

UTAH STATE BULLETIN

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Nancy L. Lancaster, Managing Editor

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

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

Office of Administrative Rules, Salt Lake City 84114

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EXECUTIVE DOCUMENTS

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

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

Rescinding and Reestablishing the Executive Water Finance Board, Utah Exec. Order No. 2019-6

EXECUTIVE ORDER

Rescinding and Reestablishing the Executive Water Finance Board

WHEREAS, the Executive Water Finance Board ("Board") is providing an essential service;

WHEREAS, additional, full-time members of the Board will provide important contributions to the Board's work;

WHEREAS, Utah is consistently ranked by the United States Census Bureau as one of the fastest growing states in the country;

WHEREAS, a clean and plentiful water supply is critical to the health, welfare and prosperity of Utah;

WHEREAS, Utah is one of the driest states in the nation and water use and conservation is a topic of significant concern;

WHEREAS, the United States Geological Survey indicates that Utah has one of the highest per capita municipal and industrial water use rates in the nation;

WHEREAS, assuming current municipal and industrial water usage rates continue unchanged, the demand for water will exceed supply in coming decades;

WHEREAS, most of Utah's projected population growth will occur in areas that will require a combination of increased conservation, new water resources, and more efficient use of existing infrastructure;

WHEREAS, the federal government has greatly reduced its participation in paying for water projects;

WHEREAS, new development and growth frequently occurs in agricultural areas and conversion of that land may allow for conversion of those existing water resources;

WHEREAS, more judicious use of existing water could delay the need for the construction of new major water development projects;

WHEREAS, the estimated costs of repair and replacement for existing water and wastewater infrastructure is billions of dollars for the coming decades;

WHEREAS, expanding water infrastructure is expensive, and requires increases in local water rates and potential increases in taxes statewide;

WHEREAS, state funds are currently allocated to finance certain water projects;

WHEREAS, current requests and proposals for future water projects involve the use of state tax dollars and state bonding capacity--often with delayed and indeterminate repayment schedules in excess of several decades;

WHEREAS, Utah's water user rates are among the lowest in the country, due both to a favorable natural topographic condition and public policy decisions to subsidize water use;

WHEREAS, the Legislature has appropriated funds for rebates to improve outdoor watering efficiency, which may help to reduce future per capita demand for outdoor water;

WHEREAS, technological advancements and analytical tools that provide additional information to water users have proven successful in reducing water use in implemented locations throughout the state;

WHEREAS, many customers have not been paying the true cost of water due to tax subsidies and failure to build budgetary reserves for repairing and replacing existing infrastructure;

WHEREAS, Utah needs a comprehensive view of water management and other strategies, including an understanding of the role of meaningful price signals on water demand;

WHEREAS, it is in the best interest of the taxpayer and the state to ensure the highest return on every taxpayer dollar invested;

WHEREAS, a prudent study of the fiscal implications of water delivery must be considered prior to state commitment to and involvement in any major water project;

WHEREAS, while other committees and task forces have been established to review water policy, none focus on the financial, budgetary, and economic impacts of significant, state-sponsored water projects and none have the required expertise to thoroughly analyze the financing models, bonding scenarios, and budgetary impacts of such projects.

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 rescind Utah Executive Order No. 2017-5, dated June 13, 2017 and hereby reestablish the Executive Water Finance Board and order the following:

1. Purpose -- The Executive Water Finance Board shall provide detailed review and analysis of proposed major water projects that would rely on state funding and financing to:

- a. ensure the State of Utah maintains a financial policy related to water that is fiscally prudent and sustainable;
- b. ensure Utah's limited water resources are used wisely;
- c. conduct financial and economic reviews and analysis of proposed water projects that may rely on state funding and/or financing; and
- d. examine the financial and economic aspects of both the demand for and the supply of water.

