed. For each failure to perform the associated public notification, 10 points shall be assessed.~~

~~\_\_\_\_\_ (f) Nitrite:~~

~~\_\_\_\_\_ (i) For each routine chemical monitoring violation for nitrite, 35 points shall be assessed. For each failure to perform the associated public notification, 5 points shall be assessed.~~

~~\_\_\_\_\_ (ii) For each MCL exceedance of nitrite, 50 points shall be assessed. For each failure to perform the associated public notification, 10 points shall be assessed.~~

~~\_\_\_\_\_ (g) Volatile Organic Chemicals:~~

~~\_\_\_\_\_ (i) For each major chemical monitoring violation for volatile organic chemical contaminants, 20 points shall be assessed. For each failure to perform the associated public notification, 3 points shall be assessed.~~

~~\_\_\_\_\_ (ii) For each minor chemical monitoring violation for volatile organic chemical contaminants, 10 points shall be assessed.~~

For each failure to perform the associated public notification, 1 point shall be assessed.

(iii) For each MCL exceedance for volatile organic chemical contaminants, 30 points shall be assessed. For each failure to perform the associated public notification, 5 points shall be assessed.

(h) Pesticides/PCBs/SOCs

(i) For each major chemical monitoring violation for pesticide/PCB/SOC contaminants, 20 points shall be assessed. For each failure to perform the associated public notification, 3 points shall be assessed.

(ii) For each minor chemical monitoring violation for pesticide/PCB/SOC contaminants, 10 points shall be assessed. For each failure to perform the associated public notification, 1 point shall be assessed.

(iii) For each MCL exceedance for pesticide/PCB/SOC contaminants, 30 points shall be assessed. For each failure to perform the associated public notification, 5 points shall be assessed.

(i) Disinfection Byproducts:

(i) Total Trihalomethanes:

(A) For each routine chemical monitoring violation for total trihalomethanes, 10 points shall be assessed. For each failure to perform the associated public notification, 1 point shall be assessed.

(B) For each MCL exceedance for total trihalomethanes, 30 points shall be assessed. For each failure to perform the associated public notification, 5 points shall be assessed.

(ii) Haloacetic Acids (HAA5):

(A) For each routine chemical monitoring violation for HAA5, 10 points shall be assessed. For each failure to perform the associated public notification, 1 point shall be assessed.

(B) For each MCL exceedance for HAA5, 30 points shall be assessed. For each failure to perform the associated public notification, 5 points shall be assessed.

(iii) Bromate:

(A) For each routine chemical monitoring violation for bromate, 10 points shall be assessed. For each failure to perform the associated public notification, 1 point shall be assessed.

(B) For each MCL exceedance for bromate, 30 points shall be assessed. For each failure to perform the associated public notification, 5 points shall be assessed.

(iv) Chlorite:

(A) For each routine chemical monitoring violation for chlorite, 10 points shall be assessed. For each failure to perform the associated public notification, 1 point shall be assessed.

(B) For each MCL exceedance for chlorite, 30 points shall be assessed. For each failure to perform the associated public notification, 5 points shall be assessed.

(j) Disinfectant Residuals:

(i) Chlorine:

(A) For each routine chemical monitoring violation for chlorine, 10 points shall be assessed. R309-210-8(3)(a). For each failure to perform the associated public notification, 1 point shall be assessed.

(B) For each MCL exceedance for chlorine, 30 points shall be assessed. For each failure to perform the associated public notification, 5 points shall be assessed.

(C) For a disinfected system that does not maintain a trace residual at all points of the distribution system, 2 points shall be assessed. R309-105-10(1) and R309-200-5(7).

(D) For a disinfected system that lacks an adequate number of disinfection residual sample sites, 2 points shall be assessed. R309-210-8(3)(a)(i)(z15).

(ii) Chloramines:

(A) For each routine chemical monitoring violation for chloramines, 10 points shall be assessed. For each failure to perform the associated public notification, 1 point shall be assessed.

(B) For each MCL exceedance for chloramines, 30 points shall be assessed. For each failure to perform the associated public notification, 5 points shall be assessed.

(iii) Chlorine Dioxide:

(A) For each routine monitoring violation for chlorine dioxide, 10 points shall be assessed. For each failure to perform the associated public notification, 1 point shall be assessed.

(B) For each non-acute chlorine dioxide MCL violation, 30 points shall be assessed. For each failure to perform the associated public notification, 5 points shall be assessed.

(C) For each acute chlorine dioxide MCL violation, 50 points shall be assessed. For each failure to perform the associated public notification, 10 points shall be assessed.

(iv) Ground Water Rule, where a water system has received a 4-Log exemption from triggered source water monitoring:

(A) For a ground water treatment facility serving greater than 3300 population lacking equipment to measure chlorine residuals continuously entering the distribution system, 20 points shall be assessed. R309-215-10(1).

(B) For a ground water system serving greater than 3300 people failing to continuously monitor the residual disinfectant concentrations, 10 points shall be assessed. R309-215-16(3)(b)(iii)(A)(I).

(C) For a ground water system serving less than 3300 people failing to collect a daily grab sample during peak demand to monitor the residual disinfectant concentrations, 10 points shall be assessed. R309-215-16(3)(b)(iii)(A)(II).

(D) For a ground water system that during the past year, the disinfection process was not operated uninterrupted while water was being produced, points will be assessed based on monthly and quarterly treatment reports. R309-200-5(7).

(E) For a ground water system that is required to provide continuous disinfection but fails to do so, 10 points shall be assessed for each month the failure continues. R309-520-6(1).

(k) Lead and Copper:

(i) For each major chemical monitoring violation for lead and copper contaminants, 20 points shall be assessed. For each failure to perform the associated public notification, 3 points shall be assessed.

(ii) For each minor chemical monitoring violation for lead and copper contaminants, 10 points shall be assessed. For each failure to perform the associated public notification, 1 point shall be assessed.

(iii) A system that fails to install, by the designated deadline, optimal corrosion control if the lead or copper action level has been exceeded shall be assessed 35 points. For each failure to perform the associated public notification, 10 points shall be assessed.

(iv) A system that fails to install source water treatment if the source waters exceed the lead or copper action level shall be assessed 35 points. For each failure to perform the associated public notification, 10 points shall be assessed.

(v) A system that fails to complete public notification/education if the lead/copper action levels have been

exceeded shall be assessed 10 points for each calendar quarter that the system fails to provide public notification/education.

(vi) A system that still exceeds the lead action level and is not on schedule for lead line replacement shall be assessed 5 points annually. For each failure to perform the associated public notification, 2 point shall be assessed.

(vii) A system that fails to notify its customers of their lead and copper sample results, 5 points shall be assessed.

(viii) A system that fails to send the lead and copper recertification notice to the Division, 5 points shall be assessed.

(l) Groundwater Turbidity:

(i) For each monitoring violation for turbidity, 35 points shall be assessed. For each failure to perform the associated public notification, 5 points shall be assessed.

(ii) For each confirmed MCL exceedance of turbidity, 50 points shall be assessed. For each failure to perform the associated public notification, 10 points shall be assessed.

(m) Surface Water Treatment:

(i) For water systems having sources, which are classified as under direct influence from surface water and which fail to abandon, retrofit or provide conventional complete treatment or its equivalent within 18 months of notification shall be assessed 150 points. For the associated failure to perform public notification 10 points shall be assessed. The points shall be assessed as the failure occurs and shall remain on record until adequate treatment is provided or the source is physically disconnected.

(ii) Quality and Monitoring: The surface water treatment assessments shall be updated on a monthly basis with the total number of points reflecting the most recent 12-month period.

(A) Turbidity:

(I) For each turbidity exceedance that requires tier 1 notification under R309-220-5(1)(e) or (f), 50 points shall be assessed. For the associated failure to perform public notification, 10 points shall be assessed.

(II) For each turbidity exceedance that requires tier 2 notification under R309-220-5(1)(e) or (f), 35 points shall be assessed. For the associated failure to perform public notification, 10 points shall be assessed.

(III) For each month where the percentage of turbidity interpretations meeting the treatment plant limit is less than 95 percent, 25 points shall be assessed. For the associated failure to perform public notification, 10 points shall be assessed.

(IV) For any period of time that exceeds 4 hours where the system fails to continuously measure (or perform grab samples) the combined filter effluent turbidity, 50 points shall be assessed. For the associated failure to perform public notification, 10 points shall be assessed.

(V) For a water system whose failure to repair continuous turbidity monitoring equipment within 5 working days, 50 points shall be assessed.

(B) Disinfection:

(I) For each instance where the disinfectant level in water entering the distribution system is less than 0.2 milligrams per liter for more than 4 hours, 25 points shall be assessed. For the associated failure to perform public notification, 5 points shall be assessed.

(II) For each instance where there is insufficient disinfectant contact time, 35 points shall be assessed. For the associated failure to perform public notification, 5 points shall be assessed.

(iii) Treatment Process Control:

(A) For each instance a treatment facility exceeds the assigned filter rates, 30 points shall be assessed.

(B) For each month a water system fails to verify calibration of the plant turbidimeters, 5 points shall be assessed.

(C) For each month a water system fails to submit a water treatment plant report, 50 points shall be assessed.

**R309-400-6. Physical Facilities.**

All points assessed to public water systems via this subsection are based upon violation of R309-500 through R309-705 unless otherwise noted. These points shall be assessed and updated upon notification of the Director and shall remain until the violation or deficiency no longer exists.

(1) New Source Approval:

(a) Use of an unapproved source shall be assessed 200 points:

(2) Surface Water Diversion Structures and Impoundments:

(a) For each surface water intake structure that does not allow for withdrawal of water from more than one level if quality significantly varies with depth, 2 points shall be assessed. R309-515-5(5)(a).

(b) Where diversion facilities are not capable of keeping large quantities of fish or debris from entering the intake, 2 points shall be assessed. R309-515-5(5)(c).

(c) Where impoundment reservoirs have not had brush and trees removed to the high water level, 2 points shall be assessed. R309-515-5(6)(a).

(d) Where reservoir watershed management has not provided adequate precautions to limit nutrient loading, 10 points shall be assessed. R309-515-5(6)(d).

(3) Well Sources

(a) For each well that is not equipped with a sanitary seal, or has any unsealed opening into the well casing, 50 points shall be assessed. R309-515-6(6)(i).

(b) For each well that does not utilize food-grade mineral oil for pump lubrication, 25 points shall be assessed. R309-515-8(2).

(c) For each well casing that does not terminate at least 12 inches above the well house floor, 18 inches above the final ground surface, or shows evidence of being subject to flooding, 20 points shall be assessed. R309-515-6(6)(b)(vi) and R309-515-6(13)(a) and (d).

(d) For each well fitted with a pitless adaptor that does not maintain a water tight seal throughout, 50 points shall be assessed. R309-515-6(12)(e)(x).

(e) For each wellhead that is not properly secured to protect the quality of the well water, 20 points shall be assessed. R309-515-6(13)(f).

(f) For each well that is equipped with a pump to waste line that does not discharge with a minimum of 12-inch clearance to the flood rim, 20 points shall be assessed. R309-515-6(12)(d)(ix).

(g) For each well that is equipped with a pump to waste line without a downturned discharge end covered with a No. 4 mesh screen, 5 points shall be assessed. R309-515-6(12)(d)(ix).

(h) For each well that is equipped with a pump to waste line that discharges to a receptacle without local authorization, 2 points shall be assessed.

(i) For each well that does not have a means to permit periodic measurement of water levels, 2 points shall be assessed. R309-515-6(12)(e)(i) and (ii).

\_\_\_\_\_ (j) For each well casing vent that is not covered with a No. 14 or finer mesh screen, 2 points shall be assessed. R309-515-6(12)(d)(iii) and R309-550-6(6)(b).

\_\_\_\_\_ (k) For each well casing vent that is not downturned, 2 points shall be assessed. R309-515-6(12)(d)(iii) and R309-550-6(6)(b). Also Division of Water Rights Rule R655-4-11.7.11.

\_\_\_\_\_ (l) For each well casing vent that does not have adequate clearance to prevent the contaminants from entering the well, 2 points shall be assessed. R309-515-6(12)(d)(iii) and R309-550-6(6)(b).

\_\_\_\_\_ (m) For each well (excluding the naturally flowing wells) that has discharge piping that is not equipped with 1) a smooth nosed sampling tap 2) check valve 3) pressure gauge 4) means of measuring flow, and 5) shut-off valve, 1 point shall be assessed for each component not present. R309-515-6(12)(d)(iv).

\_\_\_\_\_ (n) For each well that pumps directly into a distribution system and does not have a means to release trapped air from the discharge piping (for example, release air through an air release vacuum relief valve, through a pump to waste line or pumps directly to a tank), 5 points shall be assessed. R309-515-6(12)(d)(v).

\_\_\_\_\_ (o) For each well house that is not at least 6 inches above the final ground level, is not sloped to drain, or shows evidence of being subject to flooding, 5 points shall be assessed. R309-515-6(13)(b).

\_\_\_\_\_ (p) For each well that has a cross connection present in the discharge piping, 20 points shall be assessed. R309-105-12(1) and R309-515-6(12)(d)(iii).

\_\_\_\_\_ (q) For each well with an air vacuum relief valve on the well discharge piping that is not screened, 2 points shall be assessed. R309-515-6(12)(d)(v).

\_\_\_\_\_ (r) For each well with an air vacuum relief valve on the well discharge piping that is not downturned, 2 points shall be assessed. R309-515-6(12)(d)(v).

\_\_\_\_\_ (s) For each well with an air vacuum relief valve on the well discharging piping that does not have a 6-inch clearance to prevent contaminants from entering the piping, 2 points shall be assessed. R309-515-6(12)(d)(v).

\_\_\_\_\_ (t) For each well that has rotating and electrical equipment that is not provided with protective guards, 2 points shall be assessed.

#### \_\_\_\_\_ (4) Spring Sources:

\_\_\_\_\_ (a) For each spring source that allows surface water to stand or pond upon the spring collection area (within 50 feet from collection devices), 10 or 20 points shall be assessed. The number of points shall be based upon the size and extent of the ponding; the possible source (rainfall or incomplete collection); or the presence of moss or other indicators of long term presence of standing water. R309-515-7(7)(i).

\_\_\_\_\_ (b) For each spring area that does not have a minimum of ten feet of relative impervious soil or an acceptable alternate design with liner, or the spring collection area shows evidence of damaged liner or impervious soil cover, 10 points shall be assessed. R309-515-7(7)(a) and (b).

\_\_\_\_\_ (c) For each spring area that has deep-rooted vegetation within the fenced collection area, 10 points shall be assessed. R309-515-7(7)(f).

\_\_\_\_\_ (d) For each spring area that has deep rooted vegetation interfering with the spring collection, 10 points shall be assessed. R309-515-7(7)(f).

\_\_\_\_\_ (e) For each spring with a spring collection/junction box that does not have a proper shoebox lid, 5 points shall be assessed. R309-515-7(7)(d) and R309-545-14(2).

\_\_\_\_\_ (f) For each spring with a spring collection/junction box that does not have a proper gasket on the lid, 5 points shall be assessed. R309-515-7(7)(d) and R309-545-14(2).

\_\_\_\_\_ (g) For each spring with a spring collection/junction box that lacks an adequate air vent, 5 points shall be assessed. R309-515-7(7)(d) and R309-545-15.

\_\_\_\_\_ (h) For each spring with a spring collection/junction box with a vent that is not screened with No. 14 mesh screen, 2 points shall be assessed. R309-515-7(7)(d) and R309-545-15.

\_\_\_\_\_ (i) For each spring with a spring collection/junction box with a vent that is not down-turned or inverted, 2 points shall be assessed. R309-515-7(7)(d) and R309-545-15(1).

\_\_\_\_\_ (j) For each spring with a spring collection/junction box with a vent that does not have sufficient clearance to prevent ice blockage, or is not at least 24 inches above the earthen cover, 2 points shall be assessed. R309-515-7(7)(d) and R309-545-15(2).

\_\_\_\_\_ (k) For each spring with a spring collection/junction box that lacks a raised access entry, at least 4 inches above the spring box or 18 inches above the earthen cover, 5 points shall be assessed. R309-515-7(7)(d) and R309-545-14(1).

\_\_\_\_\_ (l) For each spring with a spring collection/junction box that is not secured against unauthorized access, 20 points shall be assessed. R309-515-7(7)(d) and R309-545-14(3).

\_\_\_\_\_ (m) For each spring collection area without a proper fence, 10 points shall be assessed. R309-515-7(7)(e).

\_\_\_\_\_ (n) For each spring collection area that does not have a diversion channel, or berm capable of diverting surface water away from the collection area, 5 points shall be assessed. R309-515-7(7)(g).

\_\_\_\_\_ (o) For each spring system that does not have a permanent flow measuring device, 5 points shall be assessed. R309-515-7(7)(h).

\_\_\_\_\_ (p) For each spring area with an overflow or a combined overflow/drain discharge that is not screened with a No. 4 mesh screen, 5 points shall be assessed. R309-515-7(7)(d) and R309-545-13.

\_\_\_\_\_ (q) For each spring collection/junction box overflow that does not have a freefall of 12 to 24 inches between the bottom of the discharge pipe and the surrounding ground, 5 points shall be assessed. R309-515-7(7)(d) and R309-545-13.

\_\_\_\_\_ (r) For each spring collection/junction box that has any unsealed opening(s) resulting in public health risk, 50 points shall be assessed. R309-515-7(7)(d) and R309-545-9(1).

#### \_\_\_\_\_ (5) Pump Stations:

\_\_\_\_\_ (a) For a pumping facility that does not have a standard pressure gauge on the discharge line, 1 point shall be assessed. R309-540-5(6)(e)(i).

\_\_\_\_\_ (b) For a pumping facility building without adequate drainage or showing evidence of flooding, 5 points shall be assessed. R309-540-5(2)(a)(v) and (vi).

\_\_\_\_\_ (c) For a pumping facility where the discharge line from the air release valve is not screened with number 14 non-corrodible mesh screen, 2 points shall be assessed. R309-540-5(6)(b)(ii) and R309-550-6(6)(b).

\_\_\_\_\_ (d) For an air release valve located within a building, if the discharge line terminates less than six inches above the floor, 2 points shall be assessed. R309-515-6(12)(d)(v) and R309-540-5(6)(b)(ii).

\_\_\_\_\_ (e) For an air release valve located in a chamber, if the air release valve discharge piping terminates less than 12 inches above grade, or less than one foot above the top of the pipe where the chamber is not subject to flooding, 10 points shall be assessed. R309-540-5(6)(b)(ii) and R309-550-6(6)(b).

- \_\_\_\_\_ (f) For a pumping facility where the discharge line from the air release valve is not down-turned, 2 points shall be assessed. R309-540-5(6)(b)(ii) and R309-550-6(6)(b).
- \_\_\_\_\_ (g) For a pumping facility where there is inadequate heating, lighting or ventilation, 5 points shall be assessed. R309-540-5(2)(e), (f) and (g).
- \_\_\_\_\_ (h) For a pumping facility where there are cross connections present, 20 points shall be assessed. R309-105-12(1).
- \_\_\_\_\_ (i) For an inline booster pumping facility designed to provide pressure directly to the distribution system, which does not have at least two pumping units such that with any one pump out of service the remaining pump or pumps are capable of meeting the peak day demand of the specific portion of the system served, 20 points shall be assessed. R309-540-5(4)(b).
- \_\_\_\_\_ (j) For a pumping facility which does not have protective guards on rotating and electrical equipment, 2 points shall be assessed. R309-525-21.
- \_\_\_\_\_ (k) For a pumping facility which is not secured against unauthorized access shall be assessed, 5 points. R309-540-5(1)(a)(v).
- \_\_\_\_\_ (6) Hydropneumatic pressure tanks:
- \_\_\_\_\_ (a) For diaphragm or air tanks located below ground without adequate provisions for drainage, maintenance and flood protection, 10 points shall be assessed. R309-540-6(2).
- \_\_\_\_\_ (b) For a pressure tank with a pump cycle that cycles more frequently than once every 4 minutes, 5 points shall be assessed. R309-540-6(5).
- \_\_\_\_\_ (7) Storage:
- \_\_\_\_\_ (a) A water system with uncovered finished water storage shall immediately be assessed a rating of not approved, 200 points shall be assessed. R309-545-9(1) and (2).
- \_\_\_\_\_ (b) For each storage tank roof showing evidence of water ponding with deterioration, 10 points shall be assessed. R309-545-9(4).
- \_\_\_\_\_ (c) For each storage tank that does not have an access to the interior for cleaning and maintenance, 9 points shall be assessed. R309-545-14.
- \_\_\_\_\_ (d) For each storage tank access that does not have a shoebox type lid with a minimum of a 2-inch overlap, 3 points shall be assessed. R309-545-14(2).
- \_\_\_\_\_ (e) For each storage tank access that lacks a proper gasket between the lid and frame, 3 points shall be assessed. R309-545-14(2).
- \_\_\_\_\_ (f) For each storage tank access that lacks a minimum rise of 4 inches above the tank roof or a minimum of 18 inches above an earthen cover, 3 points shall be assessed. R309-545-14(1).
- \_\_\_\_\_ (g) For each storage tank that is not vented, 6 points shall be assessed. R309-545-15.
- \_\_\_\_\_ (h) For each finished water storage tank vent that is not downturned or covered from rain and dust, 2 points shall be assessed. R309-545-15(1).
- \_\_\_\_\_ (i) For each storage tank vent that does not terminate a minimum of 24 inches above the surface of the storage tank roof if the tank is a buried structure, 2 points shall be assessed. R309-545-15(2).
- \_\_\_\_\_ (j) For each storage tank vent that is not screened with number 14 non-corrodible mesh screen, 2 points shall be assessed. R309-545-15(4).
- \_\_\_\_\_ (k) For each storage tank that lacks an overflow, 15 points shall be assessed. R309-545-13.
- \_\_\_\_\_ (l) For each storage tank overflow that does not terminate 12 to 24 inches above the ground, 5 points shall be assessed. R309-545-13.
- \_\_\_\_\_ (m) For each storage tank overflow that is not screened with number 4 non-corrodible mesh screen, 5 points shall be assessed. R309-545-13(3).
- \_\_\_\_\_ (n) For each storage tank overflow that is connected to a sewer system without an adequate air gap, 5 points shall be assessed. R309-545-13(5).
- \_\_\_\_\_ (o) For each storage tank with a drain that does not discharge through a physical airgap of at least 2 pipe diameters, 5 points shall be assessed. R309-545-10(1).
- \_\_\_\_\_ (p) For each storage tank with inadequate or improper means of site drainage or showing evidence of standing surface water within 50 feet of the tank, 5 points shall be assessed. R309-545-7(4).
- \_\_\_\_\_ (q) For each storage tank with any unsealed roof or wall penetrations, 50 points shall be assessed. R309-545-9(2).
- \_\_\_\_\_ (r) For each storage tank where the roof and sidewalls show signs of deterioration, 10 to 50 points shall be assessed based upon the size and number of cracks, the loss of structural integrity, and the access of contamination to the drinking water. R309-545-9(1).
- \_\_\_\_\_ (s) For each storage tank without a safe access (such as ladders for tanks in excess of 20 feet, ladder guards, or railings) or safely located entrance hatches, 2 points shall be assessed. R309-545-19(1), (2) and (3).
- \_\_\_\_\_ (t) For each storage tank with internal coatings not in compliance with ANSI/NSF standard 61, 30 points shall be assessed. R309-545-11.
- \_\_\_\_\_ (u) For a storage facility that is not secured against unauthorized access, 20 points shall be assessed. R309-545-14(3).
- \_\_\_\_\_ (8) Distribution System:
- \_\_\_\_\_ (a) A water system that fails to provide the minimum water pressures as required in R309-105-9 at all times and at all locations within the distribution system, 50 points shall be assessed. R309-105-9 and R309-550-5(1).
- \_\_\_\_\_ (b) A water system using pipe and materials not meeting the ANSI/NSF 61 standard shall be assessed 30 points. R309-550-6.
- \_\_\_\_\_ (c) A water system with pipelines installed without adequate separation distance from the sanitary sewer lines shall be assessed 30 points. R309-550-7.
- \_\_\_\_\_ (d) A new water system constructed after January 1, 2007 or an existing water system modification without adequate pressure as defined in R309-105-9(2) shall be assessed 50 points.
- \_\_\_\_\_ (e) A water system which has a distribution line that crosses under a surface water body without adequate protection as outlined in R309-550-8(8)(b) shall be assessed 50 points.
- \_\_\_\_\_ (f) A water system which has distribution system flushing devices, blow offs or air relief valves, which are directly connected to a sewer or do not have a proper air gap, shall be assessed 20 points. R309-550-6 and R309-550-9.
- \_\_\_\_\_ (g) For a water system that does not properly follow the AWWA disinfection standards 10 points shall be assessed. R309-550-8(10).
- \_\_\_\_\_ (h) For a water system that is required by the local fire authority to provide fire protection or has fire hydrants connected with water mains less than 8 inches in diameter, 5 points shall be assessed. These points will only be assessed for water mains installed after 1995. R309-550-5(4) and (5).

\_\_\_\_\_ (i) For each air relief valve vent piping, which is not screened with a No. 14 mesh and downturned, 10 points shall be assessed. R309-550-6(6)(b).

\_\_\_\_\_ (j) For an air release valve located in a chamber, if the air release valve discharge piping terminates less than 12 inches above grade or less than one foot above the top of the pipe where the chamber is not subject to flooding, 10 points shall be assessed. R309-550-6(6)(b).

\_\_\_\_\_ (k) For each air relief valve located in a chamber without a drain or adequate sump, or showing evidence of being subject to flooding, 30 points shall be assessed. R309-550-7.

\_\_\_\_\_ (l) For each air vacuum release valve chamber that is flooded at the time of inspection, 50 points shall be assessed.

\_\_\_\_\_ (m) For an unprotected cross-connection in the distribution system as required in R309-550-9, 50 points shall be assessed.

\_\_\_\_\_ (9) Quantity requirements

\_\_\_\_\_ (a) A water system without sufficient source capacity to meet peak day and average yearly flow requirements, from 10 to 50 points shall be assessed. The number of points shall be based upon the severity of the shortage, including the number of times and duration of water outages or low pressure. R309-510-7.

\_\_\_\_\_ (b) A water system without sufficient storage capacity to meet average day demand, plus the required fire suppression volume if applicable, 10 to 50 points shall be assessed. The number of points shall be based upon the severity of the shortage including the number of times and duration of water outages. R309-510-8.

**R309-400-7. Treatment Processes:**

\_\_\_\_\_ (1) General Treatment:

\_\_\_\_\_ (a) For a treatment facility without anti-siphon control to assure that liquid chemical solutions cannot be siphoned through solution feeders into the process units, 2 points shall be assessed. R309-525-11(9)(b)(ii) and (c).

\_\_\_\_\_ (b) For a treatment facility with a process tank that is not properly labeled to designate the chemical contained, 2 points shall be assessed. R309-525-11(8)(e)(vii).

\_\_\_\_\_ (c) For a treatment facility with chemicals not stored in covered or unopened shipping containers, unless the chemical is transferred into a covered storage unit, 2 points shall be assessed. R309-525-11(6)(a)(iii).

\_\_\_\_\_ (d) For a treatment facility with no cross-connection control provided to assure that no direct connections exist between any sewer and the drain or overflow from the feeder, solution chamber, or tank by providing that all pipes terminate at least six inches or two pipe diameters, whichever is greater, above the overflow rim of a receiving sump, conduit, or waste receptacle, 10 points shall be assessed. R309-525-11(9)(b)(iii).

\_\_\_\_\_ (e) For a treatment facility with no spare parts available for all feeders to replace parts that are subject to wear and damage, 2 points shall be assessed. R309-525-11(7)(b)(v).

\_\_\_\_\_ (f) For a treatment facility where incompatible chemicals are fed, stored or handled together, 2 points shall be assessed. R309-525-11(7)(a)(iv).

\_\_\_\_\_ (g) For a treatment facility where daily operating records do not reflect chemical dosages and total quantities used, 2 points shall be assessed. R309-105-14(3).

\_\_\_\_\_ (h) For a water system that fails to maintain and properly calibrate all instrumentation needed to verify the treatment process, 2 points shall be assessed. R309-525-25(4).

\_\_\_\_\_ (i) For a treatment facility without the means to accurately measure the quantities of chemicals used, 20 points shall be assessed. R309-525-11(7)(a)(i) and R309-525-11(6)(b)(iii).

\_\_\_\_\_ (j) A water system that does not keep acids and caustics in closed corrosion-resistant shipping containers or storage units, 2 points shall be assessed. R309-525-11(11)(a)(i).

\_\_\_\_\_ (k) For a treatment facility that does not have the vent hose from the feeder to discharge to the outside atmosphere above grade or have the end covered with #14 non-corrodible mesh screen, 2 points shall be assessed. R309-520-7(2)(f).

\_\_\_\_\_ (l) For a treatment facility that uses any chemical that is added to water being treated for use in a public water system for human consumption that does not comply with ANSI/NSF Standard 60, 25 points shall be assessed. R309-525-11(5).

\_\_\_\_\_ (m) For a treatment facility that does not have a finished water sampling tap(s), 2 points shall be assessed. R309-525-18.

\_\_\_\_\_ (n) For a treatment facility that is not performing adequate process control testing consistent with the specific treatment process, 30 points shall be assessed. R309-525-19.

\_\_\_\_\_ (o) For a surface water treatment facility that does not have continuous residual disinfection equipment to measure the residual in mg/L entering the distribution system, 20 points shall be assessed. R309-215-10(1).

\_\_\_\_\_ (p) For a treatment facility without provisions for disposing of empty bags, drums or barrels by an acceptable procedure that will minimize operator exposure to dusts, 2 points shall be assessed. R309-525-11(6)(b) and (c).

\_\_\_\_\_ (q) For a treatment facility that does not provide cross-connection control on the make-up waterlines discharging to solution tanks, 10 points shall be assessed. R309-525-11(9)(b)(i).

\_\_\_\_\_ (r) For a treatment facility with solution tank overflow pipes that do not have a free fall discharge or are not located where noticeable, 2 points shall be assessed. R309-525-11(8)(b)(v).

\_\_\_\_\_ (s) For a treatment facility without adequate spill containment provisions, 2 points shall be assessed. R309-525-11(6)(a)(iv)(B).

\_\_\_\_\_ (t) For a treatment facility with acid storage tanks that are not vented to the outside atmosphere with separate screened vents, 2 points shall be assessed. R309-525-11(8)(b)(vi).

\_\_\_\_\_ (u) For a treatment facility without provisions for the proper disposal of water treatment plant waste (such as sanitary, laboratory, sludge, and filter backwash water), 5 points shall be assessed. R309-525-23.

\_\_\_\_\_ (v) For a treatment facility where cross-connection control is not provided on the feed lines to the solution tanks, 10 points shall be assessed. R309-525-11(9)(b) and (c).

\_\_\_\_\_ (w) For a treatment facility that does not have a means to measure water flow rate, 10 points shall be assessed.

\_\_\_\_\_ (x) For a surface water treatment facility where the piping is not labeled and color coded to identify the direction of flow and the contained liquid, 2 points shall be assessed. R309-525-8.

\_\_\_\_\_ (y) Treatment facilities not secured against unauthorized access, 20 points shall be assessed.

\_\_\_\_\_ (z) For a treatment facility using expired chemical reagents for process control, 5 points shall be assessed.

\_\_\_\_\_ (aa) For a treatment facility with no access to lab or test kits for process testing, 2 points shall be assessed. R309-525-17(1).

\_\_\_\_\_ (bb) For a treatment facility lacking cross-connection control for the in-plant water supply, 10 points shall be assessed. R309-525-11(9)(b)

\_\_\_\_\_ (2) Disinfection:

\_\_\_\_\_ (a) General:

\_\_\_\_\_ (i) For a chlorination facility which is not heated, lighted or ventilated as necessary to assure proper operation or the equipment and serviceability, 2 points shall be assessed. R309-520-7(1)(l).

\_\_\_\_\_ (ii) For a disinfection facility without cross-connection control on the solution feeders into the process units as required in R309-525-11(9)(e), 10 points shall be assessed. R309-525-11(9)(b)(ii):

\_\_\_\_\_ (iii) For a chlorination facility where there is no standby disinfection equipment of sufficient capacity available to replace the largest unit, 10 points shall be assessed. R309-520-7(1)(k):

\_\_\_\_\_ (iv) For a disinfection facility where the correct reagent is not used for testing free disinfectant residual, 2 points shall be assessed.

\_\_\_\_\_ (v) For a treatment facility where the pre- and post-chlorination processes are not independent of each other, to prevent possible siphoning of partially treated water into the clear well, 50 points shall be assessed. R309-525-11(9)(b)(iv):

\_\_\_\_\_ (vi) For a disinfection facility where chemical solution tanks are not kept covered, 2 points shall be assessed. R309-525-11(8)(b)(iii):

\_\_\_\_\_ (vii) For a disinfection facility without disinfectant residual test equipment, 2 points shall be assessed. R309-520-7(1)(j):

\_\_\_\_\_ (viii) For a disinfection facility where there is no means to measure the volume of water treated, 2 points shall be assessed. R309-520-7(1)(i):

\_\_\_\_\_ (b) Gas chlorination:

\_\_\_\_\_ (i) For a gas chlorination facility without an automatic switch over of chlorine cylinders to assure continuous disinfection, 2 points shall be assessed. R309-520-7(2)(a):

\_\_\_\_\_ (ii) For a gas chlorination facility without seals for weighing cylinders, 2 points shall be assessed. R309-520-7(2)(k):

\_\_\_\_\_ (iii) For a gas chlorination facility without a leak repair kit, 15 points shall be assessed. R309-520-7(2)(p):

\_\_\_\_\_ (iv) For a gas chlorination facility without respiratory equipment available and stored at a convenient location, 5 points shall be assessed. R309-520-7(2)(o):

\_\_\_\_\_ (v) For a gas chlorination facility housed in a water treatment plant building where the chlorine gas feed and storage area is not enclosed and separated from other operating areas, 2 points shall be assessed. R309-520-7(2)(h):

\_\_\_\_\_ (vi) For a gas chlorination facility where the chlorination equipment rooms are not vented such that the ventilating fan(s) take suction near the floor, as far as practical from the door and air inlet, with the point of discharge so located as not to contaminate air inlets of any rooms or structures, 5 points shall be assessed. R309-520-7(2)(c)(ii):

\_\_\_\_\_ (vii) For a gas chlorination facility where the chlorination equipment rooms are not vented such that air inlets are through louvers near the ceiling, 2 points shall be assessed. R309-520-7(2)(c)(iii):

\_\_\_\_\_ (viii) For a gas chlorination facility where the chlorination equipment rooms are not vented such that separate switches for the fans and lights are outside of the chlorine room, at the entrance to the chlorination equipment room and protected from vandalism, 2 points shall be assessed. R309-520-7(2)(e)(v):

\_\_\_\_\_ (ix) For a gas chlorination facility where the vent hose from the feeder to discharge to the outside atmosphere is not above grade or does not have the end covered with #14 non-corrodible mesh screen, 2 points shall be assessed. R309-520-7(2)(f):

\_\_\_\_\_ (x) For a gas chlorination facility without a bottle of ammonium hydroxide (56%) available for leak detection, 2 points shall be assessed. R309-520-7(2)(p):

\_\_\_\_\_ (xi) For a gas chlorination facility where full and empty cylinders of chlorine gas are not restrained in position to prevent upset, 2 points shall be assessed. R309-520-7(2)(i)(ii):

\_\_\_\_\_ (xii) For a gas chlorination facility with full and empty cylinders of chlorine gas stored in areas in direct sunlight or exposed to excessive heat, 2 points shall be assessed. R309-520-7(2)(i)(iii):

\_\_\_\_\_ (xiii) For a gas chlorination facility in a water treatment plant building where the chlorine room is constructed in a manner that any openings between the chlorine room and the remainder of the plant are not sealed, 2 points shall be assessed. R309-520-7(2)(h)(ii):

\_\_\_\_\_ (xiv) For a gas chlorination facility housed in a water treatment plant building that lacks outward-opening doors with panic bars, 2 points shall be assessed. R309-520-7(2)(h)(iii):

\_\_\_\_\_ (xv) For a gas chlorination facility housed in a water treatment plant building with floor drains that do not discharge to the outside of the building and are not connected to other internal or external drain systems, 5 points shall be assessed. R309-520-7(2)(h)(iv):

\_\_\_\_\_ (xvi) For a gas chlorination facility without a means of chlorine leak detection, such as a bottle of ammonia hydroxide solution or chlorine leak detection equipment, 15 points shall be assessed. R309-520-7(2)(p):

\_\_\_\_\_ (e) Chlorine dioxide:

\_\_\_\_\_ (i) For a chlorine dioxide disinfection facility where provisions are not made for proper storage of sodium chlorite to eliminate any danger of explosion 2 points shall be assessed. R309-520-10(3)(b) and R309-525-11(11)(b)(i):

\_\_\_\_\_ (ii) For a chlorine dioxide disinfection facility where sodium chlorite is not stored by itself in a separate room and away from organic materials that would react violently with sodium chlorite, 2 points shall be assessed. R309-520-10(5)(a) and R309-525-11(11)(b)(i)(A):

\_\_\_\_\_ (iii) For a chlorine dioxide disinfection facility where sodium chlorite storage structures are not constructed of noncombustible materials, 2 points shall be assessed. R309-520-10(3)(b)(iv) and R309-525-11(11)(b)(i)(B):

\_\_\_\_\_ (iv) For a chlorine dioxide disinfection facility where a sodium chlorite storage structure is not located in an area where a fire may occur, water should be available to keep the sodium chlorite area sufficiently cool to prevent decomposition from heat and resultant potential explosive conditions. 2 points shall be assessed if this is not the case. R309-520-10(4)(d) and R309-525-11(11)(b)(i)(C):

\_\_\_\_\_ (v) For a chlorine dioxide disinfection facility that stores combustible or reactive materials in the operating area, 2 points shall be assessed. R309-520-10(5)(a):

\_\_\_\_\_ (vi) For a chlorine dioxide disinfection facility that does not store personal protective equipment nearby, 5 points shall be assessed. R309-520-10(5)(e)

\_\_\_\_\_ (vii) For a chlorine dioxide disinfection facility that does not have an emergency eyewash and shower immediately outside the operating area, 2 points shall be assessed. R309-520-10(3)(b)(viii)



- \_\_\_\_\_ (viii) For a chlorine dioxide disinfection facility that lacks an emergency shutoff for flows to the chlorine dioxide generator, 2 points shall be assessed. R309-520-10(3)(b)(ix)
- \_\_\_\_\_ (ix) For a chlorine dioxide disinfection facility that lacks a distinguishable alarm triggered by an ambient air chlorine dioxide sensor, 2 points shall be assessed. R309-520-10(3)(b)(v)
- \_\_\_\_\_ (x) For a chlorine dioxide disinfection facility that lacks wash down water available in the operating area, 2 points shall be assessed. R309-520-10(3)(b)(xvi)
- \_\_\_\_\_ (xi) For a chlorine dioxide disinfection facility that does not maintain the temperature of the chlorine dioxide operating area between 60 and 100°F, 2 points shall be assessed. R309-520-10(5)(d)
- \_\_\_\_\_ (xii) For a chlorine dioxide disinfection facility that lacks an Operation and Maintenance Manual including safety and emergency response procedures, 2 points shall be assessed. R309-520-10(5)(f)
- \_\_\_\_\_ (d) Ultraviolet (UV)
- \_\_\_\_\_ (i) For a UV disinfection facility that lacks an operating procedure in place to handle UV lamp breakage, power supply interruption, response to alarms, 2 points shall be assessed. R309-520-8(4)(b)
- \_\_\_\_\_ (ii) For a UV disinfection facility that does not calibrate and operate UV intensity sensors per manufacturer's instruction, 2 points shall be assessed R309-520-8(4)
- \_\_\_\_\_ (iii) For a UV disinfection facility that does not use ANSI/NSF Standard 60 chemicals in the cleaning of the UV, 25 points shall be assessed. R309-520-8(3)(j)
- \_\_\_\_\_ (iv) For a UV disinfection facility that can't isolate the UV disinfection system or each UV reactor for maintenance, 2 points shall be assessed. R309-520-8(3)(g)
- \_\_\_\_\_ (v) For a UV disinfection facility that lacks a backup power source for the UV disinfection system, 2 points shall be assessed. R309-520-8(3)(f)
- \_\_\_\_\_ (vi) For a UV disinfection facility that lacks a redundant primary disinfection mechanism, 5 points shall be assessed. R309-520-8(3)(m)
- \_\_\_\_\_ (e) Ozone
- \_\_\_\_\_ (i) For an ozone disinfection facility without a minimum of two ozone aqueous residual analyzers, 2 points shall be assessed. R309-520-9(7)(e)
- \_\_\_\_\_ (ii) For an ozone disinfection facility using chemicals that do not meet ANSI/NSF Standard 60 quench the residual ozone, 25 points shall be assessed. R309-520-9(4)(h)
- \_\_\_\_\_ (iii) For an ozone disinfection facility lacking properly functioning ozone off-gas blowers from the contactor, 2 points shall be assessed. R309-520-9(5)(b)
- \_\_\_\_\_ (iv) For an ozone disinfection facility that lacks a system for treating the final off-gas from each ozone contactor, 2 points shall be assessed. R309-520-9(5)(a)
- \_\_\_\_\_ (v) For an ozone disinfection facility discharging an ozone concentration in the gas discharge exceeding 0.1 ppm by volume, 2 points shall be assessed. R309-520-9(5)(d)
- \_\_\_\_\_ (3) Fluoridation:
- \_\_\_\_\_ (a) General
- \_\_\_\_\_ (i) For a fluoridation facility that does not calculate fluoride concentrations, including chemical dosages and total water quantities daily, 2 points shall be assessed. R309-525-11(8)(3)
- \_\_\_\_\_ (ii) For a fluoridation facility without a fail-safe device incorporated in the fluoride feed control system to prevent overfeeding fluoride, 30 points shall be assessed. R309-525-5(2)
- \_\_\_\_\_ (iii) For a fluoridation facility that uses fluoride chemicals that do not conform to the applicable AWWA standards or with ANSI/NSF Standard 60, 25 points shall be assessed. R309-525-5
- \_\_\_\_\_ (iv) For a fluoridation facility without scales, loss-of-weight recorders or liquid level indicators, as appropriate, 2 points shall be assessed. R309-525-5(2)(a)
- \_\_\_\_\_ (v) For a fluoridation facility without proper personal protective equipment as required in R309-525-11(10) for operators handling fluoride compounds, 10 points shall be assessed. R309-525-5(4)
- \_\_\_\_\_ (vi) For a fluoridation facility lacking a sampling location for measuring the final fluoride level, 2 points shall be assessed. R309-525-18
- \_\_\_\_\_ (vii) For a fluoridation facility that does not have a means to measure the flow of water to be treated, 2 points shall be assessed. R309-525-5(2)(g)
- \_\_\_\_\_ (viii) For a fluoridation facility without fluoride testing equipment not properly verified or calibrated, 2 points shall be assessed. R309-525-25(4)
- \_\_\_\_\_ (ix) For a fluoride facility adding fluoride compound before lime-soda softening, 2 points shall be assessed. R309-525-5(2)(e)
- \_\_\_\_\_ (x) For a Fluoridation facility lacking cross connection control so that no direct connections exist between any sewer and a drain or overflow from the feeder, solution chamber or tank, 10 points shall be assessed. R309-525-11(9)(b)(iii)
- \_\_\_\_\_ (xi) For a fluoridation facility storing incompatible chemicals in the fluoride storage or injection areas, 10 points shall be assessed. R309-525-11(7)(a)(iv)
- \_\_\_\_\_ (xii) For a fluoridation facility lacking a floor drain to facilitate the washdown of floors, 2 points shall be assessed. R309-525-5(5)(b)
- \_\_\_\_\_ (b) Acid
- \_\_\_\_\_ (i) For a fluoridation facility without deluge showers and eye wash devices, 10 points shall be assessed. R309-525-5(4)
- \_\_\_\_\_ (ii) For a fluoridation facility lacking adequate spill containment provisions, 2 points shall be assessed R309-525-11(6)(a)(iv)(B)
- \_\_\_\_\_ (iii) For a fluoridation facility lacking a vent in the fluorosilicic acid storage units that vents to the atmosphere, 2 points shall be assessed. R309-525-11(8)(b)(vi)
- \_\_\_\_\_ (c) Dry
- \_\_\_\_\_ (i) For a fluoridation facility where the make-up water used for sodium fluoride dissolution is not treated to reduce hardness to less than 75 mg/l as calcium carbonate, 2 points shall be assessed. R309-525-5(2)(i)
- \_\_\_\_\_ (ii) For a fluoridation facility without a spring opposed diaphragm type anti-siphon device for all fluoride feed lines and dilution water lines, 10 points shall be assessed. R309-525-5(2)(f)
- \_\_\_\_\_ (iii) For a fluoridation facility with saturators that do not have a flow meter on the inlet or outlet line, 2 points shall be assessed. R309-525-5(2)(l)
- \_\_\_\_\_ (iv) For a fluoridation facility without an adequate level of fluoride crystals in the saturator, 2 points shall be assessed. R309-525-11(8)(b)(i)
- \_\_\_\_\_ (v) For a fluoridation facility without a NIOSH/MSHA-certified dust respirator approved for fluoride dust removal as required in R309-525-11(10) for operators handling dry fluoride compounds, 10 points shall be assessed. R309-525-5(4)

\_\_\_\_\_ (vi) For a fluoridation facility where an overflow from the day tank will not drain by gravity back into the bulk storage tank or a containment system, 10 points shall be assessed. R309-525-11(8)(e)(v):

\_\_\_\_\_ (vii) For a fluoridation facility using the sodium fluoride dry chemical where the saturators are not of the up-flow type, 2 points shall be assessed. R309-535-5(2)(l):

\_\_\_\_\_ (viii) For a fluoride facility where fluoride chemicals stored in uncovered or opened shipping containers and are stored inside a building on pallets, 2 points shall be assessed. R309-535-5(1):

\_\_\_\_\_ (ix) For a fluoride feed pump that is not tied directly to the well pump or service pump, 30 points shall be assessed. R309-535-5(2)(k):

\_\_\_\_\_ (x) For a fluoridation facility lacking a vent in the dry-chemical storage areas that vents to the atmosphere outside the building, 2 points shall be assessed. R309-535-5(5)(a):

\_\_\_\_\_ (xi) For a fluoridation facility using sodium fluoride dry-chemical and lacking a hopper equipped with an exhaust fan and dust filter and under a negative pressure during transfer of dry fluoride compounds, 10 points shall be assessed. R309-535-5(5)(a):

\_\_\_\_\_ (xii) For a fluoridation facility that does not vent air from fluoride handling equipment through a dust filter to the outside atmosphere of the building for dust control during transfer of dry-fluoride compounds, 10 points shall be assessed. R309-535-5(5)(a):

\_\_\_\_\_ (xiii) For a fluoridation facility using sodium fluoride dry-chemical and lacking a means of disposing of empty bags, drums or barrels handled in a manner that minimizes operators' exposure to fluoride dusts shall be assessed, 10 points. R309-535-5(5)(b):

\_\_\_\_\_ (4) Filtration Treatment:

\_\_\_\_\_ (a) For a filtration facility that does not have equipment for each individual filter to continuously monitor the effluent turbidity, 30 points shall be assessed:

\_\_\_\_\_ (b) For a surface water filtration facility that does not have at least two filter units, each capable of meeting the plant design capacity, 20 points shall be assessed. R309-525-15(3):

\_\_\_\_\_ (c) For a conventional surface water filtration facility that does not have the ability to filter to waste (to allow a filter to ripen before introduction finished water into the clearwell), 20 points shall be assessed:

\_\_\_\_\_ (d) For a filtration facility where instrumentation and controls are inoperable, 2 points shall be assessed:

\_\_\_\_\_ (e) For a filtration facility where a backwash tank is not provided with finished drinking water, 20 points shall be assessed. R309-525-15(7)(a)(ix):

\_\_\_\_\_ (f) For a conventional surface water filtration facility where the backwash waste water is not settled prior to being recycled to the head of the treatment plant, 2 points shall be assessed. R309-525-15(7)(a):

\_\_\_\_\_ (g) For a membrane filtration facility where automatic membrane integrity tests are not performed at least daily, 2 points shall be assessed. R309-530-8(2)(b):

\_\_\_\_\_ (h) For a membrane filtration facility not using ANSI/NSF 60 approved chemicals, 25 points shall be assessed. R309-525-11(5)(b):

\_\_\_\_\_ (i) For a membrane filtration facility lacking cross-connection control protection for the treatment process, 10 points shall be assessed:

\_\_\_\_\_ (5) Ion Exchange

\_\_\_\_\_ (a) For an ion exchange facility without a depth of the exchange resin at least 3 feet, 2 points shall be assessed. R309-535-8(1)(b)(iii):

\_\_\_\_\_ (b) For an ion exchange facility using a salt for the brine solution not having an ANSI/NSF 60 certification, 25 points shall be assessed. R309-525-11(5)(b):

\_\_\_\_\_ (c) For an ion exchange facility make-up water inlet that lacks protection from back-siphonage, 2 points shall be assessed

\_\_\_\_\_ (d) For an ion exchange facility where the overflow discharge piping is not protected with a corrosion resistant screen or is not terminated with a downturned bend with adequate clearance to prevent cross connection, 10 points shall be assessed. R309-525-11(9)(b):

\_\_\_\_\_ (e) For an ion exchange facility that lacks a brine measuring tank or means of metering provided to obtain proper dilution, 2 points shall be assessed. R309-525-11(8)(b)(i):

\_\_\_\_\_ (6) Sequestration

\_\_\_\_\_ (a) For a polyphosphate sequestration facility that uses chemicals not meeting ANSI/NSF 60 certification, 25 points shall be assessed. R309-535-11(5)(d):

\_\_\_\_\_ (b) For a sequestration facility using phosphate chemicals where total phosphate applied exceed 10 milligrams per liter as PO<sub>4</sub>, 2 points shall be assessed. R309-535-11(5)(b):

\_\_\_\_\_ (c) For a sequestration facility that lacks sample taps located on each raw water source, each treatment unit influent and each treatment unit effluent, 2 points shall be assessed. R309-535-11(5)(d):

\_\_\_\_\_ (d) For a sequestration facility that lacks the testing equipment for accurately measuring the phosphate dosage, 2 points shall be assessed. R309-535-11(5):

**R309-400-8. Operator Certification.**

\_\_\_\_\_ (1) A water system that is required to have a certified operator and does not, 30 points shall be assessed:

\_\_\_\_\_ (2) A water system where the operator is not certified at the appropriate level, 10 points shall be assessed:

\_\_\_\_\_ (3) A grade 3 or 4 water system that does not have all direct responsible charge operators (as specified in R309-300-5(5)) certified at the level of the system, 5 to 15 points shall be assessed. The number of points shall be based on the percentage of time that the water system is operated by operators not certified at the required level:

\_\_\_\_\_ (4) A water system where the certified operator does not live within a one hour response time, 20 points shall be assessed:

\_\_\_\_\_ (5) A water system may be credited up to a maximum of 20 points, which shall remain on record for as long as the conditions apply. The following items are eligible for credit:

\_\_\_\_\_ (a) A water system that is not required to have a certified operator and does shall be credited 10 points:

\_\_\_\_\_ (b) A water system that has operators that are certified at a higher level than required shall be credited 10 points:

\_\_\_\_\_ (c) A water system that has operators certified in other areas that are not required by that water system, such as treatment shall be credited 10 points:

**R309-400-9. Cross Connection Control Program.**

\_\_\_\_\_ (1) A water system, which does not have any of the below listed components of a cross connection control program in place, 50 points shall be assessed:

~~\_\_\_\_\_ (2) A water system, which only has some of the components of a cross-connection control program in place, shall be assessed the following number of points:~~

~~\_\_\_\_\_ (a) A water system which does not have local authority to enforce a cross-connection control program (e.g., ordinance, bylaw or policy), 10 points shall be assessed.~~

~~\_\_\_\_\_ (b) A water system that does not provided public education or awareness material or presentations on an annual basis, 10 points shall be assessed.~~

~~\_\_\_\_\_ (c) A water system that does not have an operator with training in the area of cross-connection control or backflow prevention, 10 points shall be assessed.~~

~~\_\_\_\_\_ (d) A water system with no written records of cross-connection control activities, such as, backflow assembly inventory and test history, 10 points shall be assessed.~~

~~\_\_\_\_\_ (e) A water system that does not have on-going enforcement activities (hazard assessments and enforcement actions), 10 points shall be assessed.~~

**R309-400-10. Drinking Water Source Protection.**

~~\_\_\_\_\_ Drinking water source protection (for ground water and surface water sources): Points shall be assessed for each source after a system fails to complete source protection requirements according to schedules or deadlines specified in R309-600 and R309-605, unless extensions have been requested from and granted by the Director. The points shall remain until such time as the violation or deficiency is corrected or resolved.~~

~~\_\_\_\_\_ (1) For a water system that has not appointed a designated person for source protection and notified the Division, 5 points shall be assessed.~~

~~\_\_\_\_\_ (2) For a water system that has not upgraded a Preliminary Evaluation Report to a Drinking Water Source Protection plan, 30 points shall be assessed.~~

~~\_\_\_\_\_ (3) For a water system that has not submitted an updated Drinking Water Source Protection plan, 10 points shall be assessed.~~

~~\_\_\_\_\_ (4) For a water system with any new (see R309-110) sources for which a Preliminary Evaluation Report has not been submitted, 150 points shall be assessed. These points shall be included with the points for an unapproved source, not added to them.~~

~~\_\_\_\_\_ (5) For a water system that has any existing (see R309-110) sources that have come into use for which a source protection plan has not been submitted, 30 points shall be assessed.~~

~~\_\_\_\_\_ (6) For a water system that has reconstructed or redeveloped a water source and has not submitted a revised source protection plan, 20 points shall be assessed.~~

~~\_\_\_\_\_ (7) For a water system that has a disapproved plan, update or Preliminary Evaluation Report, 20 points shall be assessed.~~

**R309-400-11. Administrative Issues.**

~~\_\_\_\_\_ Points in this area shall be assessed at the time that the failure occurs or upon notification of the Director, and shall remain until the issue is resolved unless otherwise specified:~~

~~\_\_\_\_\_ (1) Administrative Data -~~

~~\_\_\_\_\_ (a) A water system, that has not designated a person or organizational official responsible for the system including a current address and phone number, 10 points shall be assessed.~~

~~\_\_\_\_\_ (b) A water system project constructed without proper plan approval, 50 to 200 points shall be assessed based on an evaluation of~~

~~the project which shall include the structural or engineering integrity of the project; whether the plans and specifications were prepared and stamped by a licensed professional engineer; the adequacy of the materials used and the impact on the operation of the water system (good or bad).~~

~~\_\_\_\_\_ (2) A water system with a current written Emergency Response Program shall be credited 10 points that shall remain on record as long as the Program remains current.~~

~~\_\_\_\_\_ (3) A water system with a written Financial Management Plan including an appropriate rate structure, infra-structure replacement fund, and master plan shall be credited 10 points that shall remain on record as long as the Plan is current.~~

~~\_\_\_\_\_ (4) Sampling Site Plans:~~

~~\_\_\_\_\_ (a) A water system, which does not have an adequate bacteriological sampling site plan, 5 points shall be assessed.~~

~~\_\_\_\_\_ (b) A water system, which does not have a lead/copper-sampling site plan, 10 points shall be assessed.~~

~~\_\_\_\_\_ (5) Customer Complaint:~~

~~\_\_\_\_\_ (a) 25 to 100 points may be assessed for valid and documented customer complaints. The customer complaints include but are not limited to the following:~~

~~\_\_\_\_\_ (i) Turbidity;~~

~~\_\_\_\_\_ (ii) Pressure;~~

~~\_\_\_\_\_ (iii) Taste and Odor;~~

~~\_\_\_\_\_ (iv) Sickness (water suspected); and~~

~~\_\_\_\_\_ (v) Waterborne Disease Outbreak (R309-104-9);~~

~~\_\_\_\_\_ (vi) Periods of Water Outage~~

~~\_\_\_\_\_ (b) The number of points shall be based upon the extent and documentation of the problem and the potential impact to public health. The documentation shall consist of an investigation by Department of Environmental Quality, Department of Health or Local Health Department personnel and may include an epidemiological study linking the drinking water to reported outbreaks of illness where appropriate.~~

~~\_\_\_\_\_ (c) In the case of a documented waterborne disease outbreak, the water system shall automatically be rated Not Approved for at least the duration of the threat to the quality of the drinking water and as long as it takes the water system to correct any deficiency that caused the outbreak.~~

~~\_\_\_\_\_ (d) Points shall only be assessed once per issue and shall not be additive based on the number of calls per issue. These points shall be assessed and updated upon verification of the complaint by the Director and shall remain on record until the issue or deficiency no longer exists. Points may have already been assessed in other areas as appropriate.~~

~~\_\_\_\_\_ (6)(a) The Director may issue directives to a water system that include, but are not limited to the following:~~

~~\_\_\_\_\_ (i) Administrative Orders;~~

~~\_\_\_\_\_ (ii) Rule defined action;~~

~~\_\_\_\_\_ (iii) Rule defined compliance schedule;~~

~~\_\_\_\_\_ (iv) Variance/Exemption requirements;~~

~~\_\_\_\_\_ (v) Bilateral Compliance Agreement;~~

~~\_\_\_\_\_ (vi) Notice of Violation and Compliance Order; and~~

~~\_\_\_\_\_ (vii) Compliance Action/Enforcement Order.~~

~~\_\_\_\_\_ (b) If the water system does not comply with the directive, the Director may assess 25 to 200 points to the water system. Points shall be assessed based upon the severity of the non-compliance, the threat to public health and the underlying basis for the original directive.~~