2. Membership

a. The Executive Water Finance Board shall include the following members appointed by the Governor:

- i. a representative of the Governor's Office of Management and Budget;
- ii. the State Planning Coordinator;
- iii. the State Treasurer, or their designee;

iv. a representative of the private sector with extensive experience in bonding and financial markets;

- v. a representative of local government with extensive experience in water related issues and water infrastructure;
- vi. an individual with extensive experience in economics;
- vii. a representative of the Division of Drinking Water within the Department of Environmental Quality;
- viii. a representative of the Division of Water Quality within the Department of Environmental Quality; and
- ix. a representative of the Department of Natural Resources

b. The Governor may appoint additional members to the Board.

c. Members shall be appointed to serve 4-year terms.

3. Governance

a. The Governor shall appoint the chair of the Board.

b. The chair shall establish the Board's agenda and meeting schedule.

c. The Governor's Office of Management and Budget shall provide staff support for the Board.

d. The Board shall meet as often as is needed.

4. Duties - The Board shall:

a. analyze the fiscal and economic impacts of proposed water supply projects;

b. provide a public forum in which to discuss water funding and financing scenarios, data, and the potential conservation impacts of changes in water prices;

c. recommend strategies to minimize the financial burden to state taxpayers related to water projects, use state funds invested in water in the most prudent manner possible, and use market-driven solutions to more efficiently direct existing resources;

d. review and make recommendations related to the impact of proposals and plans that impact water demand, including water prices and water demand data; and

e. make an annual report to the Governor on the status of water funding, financing, and other relevant issues by December 15th of each year.

5. This Board is authorized and shall carry out the provisions of this order until July 1, 2027, at which point it may be reauthorized.

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 October 2019.

(State Seal)

Gary R. Herbert
Governor

Attest:

Spencer J. Cox
Lieutenant Governor

2019/006/EO

Declaring a State of Emergency Due to Flooding and Landslides, Utah Exec. Order No. 2019-7

EXECUTIVE ORDER

Declaring a State of Emergency Due to Flooding and Landslides

WHEREAS, the State of Utah experienced flooding, landslides and debris flows on August 8th, 2019 due to a severe storm system which moved through Salt Lake and Utah Counties; and

WHEREAS, the storm was an estimated 500 year event in Little Cottonwood Canyon and produced up to 3 inches of rainfall in under an hour; and

WHEREAS, several State and local agencies - including the Department Of Transportation, the Unified Police Department, Department of Public Safety Division of Emergency Management, Department of Environmental Quality, Department of Natural Resources Division of Utah Geological Survey, Utah Highway Patrol, Salt Lake City Public Utilities, and Salt Lake County Emergency Management - responded to the event and are involved in continuing clean up, recovery, and repair efforts; and

WHEREAS, the flooding and debris flows caused major road damage to State Route (SR)-210 in Little Cottonwood Canyon, Salt Lake County and along US-6 in Utah County, trapping (stranded) motorists, damaging utilities, depositing debris on the roads and in the rights of way, and causing Salt Lake City to shut off their drinking water supply from the creek due to high turbidity; and

WHEREAS, culverts in Little Cottonwood Canyon on SR-210 and in places on US-6 are damaged and clogged and will cause larger ongoing flooding and damage if not repaired and/or replaced before winter; and

WHEREAS, Salt Lake County and UDOT rescued 35 vehicles stranded between landslides, with several people having to take emergency shelter overnight before the roads were reopened; and

WHEREAS, SR-210 and US-6 are highly utilized and heavily trafficked routes and there is threat of future washout damage and road failure; and

WHEREAS, damage assessments, clean up and debris removal, road repair, and recovery and mitigation efforts are ongoing and require additional funding and assistance;

WHEREAS, these conditions do create a "State of Emergency" within the intent of the Disaster Response and Recovery Act found in Title 53, Chapter 2a, Part 2 of the Utah Code Annotated 1953, as amended;

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 hereby order that:

It is found, determined and declared that a "State of Emergency" exists due to the aforesaid circumstances requiring aid, assistance, and relief from State resources;

I HEREBY ORDER THE CONTINUED execution of the State Emergency Operations Plan and assistance from State government as coordinated by the Department of Public Safety and Department of Transportation.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah on this, the 9th day of October 2019.