~~(7) Data Falsification - The Director may assess a water system points for data falsification. The water system may be assessed 25 to 200 points for each occurrence based upon:~~

- ~~(a) the severity of the falsification;~~
- ~~(b) the threat to public health;~~
- ~~(c) the intent of the water system personnel; and,~~
- ~~(d) the type of falsification:~~
  - ~~(i) Reports only good data~~
  - ~~(ii) Doctored results from the laboratory~~
  - ~~(iii) Non-valid sample~~

~~Data reported to the Director includes but is not limited to Water Treatment Plant Reports, Disinfection Reports, bacteriological and chemical analyses, and Annual Reports. This assessment of points shall be in addition to any other penalty provided by law.~~

~~(8) Water Hauling:~~

~~(a) For a community water system that is hauling water as a permanent method of culinary water distribution, 150 points shall be assessed. R309-550-10(1).~~

~~(b) For a non-community system that is hauling water as a permanent method of culinary water distribution without approval from the director, 150 points shall be assessed. R309-550-10(2).~~

~~(c) For a water system, which has been granted an exception to haul water, if any part of the water hauling guidelines is not followed, 50 points shall be assessed. R309-550-10.~~

#### **R309-400-12. Reporting and Record Maintenance Issues.**

~~Points may be assessed for failure to provide required reports to the Director by the reporting deadline. The points shall be assigned as the failure occurs and shall remain on record for a period of one year.~~

~~(1) Monthly Reports:~~

~~(a) For each failure to report the monthly water treatment plant report, 100 points shall be assessed.~~

~~(2) Quarterly Reports:~~

~~(a) For each failure to report the quarterly disinfection report, 50 points shall be assessed.~~

~~(3) Annual and Other Reports:~~

~~(a) A public water system that fails to submit water use data required by a state agency or fails to verify the accuracy of the data by including a certification by a certified operator or a professional engineer performing the duties of a certified operator shall be assessed 50 points.~~

~~(b) Community water systems that fail to send a certification to the Division stating how the consumer confidence report was distributed to its customers as required in R309-225-7(3), 10 points shall be assessed.~~

~~(c) Community water systems that fail to mail a copy of the consumer confidence report to the Division as required in R309-225-7(3), 10 points shall be assessed.~~

~~(d) A public water system that fails to submit operational reports or other reports required by the Division shall be assessed 20 points.]~~

#### **R309-400. Improvement Priority System and Public Water System Ratings.**

##### **R309-400-1. Purpose.**

~~(1) The purpose of this rule is to establish the Improvement Priority System used by the division to assign compliance ratings to public water systems and to prioritize~~

~~enforcement action based on points assessed for noncompliance with drinking water rules.~~

##### **R309-400-2. Authority.**

~~(1) This rule is promulgated by the Drinking Water Board as authorized by Title 19, Environmental Quality Code, Chapter 4, Safe Drinking Water Act, Subsection 104, of the Utah Code and in accordance with 63G, Chapter 3 of the same, known as the Administrative Rulemaking Act.~~

##### **R309-400-3. Definitions.**

~~(1) "Improvement Priority System (IPS)" is a point system used by the division to evaluate a public water system's performance and compliance with the drinking water rules in Title 309, Environmental Quality, Drinking Water.~~

~~(2) "Public Water System Rating" is assigned to a public water system by the director to characterize the water system's compliance with drinking water rules and overall operation and performance.~~

##### **R309-400-4. Improvement Priority System -- Assessment of Points.**

~~(1) The division shall:~~

~~(a) maintain and make public an improvement priority system (IPS) program that includes:~~

~~(i) a table specifying the number of points associated with each instance of noncompliance with a drinking water rule requirement and noncompliance with a directive or order issued by the director, and~~

~~(ii) the point thresholds for assigning an Approved or Not Approved rating to each type of public water system; and~~

~~(b) obtain approval from the Drinking Water Board for substantive revisions to the IPS program.~~

~~(2) The division incorporates by reference the IPS program dated August 27, 2019.~~

~~(3) Implementation of the IPS program approved by Drinking Water Board starts on January 1, 2020.~~

~~(4) The director may assess points to a public water system and take enforcement action in accordance with the implementation policy and the table of points based on:~~

~~(a) noncompliance with Title R309 of the Utah Administrative Code;~~

~~(b) noncompliance with a directive or order issued by the director; or~~

~~(c) operational practices or performance that may result in a threat to public health.~~

##### **R309-400-5. Public Water System Ratings.**

~~(1) The director may assign a rating to a public water system of:~~

~~(a) Approved based on the total number of points assessed for noncompliance;~~

~~(b) Not Approved based on:~~

~~(i) the total number of points assessed for noncompliance, or~~

~~(ii) an immediate public health threat; or~~

~~(c) Corrective Action based on a current, written agreement with the division to resolve underlying noncompliance according to a compliance schedule.~~

(2) A public water system shall maintain an Approved rating.

(3) A public water system with a Not Approved rating shall:

(a) take immediate action to resolve the noncompliance that resulted in the Not Approved rating; or

(b) enter into a written agreement with the division to resolve the noncompliance that resulted in the Not Approved rating according to a compliance schedule.

**R309-400-6. Administrative Appeals.**

(1) The assessment of points does not constitute a permit order per R305-7-102(1)(l) and may not be appealed pursuant to R305-7.

(2) The assignment of a rating to a public water system constitutes an initial order per R305-7-102(1)(g) and may be appealed by submitting, filing, and serving a written Request for Agency Action pursuant to R305-7-303 within 30 days of the date of the order issued by the director.

**KEY: drinking water, environmental protection, water system rating, penalties**

**Date of Enactment or Last Substantive Amendment: [November 22, 2016]2019**

**Notice of Continuation: March 13, 2015**

**Authorizing, and Implemented or Interpreted Law: 19-4-104**

**Governor, Economic Development  
R357-15a  
Non-Profit Enterprise Zone Rule**

**NOTICE OF PROPOSED RULE**

(New Rule)

DAR FILE NO.: 44018

FILED: 08/27/2019

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: H.B. 219, passed by the Legislature during the 2017 General Session, created the Non-Profit Enterprise Zone Rule Program (Program). The new statutory language permits the Office of Economic Development (Office) to promulgate rules to administer the Program. The purpose of this rule is to clarify the standards for participation in the Program.

SUMMARY OF THE RULE OR CHANGE: Section R357-15a-103 references the authority granted in the statutory language that permits rulewriting. Section R357-15a-104 outlines the content of the application. Section R357-15a-105 establishes the tax credit procedure.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 63N-2-213.5(14)

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** There is no aggregate anticipated cost or savings to the state budget. This rule is merely creating the requirements for the Program that was created by the passing of H.B. 219 (2017).

♦ **LOCAL GOVERNMENTS:** There is no aggregate anticipated cost or savings to local governments because local governments are not required to comply with or enforce this rule.

♦ **SMALL BUSINESSES:** There is no aggregate anticipated cost or savings to small businesses because this proposed rule does not create new obligations for small businesses, nor does it increase the costs associated with any existing obligation. Participation in the Program is optional.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no aggregate anticipated cost or savings to persons other than small businesses, businesses, or local government entities because this proposed rule does not create new obligations for persons other than small businesses, businesses, or local government entities, nor does it increase the costs associated with any existing obligation.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance costs for affected persons because participation in the Program is optional.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** This new rule implements H.B. 219 (2017) which created the Non-Profit Enterprise Zone Program (Program). The purpose of this rule filing is to clarify the standards for participation in the Program. This rule will have no impact on businesses.

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

GOVERNOR  
ECONOMIC DEVELOPMENT  
THIRD FLOOR  
60 E SOUTH TEMPLE  
SALT LAKE CITY, UT 84111

or at the Office of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

♦ Dane Ishihara by phone at 801-538-8865, or by Internet E-mail at dishihara@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/15/2019

THIS RULE MAY BECOME EFFECTIVE ON: 10/22/2019

AUTHORIZED BY: Dane Ishihara, Economic Development Analyst

**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
<b>Total Fiscal Costs:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
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
<b>Total Fiscal Benefits:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

\*This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts for State Government, Local Government, Small Businesses and Other Persons are described in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.

**Appendix 2: Regulatory Impact to Non-Small Businesses**

There is no regulatory impact creating financial cost to non-small businesses. This rule filing is to clarify the standards for participation in the program. There are no general regulations being promulgated by this rule because the program is voluntary and does not require non-participants to do anything. There is no impact to businesses or persons in general because this rule only applies to those who chose to participate in this program in order to receive a grant.

The head of the Governor's Office of Economic Development, Val Hale, has reviewed and approved this fiscal analysis.

**R357. Governor, Economic Development.**

**R357-15a. Non-Profit Enterprise Zone Program.**

**R357-15a-101. Title.**

\_\_\_\_\_ This rule is known as the "Non-Profit Enterprise Zone Rule."

**R357-15a-103. Authority.**

\_\_\_\_\_ (1) Subsection 63N-2-213.5 (14) requires the office to make rules for administration of the program.

**R357-15a-104. Content of Application.**

\_\_\_\_\_ (1) The following content shall, at minimum, be included in each entity's application for a grant:

- \_\_\_\_\_ (a) entity name;
- \_\_\_\_\_ (b) contact information including:
  - \_\_\_\_\_ (i) contact name;
  - \_\_\_\_\_ (ii) email address;
  - \_\_\_\_\_ (iii) telephone number;
  - \_\_\_\_\_ (iv) title; and
  - \_\_\_\_\_ (v) mailing address.
- \_\_\_\_\_ (c) description of the primary use of funds, including:
  - \_\_\_\_\_ (i) how the project will impact the enterprise zone;
- \_\_\_\_\_ (2) Supporting documentation including:
  - \_\_\_\_\_ (a) IRS designation letter;
  - \_\_\_\_\_ (b) non-profit organization W-9;
  - \_\_\_\_\_ (c) charitable solicitation permit;
  - \_\_\_\_\_ (d) certificate of good standing;
  - \_\_\_\_\_ (e) articles of incorporation;
  - \_\_\_\_\_ (f) by-laws;
  - \_\_\_\_\_ (g) list of board members;
  - \_\_\_\_\_ (h) evidence the legislative body of the county or municipality has approved the project; and
  - \_\_\_\_\_ (i) project budget, including maps, drawings or renderings.

**R357-15a-105. Tax Credit Procedure.**

\_\_\_\_\_ (1) A nonprofit corporation associated with an approved project shall submit, at minimum, submit the following upon completion of the approve project:

- \_\_\_\_\_ (a) complete donor list;
- \_\_\_\_\_ (b) verified project expenses on a format approved by the office.

\_\_\_\_\_ (2) Claimants shall submit, at minimum, the following documentation for reimbursement and after completion of the approved project:

- \_\_\_\_\_ (a) a complete request form provided by the office;
- \_\_\_\_\_ (b) receipt from the non-profit for the donation; and
- \_\_\_\_\_ (c) donation documentation, which may include:
  - \_\_\_\_\_ (i) canceled checks;
  - \_\_\_\_\_ (ii) credit card statements;
  - \_\_\_\_\_ (iii) bank statements; and
  - \_\_\_\_\_ (iv) other financial instruments verifying payment had occurred.

\_\_\_\_\_ (3) The office may deny a tax credit for claimants who were the recipient of funding for an approved project.

**KEY: rural development, economic development, enterprise zone**  
**Date of Enactment or Last Substantive Amendment: 2019**  
**Authorizing, and Implemented or Interpreted Law: 63N-2-213.5(14)**

**Health, Health Care Financing,  
Coverage and Reimbursement Policy**  
**R414-518**  
**Emergency Services Program for Non-Citizens**

**NOTICE OF PROPOSED RULE**

(New Rule)

DAR FILE NO.: 44023

FILED: 08/30/2019

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this new rule is to implement, by rule, Medicaid policy for emergency services as they relate to non-citizens.

**SUMMARY OF THE RULE OR CHANGE:** This new rule reflects many long-standing policies for the emergency services program through its definitions, requirements for non-citizens, and service coverage criteria. Additionally, it defines how emergency services will be provided to individuals with end stage renal disease (ESRD) and expands the covered services to include treatment of ESRD in an outpatient dialysis facility. This rule also clarifies that reimbursement for services under this rule is as described in the Utah Medicaid State Plan, as approved by the Centers for Medicare & Medicaid Services (CMS).

**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 anticipated to be a general fund cost savings of approximately \$77,000 per year.
- ◆ **LOCAL GOVERNMENTS:** There is no impact on local governments because they do not fund or provide emergency services under the Medicaid program.
- ◆ **SMALL BUSINESSES:** There is no expected fiscal impact on small businesses because there are no known hospitals or outpatient dialysis centers that have fewer than 50 employees.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is for outpatient dialysis centers who may begin to serve this population, an increased number of patients that may be served. Dialysis services are expected to shift from outpatient hospital to outpatient dialysis centers. There is

anticipated to be an overall annual increase in outpatient dialysis center reimbursement of approximately \$315,000 (total funds) and an annual decrease of approximately \$597,000 in outpatient hospital reimbursement. Anticipating the dialysis services move to outpatient dialysis centers, depending on volume, an outpatient hospital may see reduced revenues ranging from \$802 to \$587,000 per year.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Individuals under the emergency services program for non-citizens requiring dialysis services will be able to receive those services in an outpatient dialysis center rather than needing to obtain those services through an outpatient hospital's emergency department. There is for outpatient dialysis centers who may begin to serve this population, an increased number of patients that may be served. Dialysis services are expected to shift from outpatient hospital to outpatient dialysis centers. There is anticipated to be an overall annual increase in outpatient dialysis center reimbursement of approximately \$315,000 (total funds) and an annual decrease of approximately \$597,000 in outpatient hospital reimbursement. Anticipating the dialysis services move to outpatient dialysis centers, depending on volume, an outpatient hospital may see reduced revenues ranging from \$802 to \$587,000 per year.

**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 result in a decrease in business revenue for outpatient hospitals, but an increase in revenue to outpatient dialysis centers.

**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 10/15/2019**

**THIS RULE MAY BECOME EFFECTIVE ON: 10/22/2019**

**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	\$298,500	\$0	\$0
Other Persons	\$298,500	\$0	\$0
<b>Total Fiscal Costs:</b>	<b>\$597,000</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$77,000	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$157,500	\$0	\$0
Other Persons	\$157,500	\$0	\$0
<b>Total Fiscal Benefits:</b>	<b>\$392,000</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits:</b>	<b>-\$205,000</b>	<b>\$0</b>	<b>\$0</b>

\*This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts for State Government, Local Government, Small Businesses and Other Persons are described in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.

**Appendix 2: Regulatory Impact to Non-Small Businesses**  
 About 113 outpatient hospitals will see their annual revenue decrease by about \$597,000. Conversely, about 42 outpatient dialysis centers will see their revenue increase by about \$315,000.

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

**R414-518. Emergency Services Program for Non-Citizens.**

**R414-518-1. Introduction and Authority.**

This rule is authorized by 42 U.S.C. 1396b, 42 CFR 440.255(c), and Subsection 1903(v)(1) of the Social Security Act, and implements the scope of services available to individuals who qualify for coverage under the Emergency Service Program for Non-Citizens.

**R414-518-2. Definitions.**

In addition to the definitions in Rule R414-1, the following definitions apply to this rule: (1) "Acute" means referring to a disease or illness of sudden onset and brief course, not chronic;

(2) "Chronic" means a persistent condition in relation to a disease or illness;

(3) "Diagnosis" means the identification of the cause, nature, or manifestation of a disease or illness;

(4) "Non-Citizens" means aliens who are not lawfully admitted for permanent residence in the United States or permanently residing in the United States under the color of law;

(5) "Stabilized" means that an individual's severity of illness and the intensity of necessary services are such that the individual can leave the acute care facility, no longer needs constant attention from a medical professional, advances to supportive care, or requires long-term care;

(6) "Treating Physician" means a licensed physician, who has conducted an evaluation of the individual sufficient to render a medical opinion, that the presenting symptoms are emergent in nature and require immediate medical attention.

**R414-518-3. Service Coverage and Limitations.**

(1) Coverage of emergency services for non-citizens must meet the criteria found in 42 CFR 440.255(c) and is only covered until the individual is stabilized.

(2) In the event of a referral to the emergency department, the initial emergency department visit may qualify for coverage when all of the following criteria is met and established by supporting documentation:

(a) The treating physician performs an evaluation of the individual and refers the individual to the emergency department for further evaluation to determine if there is an emergency medical condition;

(b) The individual goes from the treating physician directly to the emergency department for emergency services.

(3) Dialysis is a covered benefit when the following criteria is met and established by supporting documentation. The individual:

(a) must have an initial qualifying emergency department event that meets the criteria outlined in Subsection R414-518-3(1) or (2) above;

(b) must be diagnosed with End Stage Renal Disease (ESRD) requiring dialysis; and

(i) during the initial qualifying event, the provider shall inform the individual where and how to receive continued outpatient dialysis services, and document the provided information in the individual's medical record;

(c) the individual must be receiving services through a qualifying inpatient hospitalization; or

(d) through a Medicaid-enrolled outpatient dialysis facility after an initial qualifying emergency department event outlined in Subsection R414-518-3(3)(a) above.

(4) Medicaid does not cover the following services for non-citizens:

(a) Stabilized medical conditions;

(b) Organ transplants;

(c) Planned or follow-up care;



- (d) Maintenance or planned chemotherapy; or
- (e) Maintenance or planned treatment of a chronic condition except as outlined in Subsection R414-518-3(3)(d) above.
- (5) Medicaid does not cover services provided during the prenatal or post-partum period unless the criteria in Subsection R414-518-3(1) and (2) is met.
- (6) Except for services covered pursuant to Subsection R414-518-3(2), all coverage determinations are based upon the final diagnosis of the treated emergency condition.

**R414-518-4. Reimbursement.**

Reimbursement for services covered under the Emergency Services Program for Non-Citizens is paid as described in the Utah Medicaid State Plan.

**KEY: Medicaid, emergency services**

**Date of Enactment or Last Substantive Amendment: 2019**

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

Human Services, Substance Abuse  
and Mental Health  
**R523-4**  
Certification Requirements for  
Screening, Assessment, Prevention,  
Treatment and Recovery Support  
Programs for Adults

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 44005

FILED: 08/20/2019

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule prescribes the minimum standards required for justice certification of mental health and substance use disorder (SUD) providers serving adults participating in mandatory education and treatment programs designed to reduce criminogenic risk. These changes are being proposed based on the agency's self-review of the statutory requirements placed on the Division of Substance Abuse and Mental Health (Division), and analysis of how to best meet the intent of Justice Reinvestment Initiative (JRI) certification.

**SUMMARY OF THE RULE OR CHANGE:** These amendments include: 1) formatting of sections has been changed; 2) an emphasis has been placed on the intent for certification to be extended to programs serving adults with criminogenic risk factors; 3) mandatory services has been defined; 4) a section for justice certification eligibility has been added to this rule; 5) requirements for criminogenic risk

assessments has been removed; 6) criminogenic screening requirements have been updated; 7) standards for substance use and mental health screening and assessments have been combined and updated; 8) standards for providers of educational series have been updated; 9) the "Standards for Community-based Treatment" section has been updated and combined with the "Program Standards" section, and provisions for sole proprietorships and health clinics have been added; 10) the "Standards for Jail or Prison Treatment Programs" and "Documentation Standards for Community and Jail/Prison Based Treatment Services" sections have been eliminated; 11) justice certification requirements have been updated to reflect current agency expectations and actions; and 12) key search phrases have been updated to reflect the current justice certification nomenclature.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: 42 CFR Part 2 and Subsection 62A-15-103(j)

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** The proposed changes in this rule amendment update procedures and expectation to meet current Division expectations and procedures, and do not require additional cost to the state budget beyond that which already exist with this rule as it is currently written.
- ◆ **LOCAL GOVERNMENTS:** The proposed changes in this rule amendment update procedures and expectation to meet current Division expectations and procedures, and do not require additional cost to local governments service provider systems beyond that which already exist with this rule as it is currently written.
- ◆ **SMALL BUSINESSES:** The proposed changes in this rule amendment update procedures and expectation to meet current Division expectations and procedures, and do not require additional cost to small businesses holding current justice certifications or small businesses that will potentially apply to be justice certified in the future beyond that which already exist with this rule as it is currently written.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no costs or benefits in this rule change associated with other persons.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance cost in this rule amendment.

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

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

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 10/15/2019

THIS RULE MAY BECOME EFFECTIVE ON: 10/22/2019

AUTHORIZED BY: Doug Thomas, Director

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

**Appendix 2: Regulatory Impact to Non-Small Businesses**

These rule changes are not expected to have any fiscal impact on non-small businesses' revenues or expenditures, because there are not any non-small businesses that are currently providing substance use and/or mental health services to individuals who are required to participate in treatment; and it is unlikely a non-small business will ever participate in the activities describe in these rule changes.

The director of the Department of Human Services, Ann Williamson, has reviewed and approved this fiscal analysis.

**R523. Human Services, Substance Abuse and Mental Health.  
 R523-4. Certification Requirements for Screening, Assessment, Prevention, Treatment and Recovery Support Programs for Adults.**

**R523-4-1. Authority.**

This rule is authorized by Section 62A-15-103~~(h)~~(j) and 62A-15-103(2)(a)(v) requiring the Division of Substance Abuse and Mental Health (Division) to establish by rule, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, minimum standards and requirements for the provision of substance use disorder and mental health treatment ~~for adults~~~~[to individuals who are]~~ required to participate in treatment by the court or the Board of Pardons and Parole~~;~~ ~~or who are incarcerated and to develop, in collaboration with public and private programs, minimum standards for public and private providers of substance abuse and mental health programs licensed by the Department of Human Services under Title 62A, Chapter 2, Licensure of Programs and Facilities].~~

**R523-4-2. Purpose.**

This rule prescribes the minimum standards required for ~~[programs that provide mental health and substance use disorder screening, assessment, prevention, treatment, education and recovery supports services for adults, and requirements to obtain a quality certification]~~ justice certification of mental health and substance use ~~disorder (SUD) providers serving adults participating in mandatory education and treatment programs designed to reduce criminogenic risk.~~

**R523-4-3. Definitions.**

- (1) "Screening" means a preliminary appraisal of an ~~[individual]~~adult to determine if further assessment of mental health, and/or substance use risk and needs is warranted.
- (2) "Assessment" means an in-depth clinical interview with a licensed mental health therapist, used to:
  - (a) Determine if an ~~[individual]~~adult is in need of:
    - (i) Mental health or substance use disorder treatment~~[services]~~;
    - (ii) An ~~[Educational or Prevention]~~educational series;
    - (iii) Recovery support services;
  - (b) Recommend a needed level of care or array of services.
- (3) "Criminogenic Risk" means individual characteristics that are directly related to researched causations of crime.
- (4) "Level of Care" means the intensity of either substance use disorder services needed as defined by the American Society of Addiction Medicine (ASAM) or the array of services needed to address an individual's mental health issues.

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
<b>Total Fiscal Costs:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
Fiscal Benefits	FY 2020	FY 2021	FY 2022
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

\*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

(5) "Treatment" means the array of therapeutic services, including individual, family, group services, medications and interventions designed to improve and enhance social or psychological functioning and reduce criminogenic risk for individuals identified as having either mental health or substance use disorders. ~~[-The ultimate goal of treatment services is to engage the individual in a process of recovery.]~~

(6) "Educational~~[-or Prevention]~~ Series" means an evidence-based instructional series ~~[for individuals with low criminogenic risk]~~ obtained at a substance use disorder program that is approved by the Division of Substance Abuse and Mental Health in accordance with Section 62A-15-105 designed to prevent the onset of substance use and/or mental health disorders.

(7) "Recovery" means a process of change through which individuals improve their health and wellness, live a self-directed life, and strive to reach their full potential.

(8) "Recovery Support" means social support services or activities provided before, during or after completion of acute treatment services to enhance an individual's ability to either attain or retain their recovery from either mental health or substance use disorders.

(9) "Mandatory" means education or treatment ordered, motivated, or supervised by the criminal justice system.

#### **R523-4. Eligibility for Justice Certification.**

(1) All programs or providers desiring to deliver mandatory education, or treatment services shall apply for and achieve a justice certification.

(2) The Division shall accept applications for certification from licensed human services programs providing SUD and mental health services, sole practitioners and health care facilities.

(3) Applicants for certification shall:

(a) Obtain and maintain facility license from the Department of Human Services, Office of Licensing or a health care facility license issued by Utah Department of Health, or;

(b) Sole practitioners shall submit proof of:

(i) An unencumbered license from the Utah Department of Occupational Licensing;

(ii) Adequate and appropriate malpractice insurance, and

(iii) An ability to meet all the requirements of R523-4-4 through R523-4-9.

(4) Justice certification is not required for the following programs and providers:

(a) Health care providers providing physical healthcare and limited behavioral health services and counseling;

(b) Health providers prescribing medication for physical health, substance use disorder or behavioral health treatment; and

(c) Opioid Treatment Programs engaged in opioid treatment of individuals with an opioid agonist treatment medication registered under 21 U.S.C. Sec. 823(g) licensed by the Office of Licensing, within the Department of Human Services, and certified by the Substance Abuse and Mental Health Services Administration in accordance with 42 C.F.R. 8.11;

(d) Recovery residences licensed by the Office of Licensing, within the Department of Human Services and in compliance with R501-18; and

(e) Programs and Sole Practitioners working with adults with low criminogenic risk identified using a valid and reliable screening instrument consistent with the standards in R523-4-5.

#### **R523-4-[4]5. Standards for Criminogenic Risk Screening~~[-and Assessment for Agencies Treating Justice Involved Individuals].~~**

~~(1) Prior to participating in any compelled [educational, preventative] education or treatment, [services-]adults shall [be given]complete a brief, validated criminogenic[;] risk[-and needs] screen[-to determine whether the adult is of low, moderate, or high risk to re-offend].~~

~~(2) [Screenings shall:]The screen shall evaluate behaviors and characteristics known to predict re-offending including delinquency history, social history, and attitudes/behaviors about substance use, antisocial cognition, antisocial associates, family and marital relations, employment, and leisure and recreational activities;~~

~~[-(a) Be conducted by an individual that has completed training recommended by the developer of the specific instrument being used and/or approved by the Division;~~

~~[-(b) Collect information about behaviors and characteristics known to predict re-offending including delinquency history, social history, and attitudes/behaviors;~~

~~[-(3) If the screen indicates a high or moderate likelihood of re-offending the adult shall be given an in-depth assessment of criminogenic risk and need with an instrument that has been evaluated and found reliable and valid by the scientific community for the purpose of identifying specific criminogenic risks and needs;~~

~~[-(4) The criminogenic assessment shall examine a wide variety of factors related to the adult's strengths and challenges including: criminal history, school, employment, relationships, environment, current living arrangements, alcohol and drugs, mental health, attitudes, behaviors, and skills;~~

~~[-(5) The criminogenic assessment shall also identify protective factors that are related to the reduced likelihood of re-offending and risk factors that are related to the increased likelihood of re-offending.]~~

(3) Screens shall be used to inform the probability of whether the adult is of low, moderate, or high risk to re-offend

(4) Screens may be completed by partner agencies such as the courts, law enforcement or supervising entity and reported to treatment providers.

(5) Screens shall be included and documented in the adult's service records.

(6) When a screen identifies an adult with low criminogenic risk the provider shall:

(a) Report the results of the screen to the court;

(b) Refer the adult to non-criminal justice agencies for any desired treatment, or

(c) Provide services in a manner that limits exposure to adults with high criminogenic risk.

(7) When a screen identifies an adult with moderate or high criminogenic risk, the provider shall refer the adult to a justice certified provider or deliver services that meet the standards outlined in this rule.