(State Seal)

Gary R. Herbert
Governor, State of Utah

ATTEST:

Spencer J. Cox
Lieutenant Governor, State of Utah

2019/007/EO

Calling the Sixty-Third Legislature Into the Fourth Extraordinary Session, Utah Proclamation No. 2019-4E

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 Fourth Extraordinary Session at the Utah State Capitol in Salt Lake City, Utah, on the 16th day of October 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 14th day of October 2019.

(State Seal)

Gary R. Herbert
Governor

ATTEST:

Spencer J. Cox
Lieutenant Governor

2019/04/E

NOTICES OF PROPOSED RULES

A state agency may file a **PROPOSED RULE** when it determines the need for a substantive change to an existing rule. With a **NOTICE OF PROPOSED RULE**, an agency may create a new rule, amend an existing rule, repeal an existing rule, or repeal an existing rule and reenact a new rule. Filings received between October 02, 2019, 12:00 a.m., and October 15, 2019, 11:59 p.m. are included in this, the November 01, 2019, issue of the *Utah State Bulletin*.

In this publication, each **PROPOSED RULE** is preceded by a **RULE ANALYSIS**. This analysis provides summary information about the **PROPOSED RULE** including the name of a contact person, anticipated cost impact of the rule, and legal cross-references.

Following the **RULE ANALYSIS**, the text of the **PROPOSED RULE** is usually printed. New rules or additions made to existing rules are underlined (example). Deletions made to existing rules are struck out with brackets surrounding them (~~example~~). Rules being repealed are completely struck out. A row of dots in the text between paragraphs (.) indicates that unaffected text from within a section was removed to conserve space. Unaffected sections are not usually printed. If a **PROPOSED RULE** is too long to print, the Office of Administrative Rules may include only the **RULE ANALYSIS**. A copy of each rule that is too long to print is available from the filing agency or from the Office of Administrative Rules.

The law requires that an agency accept public comment on **PROPOSED RULES** published in this issue of the *Utah State Bulletin* until at least December 2, 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 February 29, 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.

The Proposed Rules Begin on the Following Page

Commerce, Consumer Protection
R152-32a
Pawnshop and Secondhand
Merchandise Transaction Information
Act Rule

NOTICE OF PROPOSED RULE

(New Rule)
 DAR FILE NO.: 44122
 FILED: 10/09/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to specify the information capable of being transmitted electronically to the central database by a pawn or secondhand business.

SUMMARY OF THE RULE OR CHANGE: Pawn and secondhand businesses are required by Sections 13-32a-104 and 13-32a-104.5 to record specified information related to pawn and secondhand merchandise transactions, and are required by Section 13-32a-106 to transmit that information electronically to the central database. This rule specifies which information is capable of being transmitted electronically to the central database by a pawn or secondhand business.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 13-2-5(1) and Subsection 13-32a-106(1)(a) and Subsection 13-32a-106(1)(b)

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** This rule is not expected to have any fiscal impact on state government revenues or expenditures. Any fiscal impact on state government was addressed in the fiscal note to H.B. 394, passed in the 2019 General Session.
- ◆ **LOCAL GOVERNMENTS:** This rule is not expected to have any fiscal impact on local governments' revenues or expenditures because it does not create any new requirements that local governments must follow, nor does it otherwise constrain local governments.
- ◆ **SMALL BUSINESSES:** This rule is not expected to have any fiscal impact on small businesses' revenues or expenditures because it does not impose requirements upon small businesses beyond what is already required by Section 13-32a-106.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule is not expected to have any fiscal impact on persons other than small businesses, businesses, or local government entities because it does not impose requirements upon them beyond what is already required by Section 13-32a-106.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule does not impose compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because it does not impose requirements upon businesses beyond what is already required by Section 13-32a-106.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/02/2019

THIS RULE MAY BECOME EFFECTIVE ON: 12/09/2019

AUTHORIZED BY: Daniel O'Bannon, Director

Appendix 1: Regulatory Impact Summary Table*

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

Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits:	\$0	\$0	\$0
Net Fiscal Benefits:	\$0	\$0	\$0

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

Appendix 2: Regulatory Impact to Non-Small Businesses
 This proposed rule is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because it does not impose requirements upon businesses beyond what is already required by Section 13-32a-106.

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

R152. Commerce, Consumer Protection.
R152-32a. Pawnshop and Secondhand Merchandise Transaction Information Act Rule.

R152-32a-1. Purpose.
(1) The purpose of this rule is to specify the information capable of being transmitted electronically to the central database.

R152-32a-2. Authority.
(1) This rule is enacted pursuant to Subsections 13-2-5(1) and 13-32a-106(1)(b).

R152-32a-3. Definitions - Reserved.
Reserved.

R152-32a-4. Information Capable of Being Transmitted Electronically Pursuant to Subsection 13-32a-106(1)(a).

- (1) The following information is capable of being transmitted electronically to the central database:
- (a) all information described by:
 - (i) Subsections 13-32a-104(1)(a) through 13-32a-104(1)(c);
 - (ii) Subsections 13-32a-104(1)(e)(i) and (ii);
 - (iii) Subsection 13-32a-104(1)(f);
 - (iv) Subsections 13-32a-104(1)(h)(i) through 13-32a-104(1)(h)(vii);
 - (v) Subsections 13-32a-104.5(2)(a) through 13-32a-104.5(2)(c)(ii);
 - (vi) Subsection 13-32a-104.5(2)(d);
 - (vii) Subsections 13-32a-104.5(2)(f)(i) through 13-32a-104.5(2)(f)(vi);
 - (viii) Subsections 13-32a-104.5(3)(a) through 13-32a-104.5(3)(b)(vi);

- (ix) Subsection 13-32a-104.5(4)(a);
 - (x) Subsections 13-32a-104.5(4)(d) through 13-32a-104.5(4)(f); and
 - (xi) Subsections 13-32a-104.5(4)(h) and (i).
- (2) On and after January 1, 2020, the following information is capable of being transmitted electronically to the central database:
- (a) an individual's electronic legible fingerprint, as required by Subsections 13-32a-104(1)(e)(iv), 13-32a-104(6)(a)(i), 13-32a-104.5(2)(c)(iv), and 13-32a-104.5(6)(a)(i); and
 - (b) any color digital photograph required by Subsection 13-32a-104(7).

KEY: pawnshops, secondhand merchandise dealers, consumer protection, central database
Date of Enactment or Last Substantive Amendment: 2019
Authorizing, and Implemented or Interpreted Law: 13-2-5; 13-32a-106(1)(a) and (b)

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

NOTICE OF PROPOSED RULE
 (Amendment)
 DAR FILE NO.: 44119
 FILED: 10/07/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: As authorized by Section 58-31b-503, the Board of Nursing recommends these proposed amendments to provide monetary fines for nurses who fail to comply with new Utah Code provisions enacted by H.B. 191, passed in the 2019 General Session, and H.B. 3001, passed in the 2018 Third Special Session.

SUMMARY OF THE RULE OR CHANGE: In Section R156-31b-402, these proposed amendments add to the fine schedule for nurses the following sanctions: 1) for an advanced practice registered nurse (APRN) who violates Section 58-37-19: initial offense \$250; second offense \$500; third and subsequent offense(s) \$1,000; for an APRN who violates Title 26, Chapter 61a: initial offense \$250; second offense \$500; third and subsequent offense(s) \$1,000. In addition, these amendments replace the fine schedule language with a table. In Section R156-31b-502, these proposed amendments add to the list of unprofessional conduct: 1) for an APRN, failing to discuss the risks of using an opiate with a patient or the patient's guardian in accordance with Section 58-37-19; 2) for an APRN, violating any provision of Title 26, Chapter 61a, the Utah Medical Cannabis Act; and 3) failing to practice within limits of competency.

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

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: The fiscal note for H.B. 191 (2019) estimated that two prescribers annually would pay a fine of \$500 to \$1,000 for non-compliance, for aggregate revenue of approximately \$1,500 annually. The fiscal note for H.B. 3001 (2018) estimated the impact and it is available at: <https://le.utah.gov/~2018S3/bills/static/HB3001.html>. Any fines levied would be paid into the Nurse Education and Enforcement Account. The Division of Occupational and Professional Licensing (Division) estimates that these proposed amendments may result in two additional investigations of violations or complaints at a cost of \$300 each for a total of \$600. These amendments are not expected to impact any existing state practices or procedures, and 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 licensees to experience any measurable fiscal impacts. No other impact to the state is expected beyond a minimal cost to the Division of approximately \$75 to disseminate this rule once these proposed amendments are made effective.