#### **R523-4-[5]6. Standards for Substance Use and Mental Health Disorder Screening[s] and Assessment.**

~~(1) [Adults shall be screened]All adults shall complete a mental health/substance use disorder screen using an instrument(s) that has been evaluated and found reliable and valid by the scientific community[-to determine whether the adult is in need of a comprehensive assessment].~~

~~(2) [Screenings shall be:~~

~~\_\_\_\_\_ (a) Conducted by an individual that has completed training recommended by the developer of the specific instrument being used and/or approved by the Division;~~

~~\_\_\_\_\_ (b) Trauma sensitive, developmentally appropriate, and culturally sensitive. If the screening indicates a low probability for a substance use disorder or mental illness, the screening agency may recommend participation in an educational series.~~

~~(3) [The individual shall be referred for an] An assessment shall be completed if the screening [identifies] indicates a need for further assessment for potential substance use and/or mental health disorders.~~

~~(4) [Screenings shall not be used to determine diagnosis but may assist in determining the need for further assessment.]~~

**~~R523-4-6. Standards for Substance Use and Mental Health Disorder Assessments.~~**

~~\_\_\_\_\_ (1) Assessments shall be conducted by a licensed mental health therapist using a standardized process/instrument(s) that has been evaluated by the scientific community and determined to be reliable and valid for the purpose of assessing individuals.~~

~~\_\_\_\_\_ (2) Assessments shall identify the individual's level of motivation for treatment and implement strategies to increase engagement and need for clinically appropriate Mental Health Disorder services and/or Substance Use Disorder services in the following modified ASAM Patient Placement Criteria dimensions:] An assessment shall be conducted prior to admission to a clinical treatment level of care.~~

~~\_\_\_\_\_ (5) An initial assessments shall:~~

~~\_\_\_\_\_ (a) Determine the adult's eligibility for treatment, provide the basis for a treatment plan, and establish a baseline measure for use in evaluating a patient's response to treatment.~~

~~\_\_\_\_\_ (b) Identify comorbid medical and psychiatric conditions and diagnosis and to determine how, when and where they will be addressed;~~

~~\_\_\_\_\_ (c) Identify communicable diseases and address them as needed;~~

~~\_\_\_\_\_ (d) Evaluate the adult's level of physical, psychological and social functioning or impairment;~~

~~\_\_\_\_\_ (e) Assess the adult's access to social supports, family, friends, employment, housing, finances and legal problems; and~~

~~\_\_\_\_\_ (f) Determine the adult's readiness to participate in treatment.~~

~~\_\_\_\_\_ (6) Substance use disorder assessments shall address:~~

~~(a) Risk of acute psychosis, intoxication/withdrawal;~~

~~(b) Biomedical conditions or complications;~~

~~(c) Emotional, behavioral, or cognitive conditions;~~

~~(d) Readiness to change;~~

~~(e) Relapse, continued use or continued problem potential;~~

and

~~(f) Recovery environment.~~

~~\_\_\_\_\_ (7) Individuals in need of treatment shall only be referred to agencies that are justice certified.~~

~~[\_\_\_\_\_ (3) The assessment shall include relevant information on:~~

~~\_\_\_\_\_ (a) The individual's psychosocial function, substance use including tobacco/nicotine, mental and physical health, and other factors, such as educational experiences, trauma history, cultural issues, legal involvement, and family relationships that are relevant to the purpose of the assessment;~~

~~\_\_\_\_\_ (b) Strengths, resiliencies, natural supports, interests of the individual, and an evaluation of the individual's unique abilities;~~

~~\_\_\_\_\_ (c) Developmental and functional levels, social, emotional, communication abilities and strengths, and independent living skills;~~

~~\_\_\_\_\_ (d) Cognitive, social, and affective development; family, peer, and intimate relationships; trauma; current or past emotional, physical or sexual abuse; suicidality; and safety;~~

~~\_\_\_\_\_ (e) Collateral information from other sources that are relevant to the individual's situation and provides insight into the issues in Subsection R523-4-6(2)(a) through (2)(d).~~

~~\_\_\_\_\_ (4) The assessment shall include a diagnosis when clinically indicated.~~

~~\_\_\_\_\_ (5) Based on the screening and the assessment, the assessor shall make recommendations regarding the needed level of care and services to address the identified clinical needs.~~

~~\_\_\_\_\_ (6) The levels of care and array of services shall be based on the ASAM or equivalent Mental Health criteria.]~~

**~~R523-4-7. Standards for Providers of an Educational [or Prevention] Series.~~**

~~(1) [Entities wishing to provide an intervention, program, activity or curriculum to individuals with a substance use disorder shall:~~

~~\_\_\_\_\_ (a) Obtain and maintain an outpatient or residential facility license from the Department of Human Services, Office of Licensing.] Applicants for certification shall:~~

~~\_\_\_\_\_ (b) Use only educational and prevention material that meets] (a) Use only educational series materials that meet the requirements for listing on Utah's registry of evidence-based practices identified in Section R523-9[ that ];~~

~~\_\_\_\_\_ (b) Ensure all adults have received screens, and if indicated, assessed for criminogenic risk, SUD and mental illness prior to entry into services;~~

~~\_\_\_\_\_ (c) Provide serves only to individuals that will benefit from an educational series;~~

~~\_\_\_\_\_ (i) Address the substance use, and mental health needs of the targeted population;~~

~~\_\_\_\_\_ (ii) (d) Provide[s] accurate information [that is] designed to promote compliance with Utah laws; [and]~~

~~\_\_\_\_\_ (e) Address the risk factors related to substance use, and assist the adult in recognizing the harmful consequences of inappropriate substance use;~~

~~\_\_\_\_\_ (f) Target adults whose problems and risk factors appear to be related to substance use, but do not appear to meet any diagnostic criteria for substance related disorders;~~

~~\_\_\_\_\_ (iii) (g) Meet the requirements set forth in Subsection 62A-15-103(h) and Subsection R523-4-7(1)(b) through 1(f) [-];~~

~~\_\_\_\_\_ (e) Not implement any educational programs until approved by the Division.~~

~~\_\_\_\_\_ (d) (h) Maintain records documenting the individual's attendance and course completion or failure to attend and/or complete [-];~~

~~\_\_\_\_\_ (e) Not include minors in adult groups.~~

~~\_\_\_\_\_ (f) Serve low criminogenic risk individuals and high eriminogenic risk individuals separately.~~

~~\_\_\_\_\_ (g) Provide accurate information and be designed to promote compliance with Utah laws. (i) Serve adults and minors in separate groups;~~

~~(j) Serve individuals with low criminogenic risk in separate settings;~~

~~(k) Complete surveys and data requests as requested by the Division; and~~

~~(l) Provide communication with the court that includes appropriate clinical justification prior to referring individuals to higher levels of care.~~

**R523-4-8. [Program—]Standards for Community-Based Treatment[Programs].**

~~(1) All substance use programs [shall maintain the appropriate license from]licensed by the Department of Human Services Office of Licensing [for the type(s) of services being provided]shall annually complete and submit the National Survey on Substance Abuse Treatment Survey (N-SSATS), and all mental health programs shall annually complete and submit the National Mental Health Service Survey (N-MHSS).~~

~~(2) [Treatment programs shall:~~

~~(a) Ensure that public funds are the payor of last resort and:~~

~~(i) Coordinate or refer individuals to the Department of Workforce Services or healthcare navigators for assistance with eligibility for public or private insurance plans;~~

~~(ii) May negotiate and assess usual and customary fees to adults;~~

~~(b) All substance use providers complete and submit the National Survey on Substance Abuse Treatment Services (N-SSATS); and all mental health providers complete the National Mental Health Services Survey (N-MHSS).~~

~~(4) All public substance use providers, including the Local Substance Abuse Authorities and their contracted providers, shall submit Treatment Episode Data (TEDs) admission and discharge data as outlined in the Division's most current Division Directives.~~

~~(5) Programs seeking a quality certification that provides services to justice involved individuals shall:~~

~~(a) Evaluate all participants for criminogenic risk and need, and deliver services that target the specific risk and needs identified;~~

~~(b) Ensure individuals with high risk and individuals with low risk to re-offend are treated separately;~~

~~(c) Provide multi-dimensional treatment that targets the validated criminogenic risk factors; and~~

~~(d) Coordinate and communicate with Adult Probation and Parole, county sheriff's offices, or other necessary criminal justice agencies on a regular and consistent basis as agreed.~~

**R523-4-9. Treatment Standards for Community-Based Treatment Programs.**

~~(1) Treatment intensity, duration and modality for:~~

~~(a) Substance use disorders shall be based on the current ASAM criteria; and~~

~~(b) Mental health disorders shall be determined by the clinical assessment process and medical necessity.~~

~~(2) Treatment programs shall:~~

~~(a) Have qualified staff licensed and capable of assessing individuals for both mental health and substance use disorders;~~

~~(b) Develop strategies to screen for, prevent, and refer to treatment adults with serious chronic conditions such as, but not limited to, HIV/AIDS, Hepatitis B and C, and tuberculosis;~~

~~(c) Ensure that assessment is an ongoing component of treatment;~~

~~(d) Diagnose, treat or ensure treatment for co-occurring conditions;~~

~~(e) Ensure treatment participation and length shall be of sufficient dosage/duration to affect stable behavioral change and long term recovery supports;~~

~~(f) Develop an individualized treatment plan that identifies a comprehensive set of tools and strategies that address the client's identifiable strengths as well as their problems and deficits;~~

~~(g) Provide comprehensive treatment services that includes but is not limited to:~~

~~(i) Developmentally appropriate and informed treatments;~~

~~(ii) Recognition of gender, cultural, linguistic, and other individual differences in the treatment approach;~~

~~(iii) Ensuring all individuals with alcohol and/or opioid disorders are educated and screened for the potential use of medication-assisted treatment;~~

~~(iv) Monitoring drug use through drug testing and other means;~~

~~(v) Individuals testing positive for drugs or alcohol shall not be denied entry or removed from treatment from a program solely for positive drug tests;~~

~~(vi) All public substance use providers, including the Local Substance Abuse Authorities and their contracted providers shall comply with all Division Directives for Drug testing as published in the annual DSAMH Division Directives and/or preferred practice guidelines;~~

~~(vii) As appropriate and with consent, involve families and support persons in the treatment and recovery process; and~~

~~(viii) Provide Naloxone education, training and assistance to individuals with opiate use disorders and when possible to their families, friends, and significant others.~~

~~(2) Treatment programs shall work with individuals to identify needed and desired recovery supports and ensure that:~~

~~(a) Participation in recovery support shall be voluntary; and~~

~~(b) Whenever possible, individuals are encouraged and given a choice of potential recovery support services and a choice of programs;~~

~~(3) Services such as case management, housing, employment training, transportation, childcare, healthcare, peer support and other social supports shall be strongly considered and implemented if appropriate before, during and after the completion of acute treatment services.]Certified programs, sole proprietors and health clinics providing behavioral health treatment shall:~~

~~(a) Conduct risk, need, and responsivity (RNR) screens and clinical assessments to determine effective supervision and treatment strategies;~~

~~(b) Base interventions on the person's level of criminogenic risk, and level of substance use disorder and/or mental illness;~~

~~(c) Ensure treatment is tailored to the individual and addresses:~~

~~(i) motivation,~~

~~(ii) problem solving,~~

~~(iii) skill building to improve cognitive, social, emotional, and coping skills, and~~

~~(iv) assists in building prosocial supports and activities;~~

~~(d) Ensure service for SUD including assessment, treatment planning, continued stay and discharge planning are consistent with the most current ASAM Criteria;~~

~~(e) Include medication assisted treatment (MAT) in opioid use disorder and alcohol use disorder interventions;~~

~~(f) Provide random, unpredictable, and frequent drug testing in the supervision of persons with SUD, and ensure drug testing procedures and policies are compliant with R523-15;~~

~~(g) Assist adults with housing, employment, vocational activities, and building social supports;~~

~~(h) Maintain a complete and accurate record of all clinical services for each individual served that contains the following information:~~

~~(i) any and all screenings and assessments completed;~~

~~(ii) any and all consent forms or required disclosures;~~

~~(iii) a comprehensive treatment plan;~~

~~(iv) progress notes;~~

~~(v) continuing recovery recommendations upon discharge, and~~

~~(vi) documentation of receipt for all payments made by participants as contributions to the cost of treatment; and~~

~~(i) Complete any training required by the Division as a condition of certification.~~

**[R523-4-10. Standards for Jail or Prison Treatment Programs:**

~~(1) All individuals shall be screened for criminogenic risk, mental health, substance use disorders and substance withdrawal syndromes as part of the intake process.~~

~~(2) Individuals with signs and symptoms of withdrawal shall receive timely medical care or a transfer to a more appropriate facility that can provide standard detoxification services.~~

~~(3) Jail or prison-based treatment service providers shall coordinate care with community-based treatment providers so that individuals may transition to treatment services in the community.~~

~~(4) Treatment programs shall:~~

~~(a) First assess level of motivation for treatment and implement strategies to increase engagement;~~

~~(b) Assess individuals for mental health, substance use disorders and criminogenic risk using scientifically validated instruments and protocols;~~

~~(c) Diagnose and treat or ensure treatment for co-occurring conditions;~~

~~(d) Provide comprehensive treatment services;~~

~~(e) As appropriate and with consent, involve families and support persons in the treatment process;~~

~~(f) Use developmentally appropriate and informed treatments;~~

~~(g) Monitor drug use through drug testing and other means;~~

~~(i) Programs shall comply with all Division Directives for drug testing as published in the annual DSAMH Division Directives;~~

~~(h) Have qualified staff licensed and capable of assessing individuals for both mental health and substance use disorders;~~

~~(i) Recognize gender, cultural, linguistic, and other individual differences in their treatment approach;~~

~~(j) Provide ongoing chronic disease management, recovery support, monitoring and link to needed community supports;~~

~~(k) All individuals with alcohol and/or opioid disorders shall be educated and screened for the potential use of medication-assisted treatment;~~

~~(l) Treatment providers shall develop strategies to screen for, prevent, and refer to treatment adults with serious chronic conditions such as HIV/AIDS, Hepatitis B and C, and tuberculosis;~~

~~(m) Work with individuals to identify needed and desired recovery supports;~~

~~(i) Recovery supports may include preparation/planning for housing, employment, health care, peer support or other services upon release;~~

~~(ii) Recovery supports may be provided before, during or after the completion of acute treatment services.~~

**~~R523-4-11. Documentation Standards for Community and Jail/Prison Based Treatment Services.~~**

~~(1) A complete and accurate record of all clinical services shall be kept for each individual served that contains the following information:~~

~~(a) Any and all screenings and assessments completed;~~

~~(b) Any and all consent forms or required disclosures;~~

~~(c) A comprehensive treatment plan;~~

~~(d) Progress notes;~~

~~(e) Continuing recovery recommendations upon discharge; and~~

~~(f) Record reflects cultural and gender specificity in treatment.~~

~~(2) The individual record is maintained in a manner so as to protect confidentiality and comply with 42 CFR Part 2 and the Health Insurance Portability and Accountability Act of 1996 (HIPAA) documentation/privacy standards. The record is organized, clear, complete, current and legible.~~

~~(a) Consent forms for any release of information shall be found in the file.~~

~~(b) Consent forms shall be complete, and contain a statement that consent is subject to revocation, and shall be signed and dated by the patient.~~

~~(c) Each file shall contain a signed and witnessed Acknowledgement of Receipt of Privacy Statement.~~

~~(3) The individual record shall contain documentation of the initial assessment/engagement session.~~

~~(a) The assessment/engagement session identifies presenting problems and individual goals.~~

~~(b) The assessment/engagement session includes a statement of the individual's presenting problem(s) and:~~

~~(i) Identification and documentation of acute psychosis, intoxication/withdrawal relevant to the presenting problem.~~

~~(ii) Identification and documentation of biomedical conditions and complications relevant to the presenting problem.~~

~~(iii) Identification and documentation of emotional, behavioral, cognitive conditions, and/or complications relevant to the individual's current situation and presenting problem.~~

~~(iv) Identification, evaluation and documentation of readiness to change relevant to presenting problem.~~

~~(v) Identification and documentation of relapse, or continued problem potential relevant to presenting problem.~~

~~(vi) Identification and documentation of the individual's recovery environment relative to presenting problem.~~

~~(vii) Identification of recovery support services needed relevant to presenting problem.~~

~~(viii) An assessment/engagement session summary includes recommendations for level of care and intensity of services needed.~~

~~(ix) Documentation of an assignment for the individual to complete for their next session.~~

~~\_\_\_\_\_ (4) Assessment process is ongoing and changes to assessment information are reflected throughout the record.~~

~~\_\_\_\_\_ (5) Level of care and intensity of services are supported by ongoing assessment information, or differences are clinically justified.~~

~~\_\_\_\_\_ (6) Assessment shall be signed and include the title of a person licensed in the State of Utah to diagnose, assess and treat people with mental health and substance use disorders.~~

~~\_\_\_\_\_ (7) A treatment plan that contains the following:~~

~~\_\_\_\_\_ (a) Specific, individualized, long-range goals;~~

~~\_\_\_\_\_ (b) Behaviorally measurable, short-term objectives that support long-range goals;~~

~~\_\_\_\_\_ (c) Evidence of the individual's participation in development of the plan;~~

~~\_\_\_\_\_ (d) Evidence that the plan is based on the individual's goals and other needs identified in the screening and assessments;~~

~~\_\_\_\_\_ (e) Objectives that are measurable, achievable within a specified time frame and reflect developmentally appropriate activities that support progress towards achievement of individual goals;~~

~~\_\_\_\_\_ (f) Substance use disorder treatment plans should be based on the six ASAM Patient Placement Dimensions and shall address critical areas identified in each dimension. Mental Health Recovery Plans shall be organized in a similar manner;~~

~~\_\_\_\_\_ (g) Interventions designed to help the patient complete the objectives; and~~

~~\_\_\_\_\_ (h) Signature and title of a person licensed in the State of Utah to diagnose, assess and treat people with mental health and substance use disorders.~~

~~\_\_\_\_\_ (6) The individual file shall include documentation of the individual's status throughout the individual record including:~~

~~\_\_\_\_\_ (a) Changes in types, schedule, duration and frequency of therapeutic interventions to facilitate individual progress as well as changes in individual objectives and goals;~~

~~\_\_\_\_\_ (b) Each contact shall be documented in a timely manner;~~

~~\_\_\_\_\_ (c) Progress notes shall be kept that identify the date, duration and type of intervention;~~

~~\_\_\_\_\_ (d) Progress notes shall document progress or lack of progress on the individual's goals as well as the clinician's assessment of the individual's changes in behaviors, attitudes and beliefs;~~

~~\_\_\_\_\_ (e) Progress notes shall reflect clinician's assessment of the effectiveness of the therapeutic interventions and plans for future interventions, which is ideally accomplished through the use of standardized evidence-based tools;~~

~~\_\_\_\_\_ (f) Notes shall be legible and signed by a qualified staff indicating appropriate credentials;~~

~~\_\_\_\_\_ (g) No shows, cancellations or gaps in service such as vacation, incarceration or home visits shall be documented;~~

~~\_\_\_\_\_ (h) Notes shall reflect behavioral changes as well as changes in attitudes and beliefs;~~

~~\_\_\_\_\_ (i) Other group activities such as psychosocial rehabilitation, psychoeducation, life skills, case management, recreational therapy and recovery support services are documented to the extent required for clinical continuity and in order to meet financial requirements; and~~

~~\_\_\_\_\_ (k) Upon discharge, recommendations for ongoing services include the extent to which established goals and objectives were achieved, what ongoing services are recommended, and a description of the individual's recovery support plan.]~~

**~~R523-4-[12]9. [Quality]Justice Certification Procedures[for Educational Series and Community-Based Treatment Provider Sites That Do Not Provide Opioid Replacement Treatment].~~**

~~(1) [Programs]Providers seeking first-time approval or re-approval shall make application to the Division at least 60 days prior to delivering services.~~

~~(2) Each [treatment site-]provider seeking certification shall submit a completed and signed application and assurances form to the Division.~~

~~(3) All application forms shall be reviewed by the Division.~~

~~(4) The Division shall determine if the application is complete and demonstrates compliance with this rule.~~

~~(5) [The]If the Division approves the application and determines the program has met all other requirements, the Division shall provisionally certify the program for a period of up to one year.~~

~~(6) The Division shall notify [in writing]all applicants of the status of their applications in writing. [within 30 days of submission of an application, whether the application is]The status of an application may be:~~

~~(a) Approved,~~

~~(b) Denied, or~~

~~(c) Requires additional information.~~

~~(7) A final certification shall[;~~

~~(a) Be]be completed within the one year provisional certification period of time, according to the procedures established by the Division[; and~~

~~(b) The final certification may last up to two years from the end date of the provisional certification].~~

~~(8) If an application for re-approval requires additional information, a previously certified program may continue to provide services for 30 days from the date of notification unless notified by the [Department of Human Services]Division to cease and desist.~~

**~~R523-4-[13]10. Corrective Action.~~**

~~(1) When the Division becomes aware that a provider is in violation of this rule the Division shall:~~

~~(a) Identify in writing the specific areas in which the provider is not in compliance; and~~

~~(b) Send written notice to the provider within 30 days after becoming aware of the violation.~~

~~(2) The provider shall submit a written plan for achieving compliance within 30 days of notification of noncompliance.~~

**~~R523-4-[14]11. Suspension and Revocation.~~**

~~(1) The Division may suspend the approval of a provider when a provider fails to:~~

~~(a) Respond in writing to areas of noncompliance identified in writing by the Division within the defined period;~~

~~(b) Comply with corrective action as agreed upon in its written response to the Division; or~~

~~(c) Allow the Division access to information or records necessary to determine the provider's compliance under this rule.~~

~~(2) The Division may revoke approval if a provider:~~

~~(a) Continues to provide the educational series after suspension;~~

~~(b) Fails to comply with corrective action while under a suspension; or~~

(c) Commits a second violation which constitutes grounds for suspension when a previous violation resulted in a suspension during the last 24 months.

(3) The Division shall notify the Administrative Office of the Courts, the Utah Department of Corrections, the Department of Human Services, Office of Licensing and county local authorities when a certification is suspended or revoked.

**R523-4-[15]12. Procedure for Denial, Suspension, or Revocation.**

(1) If the Division has grounds for action under this rule and intends to deny, suspend or revoke approval of a provider, the Division shall notify the applicant or provider of the action to be taken.

(2) A notice to deny, suspend or revoke approval shall contain the reasons for the action, to include all statutory or rule violations, and a date when the action shall become effective.

(3) The provider may request a meeting with the Director or their designee within ten calendar days of receipt of notification.

(4) A request for a meeting for this purpose shall be in writing.

(5) Within ten days following the close of the meeting the Division shall inform the provider or applicant in writing of the decision of the Director or Designee of the Division.

**R523-4-[16]13. Posting of Certified Providers.**

(1) The Division shall maintain and make public a list of all certified educational or prevention series and treatment programs.

(2) The list shall include agency contact information, service location address, and target population, and a brief description of services offered.

**KEY:** ~~[offender substance abuse screenings, offender substance abuse assessments, offender substance abuse education series, offender substance abuse treatments]~~ justice certification requirements, justice certification screening standards, justice certification assessment standards, justice certification treatment standards

**Date of Enactment or Last Substantive Amendment:** ~~[January 17, 2017]~~ **2019**

**Authorizing, and Implemented or Interpreted Law:** 62A-15-103(h)(j); 62A-15-103.5; 42 CFR Part 2

## Lieutenant Governor, Elections

### R623-100

#### Remote Notarization

#### NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 44029

FILED: 09/03/2019

#### RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rulemaking authority is granted by Section 46-1-3.7.

**SUMMARY OF THE RULE OR CHANGE:** This rule outlines technical and procedural guidance for remote notaries public and solution providers to complete remote notarizations.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 46-1-3.7

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** There are state agencies that will experience a fiscal cost associated with increased prices. The full impact to state government cannot be estimated as the necessary data is unavailable. The Lt. Governor's Office is using funds for the project derived from a legislative funding to make any adjustments to the current system to allow for the process or commissioning Remote Notaries Public.

◆ **LOCAL GOVERNMENTS:** There are local governments that will experience a fiscal cost associated with increased prices. The full impact to local governments cannot be estimated as the necessary data is unavailable.

◆ **SMALL BUSINESSES:** There are small businesses that will experience a fiscal cost associated with increased prices. The full impact to small businesses cannot be estimated as the necessary data is unavailable.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Of the approximately 24,000 notaries public commissioned by the state of Utah, any that are hired or contracted with an approved remote notary vendor will pay a fee to the lieutenant governor for commissioning and that fee has yet to be set by the Lt. Governor.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The fee has not been determined as of 08/30/2019.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** If a business chooses to contract with an approved remote notary vendor, the costs associated would be dependent on whether the business assumes financial responsibility for their notaries public employees.

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

LIEUTENANT GOVERNOR  
ELECTIONS  
ROOM 220 UTAH STATE CAPITOL  
350 N STATE STREET  
SALT LAKE CITY, UT 84114  
or at the Office of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ Jennifer Storie by phone at 801-538-1746, or by Internet E-mail at [jenstorie@utah.gov](mailto:jenstorie@utah.gov)

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/15/2019**



**INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:**

◆ 10/16/2019 09:30 AM, Lt. Governor's Office, 220 State Capitol Bldg, 350 N State Street, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 11/01/2019

AUTHORIZED BY: Justin Lee, 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
<b>Total Fiscal Costs:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
Fiscal Benefits	FY 2020	FY 2021	FY 2022
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

\*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 non-small businesses that will experience a fiscal cost associated with increased prices. The full impact to small business cannot be estimated as the necessary data is unavailable.

**R623. Lieutenant Governor, Elections.**

**R623-100. Remote Notarization.**

**R623-100-1. Authority.**

This rule is required by Section 46-1-3.7 and is enacted under the authority of Chapter 3 of Title 63G, the Utah Administrative Rulemaking Act.

**R623-100-2. Definitions.**

A. "Credential Analysis" means a method to verify a principal's identity, as described in 46-1-2(19) and R623-100-4, utilized by a remote notary public.

B. "Identity proofing" means a process or a service operating according to this rule through which a third person or party affirms the identity of a principal through a review of the principal's personal information.

C. "Knowledge-Based Authentication" is an identity assessment that is based on a set of questions formulated from public or private data sources.

D. "Multi-Factor Authentication" means a method of access control in which a principal is granted access after successfully presenting personal identity evidence using at least two or more of the following mechanisms: knowledge-based authentication; credential analysis; or biometric data.

E. "Principal" means a person whose electronic signature is notarized in a remote notarization.

F. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

G. "Remote Notarial Act" means the recorded process of completing a remote notarization between the principal and remote notary public described in Section 46-1-6.

H. "Remote Notarial Certificate" means the portion of a remotely notarized electronic document that is completed by a remote notary public and that bears the notary public's electronic signature, electronic seal and certification language as provided by Section 46-1-6.5.

I. "Remote notarization solution" means a set of applications, programs, hardware, software or technology designed to enable the performance of a remote notarial act.

J. "Solution Provider" means a third-party vendor, approved by the lieutenant governor, providing a software solution enabling a Utah remote notary public to perform the duties of, or complete, a remote notarial act.

K. "Tamper-Evident" means a technology-based process that indicates whether a change has been made to an electronic document since the technology was applied.

**R623-100-3. Purpose.**

Pursuant to Section 46-1-3.7, this rule outlines technical and procedural guidance for remote notaries public and solution providers to complete remote notarizations.

**R623-100-4. Remote Notary Public Certification.**

A. A commissioned notary public may apply for certification to perform remote notarizations from the lieutenant governor.

B. In addition to meeting the application requirements in Section 46-1-3.5, the applicant shall submit to the lieutenant governor the following information:

1. The notary public's commission number as assigned by the lieutenant governor;

2. The notary public's commission expiration date;

2. The name of the solution provider authorizing the notary public's use of the remote notarization product;

3. A copy of the notary public's electronic seal and electronic signature provided by the solution provider; and

4. A statement certifying that the notary public will comply with the provisions of R623 Remote Notarization and Title 46 Chapter 1 Notaries Public Reform Act.

C. Upon an applicant's meeting the requirements set forth in Section 46-1-3.5 and R623-100-1, the lieutenant governor may update the notary public's record allowing the applicant to perform remote notarial acts.

D. A remote notary public shall use an approved solution vendor to perform remote notarial acts.

E. A notary public providing remote notarial services without a current remote notary certificate is subject to suspension or revocation of his or her notary commission and other penalties as prescribed by Title 46 Chapter 1 Notaries Public Reform Act.

F. Any suspension or revocation of a remote notary public's traditional notary public commission will result in suspension or revocation of the notary public's remote certification until such time that the lieutenant governor lifts such suspension or revocation.

#### **R623-100-5. Credential Analysis and Authentication.**

A. Credential analysis must be provided by a reputable third-party vendor or software tool that can demonstrate proven credential analysis processes and shall employ technology that provides the following:

1. The principal's identity must be bound to the principal following successful knowledge-based authentication, or biometric data; and

2. Remote notarization procedures shall provide for human visual comparison between the principal and the principal's identification presented to the remote notary.

B. Remote notarization solution providers shall use an automated software process to aid the notary in verifying each principal's identity.

1. The identification shall pass an authenticity test that:

i. Uses appropriate technologies to confirm the integrity of visual, physical or cryptographic security features;

ii. Uses appropriate technologies to confirm that the identification is not fraudulent or inappropriately modified;

iii. Uses information held or published by the issuing source or authoritative source, as available, to confirm the validity of the identification details; and

iv. Provides the result of the authenticity test to the notary.

2. The identification analysis procedure shall enable the notary to visually compare the following for consistency:

i. The information and photo on the identification image presented; and

ii. The principal as viewed by the notary in real time through the audio/video system.

3. If the remote notary public is unable to validate the identification of the principal, or to match the 's physical features with the credential, the remote notary public shall not complete the remote notarial act.

i. No further attempt may be made by the notary or the Solution Provider to complete the notarial act using audio-video communication using that credential.

4. Identification requirements shall be a type required under 46-1-2(19)(b).

5. The identification image shall be captured and shall confirm that:

a. The principal is in possession of the identification at the time of the notarial act;

b. The identification images submitted for credential analysis have not been manipulated; and

c. The identification images match the identification in the principal's possession.

ii. The following general principles should be considered in the context of image resolution:

a. Captured image resolution should be sufficient for the issuing source or authoritative source to perform Credential Analysis per the requirements above;

b. Image resolution should be sufficient to enable visual inspection by the notary, including legible text and clarity of photographs, barcodes, and other identification features; and

c. All images necessary to perform visual inspection and Credential Analysis shall be captured.

C. Knowledge-based authentication procedure must meet the following requirements:

1. Each principal must answer questions and achieve a passing score. The procedure must include:

a. Five multiple choice questions, drawn from public or private data sources.

b. A minimum of five possible answer choices per question.

c. Require that 80% of the questions are correctly answered within two minutes by the principal.

2. Each principal is to be provided a reasonable number of attempts per signing session.

i. If a principal fails their first quiz, they may attempt up to two additional quizzes within 48 hours from the first failure.

ii. During any quiz retake, a minimum of 40% (2) of the prior questions shall be replaced.

3. Biometric sensing technologies for remote notarization in the areas of authentication, credential analysis, and identity proofing verification may include facial, voice, and fingerprint recognition.

4. If a principal exits the notarial act during the notarial act, they shall restart the credential analysis and authentication workflow from the beginning.

#### **R623-100-6. Audio and Video Quality Requirements.**

A. A reliable remote notarization operating model should consist of continuous, synchronous audio and video feeds with good clarity such that all participants can always be clearly seen and understood.

B. The remote notary shall determine if the quality of both the audio and the video are adequate for communication and provide direction to terminate the session if adequate conditions are not met.

C. The audio/video recording shall include the person-to-person interaction required as part of the remote notarial act, shall be logically associated to the electronic notary journal, and shall be capable of being viewed and heard using broadly available audio/video players.

1. The transaction documents executed in the remote notarization act shall not be recorded as part of the video recording.

**R623-100-7. Electronic Notary Journal Storage.**

A. Actions completed as part of a remote notarization act shall be recorded in an electronic notary journal. Each entry in this electronic journal shall clearly indicate the notarial act performed, the date and time of its performance, the name of the principal performing the action and the IP address of the principal performing the action.

B. Each document completed as part of a Remote Notarization shall be electronically signed and rendered Tamper-Evident.

C. Solution Providers shall have comprehensive security programs in place to ensure privacy and data security. D. Solution Providers shall be vigilant to ensure consumer data, privacy and information security laws and regulations are satisfied through their information security programs.

**R623-100-8. Solution Provider Application Process.**

A. A solution provider may apply for approval to provide a remote notary solution submitted to the lieutenant governor electronically and shall include the following:

1. Legal name of the Solution Provider;
2. How the business is organized;
3. Mailing address of the Solution Provider;
4. Physical address of the Solution Provider;
5. Solution provider's contact name;
6. Phone number of the contact person;
7. Email of the contact person;
8. The name of the remote notarization solution provided;
9. The name of the provider or providers of the knowledge-based authentication, Credential Analysis and digital certificate services
10. A description of the technology used to ensure compliance with R623-100;
11. Plan for the disposition, including but not limited to the retention and storage of documents, journals, recordings, etc., in the event the Solution Provider no longer provides the remote notary solution, for whatever reason; and
12. Declaration that the solution complies with Utah laws pertaining to remote notarization.

B. Any information provided to the lieutenant governor pursuant to R623-100-7 is confidential and shall not be disclosed by the lieutenant governor except when required by law.

C. A Solution Provider's solution shall be approved by the lieutenant governor prior to use in this state and shall:

1. Provide secure access to the solution by password or other secure means identifying the Utah remote notary public;

2. Verify from the lieutenant governor's notary registry, each time a remote notary public logs into the solution to ensure that the remote notary public is in active status before performing a remote notarization;

D. Approval of the Solution Provider by the lieutenant governor will be sent electronically to the provider's contact email.

E. The lieutenant governor may approve, reject or request additional information on the application.

**R623-100-9. Recording for Remote Notarized Documents.**

A. The remote notarization solution provider's system, process, and procedures shall be capable of generating a printable version of all documents executed in the system, including but not limited to the documents executed in the notarial act, and associated tamper-evident certifications as required by the lieutenant governor.

B. Any document notarized remotely shall clearly state, in the remote notarial certificate, that the principal making the acknowledgment, oath or affirmation and signing the document appeared remotely using audio/video communication technology.

**KEY: remote notarization**

**Date of Enactment or Last Substantive Amendment: 2019**

**Authorizing, and Implemented or Interpreted Law: 46-1-3.7**

**Natural Resources, Wildlife Resources  
R657-10  
Taking Cougar**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 44028

FILED: 09/03/2019

**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) cougar program.

**SUMMARY OF THE RULE OR CHANGE:** The proposed revisions to this rule: 1) authorize the use of archery equipment, a crossbow or airguns with a bolt to take cougar; and 2) require the location of harvest and a tooth sample to be provided to DWR during the check-in process.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 23-14-18 and Section 23-14-19

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** These proposed rule amendments allow for additional weapons to be used to take cougar and can be initiated within the current workload and resources of DWR. Therefore, DWR has determined that these amendments do not create a cost or savings impact to the

state budget or DWR's budget since these changes will not increase workload and can be carried out with existing budget.

◆ LOCAL GOVERNMENTS: Since these proposed amendments simply align the taking of cougar with the restrictions currently set for big game and bear, this filing does not create any direct cost or savings impact to local governments. Nor are local governments indirectly impacted because this rule does not create a situation requiring services from local governments.

◆ SMALL BUSINESSES: None--These amendments offer additional opportunity to persons wishing to participate in taking cougar in Utah and do not have the potential to create a cost impact to small businesses.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: None--These amendments offer additional opportunity to persons wishing to participate in taking cougar in Utah and do not have the potential to create a cost impact.

COMPLIANCE COSTS FOR AFFECTED PERSONS: DWR has determined that these amendments will not create additional costs for those participating in the cougar 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 amendments 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 10/15/2019

THIS RULE MAY BECOME EFFECTIVE ON: 10/22/2019

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
<b>Total Fiscal Costs:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
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
<b>Total Fiscal Benefits:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits:</b>			
	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

\*This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts for State Government, Local Government, Small Businesses and Other Persons are described in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.

**Appendix 2: Regulatory Impact to Non-Small Businesses**

These rule changes are not expected to have any fiscal impact on non-small businesses' revenues or expenditures because they currently do not benefit from the taking of black bear hunting program or the regulations set forth in this rule amendment.

The head of department of Natural Resources, Brian Steed, has reviewed and approved this fiscal analysis.

**R657. Natural Resources, Wildlife Resources.**

**R657-10. Taking Cougar.**

**R657-10-1. Purpose and Authority.**

(1) Under authority of Sections 23-14-18 and 23-14-19 of the Utah Code, the Wildlife Board has established this rule for taking and pursuing cougar.

(2) Specific dates, areas, number of permits, limits, and other administrative details which may change annually are published in the guidebook of the Wildlife Board for taking cougar.

**R657-10-6. ~~[Firearms and Archery Tackle]~~Firearms, Archery Equipment, Crossbows, and Airguns.**

~~[A](1)~~ For limited entry and harvest objective hunts identified in the Wildlife Board's guidebook for taking cougar, a person may use the following to take cougar:

~~[+](a)~~ any firearm not capable of being fired fully automatic, except a firearm using rimfire cartridge;

~~[(2) a bow and arrows; and]~~  
~~(b) archery equipment meeting the following requirements:~~  
~~(i) the minimum bow pull is 30 pounds at the draw or the peak, whichever comes first;~~  
~~(ii) arrowheads used have two or more sharp cutting edges that cannot pass through a 7/8 inch ring;~~  
~~(iii) expanding arrowheads cannot pass through a 7/8 inch ring when expanded; and~~  
~~(iv) arrows must be a minimum of 20 inches in length from the tip of the arrowhead to the tip of the nock;~~  
~~[(3)c] a crossbow[as provided in Rule R657-12:] meeting the following requirements:~~  
~~(i) a minimum draw weight of 125 pounds;~~  
~~(ii) a positive mechanical safety mechanism; and~~  
~~(iii) an arrow or bolt that is at least 16 inches long with:~~  
~~(A) a fixed broadhead that is at least 7/8 inch wide at the widest point; or~~  
~~(B) an expandable, mechanical broadhead that is at least 7/8 inch wide at the widest point when the broadhead is in the open position; and~~  
~~(d) an airgun used to hunt bear must:~~  
~~(i) be pneumatically powered;~~  
~~(ii) be pressurized solely through a separate charging device; and~~  
~~(iii) may only fire a bolt or arrow:~~  
~~(A) no less than 16 inches long;~~  
~~(B) with a fixed or expandable broadhead at least 7/8 inch wide at its widest position; and~~  
~~(C) traveling no less than 400 feet per second at the muzzle.~~  
~~(2) Arrows and bolts carried in or on a vehicle where a person is riding must be in an arrow quiver or a closed case.~~

**R657-10-15. Permanent Tag.**

(1)(a) Each cougar must be taken by the permit holder to a conservation officer or division office within 48 hours after the date of kill to have a permanent possession tag affixed to the pelt or unskinned carcass and for the removal of a tooth.

(b) After regular business hours, on weekends, or on holidays, a conservation officer may be reached by contacting the local police dispatch office.

(2) A person may not possess a green pelt after the 48-hour check-in period, or ship a green pelt out of Utah, or present a green pelt to a taxidermist if the green pelt does not have a permanent possession tag attached.

(3) The location of harvest and a tooth sample must be provided to the division during the check-in process.

**KEY: wildlife, cougar, game laws**

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

**Notice of Continuation:** August 1, 2016

**Authorizing, and Implemented or Interpreted Law:** 23-14-18; 23-14-19

Regents (Board of), Administration  
**R765-609B**  
 Regents' Scholarship

**NOTICE OF PROPOSED RULE**

(New Rule)

DAR FILE NO.: 44017

FILED: 08/25/2019

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule establishes procedures and eligibility criteria for the Regents' Scholarship, which rewards high school students who achieve certain academic standards and also who demonstrate financial need. This rule is required under Section 53B-8-2, as amended by S.B. 256 passed in the 2017 General Session. This rule applies only to students who graduate after July 1, 2018.

**SUMMARY OF THE RULE OR CHANGE:** This rule establishes eligibility criteria, application procedures, directions to eligible institutions to assess student financial need, and how to distribute supplemental funds to students based on the last dollar in from all other financial aid, and establishes procedures for filing an appeal.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 53B-8-2

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** The Legislature appropriated \$12,708,400 for the scholarship. Although funding is primarily one-time, the Legislature has traditionally funded the scholarship at similar levels. The appropriated funds go to students in the form of scholarship funds which they can use at eligible schools. Although this is a scholarship to students, they can use these funds at one of Utah's public institutions of higher education, which could indirectly benefit those institutions in the form of revenue. However, this is not a direct appropriation and is dependent on where a scholarship recipient chooses to attend.

◆ **LOCAL GOVERNMENTS:** Local governments are not fiscally impacted by this rule.

◆ **SMALL BUSINESSES:** Small businesses are not directly impacted by this rule.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Eligible Utah high school students will receive a portion of the \$12,708,400 appropriated to this program. Scholarship amounts vary by how much the student is receiving in other financial aid or scholarships.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance costs to students who apply for and are eligible to receive the Regents' Scholarship under this rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This is a scholarship appropriated for Utah students. Under this administrative rule, there are several large, non-profit, private institutions of higher education that are eligible for scholarship recipients to attend. Those schools could therefore benefit by receiving those state appropriated scholarship funds. The amount of which the schools receive is entirely dependent on where a recipient chooses to attend. Consequently, it is impractical to estimate how much will go to these schools year to year.

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

REGENTS (BOARD OF)  
ADMINISTRATION  
BOARD OF REGENTS BUILDING, THE GATEWAY  
60 SOUTH 400 WEST  
SALT LAKE CITY, UT 84101-1284  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Geoff Landward by phone at 801-321-7136, or by Internet E-mail at glandward@ushe.edu

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/30/2019

THIS RULE MAY BECOME EFFECTIVE ON: 11/15/2019

AUTHORIZED BY: Dave Woolstenhulme, Commissioner of Higher Education

Appendix 1: Regulatory Impact Summary Table\*

Fiscal Costs	FY 2020	FY 2021	FY 2022
State Government	\$12,708,400	\$12,708,400	\$12,708,400
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Person	\$0	\$0	\$0
<b>Total Fiscal Costs:</b>	<b>\$12,708,400</b>	<b>\$12,708,400</b>	<b>\$12,708,400</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$12,708,400	\$12,708,400	\$12,708,400
<b>Total Fiscal Benefits:</b>	<b>\$12,708,400</b>	<b>\$12,708,400</b>	<b>\$12,708,400</b>
<b>Net Benefits:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

\*This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts for State Government, Local

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

**Appendix 2: Regulatory Impact to Non-Small Businesses**

The Regents' Scholarship is a statutorily created scholarship program that benefits Utah high school students who reach certain academic achievements and also demonstrate financial need. Scholarship recipients may use the scholarship funds for tuition, fees and books at eligible institutions of higher education in Utah. Although those institutions, which may include several larger, non-profit, private institutions would therefore indirectly benefit from this rule, but the amount from which they would benefit depends solely on where students attend school.

The Commissioner of Higher Education, Dave Woolstenhulme, has reviewed and approved this fiscal analysis.

**R765. Regents (Board of), Administration.**

**R765-609B. Regents' Scholarship.**

**R765-609B-1. Purpose.**

(1) The Regents' Scholarship rewards students whose academic achievements demonstrate a high likelihood of college success and also provides additional financial aid to qualifying students whose economic resources may prevent access to higher education.

**R765-609B-2. References.**

(1) Title 53B, Chapter 8, Section 108, Regents' Scholarship Program.

(2) Utah Admin. Code Section R277-700-7, High School Requirements (Effective for Graduating Students Beginning with the 2010-2011 School Year).

**R765-609B-3. Definitions.**

(1) "Advanced Math" means any of the following courses: pre-calculus, calculus, statistics, AP calculus AB, AP calculus BC, AP statistics, college courses Math 1030 and higher, IB Math SL, HL, and Further Math.

(2) "Board" means the Utah State Board of Regents.

(3) "College Course Work" means any instance in which college credit is earned, including but not limited to, concurrent enrollment, distance education, dual enrollment, or early college.

(4) "Eligible Institutions" means USHE institutions or any private, nonprofit institution of higher education in Utah accredited by the Northwest Commission on Colleges and Universities (NWCCU) that enters into a data sharing MOU with the Board of Regents.

(5) "Excusable Neglect" means a failure to take proper steps at the proper time, not in consequence of carelessness, inattention, or willful disregard of the scholarship application process, but in consequence of some unexpected or unavoidable hindrance or accident.

(6) "Good Cause" means the student's failure to meet a scholarship application process requirement was due to circumstances beyond the student's control or circumstances that are compelling and reasonable.

(7) "High School" means a public school established by the Utah State Board of Education or private high school within the boundaries of the State of Utah. If a private high school, it shall be accredited by a regional accrediting body approved by the Board.

(8) "Scholarship Appeals Committee" means the committee designated by Commissioner of Higher Education to review appeals of Regents' Scholarship award decisions and take final agency action regarding awards.

(9) "Scholarship Award" means a one-time scholarship awarded to all eligible applicants who meet the eligibility requirements of section R609-4.

(10) "Scholarship Staff" means the employees assigned to review Regents' Scholarship applications and make initial decisions awarding the scholarships.

(11) "Substantial Compliance" means the applicant, in good faith, demonstrated clear intent to comply with the scholarship application requirements and has demonstrated likely eligibility, but failed to precisely comply with the application specifics.

(12) "Supplemental Award" means a four-semester award of additional funds based on the recipient's financial ability to access higher education.

#### **R765-609B-4. Award Requirements**

(1) To qualify for the Regents' Scholarship, the applicant shall satisfy the following criteria:

(a) Graduate from a Utah high school with a minimum, non-weighted GPA of 3.3.

(b) Complete four credits of English.

(c) Complete four credits of math, including one course of advanced math.

(d) Complete three credits of lab-based biology, chemistry and physics.

(e) Complete two credits of world languages.

(f) Complete three credits of social science.

(g) Complete the ACT with a minimum score of 22.

(h) Receive an Estimated Family Contribution (EFC) by completing and submitting the Free Application for Federal Student Aid (FAFSA).

(2) A student may satisfy a course requirement through a competency-based assessment provided it is documented for credit on an official transcript.

(3) The courses completed shall be unique except when repeated for a higher grade.

(4) Repeated course work shall not count toward accumulation of required credits.

(5) College Course Work: College course work will only be evaluated if the applicant submits an official college transcript. If an applicant enrolls in and completes a college course worth three or more college credits, this shall be counted as one high school credit toward the scholarship requirements.

(6) Mandatory Enrollment: A recipient shall enroll at an eligible institution and complete a minimum of 12 credit hours per academic semester. The institution at which the student attends shall verify the recipient has met the enrollment requirements.

(7) New Century Scholarship: A recipient shall not receive both a Regents' Scholarship and the New Century Scholarship established in Utah Code Section 53B-8-105.

#### **R765-609B-5. Application Procedures.**

(1) Application Deadline: Applicants shall submit an official scholarship application no later than February 1 of the year that they graduate from high school. The Board may establish a

priority deadline each year. Applicants who meet the priority deadline may be given first priority or consideration for the scholarship. Subject to funding, students may be considered based on the date of they completed and submitted their application.

(2) Required Documentation: Applicants shall submit the following documents:

(a) The online Regents' Scholarship application.

(b) An official high school paper or electronic transcript, official college transcript(s) when applicable, and any other miscellaneous official transcripts demonstrating all completed courses and GPA.

(c) If a student completed coursework at an educational institution outside of the district from which the student graduated, the student must submit an official transcript from the school at which he or she completed the coursework if the courses completed and grades earned are not reflected in the official high school transcript.

(d) Verified ACT score(s).

#### **R765-609B-6. Award Amounts and Distribution of Award Funds.**

(1) Funding Constraints of Awards: The Board will determine award amounts, depending on the annual legislative appropriation and the number of qualified applicants.

(2) Scholarship Award: Students who meet the eligibility criteria will receive a one-time scholarship award, the amount of which will be determined annually by the Board

(3) Supplemental Award: In addition to the Scholarship Award, recipients may qualify for a four-semester supplemental award up to a maximum award amount set by the Board annually. The supplemental award amount will be distributed based the following methodology:

(a) Participating institutions shall establish a range with a minimum and maximum Expected Family Contribution (EFC) based on the FAFSA within which eligible recipients' EFC must fall to be eligible for a supplemental award. Participating institutions shall annually revise and report EFC range of eligibility to the Office of the Commissioner by February 1.

(b) The institution may then award the supplemental amount to each recipient up to the established maximum award, based on state and federal aid the recipient is already receiving and the EFC. The supplemental award shall not be used to exceed the recipient's remaining cost for tuition, fees, books, required course materials and housing after all other financial aid is considered.

(c) Supplemental award recipients must maintain a 3.0 GPA and complete a minimum of 12 credit hours per academic semester or equivalent to remain eligible for the award. Students who earn less than a 3.0 Semester GPA will be placed on probation. If the recipient again earns less than a 3.3 GPA the scholarship may be revoked. Institutions shall verify the recipient has met these requirements.

(d) If in the course of distributing awards the institution reduces a recipient's award based on that student's other financial aid, the remaining funds may be used to distribute further supplemental awards to other recipients. Additionally, institutions may additionally distribute unused or forfeited funds to other eligible recipients.

(4) UESP Supplemental Award to Encourage College Savings: Subject to available funding, an applicant who qualifies

for the Base award is eligible to receive up to an additional \$300 in state funds to be added to the total scholarship award.

(a) For each year the applicant is 14, 15, or 16 years of age and had an active UESP account, the Board may contribute, subject to available funding, \$100 (i.e., up to \$300 total for all three years) to the recipient's award if at least \$100 was deposited into the account for which the applicant is named the beneficiary.

(b) If no contributions are made to an applicant's account during a given year, the matching amount will likewise be \$0.

(c) If contributions total more than \$100 in a given year, the matching amount will cap at \$100 for that year.

(d) Matching funds apply only to contributions, not to transfers, earnings, or interest.

#### **R765-609B-7. Time Constraints and Deferrals.**

(1) Time Limitation: Regents' Scholarship recipients shall use the award in its entirety within five years after their school graduation date.

(2) Deferral or Leave of Absence: Recipients who will not enroll as a student shall apply for a deferral or leave of absence with their institution.

(a) Deferrals or leaves of absence may be granted, at the discretion of the institution, for military service, humanitarian/religious service, documented medical reasons, and other exigent reasons.

(b) An approved deferral or leave of absence will not extend the time limits of the scholarship. The scholarship may only be used for academic terms which begin within five years after the recipient's high school graduation date.

#### **R765-609B-8. Transfers.**

(1) Recipients may transfer to another eligible institution and retain the scholarship and supplemental awards. Recipients are responsible to inform the Office of the Commissioner of their intent to transfer. The Office of the Commissioner shall coordinate the transfer of scholarship funds and information.

#### **R765-609B-9. Scholarship Determinations and Appeals.**

(1) Scholarship Determinations: Submission of a scholarship application does not guarantee a scholarship award. The Scholarship Staff shall review individual scholarship applications and determine eligibility. Awards are based on available funding, applicant pool, and applicants' completion of scholarship criteria by the specified deadline.

(2) Appeals: An applicant has the right to appeal the Scholarship Staff's adverse decision by filing an appeal with the Scholarship Appeals Committee subject to the following conditions:

(a) Applicants may submit a written appeal through either the U.S. Mail or their Regents Scholarship Student Account. Appeals must be postmarked (if mailed) or submitted online within 30 days of the date on which the scholarship notification was issued.

(b) In the appeal, the applicant must provide his or her full name, mailing address, the high school he or she last attended, a statement of the reason for the appeal, and all information or evidence that supports the appeal. The failure of an applicant to provide the information in this subsection shall not preclude the acceptance of an appeal.

(c) An appeal filed before the applicant receives official notification from the Scholarship Staff of its decision may not be considered.

(e) If an applicant failed to file his or her appeal on time, the Scholarship Appeals Committee shall notify the applicant of the late filing and give him or her an opportunity to explain the reasons for failing to file the appeal by the deadline. The Scholarship Appeals Committee shall not have jurisdiction to consider the merits of an appeal that is filed beyond the deadline unless it determines the applicant established excusable neglect.

(f) The Scholarship Appeals Committee shall review the appeal to determine if the award decision was made in error, or if the applicant demonstrated substantial compliance with the scholarship application requirements but failed to meet one or more requirements for good cause.

(g) If the Scholarship Appeals Committee determines the applicant has shown by a preponderance of the evidence that the initial decision was made in error, it shall either reverse the initial decision or remand it back to the Scholarship Staff for further review in accordance with the Appeals Committee's instructions.

(h) If the Scholarship Appeals Committee determines the applicant has shown by a preponderance of the evidence that he or she demonstrated substantial compliance with the application process requirements and good cause for failing to meet one or more of the requirements, the Appeals Committee shall grant the applicant a reasonable period of time to complete the remaining requirements and to resubmit the completed application to the Scholarship Staff for a redetermination. In such a case, the applicant shall have the right to appeal an adverse decision according to this rule.

(i) The Scholarship Appeals Committee's decision shall be in writing and contain its findings of facts, reasoning and conclusions of law and notice of the right to judicial review.

(j) The Scholarship Appeals Committee's decision represents the final agency action. An applicant who disagrees with the Scholarship Appeal Committee's Decision may seek judicial review in accordance with Utah Code Ann. 63G-4-402.

#### **R765-609B-10. Reporting.**

(1) As directed by the Commissioner's staff, eligible institutions shall report to the Board of Regents the following:

(a) The names of students the institutions awarded Regents' Scholarship funds.

(b) Enrollment information such as the current GPA, the number of credits completed, and deferment or leave of absence information.

(c) Other information deemed necessary to evaluate eligibility or the effectiveness of the program.

(2) The Board of Regents may, at any time, request additional documentation or data related to the Regents Scholarship and may review or formally audit an eligible institution's compliance with this policy.

#### **KEY: Regents, scholarship**

**Date of Enactment or Last Substantive Amendment: 2019**

**Authorizing, and Implemented or Interpreted Law: 53B-8-2**



**Tax Commission, Motor Vehicle  
R873-22M-24  
Salvage Vehicle Definitions Pursuant to  
Utah Code Ann. Sections 41-1a-1001  
and 41-1a-1002**

**NOTICE OF PROPOSED RULE  
(Amendment)  
DAR FILE NO.: 44009  
FILED: 08/22/2019**

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This section is no longer necessary as a result of the passage of S.B. 82, Dealership Licensing Amendments, passed during the 2019 General Session.

**SUMMARY OF THE RULE OR CHANGE:** This section is being removed because S.B. 82 (2019) which repealed Section 41-1a-1002 which provided a process for unbranding a vehicle with a branded title.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 41-1a-1001 and Section 41-1a-1002

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** This proposed amendment is 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 S.B. 82 (2019).
- ◆ **LOCAL GOVERNMENTS:** This proposed amendment is 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 S.B. 82 (2019).
- ◆ **SMALL BUSINESSES:** This proposed amendment is 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 S.B. 82 (2019).
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This proposed amendment is not expected to have any fiscal impact on persons other than small businesses' or local governments' revenues or expenditures because any fiscal impact would have been addressed in the fiscal note of S.B. 82 (2019).

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The proposed removal of this section is not expected to impose any compliance costs on affected persons because any compliance or regulatory burdens would have been addressed in the fiscal note of S.B. 82 (2019).

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** Any fiscal impact would have been addressed in the fiscal note for S.B. 82 (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 10/15/2019

THIS RULE MAY BECOME EFFECTIVE ON: 10/22/2019

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
<b>Total Fiscal Costs:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
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
<b>Total Fiscal Benefits:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

\*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 impact on non-small businesses' revenues or expenditures because any fiscal impacts would have been addressed in the fiscal note of S.B. 82 (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-24. ~~Salvage Vehicle Definitions Pursuant to Utah Code Ann. Sections 41-1a-1001 and 41-1a-1002.~~**

~~A. "Cosmetic repairs" means repairs that are not necessary to promote the structural soundness or safety of the vehicle or to prevent accelerated wear or deterioration:~~

- ~~1. Cosmetic repairs include:
 
  - ~~a) cracks or chips in windows if the vehicle will pass a safety inspection;~~
  - ~~b) paint chips or scratches that do not extend below the rust preventive primer coating;~~
  - ~~c) decals or decorative paint;~~
  - ~~d) decorative molding and trim made from plastic, light metal, or other similar material;~~
  - ~~e) hood ornaments;~~
  - ~~f) wheel covers;~~
  - ~~g) final coats of paint applied over any rust preventive primer, primer surfacer, or primer sealer;~~
  - ~~h) vinyl roof covers or imitation convertible tops;~~
  - ~~i) rubber inserts in bumpers or bumper guards; and~~
  - ~~j) minor damage to seats, dashboard, door panels, carpet, headliner, or other interior components if the damage does not affect the comfort of the driver or passengers, or the safe operation of the vehicle.~~~~

~~2. Cosmetic repairs do not include:~~

- ~~a) primer coats or sealer necessary to prevent deterioration of any structural body component, such as fenders, doors, hood, or roof;~~
- ~~b) repair or replacement of any sheet metal;~~
- ~~c) repair or replacement of exterior or interior body panels;~~
- ~~d) repair or replacement of mounting or attachment brackets and all other components and attaching hardware associated with the body of the vehicle; and~~
- ~~e) cracks or chips in windows if the vehicle will not pass a safety inspection.~~

~~3. The determination of whether a specific repair is cosmetic shall be made by the Administrator of the Motor Vehicle Enforcement Division:~~

~~B. "Collision estimating guide recognized by the Motor Vehicle Enforcement Division" means the current edition of the:~~

- ~~1. Mitchell Collision Estimating Guide;~~
- ~~2. Motor Estimating Guide;~~
- ~~3. Delmar Auto Series Complete Automotive Estimating;~~
- ~~4. CCC Autobody Systems EZEst Software;~~
- ~~5. ADP Collision Estimating Services; or~~

~~6. an equivalent estimating guide recognized by the industry.~~

~~C. For purposes of Section 41-1a-1002, the determination of whether a vehicle is seven years old or older is made by subtracting the model year of the vehicle from the current calendar year.]~~

**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**

**Tax Commission, Motor Vehicle  
R873-22M-26  
Interim Inspections and Repair  
Standards Pursuant to Utah Code Ann.  
Section 41-1a-1002**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 44010

FILED: 08/22/2019

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This section is no longer necessary as a result of the passage of S.B. 82, Dealership Licensing Amendments, passed during the 2019 General Session.