◆ LOCAL GOVERNMENTS: The Division estimates that these proposed amendments will have no measurable impact on local governments. None of these amendments are expected to impact existing 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 licensees to experience any measurable fiscal impacts.

◆ SMALL BUSINESSES: These proposed amendments will regulate the APRNs practicing in Utah, which may indirectly affect the estimated 403 small businesses in Utah comprising establishments of licensed APRNs, or who employ APRNs, such as private or group practices, clinics, hospitals, private mental health practices, or medical centers (NAICS 621399, 621330, 621498, and 621999). However, these amendments are not expected to result in any measurable fiscal impact to small businesses. First, these amendments only impose a penalty for noncompliance with Utah Code requirements, and the practices of most small businesses are, or should be, already consistent with existing requirements. Second, these amendments will only affect licensees who violate the statute and are sanctioned, and as described below for other persons, for the typical licensee these proposed amendments will have no 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 sanctioned may face indirect financial costs, it is impossible to estimate what those costs might be because any such violations are unforeseeable, and because any indirect costs that a 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.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There are approximately 2,908 licensed APRNs that may be affected by these proposed amendments. No measurable fiscal impact to these persons is expected. First, these proposed amendments will only affect licensees who violate the statute(s) and are sanctioned, so that most licensees will never be impacted. These amendments only impose a penalty for noncompliance with existing Utah Code requirements, and the practices of most licensees are, or should be, already consistent with existing professional practice requirements. 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, these proposed amendments are expected to have no direct or indirect fiscal impact. Second, although a licensee who is sanctioned 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: These proposed amendments replace the fine schedule language with a table. These amendments also provide monetary fines for nurses who fail to comply with new Utah Code provisions enacted by H.B. 191 (2019) and H.B. 3001 (2018). In addition, these amendments add to the list of unprofessional conduct: 1) failing to discuss the risks of using an opiate with a patient or the patient's guardian in accordance with Subsection 58-37-19, 2) violating any provision of Title 26, Chapter 61a, the Utah Medical Cannabis Act, and 3) failing to practice within limits of competency. Small Businesses (less than 50 employees): These proposed amendment will regulate APRNs practicing in Utah, which may indirectly affect the estimated 403 small businesses in Utah comprising establishments of licensed APRNs or who employ APRNs, such as private or group practices, clinics, hospitals, private mental health practices, or medical centers (NAICS 621399, 621330, 621498, and 621999). However, these amendments are not expected to result in any measurable fiscal impact to small businesses. First, these amendments only impose a penalty for noncompliance with Utah Code requirements, and the practices of most small businesses are, or should be, already consistent with existing requirements. Second, these amendments will only affect

licensees who violate the statute and are sanctioned. For the typical licensee, these proposed amendments will have no 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 sanctioned may face indirect financial costs, it is impossible to estimate what those costs might be because any such violations are unforeseeable, and because any indirect costs that a 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. Regulatory Impact to Non-Small Businesses (50 or more employees): These proposed amendment will regulate APRNs practicing in Utah, which may indirectly affect the estimated 101 non-small businesses in Utah comprising establishments of APRNs or who employ APRNs, such as private or group practices, hospitals, or medical centers (NAICS 621110, 622210, 622310). However, these proposed amendments are not expected to result in any measurable fiscal impact for non-small business for the same reasons as described above for small businesses. They are either inestimable, for the reasons stated, or there is no 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:
 ♦ Jeff Busjahn by phone at 801-530-6789, by FAX at 801-530-6511, or by Internet E-mail at jbusjahn@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/02/2019

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
 ♦ 11/06/2019 10:30 AM, Heber Wells Bldg, 160 E 300 S, Conference Room 475 (fourth floor), Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 12/09/2019