**SUMMARY OF THE RULE OR CHANGE:** This section is being removed because S.B. 82 (2019) repealed Section 41-1a-1002 which provided a process for unbranding a vehicle with a branded title.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 41-1A-1002

**ANTICIPATED COST OR SAVINGS TO:**

- ♦ **THE STATE BUDGET:** This proposed amendment is not expected to have any fiscal impact on state government revenues or expenditures because any fiscal impacts would have been addressed in the fiscal note of S.B. 82 (2019).
- ♦ **LOCAL GOVERNMENTS:** This proposed amendment is 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 S.B. 82 (2019).
- ♦ **SMALL BUSINESSES:** This proposed amendment is 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 S.B. 82 (2019).

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This proposed amendment is not expected to have any fiscal impact on persons other than small businesses' or local governments' revenues or expenditures because any fiscal impact would have been addressed in the fiscal note of S.B. 82 (2019).

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The proposed removal of this section is not expected to impose any compliance costs on affected persons because any compliance or regulatory burdens would have been addressed in the fiscal note of S.B. 82 (2019).

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** Any fiscal impact would have been addressed in the fiscal note for S.B. 82 (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 10/15/2019

THIS RULE MAY BECOME EFFECTIVE ON: 10/22/2019

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
<b>Total Fiscal Costs:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

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
<b>Total Fiscal Benefits:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

\*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 impact on non-small businesses' revenues or expenditures because any fiscal impact would have been addressed in the fiscal note of S.B. 82 (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-26. ~~Interim Inspections and Repair Standards Pursuant to Utah Code Ann. Section 41-1a-1002.~~**

~~A. Each certified vehicle inspector shall independently determine:~~

- ~~1. if one or more interim inspections are required; and~~
- ~~2. when any required interim inspection shall be made.~~

~~B. A vehicle that is repaired beyond the point of a required interim inspection prior to that interim inspection may not receive an unbranded title.~~

~~C. A vehicle is repaired in accordance with Motor Vehicle Enforcement Division standards if it meets or exceeds the standards established by the Inter-Industry Conference on Auto Collision Repair ("I-CAR").~~

- ~~1. Repairs must be performed in licensed body shops.~~
- ~~2. All repairs must be certified by an individual who:~~
  - ~~a) owns or is employed by that body shop;~~
  - ~~b) has repaired the vehicle or supervised any repairs he did not make;~~
  - ~~c) is certified with I-CAR for structural repair and has either five years experience in repairing structural collision damage in a licensed body shop, or three years experience in repairing structural collision damage in a licensed body shop and an associate degree in the structural repair of an automobile from an accredited institution; and~~
  - ~~d) completes ten hours of division approved continuing training in repair of structural collision damage every three years.~~

~~D. Individuals certifying repairs under Subsection (C) must be certified with I-CAR by January 1, 1994.~~

~~E. A person who repairs or replaces major damage identified by a certified vehicle inspector shall keep records of the repairs made, and the time required to make those repairs, for a period of three years from the date of repair.]~~

**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

## Tax Commission, Property Tax R884-24P-27

### Standards for Assessment Level and Uniformity of Performance Pursuant to Utah Code Ann. Sections 59-2-704 and 59-2-704.5

#### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 44012

FILED: 08/22/2019

#### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this amendment is to allow a county to be exempt from the April assessment-to-sale ratio study under certain circumstances.

**SUMMARY OF THE RULE OR CHANGE:** The change allows the Property Tax Division (Division) to exempt a county from the April assessment-to-sale ratio study if the county can demonstrate that it employs methods and measures that are adequate to ensure assessment compliance with applicable law.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 59-2-704 and Section 59-2-704.5

**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 they do not change the amount of revenue generated statewide.

◆ **LOCAL GOVERNMENTS:** These proposed amendments are not expected to have any fiscal impact on local governments' revenues or expenditures because the exemption is limited to counties that can demonstrate that the assessment methodologies being applied are adequate to ensure assessment compliance with applicable law.

◆ **SMALL BUSINESSES:** These proposed amendments are not expected to have any fiscal impact on small businesses' revenues or expenditures because the exemption is limited to counties that have demonstrated that the assessment methodologies being applied are adequate to ensure assessments consistent with applicable law.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** These proposed amendments are not expected to have any fiscal impact on the revenues or expenditures of other persons because the exemption is limited to counties that have demonstrated that the assessment methodologies being applied are adequate to ensure assessments consistent with applicable law.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** These proposed amendments are likely to ease compliance costs for those counties that have demonstrated that the assessment methodologies being applied are adequate to ensure assessments consistent with applicable law.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** These proposed amendments are not expected to impact the revenues or expenditures of businesses because the exemption will only be granted to those counties that can satisfactorily demonstrate that the assessment methodologies being applied within the county are adequate to ensure assessments consistent with applicable law.

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

TAX COMMISSION

PROPERTY TAX

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](mailto:jenniferfranklin@utah.gov)

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/15/2019**

**THIS RULE MAY BECOME EFFECTIVE ON: 10/22/2019**

**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
<b>Total Fiscal Costs:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
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
<b>Total Fiscal Benefits:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits:</b>			
	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

\*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 the revenues or expenditures of non-small businesses because the exemption is limited to counties that have demonstrated that the assessment methodologies being applied are adequate to ensure assessments consistent with applicable law.

Commissioner of the Utah State Tax Commission, Rebecca L. Rockwell, has reviewed and approved this fiscal analysis.

**R884. Tax Commission, Property Tax.**

**R884-24P. Property Tax.**

**R884-24P-27. Standards for Assessment Level and Uniformity of Performance Pursuant to Utah Code Ann. Sections 59-2-704 and 59-2-704.5.**

(1) Definitions.

(a) "Coefficient of dispersion (COD)" means the average deviation of a group of assessment ratios taken around the median and expressed as a percent of that measure.

(b) "Coefficient of variation (COV)" means the standard deviation expressed as a percentage of the mean.

(c) "Division" means the Property Tax Division of the commission.

(d) "Nonparametric" means data samples that are not normally distributed.

(e) "Parametric" means data samples that are normally distributed.

(f) "Urban counties" means counties classified as first or second class counties pursuant to Section 17-50-501.

(2) The commission adopts the following standards of assessment performance.

(a) For assessment level in each property class, subclass, and geographical area in each county, the measure of central tendency shall meet one of the following measures;

(i) For a county of the first, second, third or fourth class, the measure of central tendency shall be within:

(A) 5 percent of the legal level of assessment for county-wide residential property; or

(B) 10 percent of the legal level of assessment for all other classes of property.

(ii) For a county of the fifth or sixth class, the measure of central tendency shall be within 10 percent of the legal level of assessment for all property.

(iii) The 95 percent confidence interval of the measure of central tendency shall contain the legal level of assessment.

(b) For uniformity of the property assessments in each class of property for which a detailed review is conducted during the current year, the measure of dispersion shall be within the following limits.

(i) In urban counties:

(A) a COD of 15 percent or less for primary residential property, and 20 percent or less for commercial property, vacant land, and secondary residential property; and

(B) a COV of 19 percent or less for primary residential property, and 25 percent or less for commercial property, vacant land, and secondary residential property.

(ii) In rural counties:

(A) a COD of 20 percent or less for primary residential property, and 25 percent or less for commercial property, vacant land, and secondary residential property; and

(B) a COV of 25 percent or less for primary residential property, and 31 percent or less for commercial property, vacant land, and secondary residential property.

(iii) For a rural or small jurisdiction with limited development, or for a jurisdiction with a depressed market, the county assessor may petition the division for a five percentage point increase in the COD or COV for one year only. After sufficient examination, the division may determine that a one-year expansion of the COD or COV is appropriate.

(c) Statistical measures.

(i) The measure of central tendency shall be the mean for parametric samples and the median for nonparametric samples.

(ii) The measure of dispersion shall be the COV for parametric samples and the COD for nonparametric samples.

(iii) To achieve statistical accuracy in determining assessment level under Subsection (2)(a) and uniformity under Subsection (2)(b) for any property class, subclass, or geographical area, the minimum sample size shall consist of 10 or more ratios.

(3) Each year the division shall conduct and publish an assessment-to-sale ratio study to determine if each county complies with the standards in Subsection (2).

(a) To meet the minimum sample size, the study period may be extended.

(b) A smaller sample size may be used if:

(i) that sample size is at least 10 percent of the class or subclass population; or

(ii) both the division and the county agree that the sample may produce statistics that imply corrective action appropriate to the class or subclass of property.

(c) If the division, after consultation with the counties, determines that the sample size does not produce reliable statistical data, an alternate performance evaluation may be conducted, which may result in corrective action. The alternate performance evaluation shall include review and analysis of the following:

(i) the county's procedures for collection and use of market data, including sales, income, rental, expense, vacancy rates, and capitalization rates;

(ii) the county-wide land, residential, and commercial valuation guidelines and their associated procedures for maintaining current market values;

(iii) the accuracy and uniformity of the county's individual property data through a field audit of randomly selected properties; and

(iv) the county's level of personnel training, ratio of appraisers to parcels, level of funding, and other workload and resource considerations.

(d) All input to the sample used to measure performance shall be completed by March 31 of each study year.

(e)(i) Except as provided in Subsection (3)(e)(ii), the [The] division shall conduct a preliminary annual assessment-to-sale ratio study by April 30 of the study year, allowing counties to apply adjustments to their tax roll prior to the May 22 deadline.

(ii) The division may exempt a county from the study described in Subsection (3)(e)(i) if the county demonstrates to the satisfaction of the division that the county employs methods and measures adequate to ensure assessment compliance with applicable law.

(f) The division shall complete the final study immediately following the closing of the tax roll on May 22.

(4) The division shall order corrective action if the results of the final study do not meet the standards set forth in Subsection (2).

(a) Assessment level adjustments, or factor orders, shall be calculated by dividing the legal level of assessment by one of the following:

(i) the measure of central tendency, if the uniformity of the ratios meets the standards outlined in Subsection (2)(b); or

(ii) the 95 percent confidence interval limit nearest the legal level of assessment, if the uniformity of the ratios does not meet the standards outlined in Subsection (2)(b).

(b) Uniformity adjustments or other corrective action shall be ordered if the property fails to meet the standards outlined

in Subsections (2)(b) and (c). A corrective action order may contain language requiring a county to create, modify, or follow its five-year plan for a detailed review of property characteristics.

(d) All corrective action orders shall be issued by June 10 of the study year, or within five working days after the completion of the final study, whichever is later.

(5) The commission adopts the following procedures to insure compliance and facilitate implementation of ordered corrective action.

(a) Prior to the filing of an appeal, the division shall retain authority to correct errors and, with agreement of the affected county, issue amended orders or stipulate with the affected county to any appropriate alternative action without commission approval. Any stipulation by the division subsequent to an appeal is subject to commission approval.

(b) A county receiving a corrective action order resulting from this rule may file and appeal with the commission pursuant to rule R861-1A-11.

(c) A corrective action order will become the final commission order if the county does not appeal in a timely manner, or does not prevail in the appeals process.

(d) The division may assist local jurisdictions to ensure implementation of any corrective action orders by the following deadlines.

(i) Factor orders shall be implemented in the current study year prior to the mailing of valuation notices.

(ii) Other corrective action shall be implemented prior to May 22 of the year following the study year.

(e) The division shall complete audits to determine compliance with corrective action orders as soon after the deadlines set forth in Subsection (5)(d) as practical. The division shall review the results of the compliance audit with the county and make any necessary adjustments to the compliance audit within 15 days of initiating the audit. These adjustments shall be limited to the analysis performed during the compliance audit and may not include review of the data used to arrive at the underlying factor order. After any adjustments, the compliance audit will then be given to the commission for any necessary action.

(f) The county shall be informed of any adjustment required as a result of the compliance audit.

**KEY: taxation, personal property, property tax, appraisals**

**Date of Enactment or Last Substantive Amendment: [May 17,] 2019**

**Notice of Continuation: November 10, 2016**

**Authorizing, and Implemented or Interpreted Law: Art. XIII, Sec 2; 9-2-201; 11-13-302; 41-1a-202; 41-1a-301; 59-1-210; 59-2-102; 59-2-103; 59-2-103.5; 59-2-104; 59-2-201; 59-2-210; 59-2-211; 59-2-301; 59-2-301.3; 59-2-302; 59-2-303; 59-2-303.1; 59-2-305; 59-2-306; 59-2-401; 59-2-402; 59-2-404; 59-2-405; 59-2-405.1; 59-2-406; 59-2-508; 59-2-514; 59-2-515; 59-2-701; 59-2-702; 59-2-703; 59-2-704; 59-2-704.5; 59-2-705; 59-2-801; 59-2-918 through 59-2-924; 59-2-1002; 59-2-1004; 59-2-1005; 59-2-1006; 59-2-1101; 59-2-1102; 59-2-1104; 59-2-1106; 59-2-1107 through 59-2-1109; 59-2-1113; 59-2-1115; 59-2-1202; 59-2-1202(5); 59-2-1302; 59-2-1303; 59-2-1308.5; 59-2-1317; 59-2-1328; 59-2-1330; 59-2-1347; 59-2-1351; 59-2-1365; 59-2-1703**

**Tax Commission, Property Tax**  
**R884-24P-33**  
**2019 Personal Property Valuation**  
**Guides and Schedules Pursuant to**  
**Utah Code Ann. Section 59-2-301**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 44014

FILED: 08/22/2019

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The valuation guides and schedules contained in this section are reviewed and updated annually by the Property Tax Division. The personal property guides and schedules are used for local property tax valuation and assessment of business personal property and certain motor vehicles by county assessors.

**SUMMARY OF THE RULE OR CHANGE:** Section 59-2-107 authorizes the State Tax Commission to promulgate rules that define classes of items considered to be personal property and provide valuation percent good schedules to value locally assessed personal property. County assessors must use the percent good schedules as contained in this section. Any deviation which affects an entire class or type of personal property requires a written report documenting the schedule change to be submitted to the Tax Commission for approval prior to use.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 59-2-107

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** The amount of savings or cost to state government is not affected by this section. Tax revenue generated by taxing personal property is distributed to local governments to finance public services, programs, school districts, and local districts. No tax revenues generated by taxation of personal property will be retained by state government.

◆ **LOCAL GOVERNMENTS:** The amount of saving or cost to local governments is undetermined. Local governments receive tax revenue based on increased or decreased personal property values and the change in the annual property tax rate. Increases or decreases in 2020 property tax revenue cannot be determined, even if there were no changes in the percent good tables, because taxpayer acquisitions and deletions of personal property during 2020 are unknown. The proposed personal property schedules in this amendment are raised, lowered, or remain the same for 2020 based upon the type and age of the personal property assessed. Schedules used to value business personal property increase or decrease based upon the calculation of economic trends from cost indexes published by the Marshall

Valuation Service. It is anticipated that the change in the annual property tax rate will have a larger impact on revenue than will the proposed amendments to this section.

◆ **SMALL BUSINESSES:** In the aggregate, the amount of savings or cost to small businesses is undetermined. Affected small businesses pay property taxes based on increased or decreased personal property values and the change in the annual property tax rate. The proposed personal property schedules in this section are raised, lowered, or remain the same for 2020 based upon the type and age of the property. Since some schedules are increased and some decreased, it is not possible to determine the change to affected persons without knowing the 2020 personal property mix compared to the previous year.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** In the aggregate, the amount of savings or cost to persons other than small businesses, businesses, or local government entities is undetermined. Affected persons other than small businesses, businesses, or local government entities pay property taxes based on increased or decreased personal property values and the change in the annual property tax rate. The proposed personal property schedules in this section are raised, lowered, or remain the same for 2020 based upon the type and age of the property. Since some schedules are increased and some decreased, it is not possible to determine the change to affected persons without knowing the 2020 personal property mix compared to the previous year.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Local business owners and property tax practitioners will once again be required to be aware of new percent good figures. This is an annual occurrence; therefore, the compliance cost in completing the assessment process will not change. The change in taxes charged for these businesses depends entirely on the owner's mix of personal property since some percent good schedules are increasing and others decreasing. For example, the owner of a business may discard some personal property items and add new equipment or replace equipment which may increase or decrease personal property values. In addition, the personal property percent good schedule percentages often change from the previous year due to current economic conditions.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** The fiscal impact on businesses is undetermined. Some personal property schedules are raised, some are lowered, and some remain the same. Without knowing the 2020 personal property mix compared to the previous year, it is not possible to determine the impact on affected businesses.

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

TAX COMMISSION  
 PROPERTY TAX  
 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 10/15/2019

THIS RULE MAY BECOME EFFECTIVE ON: 10/22/2019

AUTHORIZED BY: Rebecca Rockwell, Commissioner

**Appendix 2: Regulatory Impact to Non-Small Businesses**

In the aggregate, the amount of savings or cost to non-small businesses is undetermined. Affected persons pay property taxes based on increased or decreased personal property values and the change in the annual property tax rate. The proposed personal property schedules in this section are raised, lowered, or remain the same for 2020 based upon the type and age of the property. Since some schedules are increased and some decreased, it is not possible to determine the change to affected persons without knowing the 2020 personal property mix compared to the previous year.

Commissioner of the Utah State Tax Commission, Rebecca L. Rockwell, has reviewed and approved this fiscal analysis.

**R884. Tax Commission, Property Tax.**

**R884-24P. Property Tax.**

**R884-24P-33. [2019]2020 Personal Property Valuation Guides and Schedules Pursuant to Utah Code Ann. Section [59-2-301]59-2-107.**

(1) Definitions.

(a)(i) "Acquisition cost" does not include indirect costs such as debugging, licensing fees and permits, insurance, or security.

(ii) Acquisition cost may correspond to the cost new for new property, or cost used for used property.

(b)(i) "Actual cost" includes the value of components necessary to complete the vehicle, such as tanks, mixers, special containers, passenger compartments, special axles, installation, engineering, erection, or assembly costs.

(ii) Actual cost does not include sales or excise taxes, maintenance contracts, registration and license fees, dealer charges, tire tax, freight, or shipping costs.

(c) "Cost new" means the actual cost of the property when purchased new.

(i) Except as otherwise provided in this rule, the Tax Commission and assessors shall rely on the following sources to determine cost new:

(A) documented actual cost of the new or used vehicle; or

(B) recognized publications that provide a method for approximating cost new for new or used vehicles.

(ii) For the following property purchased used, the taxing authority may determine cost new by dividing the property's actual cost by the percent good factor for that class:

(A) class 6 heavy and medium duty trucks;

(B) class 13 heavy equipment;

(C) class 14 motor homes;

(D) class 17 vessels equal to or greater than 31 feet in length; and

(E) class 21 commercial trailers.

(d) For purposes of Sections 59-2-108 and 59-2-1115, "item of taxable tangible personal property" means a piece of equipment, machinery, furniture, or other piece of tangible personal property that is functioning at its highest and best use for the purpose it was designed and constructed and is generally capable of performing that function without being combined with other items of personal property. An item of taxable tangible personal property is not an individual component part of a piece of machinery or equipment, but the piece of machinery or equipment. For example, a fully functioning computer is an item of taxable tangible personal property, but the motherboard, hard drive, tower, or sound card are not.

**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
<b>Total Fiscal Costs:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
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
<b>Total Fiscal Benefits:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

\*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.



(e) "Percent good" means an estimate of value, expressed as a percentage, based on a property's acquisition cost or cost new, adjusted for depreciation and appreciation of all kinds.

(i) The percent good factor is applied against the acquisition cost or the cost new to derive taxable value for the property.

(ii) Percent good schedules are derived from an analysis of the Internal Revenue Service Class Life, the Marshall and Swift Cost index, other data sources or research, and vehicle valuation guides such as Penton Price Digests.

(2) Each year the Property Tax Division shall update and publish percent good schedules for use in computing personal property valuation.

(a) Proposed schedules shall be transmitted to county assessors and interested parties for comment before adoption.

(b) A public comment period will be scheduled each year and a public hearing will be scheduled if requested by ten or more interested parties or at the discretion of the Commission.

(c) County assessors may deviate from the schedules when warranted by specific conditions affecting an item of personal property. When a deviation will affect an entire class or type of personal property, a written report, substantiating the changes with verifiable data, must be presented to the Commission. Alternative schedules may not be used without prior written approval of the Commission.

(d) A party may request a deviation from the value established by the schedule for a specific item of property if the use of the schedule does not result in the fair market value for the property at the retail level of trade on the lien date, including any relevant installation and assemblage value.

(3) The provisions of this rule do not apply to:

(a) a vehicle subject to the age-based uniform fee under Section 59-2-405.1;

(b) the following personal property subject to the age-based uniform fee under Section 59-2-405.2:

- (i) an all-terrain vehicle;
- (ii) a camper;
- (iii) an other motorcycle;
- (iv) an other trailer;
- (v) a personal watercraft;
- (vi) a small motor vehicle;
- (vii) a snowmobile;
- (viii) a street motorcycle;
- (ix) a tent trailer;
- (x) a travel trailer; and
- (xi) a vessel, including an outboard motor of the vessel, that is less than 31 feet in length;

(c) a motorhome subject to the uniform statewide fee under Section 59-2-405.3; and

(d) an aircraft subject to the uniform statewide fee under Section 72-10-110.5.

(4) Other taxable personal property that is not included in the listed classes includes:

(a) Supplies on hand as of January 1 at 12:00 noon, including office supplies, shipping supplies, maintenance supplies, replacement parts, lubricating oils, fuel and consumable items not held for sale in the ordinary course of business. Supplies are assessed at total cost, including freight-in.

(b) Equipment leased or rented from inventory is subject to ad valorem tax. Refer to the appropriate property class schedule to determine taxable value.

(c) Property held for rent or lease is taxable, and is not exempt as inventory. For entities primarily engaged in rent-to-own, inventory on hand at January 1 is exempt and property out on rent-to-own contracts is taxable.

(5) Personal property valuation schedules may not be appealed to, or amended by, county boards of equalization.

(6) All taxable personal property, other than personal property subject to an age-based uniform fee under Section 59-2-405.1 or 59-2-405.2, or a uniform statewide fee under Section 59-2-404, is classified by expected economic life as follows:

(a) Class 1 - Short Life Property. Property in this class has a typical life of more than one year and less than four years. It is fungible in that it is difficult to determine the age of an item retired from service.

(i) Examples of property in the class include:

- (A) barricades/warning signs;
- (B) library materials;
- (C) patterns, jigs and dies;
- (D) pots, pans, and utensils;
- (E) canned computer software;
- (F) hotel linen;
- (G) wood and pallets;
- (H) video tapes, compact discs, and DVDs; and
- (I) uniforms.

(ii) With the exception of video tapes, compact discs, and DVDs, taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

(iii) A licensee of canned computer software shall use one of the following substitutes for acquisition cost of canned computer software if no acquisition cost for the canned computer software is stated:

- (A) retail price of the canned computer software;
- (B) if a retail price is unavailable, and the license is a nonrenewable single year license agreement, the total sum of expected payments during that 12-month period; or

(C) if the licensing agreement is a renewable agreement or is a multiple year agreement, the present value of all expected licensing fees paid pursuant to the agreement.

(iv) Video tapes, compact discs, and DVDs are valued at \$15.00 per tape or disc for the first year and \$3.00 per tape or disc thereafter.

TABLE 1

Year of Acquisition	Percent Good of Acquisition Cost
[18] 19	[72] 75%
[17] 18	[42] 44%
[16] 17 and prior	11%

(b) Class 2 - Computer Integrated Machinery.

(i) Machinery shall be classified as computer integrated machinery if all of the following conditions are met:

(A) The equipment is sold as a single unit. If the invoice breaks out the computer separately from the machine, the computer must be valued as Class 12 property and the machine as Class 8 property.

(B) The machine cannot operate without the computer and the computer cannot perform functions outside the machine.

(C) The machine can perform multiple functions and is controlled by a programmable central processing unit.

(D) The total cost of the machine and computer combined is depreciated as a unit for income tax purposes.

(E) The capabilities of the machine cannot be expanded by substituting a more complex computer for the original.

(ii) Examples of property in this class include:

(A) CNC mills;

(B) CNC lathes;

(C) high-tech medical and dental equipment such as MRI equipment, CAT scanners, and mammography units.

(iii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 2

Year of Acquisition	Percent Good of Acquisition Cost
[18] 19	[91] 95%
[17] 18	[81] 85%
[16] 17	[70] 73%
[15] 16	[59] 61%
[14] 15	[48] 50%
[13] 14	[38] 39%
[12] 13	[25] 26%
[11] 12 and prior	13%

(c) Class 3 - Short Life Trade Fixtures. Property in this class generally consists of electronic types of equipment and includes property subject to rapid functional and economic obsolescence or severe wear and tear.

(i) Examples of property in this class include:

(A) office machines;

(B) alarm systems;

(C) shopping carts;

(D) ATM machines;

(E) small equipment rentals;

(F) rent-to-own merchandise;

(G) telephone equipment and systems;

(H) music systems;

(I) vending machines;

(J) video game machines; and

(K) cash registers.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 3

Year of Acquisition	Percent Good of Acquisition Cost
[18] 19	[86] 89%
[17] 18	[70] 73%
[16] 17	[53] 55%
[15] 16	[35] 37%
[14] 15 and prior	18%

(d) Class 5 - Long Life Trade Fixtures. Class 5 property is subject to functional obsolescence in the form of style changes.

(i) Examples of property in this class include:

(A) furniture;

(B) bars and sinks;

(C) booths, tables and chairs;

(D) beauty and barber shop fixtures;

(E) cabinets and shelves;

(F) displays, cases and racks;

(G) office furniture;

(H) theater seats;

(I) water slides;

(J) signs, mechanical and electrical; and

(K) LED component of a billboard.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 5

Year of Acquisition	Percent Good of Acquisition Cost
[18] 19	[92] 96%
[17] 18	[84] 87%
[16] 17	[74] 77%
[15] 16	[64] 66%
[14] 15	[55] 57%
[13] 14	[45] 47%
[12] 13	[34] 35%
[11] 12	[23] 24%
[10] 11 and prior	12%

(e) Class 6 - Heavy and Medium Duty Trucks.

(i) Examples of property in this class include:

(A) heavy duty trucks;

(B) medium duty trucks;

(C) crane trucks;

(D) concrete pump trucks; and

(E) trucks with well-boring rigs.

(ii) Taxable value is calculated by applying the percent good factor against the cost new.

(iii) Cost new of vehicles in this class is defined as follows:

(A) the documented actual cost of the vehicle for new vehicles; or

(B) 75 percent of the manufacturer's suggested retail price.

(iv) For state assessed vehicles, cost new shall include the value of attached equipment.

(v) The [2019]2020 percent good applies to [2019]2020 models purchased in [2018]2019.

(vi) Trucks weighing two tons or more have a residual taxable value of \$1,750.

TABLE 6

Model Year	Percent Good of Cost New
[19] 20	90%
[18] 19	[71] 73%
[17] 18	[66] 68%
[16] 17	[61] 63%
[15] 16	[56] 59%
[14] 15	[51] 54%
[13] 14	[45] 49%
[12] 13	[40] 44%
[11] 12	[35] 40%
[10] 11	[30] 35%
[09] 10	20%
[08] 09	15%
[07] 08	10%
[06] 07 and prior	4%

(f) Class 7 - Medical and Dental Equipment. Class 7 has been merged into Class 8.

(g) Class 8 - Machinery and Equipment and Medical and Dental Equipment.

(i) Machinery and equipment is subject to considerable functional and economic obsolescence created by competition as technologically advanced and more efficient equipment becomes available. Examples of machinery and equipment include:

- (A) manufacturing machinery;
- (B) amusement rides;
- (C) bakery equipment;
- (D) distillery equipment;
- (E) refrigeration equipment;
- (F) laundry and dry cleaning equipment;
- (G) machine shop equipment;
- (H) processing equipment;
- (I) auto service and repair equipment;
- (J) mining equipment;
- (K) ski lift machinery;
- (L) printing equipment;
- (M) bottling or cannery equipment;
- (N) packaging equipment; and
- (O) pollution control equipment.

(ii) Medical and dental equipment is subject to a high degree of technological development by the health industry. Examples of medical and dental equipment include:

- (A) medical and dental equipment and instruments;
- (B) exam tables and chairs;
- (C) microscopes; and
- (D) optical equipment.

(iii) Except as provided in Subsection (6)(g)(iv), taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

(iv)(A) Notwithstanding Subsection (6)(g)(iii), the taxable value of the following oil refinery pollution control equipment required by the federal Clean Air Act shall be calculated pursuant to Subsection (6)(g)(iv)(B):

- (I) VGO (Vacuum Gas Oil) reactor;
- (II) HDS (Diesel Hydrotreater) reactor;
- (III) VGO compressor;
- (IV) VGO furnace;
- (V) VGO and HDS high pressure exchangers;
- (VI) VGO, SRU (Sulfur Recovery Unit), SWS (Sour Water Stripper), and TGU; (Tail Gas Unit) low pressure exchangers;
- (VII) VGO, amine, SWS, and HDS separators and drums;
- (VIII) VGO and tank pumps;
- (IX) TGU modules; and
- (X) VGO tank and VGO tank air coolers.

(B) The taxable value of the oil refinery pollution control equipment described in Subsection (6)(g)(iv)(A) shall be calculated by:

- (I) applying the percent good factor in Table 8 against the acquisition cost of the property; and
- (II) multiplying the product described in Subsection (6)(g)(iv)(B)(I) by 50%.

TABLE 8

Year of Acquisition	Percent Good of Acquisition Cost
[18] 19	[94] 97%
[17] 18	[87] 91%
[16] 17	[79] 82%
[15] 16	[71] 74%
[14] 15	[64] 66%
[13] 14	[56] 59%
[12] 13	[47] 48%
[11] 12	[38] 40%
[10] 11	[30] 31%
[09] 10	[21] 22%
[08] 09 and prior	11%

(h) Class 9 - Off-Highway Vehicles. [ ~~(i)~~ ] Because Section 59-2-405.2 subjects off-highway vehicles to an age-based uniform fee, a percent good schedule is not necessary.

(i) Class 10 - Railroad Cars. The Class 10 schedule was developed to value the property of railroad car companies. Functional and economic obsolescence is recognized in the developing technology of the shipping industry. Heavy wear and tear is also a factor in valuing this class of property. [ ~~(ii)~~ ] Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 10

Year of Acquisition	Percent Good of Acquisition Cost
[18] 19	[96] 97%
[17] 18	[91] 94%
[16] 17	[84] 88%
[15] 16	[78] 81%
[14] 15	[73] 76%
[13] 14	[68] 70%
[12] 13	[60] 62%
[11] 12	[54] 56%
[10] 11	[48] 50%
[09] 10	[42] 44%
[08] 09	[35] 37%
[07] 08	[28] 29%
[06] 07	20%
[05] 06 and prior	9%

(j) Class 11 - Street Motorcycles. [ ~~(i)~~ ] Because Section 59-2-405.2 subjects street motorcycles to an age-based uniform fee, a percent good schedule is not necessary.

(k) Class 12 - Computer Hardware.

(i) Examples of property in this class include:

- (A) data processing equipment;
- (B) personal computers;
- (C) main frame computers;
- (D) computer equipment peripherals;
- (E) cad/cam systems; and
- (F) copiers.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 12

Year of Acquisition	Percent Good of Acquisition Cost
[18]19	62%
[17]18	46%
[16]17	21%
[15]16	9%
[14]15 and prior	7%

(l) Class 13 - Heavy Equipment.

(i) Examples of property in this class include:

- (A) construction equipment;
- (B) excavation equipment;
- (C) loaders;
- (D) batch plants;
- (E) snow cats; and
- (F) pavement sweepers.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

(iii) [2019]2020 model equipment purchased in [2018]2019 is valued at 100 percent of acquisition cost.

TABLE 13

Year of Acquisition	Percent Good of Acquisition Cost
[18]19	[49]51%
[17]18	[47]49%
[16]17	[44]47%
[15]16	[42]45%
[14]15	[39]41%
[13]14	[37]39%
[12]13	[35]37%
[11]12	[32]35%
[10]11	[30]33%
[09]10	[28]31%
[08]09	[25]29%
[07]08	[23]25%
[06]07	[20]23%
[05]06 and prior	[13]15%

(m) Class 14 - Motor Homes.

(i) Because Section 59-2-405.3 subjects motor homes to an age-based uniform fee, a percent good schedule is not necessary.

(n) Class 15 - Semiconductor Manufacturing Equipment. Class 15 applies only to equipment used in the production of semiconductor products. Equipment used in the semiconductor manufacturing industry is subject to significant economic and functional obsolescence due to rapidly changing technology and economic conditions.

(i) Examples of property in this class include:

- (A) crystal growing equipment;
- (B) die assembly equipment;
- (C) wire bonding equipment;
- (D) encapsulation equipment;
- (E) semiconductor test equipment;
- (F) clean room equipment;
- (G) chemical and gas systems related to semiconductor manufacturing;
- (H) deionized water systems;
- (I) electrical systems; and

(J) photo mask and wafer manufacturing dedicated to semiconductor production.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 15

Year of Acquisition	Percent Good of Acquisition Cost
[18]19	47%
[17]18	34%
[16]17	24%
[15]16	15%
[14]15 and prior	6%

(o) Class 16 - Long-Life Property. Class 16 property has a long physical life with little obsolescence.

(i) Examples of property in this class include:

- (A) billboard (excluding LED component);
- (B) sign towers;
- (C) radio towers;
- (D) ski lift and tram towers;
- (E) non-farm grain elevators;
- (F) bulk storage tanks;
- (G) underground fiber optic cable;
- (H) solar panels and supporting equipment; and
- (I) pipe laid in or affixed to land.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 16

Year of Acquisition	Percent Good of Acquisition Cost
[18]19	[96]97%
[17]18	[94]96%
[16]17	[89]93%
[15]16	[85]88%
[14]15	[82]85%
[13]14	[79]82%
[12]13	[73]76%
[11]12	[69]72%
[10]11	[64]65%
[09]10	[63]64%
[08]09	59%
[07]08	[57]58%
[06]07	[51]53%
[05]06	[45]47%
[04]05	[38]39%
[03]04	[30]31%
[02]03	[23]24%
[01]02	[15]16%
[00]01 and prior	8%

(p) Class 17 - Vessels Equal to or Greater Than 31 Feet in Length.

(i) Examples of property in this class include:

- (A) houseboats equal to or greater than 31 feet in length;
- (B) sailboats equal to or greater than 31 feet in length; and
- (C) yachts equal to or greater than 31 feet in length.

(ii) A vessel, including an outboard motor of the vessel, under 31 feet in length:

- (A) is not included in Class 17;

- (B) may not be valued using Table 17; and
- (C) is subject to an age-based uniform fee under Section 59-2-405.2.
- (iii) Taxable value is calculated by applying the percent good factor against the cost new of the property.
- (iv) The Tax Commission and assessors shall rely on the following sources to determine cost new for property in this class:
  - (A) the following publications or valuation methods:
    - (I) the manufacturer's suggested retail price listed in the ABOS Marine Blue Book;
    - (II) for property not listed in the ABOS Marine Blue Book but listed in the NADA Marine Appraisal Guide, the NADA average value for the property divided by the percent good factor; or
    - (III) for property not listed in the ABOS Marine Blue Book or the NADA Appraisal Guide:
      - (aa) the manufacturer's suggested retail price for comparable property; or
      - (bb) the cost new established for that property by a documented valuation source; or
  - (B) the documented actual cost of new or used property in this class.
  - (v) The ~~2019~~2020 percent good applies to ~~2019~~2020 models purchased in ~~2018~~2019.
  - (vi) Property in this class has a residual taxable value of \$1,000.

TABLE 17

Model Year	Percent Good of Cost New
<del>19</del> 20	90%
<del>18</del> 19	<del>67</del> 70%
<del>17</del> 18	<del>64</del> 68%
<del>16</del> 17	<del>62</del> 66%
<del>15</del> 16	<del>60</del> 63%
<del>14</del> 15	<del>57</del> 61%
<del>13</del> 14	<del>55</del> 59%
<del>12</del> 13	<del>53</del> 57%
<del>11</del> 12	<del>50</del> 54%
<del>10</del> 11	<del>48</del> 52%
<del>09</del> 10	<del>46</del> 50%
<del>08</del> 09	<del>43</del> 47%
<del>07</del> 08	<del>41</del> 45%
<del>06</del> 07	<del>39</del> 43%
<del>05</del> 06	<del>36</del> 41%
<del>04</del> 05	<del>34</del> 38%
<del>03</del> 04	<del>32</del> 36%
<del>02</del> 03	<del>29</del> 34%
<del>01</del> 02	<del>27</del> 32%
<del>00</del> 01	<del>25</del> 29%
<del>99</del> 00	<del>24</del> 27%
<del>98</del> 99 and prior	<del>17</del> 22%

- (q) Class 17a - Vessels Less Than 31 Feet in Length.
  - (i) Because Section 59-2-405.2 subjects vessels less than 31 feet in length to an age-based uniform fee, a percent good schedule is not necessary.
  - (r) Class 18 - Travel Trailers and Class 18a - Tent Trailers/Truck Campers.
    - (i) Because Section 59-2-405.2 subjects travel trailers and tent trailers/truck campers to an age-based uniform fee, a percent good schedule is not necessary.
    - (s) Class 20 - Petroleum and Natural Gas Exploration and Production Equipment. Class 20 property is subject to significant

- functional and economic obsolescence due to the volatile nature of the petroleum industry.
  - (i) Examples of property in this class include:
    - (A) oil and gas exploration equipment;
    - (B) distillation equipment;
    - (C) wellhead assemblies;
    - (D) holding and storage facilities;
    - (E) drill rigs;
    - (F) reinjection equipment;
    - (G) metering devices;
    - (H) cracking equipment;
    - (I) well-site generators, transformers, and power lines;
    - (J) equipment sheds;
    - (K) pumps;
    - (L) radio telemetry units; and
    - (M) support and control equipment.
  - (ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 20

Year of Acquisition	Percent Good of Acquisition Cost
<del>18</del> 19	<del>95</del> 97%
<del>17</del> 18	<del>87</del> 90%
<del>16</del> 17	<del>81</del> 84%
<del>15</del> 16	<del>74</del> 76%
<del>14</del> 15	<del>67</del> 69%
<del>13</del> 14	<del>61</del> 63%
<del>12</del> 13	<del>55</del> 57%
<del>11</del> 12	<del>46</del> 48%
<del>10</del> 11	<del>40</del> 42%
<del>09</del> 10	<del>34</del> 35%
<del>08</del> 09	<del>27</del> 28%
<del>07</del> 08	<del>19</del> 20%
<del>06</del> 07 and prior	<del>10</del> 11%

- (t) Class 21 - Commercial Trailers.
  - (i) Examples of property in this class include:
    - (A) dry freight van trailers;
    - (B) refrigerated van trailers;
    - (C) flat bed trailers;
    - (D) dump trailers;
    - (E) livestock trailers; and
    - (F) tank trailers.
  - (ii) Taxable value is calculated by applying the percent good factor against the cost new of the property. For state assessed vehicles, cost new shall include the value of attached equipment.
  - (iii) The ~~2019~~2020 percent good applies to ~~2019~~2020 models purchased in ~~2018~~2019.
  - (iv) Commercial trailers have a residual taxable value of \$1,000.

TABLE 21

Model Year	Percent Good of Cost New
<del>19</del> 20	95%
<del>18</del> 19	<del>85</del> 86%
<del>17</del> 18	82%
<del>16</del> 17	78%
<del>15</del> 16	74%
<del>14</del> 15	<del>69</del> 68%

[13] 14	[65] 66%
[12] 13	[64] 62%
[11] 12	[57] 58%
[10] 11	[53] 54%
[09] 10	[50] 51%
[08] 09	[46] 47%
[07] 08	[44] 42%
[06] 07	[36] 37%
[05] 06	[30] 34%
[04] 05	[25] 30%
[03] 04 and prior	[17] 20%

[08] 09	36%
[07] 08 and prior	30%

(u) Class 21a - Other Trailers (Non-Commercial).  
 [†] Because Section 59-2-405.2 subjects this class of trailers to an age-based uniform fee, a percent good schedule is not necessary.

(v) Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans.

(i) Class 22 vehicles fall within four subcategories: domestic passenger cars, foreign passenger cars, light trucks, including utility vehicles, and vans.

(ii) Because Section 59-2-405.1 subjects Class 22 property to an age-based uniform fee, a percent good schedule is not necessary.

(w) Class 22a - Small Motor Vehicles. [†] Because Section 59-2-405.2 subjects small motor vehicles to an age-based uniform fee, a percent good schedule is not necessary.

(x) Class 23 - Aircraft Required to be Registered With the State. [†] Because Section 59-2-404 subjects aircraft required to be registered with the state to a statewide uniform fee, a percent good schedule is not necessary.

(y) Class 24 - Leasehold Improvements on Exempt Real Property.

(i) The Class 24 schedule is to be used only for those leasehold improvements where the underlying real property is owned by an entity exempt from property tax under Section 59-2-1101. See Tax Commission rule R884-24P-32. Leasehold improvements include:

- (A) walls and partitions;
- (B) plumbing and roughed-in fixtures;
- (C) floor coverings other than carpet;
- (D) store fronts;
- (E) decoration;
- (F) wiring;
- (G) suspended or acoustical ceilings;
- (H) heating and cooling systems; and
- (I) iron or millwork trim.

(ii) Taxable value is calculated by applying the percent good factor against the cost of acquisition, including installation.

(iii) The Class 3 schedule is used to value short life leasehold improvements.

TABLE 24

Year of Installation	Percent of Installation Cost
[18] 19	94%
[17] 18	88%
[16] 17	82%
[15] 16	77%
[14] 15	71%
[13] 14	65%
[12] 13	59%
[11] 12	54%
[10] 11	48%
[09] 10	42%

(z) Class 25 - Aircraft Parts Manufacturing Tools and Dies. Property in this class is generally subject to rapid physical, functional, and economic obsolescence due to rapid technological and economic shifts in the airline parts manufacturing industry. Heavy wear and tear is also a factor in valuing this class of property.

(i) Examples of property in this class include:

- (A) aircraft parts manufacturing jigs and dies;
- (B) aircraft parts manufacturing molds;
- (C) aircraft parts manufacturing patterns;
- (D) aircraft parts manufacturing taps and gauges; and
- (E) aircraft parts manufacturing test equipment.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 25

Year of Acquisition	Percent Good of Acquisition Cost
[18] 19	[86] 89%
[17] 18	[70] 73%
[16] 17	[53] 56%
[15] 16	[36] 38%
[14] 15	[19] 20%
[13] 14 and prior	4%

(aa) Class 26 - Personal Watercraft.

[†] Because Section 59-2-405.2 subjects personal watercraft to an age-based uniform fee, a percent good schedule is not necessary.

(bb) Class 27 - Electrical Power Generating Equipment and Fixtures

(i) Examples of property in this class include:

- (A) electrical power generators; and
- (B) control equipment.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 27

Year of Acquisition	Percent Good of Acquisition Cost
[18] 19	97%
[17] 18	95%
[16] 17	92%
[15] 16	90%
[14] 15	87%
[13] 14	84%
[12] 13	82%
[11] 12	79%
[10] 11	77%
[09] 10	74%
[08] 09	71%
[07] 08	69%
[06] 07	66%
[05] 06	64%
[04] 05	61%
[03] 04	58%
[02] 03	56%
[01] 02	53%
[00] 01	51%
[99] 00	48%
[98] 99	45%
[97] 98	43%
[96] 97	40%

[95] 96	38%
[94] 95	35%
[93] 94	32%
[92] 93	30%
[91] 92	27%
[90] 91	25%
[89] 90	22%
[88] 89	19%
[87] 88	17%
[86] 87	14%
[85] 86	12%
[84] 85 and prior	9%

[17] 18	50%
[16] 17	25%
[15] 16 and prior	0%

The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, [2019]2020.

**KEY: taxation, personal property, property tax, appraisals**  
**Date of Enactment or Last Substantive Amendment: [May 17,] 2019**

**Notice of Continuation: November 10, 2016**  
**Authorizing, and Implemented or Interpreted Law: Art. XIII, Sec 2; 9-2-201; 11-13-302; 41-1a-202; 41-1a-301; 59-1-210; 59-2-102; 59-2-103; 59-2-103.5; 59-2-104; 59-2-201; 59-2-210; 59-2-211; 59-2-301; 59-2-301.3; 59-2-302; 59-2-303; 59-2-303.1; 59-2-305; 59-2-306; 59-2-401; 59-2-402; 59-2-404; 59-2-405; 59-2-405.1; 59-2-406; 59-2-508; 59-2-514; 59-2-515; 59-2-701; 59-2-702; 59-2-703; 59-2-704; 59-2-704.5; 59-2-705; 59-2-801; 59-2-918 through 59-2-924; 59-2-1002; 59-2-1004; 59-2-1005; 59-2-1006; 59-2-1101; 59-2-1102; 59-2-1104; 59-2-1106; 59-2-1107 through 59-2-1109; 59-2-1113; 59-2-1115; 59-2-1202; 59-2-1202(5); 59-2-1302; 59-2-1303; 59-2-1308.5; 59-2-1317; 59-2-1328; 59-2-1330; 59-2-1347; 59-2-1351; 59-2-1365; 59-2-1703**

(cc) Class 28 - Noncapitalized Personal Property. Property shall be classified as noncapitalized personal property if the following conditions are met:

- (i) the property is an item of taxable tangible personal property with an acquisition cost of \$1,000 or less; and
- (ii) the property is eligible as a deductible expense under Section 162 or Section 179, Internal Revenue Code, in the year of acquisition, regardless of whether the deduction is actually claimed.

TABLE 28

Year of Acquisition	Percent Good of Acquisition Cost
[18] 19	75%

**End of the Notices of Proposed Rules Section**





## NOTICES OF CHANGES IN PROPOSED RULES

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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 October 15, 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 January 13, 2020, 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.

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**The Changes in Proposed Rules Begin on the Following Page**

**Governor, Economic Development**  
**R357-22**  
**Rural Employment Expansion Program**  
**Rule**

**NOTICE OF CHANGE IN PROPOSED RULE**

DAR FILE NO.: 43939  
 FILED: 08/29/2019

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this rule filing is to clarify the requirements for a business entity to qualify for participation in the Rural Employment Expansion Program (Program) from the original filing.

**SUMMARY OF THE RULE OR CHANGE:** Section R357-22-102 is updated to create new definitions that will be used to administer the Program and delete obsolete definitions. Section R357-22-104 is modified to include additional documentation in the form and content of the application. Section R357-22-105 is modified to adjust the documentation required to demonstrate the creation of new full-time employee positions. Section R357-22-107 is updated to codify various requirements for the administration of the Program and delete obsolete subsections. (EDITOR'S NOTE: The original proposed amendment upon which this change in proposed rule (CPR) was based was published in the August 15, 2019, issue of the Utah State Bulletin, on page 30. 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 63N-4-403(2)(c)

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** There is no aggregate anticipated cost or savings to the state budget. These changes merely codify the procedures the Office of Economic Development (Office) has historically used.
- ◆ **LOCAL GOVERNMENTS:** There is no aggregate anticipated cost or savings to local governments because local governments are not required to comply with or enforce this rule.
- ◆ **SMALL BUSINESSES:** There is no aggregate anticipated cost or savings to small businesses because these proposed amendments do not create new obligations for small businesses, nor does it increase the costs associated with any existing obligation. Participation in the Program is optional.

- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no aggregate anticipated cost or savings to persons other than small businesses, businesses, or local government entities because these proposed amendments do not create new obligations for persons other than small businesses, businesses, or local government entities, nor does it increase the costs associated with any existing obligation.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance costs for affected persons because participation in this Program is optional.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** The purpose of this rule filing is to clarify the standards for participation in the Program. This rule will have no impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 GOVERNOR  
 ECONOMIC DEVELOPMENT  
 THIRD FLOOR  
 60 E SOUTH TEMPLE  
 SALT LAKE CITY, UT 84111  
 or at the Office of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**  
 ◆ Dane Ishihara by phone at 801-538-8865, or by Internet E-mail at dishihara@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/15/2019

THIS RULE MAY BECOME EFFECTIVE ON: 10/22/2019

AUTHORIZED BY: Val Hale, 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
<b>Total Fiscal Costs:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

<b>Fiscal Benefits</b>			
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
<b>Total Fiscal Benefits:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

\*This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts for State Government, Local Government, Small Businesses and Other Persons are described in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.

**Appendix 2: Regulatory Impact to Non-Small Businesses**

There is no regulatory impact creating financial cost to non-small businesses. These proposed rule changes are to clarify the standards for participation in the Utah Works Program (Program). There are no general regulations being promulgated by this rule because the Program is voluntary and does not require non-participants to do anything. There is no impact to businesses or persons in general because this rule only applies to those who chose to participate in this Program in order to receive a grant.

The head of the Governor's Office of Economic Development, Val Hale, has reviewed and approved this fiscal analysis.

**R357. Governor, Economic Development.**

**R357-22. Rural Employment Expansion Program.**

**R357-22-101. Title.**

This rule is known as the "Rural Employment Expansion Program Rule."

**R357-22-102. Definitions.**

In addition to the terms defined in 63N-4-402, the following terms are defined as follows:

- (1) "Employee report" means a list of employees in a format approved by the office that includes:
  - (a) time-period of report;
  - (b) employee:
    - (i) names or ID numbers;
    - (ii) position titles;
    - (iii) hire dates;
    - (iv) termination dates, if applicable;
    - (v) hours paid;
    - (vi) wages paid.; and

- (vii) benefits paid, if applicable.
- (4) "New full-time employee position" means a position that:

- (a) has been newly created in addition to the number of baseline jobs as defined in subsection 63N-1-102(1);

- (b) is a newly created full-time employee position where the annual gross wage or annualized wage of the employment position, not including health care or other paid or unpaid benefits, is at least 110% of the average wage of the county in which the employment position exists; and

- (c) is filled;
  - (i) by a full-time employee as defined in subsection 63N-1-102(6) who is not a spouse, child, parent, sibling, grandparent, or grandchild of an owner or officer of the business entity; and

- (ii) in any county in the state except Salt Lake, Utah, Davis, Weber, Washington, Cache, Tooele, and Summit counties. ~~and~~

- (2) "REDI", Rural Economic Development Incentives, means the same as the Rural Employment Expansion Program.

**R357-22-103. Authority.**

This rule is adopted by the office under the authority of Subsection 63N-4-403(2)(c).

**R357-22-104. Form and Content of Application for Rural Employment Expansion Program Participation.**

(1) The content of the application for a rural employment expansion grant shall, at minimum, include the business entity's:

- (a) name;
- (b) physical operating address;
- (c) telephone number;
- (d) email address;
- (e) Federal EIN number;
- (f) primary NAICS code;
- (g) vendor number, if the applicant is a registered vendor with the State of Utah;

(h) requested rural employment expansion grant amount; and

- (i) forecasted:
  - (i) number of new full-time positions;
  - (ii) wage of new full-time employee positions; and
  - (iii) hire date of new full-time employee positions.

(2) The following documents shall, at minimum, be included in each application for participation in the program:

- (a) copy of current W-9 form;
- (b)(i) two most recent Form 33H - Utah Employer Quarterly Wage List and Contribution Reports; or
- (ii) a copy of an executed professional employee agreement, as defined in Subsection 31A-40-102(15); and
- (c) employee report covering the twelve months prior to application.

**R357-22-105. Documentation Required to Demonstrate the Creation of New Full-Time Positions.**

(1) The following documents shall, at minimum, be included when a business entity demonstrates the creation of new full-time employee positions after the position has been filled for 12 months:

- (a) number of new full-time employee positions created;

(b) address of work location if different from the address supplied in the business entity's application for REDI Participation;

(c) employee report for the twelve months prior to grant funds disbursement request; and

(d)(i) two most recent Form 33H - Utah Employer Quarterly Wage List and Contribution Reports; or

(ii) a copy of an executed professional employee agreement, as defined in Subsection 31A-40-102(15).

(2) A business entity may apply for grant funds after the new employee position has been filled for a minimum of six months and the annualized wage is at least 110% of the county's annual wage by submitting, at minimum, the following:

(a) number of new full-time employee positions created;

(b) address of work if different from the address supplied in the business entity's application for REDI Participation;

(c) employee report covering the twelve months prior to grant disbursement request; and

(d)(i) two most recent Form 33H - Utah Employer Quarterly Wage List and Contribution Reports; or

(ii) a copy of an executed professional employee agreement, as defined in Subsection 31A-40-102(15).

(e) new full-time employee positions pay stubs at the second, fourth and sixth months.

(3) the office may request additional information in order to verify the creation and wage of new full-time employee positions.

**R357-22-106. Documentation Required to Demonstrate the Creation of New Full-Time Positions -- Appeal Process.**

(1) If, after a review of the documentation required to demonstrate the creation of a new full-time employee positions is inadequate the office shall:

(a) deny the request for a rural employment expansion grant; or

(b) inform the business entity that the documentation is inadequate and ask the business entity to submit additional documentation.

(2) If the office denies the request for a rural employment expansion grant the business entity may appeal the denial to the office, in writing, within 20 business days of the denial notice date.

(3) The office shall review any appeal within 20 business days and make a final determination of the business entity's request for a rural employment expansion grant.

**R357-22-107. Administration of the Rural Employment Expansion Grant.**

(1) From the date of entering a written agreement, as described in Subsection 63N-4-404(3), the business entity shall have six months to hire an employee to fill any new full-time employee positions.

(2) The business entity shall provide the documentation required to demonstrate the creation of new full-time employee positions within 90-days of the completion of all eligible employment periods for the new full-time positions.

(3) The business entity shall verify that newly hired employees are legal U.S. Citizens or meet eligible non-citizen requirements (employer must use the E-Verify and keep a record of citizen documentation on hand).

(4) If the office finds a material change in the baseline number of jobs after established in the contract, the administrator may cause the contract to be amended to reflect the correct number prior to issuance or denial of an incentive.

(5) The written agreement, as described in Subsection 63N-4-404(3), will establish the average county wage terms and requirements.

(6)(a) New full-time employee positions that qualify for a Rural Employment Expansion Grant are not eligible to be considered as new full-time employee positions for other grant or incentive programs administered by the office.

(b) Business entities that would like to apply for or receive another grant or incentive administered by the office must submit a separate application for each grant or incentive program.

**KEY: rural employment expansion, economic development**

**Date of Enactment or Last Substantive Amendment: 2019**

**Authorizing, and Implemented or Interpreted Law: 63N-4-403(2)**

(c)

**End of the Notices of Changes in Proposed Rules Section**

# FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

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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.

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## Agriculture and Food, Marketing and Development **R65-1**

### Utah Apple Marketing Order

#### **FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 44024  
FILED: 08/30/2019

#### **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 4-2-103(1)(e) which grants the Department of Agriculture and Food (Department) authority to establish marketing order to market and promote agricultural commodities in the state.

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 comments on this rule during the last 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 necessary to promote the apple industry in the state. It is supported by the apple growers in the state. Therefore, this rule should be continued.

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

MARKETING AND DEVELOPMENT  
350 N REDWOOD RD  
SALT LAKE CITY, UT 84116-3034  
or at the Office of Administrative Rules.

#### DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Kathleen Mathews by phone at 801-538-7103, by FAX at 801-538-7126, or by Internet E-mail at [kmathews@utah.gov](mailto:kmathews@utah.gov)
- ◆ Kelly Pehrson by phone at 801-538-7102, or by Internet E-mail at [kwpehrson@utah.gov](mailto:kwpehrson@utah.gov)

AUTHORIZED BY: Kerry Gibson, Commissioner

EFFECTIVE: 08/30/2019

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## Agriculture and Food, Regulatory Services **R70-910**

### Registration of Servicepersons for Commercial Weighing and Measuring Devices

#### **FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 44026  
FILED: 08/30/2019

#### **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 Section 4-9-103 which allows the Department of Agriculture and Food (Department) to create rules for the enforcement of ensuring

the proper certification and usage of weights and measures used for commerce.

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 comments on this rule in the last 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 allows the Department to certify individuals with proper training to assist in the calibration of scales and other measuring devices. This is necessary to ensure the measuring devices are accurate for the consumer. Additionally, the Department knows that the individuals are properly trained to engage in this activity. Therefore, this rule should be continued.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Brett Gurney by phone at 801-538-7158, by FAX at 801-538-7126, or by Internet E-mail at bgurney@utah.gov  
 ♦ Kelly Pehrson by phone at 801-538-7102, or by Internet E-mail at kwpehrson@utah.gov  
 ♦ Travis Waller by phone at 801-538-7150, by FAX at 801-538-7124, or by Internet E-mail at twaller@utah.gov

AUTHORIZED BY: Kerry Gibson, Commissioner

EFFECTIVE: 08/30/2019

ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized by Section 4-9-118 which allows the Department of Agriculture and Food (Department) to establish rules and fees for the registration of weights and measures to ensure the correct weights and measures are used to protect the consumer.

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 comments on this rule in the last 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 necessary to ensure the inspection and certification of measuring devices used for commerce in the state. This ensures that the consumer is paying the correct price for their products. Therefore, this rule should be continued.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Brett Gurney by phone at 801-538-7158, by FAX at 801-538-7126, or by Internet E-mail at bgurney@utah.gov  
 ♦ Travis Waller by phone at 801-538-7150, by FAX at 801-538-7124, or by Internet E-mail at twaller@utah.gov

AUTHORIZED BY: Kerry Gibson, Commissioner

EFFECTIVE: 08/30/2019

**Agriculture and Food, Regulatory Services  
 R70-960**

**Weights and Measures Fee Registration**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
 DAR FILE NO.: 44025  
 FILED: 08/30/2019

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS

**Health, Disease Control and Prevention, Epidemiology  
 R386-80**

**Local Public Health Emergency Funding Protocols**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
 DAR FILE NO.: 44006  
 FILED: 08/22/2019

**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 Section 26-1-38. This rule specifies details and expectations regarding the Public Health Emergency Funding 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 have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Public Health Emergency Funding Program received an ongoing appropriation from the legislature and this rule is still necessary to specify expectations for the program. Therefore, this rule should be continued.

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

HEALTH  
DISEASE CONTROL AND PREVENTION,  
EPIDEMIOLOGY  
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:

♦ Heather Borski by phone at 801-538-9998, by FAX at 801-538-9495, or by Internet E-mail at hborski@utah.gov

AUTHORIZED BY: Joseph Miner, MD, Executive Director

EFFECTIVE: 08/22/2019

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Health, Disease Control and  
Prevention, Environmental Services

**R392-104**

Feeding Disadvantaged Groups

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 43995  
FILED: 08/20/2019

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE

OR REQUIRE THE RULE: Rule R392-104 is authorized under Subsection 26-1-30(4), and Sections 26-15-5.1 and 26-15A-105. Subsection 26-1-30(4) authorizes the Department of Health (Health) to establish, maintain, and enforce rules necessary or desirable to carry out the provisions and purposes of Title 26 to promote and protect public health or to prevent disease and illness. Sections 26-15-5.1 and 26-15A-105 exempts charitable organizations from the requirements to have food handler permits or a food safety manager certification, respectively.

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 sought comments from the local health departments in Utah, as well as through the register of charitable organizations that feed disadvantage groups. No comments were received in opposition to a continuation of Rule R392-104.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Continuation of Rule R392-104 is recommended by the Department. This rule exempts certain charitable organizations from facility and operator permitting requirements, as well as meets statutory requirements to exempt food workers from needing food handler permits or food safety manager certifications. Keeping these exemptions in place encourages organizations and individuals to volunteer and help disadvantaged groups. The Department received no comments in opposition to this rule.

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

HEALTH  
DISEASE CONTROL AND PREVENTION,  
ENVIRONMENTAL SERVICES  
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:

♦ Chris Nelson by phone at 801-538-6739, or by Internet E-mail at chrisnelson@utah.gov

AUTHORIZED BY: Joseph Miner, MD, Executive Director

EFFECTIVE: 08/20/2019

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Human Services, Recovery Services  
**R527-40**  
Retained Support

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 44019  
 FILED: 08/28/2019

**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 62A-1-111 gives the Department of Human Services (DHS) the authority to adopt rules as necessary for providing social services to the people of Utah, as well as to collect child support payments and any other money due to the department. This rule was adopted to provide a clear definition of "retained support" and to explain when the \$50 pass-through payment would be appropriate for credit on support payments that were retained by the obligee. Section 62A-11-107 gives the Office of Recovery Services (ORS) the authority to adopt, amend, and enforce rules necessary to carry out its responsibilities under state law. Under Section 62A-11-307.1, an obligee whose rights have been assigned must immediately deliver payments that he/she has received and retained directly to ORS, and ORS may recover the assigned support that has been inappropriately retained by the obligee in the same manner as it collects support owed by an obligor. Section 62A-11-307.2 describes the duties of the obligee after his/her support rights have been assigned. Section 62A-11-304.1 authorizes ORS to direct an obligor or other payor to change the payee of support to ORS if there has been an assignment of rights, upon providing notice to the obligor and obligee.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no comments received since the last five-year review of this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should continue because the laws and policies dealing with retained support are still in effect and the rule gives essential clarification, procedures, and explanation relating to the laws and policies. Recovery of assigned support is essential to reimburse the state for funds spent on the family.

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

HUMAN SERVICES  
 RECOVERY SERVICES  
 515 E 100 S  
 SALT LAKE CITY, UT 84102-4211  
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Casey Cole by phone at 801-741-7523, by FAX at 801-536-8509, or by Internet E-mail at cacole@utah.gov
- ◆ Jonah Shaw by phone at 801-538-4219, by FAX at 801-538-3942, or by Internet E-mail at jshaw@utah.gov

AUTHORIZED BY: Liesa Stockdale, Director

EFFECTIVE: 08/28/2019

**Insurance, Administration  
 R590-67**

**Proxy Solicitations and Consent and Authorization of Stockholders of Domestic Stock Insurers**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 44003  
 FILED: 08/20/2019

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 31A-2-201(3) authorizes the Insurance Commissioner to write rules to implement the provisions of the Insurance Code, Title 31A. This rule provides guidance as to the form and content of proxy solicitation made to insurance stockholders. Without this rule, there may be instances where individuals unfairly or covertly obtain a proxy to act on behalf of a stockholder without the stockholder's full or complete knowledge of what is happening.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Insurance Department has received no written comments regarding this rule during the past five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Many insurance companies in Utah are stock insurance companies. Stockholders in an insurance company have various rights, which may be assigned to another person via a proxy statement. This rule provides guidance as to the form and content of proxy solicitation made to insurance stockholders. Without this rule, there may



be instances where individuals unfairly or covertly obtain a proxy to act on behalf of a stockholder without the stockholder's full or complete knowledge of what is happening. 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](mailto:sgooch@utah.gov)

AUTHORIZED BY: Steve Gooch, Information Specialist

EFFECTIVE: 08/20/2019

## Insurance, Administration **R590-76**

### Health Maintenance Organizations and Limited Health Plans

#### FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 44004  
FILED: 08/20/2019

#### NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 31A-2-201(3) authorizes the Insurance Commissioner to write rules to implement the provisions of the Insurance Code, Title 31A. Title 31A, Chapter 8, regulates health maintenance organizations, their incorporation, licensure, solvency, securities standards, requirements regarding their operations, and access to health care providers.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Insurance Department has received no written comments regarding this rule during the past five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE

RULE, IF ANY: Health maintenance organizations (HMOs) are major players in Utah's health insurance market. This rule, along with Title 31A, Chapter 8, of the Insurance Code have been developed to: 1) ensure the availability, accessibility, and quality of services provided by HMOs; 2) provide standards for terms and provisions contained in HMO contracts and certificates; 3) provide standards for determining financial condition; and 4) provide other standards deemed necessary to protect the interests of the citizens of Utah. 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](mailto:sgooch@utah.gov)

AUTHORIZED BY: Steve Gooch, Information Specialist

EFFECTIVE: 08/20/2019

## Insurance, Administration **R590-79**

### Life Insurance Disclosure Rule

#### FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 43996  
FILED: 08/20/2019

#### NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 31A-2-201(3) authorizes the Insurance Commissioner to write rules to implement the provisions of the Insurance Code, Title 31A. Subsection 31A-22-425(1) authorizes the Insurance Commissioner to make rules to establish standards for buyers' guides and disclosures. This rule requires insurers to deliver information to purchasers of life insurance that will improve the purchaser's ability to select a life insurance policy that is most appropriate for them.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Insurance Department has

received no written comments regarding this rule during the past five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule requires disclosure of basic life policy features specified in Title 31A, Chapter 22, Part 4, and specifies the format for disclosure. The disclosure informs and assists consumers in understanding the policy they purchase. 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: 08/20/2019

**Insurance, Administration  
R590-83**

**Unfair Discrimination on the Basis of  
Sex or Marital Status**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 43997  
FILED: 08/20/2019

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 31A-2-201(3)(a) authorizes the Insurance Commissioner to make rules to implement the provisions of the Insurance Code, Title 31A. Subsection 31A-23a-402(8) authorizes the Insurance Commissioner to define by rule, after a finding of fact, any marketing practices that are unfair, deceptive, discriminatory, etc. This rule prohibits discrimination in all new and renewal insurance contracts based solely on sex or marital status.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE

FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Insurance Department has received no written comments regarding this rule during the past five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued because it provides important protection to consumers and allows the Insurance Department to regulate against unfair and discriminatory transactions between insurers and consumers. Not having this rule could give the impression that the Department is not concerned about unfair discrimination based on sex and marital status.

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: 08/20/2019

**Insurance, Administration  
R590-127**

**Rate Filing Exemptions**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 43998  
FILED: 08/20/2019

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 31A-2-201(3) authorizes the Insurance Commissioner to make rules to implement the provisions of the Insurance Code, Title 31A. Section 31A-19a-103 authorizes the Insurance Commissioner to exempt a person, a class of persons, or a market segment from Title 31A, Chapter 19a. This rule exempts (a) rates, the process of developing (a) rates, special risk rating, commercial excess, and umbrella liability insurance from the rate filing requirements in Section 31A-19a-203.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Insurance Department has received no written comments regarding this rule during the past five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: There are four key reasons for continuing this rule: 1) it clarifies Title 31A, Chapter 19a; 2) it exempts certain lines of insurance from filing rates; 3) it puts a limitation on scheduled rating plans; and 4) it provides definitions for (a) rates, excess insurance, individual risk filing, self-insured retention, and umbrella liability insurance.

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](mailto:sgooch@utah.gov)

AUTHORIZED BY: Steve Gooch, Information Specialist

EFFECTIVE: 08/20/2019

## Insurance, Administration

### **R590-129**

#### Unfair Discrimination Based Solely Upon Blindness or Physical or Mental Impairment

#### **FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 43999  
FILED: 08/20/2019

#### **NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 31A-2-201(3)(a) authorizes the Insurance Commissioner to make rules to implement the provisions of the Insurance Code, Title 31A. Subsection 31A-23a-402(8) authorizes the Insurance Commissioner to define by rule, after a finding of fact, any

marketing practices that are unfair, deceptive, discriminatory, etc. This rule prohibits discrimination based on blindness, or physical or mental impairment in all new and renewal insurance contracts.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Insurance Department has received no written comments regarding this rule during the past five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued because it provides important protection for consumers and insurers and allows the Insurance Department to regulate against unfair and discriminatory transactions between insurers and consumers. Not having this rule could give the impression that the Insurance Department does not care about unfair discrimination based on blindness, or physical or mental impairments.

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](mailto:sgooch@utah.gov)

AUTHORIZED BY: Steve Gooch, Information Specialist

EFFECTIVE: 08/20/2019

## Insurance, Administration

### **R590-167**

#### Individual, Small Employer, and Group Health Benefit Plan Rule

#### **FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 44000  
FILED: 08/20/2019

#### **NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS

ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 31A-2-201(3)(a) authorizes the Insurance Commissioner to write rules to implement the provisions of the Insurance Code, Title 31A. Subsection 31A-30-106(1)(k) — which is now (h) and will be nonsubstantively amended presently — authorizes the Insurance Commissioner to revise rules written for Sections 31A-22-602 and 31A-22-605 regarding individual accident and health policy rates that allow rating in accordance with Section 31A-30-106. Subsection 31A-30-106.1(10) gives direction in the rating of new health benefit plans into which new enrollees are enrolling.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Insurance Department 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 should be continued because it is a valuable consumer protection. It regulates and prevents abuse in insurer rating practices, assures that consumers receive credit for previous coverage, and limits the use of restrictive riders.

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](mailto:sgooch@utah.gov)

AUTHORIZED BY: Steve Gooch, Information Specialist

EFFECTIVE: 08/20/2019

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**Insurance, Administration**  
**R590-194**  
**Coverage of Dietary Products for**  
**Inborn Errors of Amino Acid or Urea**  
**Cycle Metabolism**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
 DAR FILE NO.: 44001  
 FILED: 08/20/2019

**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 administer and enforce the provisions of the Insurance Code, Title 31A. Subsection 31A-2-201(3)(a) authorizes the Insurance Commissioner to write rules to implement the provisions of Title 31A. Subsection 31A-22-623(2) authorizes the Insurance Commissioner to set minimum standards by rule for coverage of dietary products for inborn errors of amino acid or urea cycle metabolism.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Insurance Department has received no written comments regarding this rule during the past five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued because it provides the identification of a uniform billing code standard to be used by health insurers to expedite the processing of claims covering dietary formulas in conjunction with the treatment of these specific inborn metabolic errors.

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](mailto:sgooch@utah.gov)

AUTHORIZED BY: Steve Gooch, Information Specialist

EFFECTIVE: 08/20/2019

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Insurance, Administration  
**R590-229**  
 Annuity Disclosure

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
 OF CONTINUATION**

DAR FILE NO.: 44002  
 FILED: 08/20/2019

**NOTICE OF REVIEW AND STATEMENT OF  
 CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 31A-2-201(3)(a) authorizes the Insurance Commissioner to write rules to implement the provisions of the Insurance Code, Title 31A. Section 31A-22-425 authorizes the Insurance Commissioner to make rules to establish standards for annuity buyers' guides and disclosures.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Insurance Department has received no written comments regarding this rule during the past five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule must be continued because it provides standards for the disclosure of information about annuity contracts to protect consumers by specifying the minimum information to be disclosed, and the method for disclosing it in connection with the sale of an annuity contract. This rule also fosters consumer education by ensuring that consumers understand certain basic features of annuity contracts.

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](mailto:sgooch@utah.gov)

AUTHORIZED BY: Steve Gooch, Information Specialist

EFFECTIVE: 08/20/2019

Public Safety, Highway Patrol  
**R714-500**  
 Chemical Analysis Standards and  
 Training

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
 OF CONTINUATION**

DAR FILE NO.: 44022  
 FILED: 08/29/2019

**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 Section 41-6a-515, which requires the Commissioner of the Department of Public Safety (Department) to establish standards for the administration and interpretation of chemical testing and standards of training.

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 regarding this rule since the last five-year review of this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is authorized by Section 41-6a-515, and is required in order for the Department to establish standards for the administration and interpretation of chemical testing in connection with an arrest for driving under the influence, and to establish standards of training and certification of officers to conduct testing, or certify testing instruments in order for test results to be admissible for court proceedings. 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](mailto:kgibb@utah.gov)

◆ Matt Spillman by phone at 801-698-2186, or by Internet E-mail at [mspillman@utah.gov](mailto:mspillman@utah.gov)

◆ Steven Winward by phone at 801-550-6163, or by Internet E-mail at [swinward@utah.gov](mailto:swinward@utah.gov)

AUTHORIZED BY: Steven Winward, Captain

EFFECTIVE: 08/29/2019

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**End of the Five-Year Notices of Review and Statements of Continuation Section**

## NOTICES OF RULE EFFECTIVE DATES

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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.

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### Abbreviations

AMD = Amendment  
CPR = Change in Proposed Rule  
NEW = New Rule  
R&R = Repeal & Reenact  
REP = Repeal

### Agriculture and Food

Plant Industry  
No. 43684 (NEW): R68-27. Cannabis Cultivation  
Published: 05/15/2019  
Effective: 08/29/2019

No. 43684 (CPR): R68-27. Cannabis Cultivation  
Published: 07/15/2019  
Effective: 08/29/2019

No. 43842 (NEW): R68-29. Quality Assurance Testing on Cannabis  
Published: 07/15/2019  
Effective: 08/29/2019

No. 43843 (NEW): R68-30. Independent Cannabis Testing Laboratory  
Published: 07/15/2019  
Effective: 08/29/2019

### Commerce

Consumer Protection  
No. 43845 (REP): R152-39. Child Protection Registry Rule  
Published: 07/15/2019  
Effective: 08/22/2019

Occupational and Professional Licensing  
No. 43825 (AMD): R156-31b. Nurse Practice Act Rule  
Published: 07/15/2019  
Effective: 08/22/2019

### Education

Administration  
No. 43794 (NEW): R277-305. School Leadership License Areas of Concentration and Programs  
Published: 07/01/2019  
Effective: 08/19/2019

No. 43787 (NEW): R277-322. LEA Codes of Conduct  
Published: 07/01/2019  
Effective: 08/19/2019

No. 43788 (AMD): R277-477. Distributions of Funds from the Trust Distribution Account and Administration of the School LAND Trust Program  
Published: 07/01/2019  
Effective: 08/19/2019

No. 43789 (AMD): R277-491. School Community Councils  
Published: 07/01/2019  
Effective: 08/19/2019

No. 43790 (REP): R277-517. LEA Codes of Conduct  
Published: 07/01/2019  
Effective: 08/19/2019

No. 43791 (AMD): R277-522. Entry Years Enhancements (EYE) for Quality Teaching - Level 1 Utah Teachers  
Published: 07/01/2019  
Effective: 08/19/2019

No. 43701 (AMD): R277-528. Use of Public Education Job Enhancement Program (PEJEP) Funds  
Published: 06/01/2019  
Effective: 08/19/2019

No. 43795 (AMD): R277-600. Student Transportation Standards and Procedures  
Published: 07/01/2019  
Effective: 08/19/2019

No. 43813 (AMD): R277-707. Enhancement for Accelerated Students Program  
Published: 07/01/2019  
Effective: 08/19/2019

No. 43702 (AMD): R277-709. Education Programs Serving Youth in Custody  
Published: 06/01/2019  
Effective: 08/19/2019

No. 43793 (AMD): R277-710. Intergenerational Poverty Interventions in Public Schools  
Published: 07/01/2019  
Effective: 08/19/2019

#### Health

Health Care Financing, Coverage and Reimbursement Policy  
No. 43837 (NEW): R414-71. Early and Periodic Screening, Diagnostic and Treatment Program  
Published: 07/15/2019  
Effective: 08/29/2019

No. 43796 (AMD): R414-303. Coverage Groups  
Published: 07/01/2019  
Effective: 08/29/2019

No. 43797 (AMD): R414-311-6. Household Composition and Income Provisions  
Published: 07/01/2019  
Effective: 08/29/2019

No. 43798 (NEW): R414-312. Adult Expansion Medicaid  
Published: 07/01/2019  
Effective: 08/29/2019

No. 43830 (AMD): R414-516. Nursing Facility Non-State Government-Owned Upper Payment Limit Quality Improvement Program  
Published: 07/15/2019  
Effective: 08/29/2019

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Published: 07/01/2019  
Effective: 08/20/2019

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Published: 07/15/2019  
Effective: 08/21/2019

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Published: 01/01/2019  
Effective: 08/20/2019

No. 43427 (CPR): R590-277. Managed Care Health Benefit Plan Policy Standards  
Published: 05/01/2019  
Effective: 08/20/2019

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Published: 07/15/2019  
Effective: 08/22/2019

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Published: 07/15/2019  
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Published: 07/15/2019  
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Published: 07/15/2019  
Effective: 08/22/2019

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Published: 07/15/2019  
Effective: 08/22/2019

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Published: 07/15/2019  
Effective: 08/26/2019



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Published: 07/15/2019

Effective: 08/26/2019

No. 43846 (NEW): R940-8. Establishment of Road Usage Charge (RUC) Rates

Published: 07/15/2019

Effective: 08/26/2019

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Published: 07/15/2019

Effective: 08/21/2019

**End of the Notices of Rule Effective Dates Section**



**RULES INDEX  
BY AGENCY (CODE NUMBER)  
AND  
BY KEYWORD (SUBJECT)**

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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 September 03, 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).

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**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	

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R704-1	Search and Rescue Financial Assistance Program	43827	5YR	06/26/2019	2019-14/79

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R746-700	Complete Filings for General Rate Case and Major Plant Addition Applications	43965	5YR	08/07/2019	2019-17/227

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R805-3	Overnight Camping and Campfires on University of Utah Property	43566	AMD	05/22/2019	2019-7/38
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R850-70	Sales of Forest Products From Trust Lands Administration Lands	43792	AMD	08/07/2019	2019-13/103

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R865-9I-2	Determination of Utah Resident Individual Status Pursuant to Utah Code Ann. Sections 59-10-103 and 59-10-136	43839	AMD	08/22/2019	2019-14/52
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R884-24P-19	Appraiser Designation Program Pursuant to Utah Code Ann. Sections 59-2-701 and 59-2-702	43437	AMD	03/28/2019	2019-1/51
R884-24P-19	Appraiser Designation Program Pursuant to Utah Code Ann. Sections 59-2-701 and 59-2-702	43640	NSC	04/24/2019	Not Printed
R884-24P-27	Standards for Assessment Level and Uniformity of Performance Pursuant to Utah Code Ann. Sections 59-2-704 and 59-2-704.5	43371	AMD	01/10/2019	2018-23/119
R884-24P-62	Valuation of State Assessed Unitary Properties Pursuant to Utah Code Ann. Section 59-2-201	43698	NSC	05/17/2019	Not Printed
R884-24P-66	County Board of Equalization Procedures and Appeals	43970	NSC	08/19/2019	Not Printed
R884-24P-74	Changes to Jurisdiction of Mining Claims Pursuant to Utah Code Ann. Section 59-2-201	43438	AMD	03/28/2019	2019-1/54

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R895-13	Access to the Identity Theft Reporting Information System Database	43681	REP	06/21/2019	2019-10/105

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R909-3	Standards for Utah School Buses	43704	AMD	07/08/2019	2019-11/22
R909-19	Safety Regulations for Tow Truck Operations - Tow Truck Requirements for Equipment, Operation, and Certification	43443	AMD	02/07/2019	2019-1/56

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R920-50	Ropeway Operation Safety	43444	AMD	02/07/2019	2019-1/63	
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R930-6	Access Management	43602	AMD	05/22/2019	2019-8/67	
R930-7	Utility Accommodation	43742	AMD	07/23/2019	2019-12/109	
R930-8	Utility Relocations Required by Highway Projects	43745	AMD	07/23/2019	2019-12/124	
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R926-16	Unsolicited Proposals for Transportation Infrastructure Public-Private Partnerships	43584	NEW	05/08/2019	2019-7/40	
R926-17	Road Usage Charge Program	43847	NEW	08/26/2019	2019-14/55	
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R940-8	Establishment of Road Usage Charge (RUC) Rates	43846	NEW	08/26/2019	2019-14/61	
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R986-200-250	Unauthorized Spending of TANF Financial Assistance Benefits	43482	AMD	06/01/2019	2019-3/35	
R986-700	Child Care Assistance	43556	AMD	06/01/2019	2019-6/30	
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R990-300	Evaluation Process for Plan for Moderate Income Housing Reports	43849	NEW	08/21/2019	2019-14/63	
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R994-305-801	Wage List Requirement	43558	AMD	07/01/2019	2019-6/35	
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R994-310	Coverage	43819	5YR	06/17/2019	2019-14/81	
R994-311	Governmental Units and Indian Tribes	43820	5YR	06/17/2019	2019-14/81	
R994-312	Employing Units Records	43821	5YR	06/17/2019	2019-14/82	
R994-403	Claim for Benefits	43557	AMD	05/01/2019	2019-6/38	
R994-403-109b	Profiled Claimants	43365	AMD	03/31/2019	2018-23/122	

**RULES INDEX - BY KEYWORD (SUBJECT)**

**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	

KEYWORD AGENCY	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<u>abortions</u> Health, Center for Health Data, Vital Records and Statistics	43462	R436-19	NEW	05/08/2019	2019-2/10
<u>Academic Pathway to Teaching</u> Education, Administration	43648	R277-511	AMD	07/02/2019	2019-9/34
<u>accelerated learning</u> Education, Administration	43651 43813	R277-707 R277-707	AMD AMD	07/02/2019 08/19/2019	2019-9/37 2019-13/47
<u>acceptable use</u> Technology Services, Administration	43467	R895-7	5YR	01/03/2019	2019-3/45
<u>access control</u> Transportation, Preconstruction	43602	R930-6	AMD	05/22/2019	2019-8/67
<u>access to information</u> Administrative Services, Administration	43744	R13-2	5YR	05/29/2019	2019-12/135
<u>access to records</u> Public Safety, Criminal Investigations and Technical Services, Criminal Identification	43665	R722-900	AMD	06/24/2019	2019-10/95
<u>accounting</u> Education, Administration	43515	R277-483	NEW	04/08/2019	2019-5/36
<u>accounts receivable</u> Administrative Services, Debt Collection	43801 43802 43803	R21-1 R21-2 R21-3	AMD AMD AMD	08/07/2019 08/07/2019 08/07/2019	2019-13/6 2019-13/8 2019-13/12
<u>achievement tests</u> Education, Administration	43732	R277-604	AMD	07/31/2019	2019-12/50
<u>activities</u> Education, Administration	43506	R277-494-4	NSC	02/20/2019	Not Printed
<u>adjudicative process</u> Administrative Services, Debt Collection	43802	R21-2	AMD	08/07/2019	2019-13/8
<u>administrative law judges</u> Human Resource Management, Administration	43470	R477-101	5YR	01/07/2019	2019-3/44
<u>administrative offset</u> Administrative Services, Debt Collection	43803	R21-3	AMD	08/07/2019	2019-13/12
<u>administrative procedures</u> Education, Administration Environmental Quality, Drinking Water	43609 43378	R277-102 R309-100-9	REP AMD	05/23/2019 01/15/2019	2019-8/4 2018-23/57

Heritage and Arts, History	43714	R455-14	5YR	05/14/2019	2019-11/43
	43715	R455-15	5YR	05/14/2019	2019-11/43
Human Resource Management, Administration	43678	R477-12	AMD	07/01/2019	2019-10/60
	43680	R477-15	AMD	07/01/2019	2019-10/67
Labor Commission, Adjudication	43574	R602-2-1	AMD	05/08/2019	2019-7/30
Natural Resources, Forestry, Fire and State Lands	43480	R652-70	AMD	03/25/2019	2019-3/28
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	43903	R850-21	NSC	08/01/2019	Not Printed
	43792	R850-70	AMD	08/07/2019	2019-13/103
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Public Safety, Driver License	43606	R708-22	5YR	03/28/2019	2019-8/106
<u>administrative rules</u>					
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Transportation, Operations, Maintenance	43489	R918-4	AMD	03/26/2019	2019-4/36
<u>adoption</u>					
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<u>adult expansion</u>					
Health, Health Care Financing, Coverage and Reimbursement Policy	43708	R414-312	EMR	05/07/2019	2019-11/28
	43798	R414-312	NEW	08/29/2019	2019-13/87
<u>advertising</u>					
Commerce, Consumer Protection	43845	R152-39	REP	08/22/2019	2019-14/15
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Transportation, Operations, Aeronautics	43722	R914-4	NEW	07/23/2019	2019-12/106
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	43212	R307-110-10	AMD	03/05/2019	2018-19/31
	43212	R307-110-10	CPR	03/05/2019	2019-3/40
	42976	R307-110-17	AMD	01/03/2019	2018-13/35
	42976	R307-110-17	CPR	01/03/2019	2018-21/134
	43587	R307-110-28	AMD	08/15/2019	2019-7/4
	43587	R307-110-28	CPR	08/15/2019	2019-14/73
	43588	R307-150-3	AMD	06/25/2019	2019-7/5
	43589	R307-401-10	AMD	06/06/2019	2019-7/6
<u>air quality</u>					
Environmental Quality, Air Quality	43211	R307-511	NEW	03/05/2019	2018-19/32
	43211	R307-511	CPR	03/05/2019	2019-3/41
<u>air travel</u>					
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<u>alternative licensing</u>						
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<u>annuity disclosure</u>						
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<u>annuity insurance filings</u>						
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<u>appeals</u>						
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	43872	R33-19	5YR	07/08/2019	2019-15/42	
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	43401	R277-553	NEW	01/09/2019	2018-23/31	
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	43640	R884-24P-19	NSC	04/24/2019	Not Printed	
	43371	R884-24P-27	AMD	01/10/2019	2018-23/119	
	43698	R884-24P-62	NSC	05/17/2019	Not Printed	
	43970	R884-24P-66	NSC	08/19/2019	Not Printed	
	43438	R884-24P-74	AMD	03/28/2019	2019-1/54	
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	43578	R156-63b	NSC	05/14/2019	Not Printed
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<u>assessments</u> Education, Administration	43450	R277-404	AMD	02/22/2019	2019-2/6
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	43701	R277-528	AMD	08/19/2019	2019-11/6
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	43690	R495-885	AMD	07/18/2019	2019-10/69
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	43691	R501-14	AMD	07/18/2019	2019-10/73
<u>bail bond</u> Insurance, Administration	43694	R590-186	AMD	06/21/2019	2019-10/79
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	43530	R313-28-31	AMD	04/15/2019	2019-5/50
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	43741	R657-5	AMD	07/22/2019	2019-12/79	
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	43886	R398-5	5YR	07/12/2019	2019-15/47	
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Health, Family Health and Preparedness, Children with Special Health Care Needs	43472	R398-5	AMD	03/11/2019	2019-3/18	
	43886	R398-5	5YR	07/12/2019	2019-15/47	
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	43464	R651-214	AMD	02/21/2019	2019-2/12	
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	43711	R616-2-3	AMD	07/08/2019	2019-11/21	
	43573	R616-2-8	AMD	05/08/2019	2019-7/36	
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Commerce, Occupational and Professional Licensing	43522	R156-15A	AMD	04/08/2019	2019-5/8	
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	43567	R23-29	5YR	03/06/2019	2019-7/60	
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	43566	R805-3	AMD	05/22/2019	2019-7/38	
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Regents (Board of), University of Utah, Administration	43541	R805-3	5YR	02/25/2019	2019-6/46	
	43566	R805-3	AMD	05/22/2019	2019-7/38	
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	43684	R68-27	NEW	08/29/2019	2019-10/4	
	43684	R68-27	CPR	08/29/2019	2019-14/68	
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Agriculture and Food, Plant Industry	43842	R68-29	NEW	08/29/2019	2019-14/4	
	43843	R68-30	NEW	08/29/2019	2019-14/7	
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	43843	R68-30	NEW	08/29/2019	2019-14/7	
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	43646	R628-20	5YR	04/12/2019	2019-9/88	
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	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	
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	43237	R501-21	AMD	02/12/2019	2018-21/91	
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	43910	R58-20	NSC	08/01/2019	Not Printed	
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