AUTHORIZED BY: Mark Steinagel, Director

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2020	FY 2021	FY 2022
State Government	\$675	\$600	\$600
Local Government	\$0	\$0	\$0

Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Person	\$0	\$0	\$0
Total Fiscal Costs:	\$675	\$600	\$600
Fiscal Benefits			
State Government	\$1,500	\$1,500	\$1,500
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits:	\$1,500	\$1,500	\$1,500
Net Fiscal Benefits:	\$825	\$900	\$900

*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 APRNs practicing in Utah, which may indirectly affect the estimated 101 non-small businesses in Utah comprising establishments of APRNs, or who employ APRNs, such as private or group practices, hospitals, or medical centers (NAICS 621110, 622210, 622310). However, these proposed amendments are not expected to result in any measurable fiscal impact for non-small businesses. First, these amendments only impose a penalty for noncompliance with the Utah Code requirements, and the practices of most non-small businesses are, or should be, already consistent with existing requirements. Second, these amendments will only affect licensees who violate the statute and are sanctioned, and as described above for other persons, for the typical licensee these proposed amendments will have no 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 sanctioned may face indirect financial costs, it is impossible to estimate what those costs might be because any such violations are unforeseeable, and because any indirect costs that a non-small businesses 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.

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

**R156. Commerce, Occupational and Professional Licensing.
 R156-31b. Nurse Practice Act Rule.
 R156-31b-402. Administrative Penalties.**

In accordance with Sections 58-1-501, 58-31b-501, 58-31b-502, 58-31b-502.5, 58-31b-[804]503, Subsection 58-31b-102(1), and Section R156-31b-502, and unless otherwise ordered by the presiding officer, the following fine schedule shall apply: ~~to a nurse or MAC.~~

TABLE

FINE SCHEDULE

VIOLATION	FIRST OFFENSE	SUBSEQUENT OFFENSE
58-31b-501(1)	\$ 500 - \$ 4,000	\$ 4,000 - \$ 8,000
58-31b-501(2)	\$ 500 - \$ 4,000	\$ 4,000 - \$ 8,000
58-31b-501(3)	\$ 2,000 - \$ 7,500	\$ 7,500 - \$ 9,500

58-31b-601	\$ 2,000 - \$ 7,500	\$ 7,500 - \$ 9,500
R156-31b-602	\$ 2,000 - \$ 7,500	\$ 7,500 - \$ 9,500
58-1-501(1)(a)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
58-1-501(1)(b)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
58-1-501(1)(c)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
58-1-501(1)(d)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
58-1-501(1)(e)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
58-1-501(1)(f)(i)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
58-1-501(2)(a)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
58-1-501(2)(b)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
58-1-501(2)(c)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
58-1-501(2)(d)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
58-1-501(2)(e)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
58-1-501(2)(f)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
58-1-501(2)(g)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
58-1-501(2)(h)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
58-1-501(2)(i)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
58-1-501(2)(j)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
58-1-501(2)(k)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
58-1-501(2)(l)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
58-1-501(2)(m)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
58-1-501(2)(o)	\$ 250 - \$ 4,000	\$ 4,000 - \$ 8,000
58-31b-502(1)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
58-31b-502(2)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
58-31b-502(3)	\$ 4,000 - \$ 8,000	\$ 8,000 - \$10,000
58-31b-502(4)	\$ 2,000 - \$ 5,000	\$ 5,000 - \$10,000
58-31b-502(5)	\$ 1,000 - \$ 5,000	\$ 5,000 - \$10,000
58-31b-502(6)	\$ 1,000 - \$ 5,000	\$ 5,000 - \$10,000
58-31b-502(7)	\$ 1,000 - \$ 5,000	\$ 5,000 - \$10,000
58-31b-502(8)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
58-31b-502(9)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
58-31b-502(10)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
58-31b-502(11)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
58-31b-502(12)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
58-31b-502(13)	\$ 1,000 - \$ 5,000	\$ 5,000 - \$10,000
58-31b-502(14)	double the original penalty, up to \$20,000	
58-31b-502(15)	\$ 1,000 - \$ 5,000	\$ 5,000 - \$10,000
58-31b-801	\$ 1,000 - \$ 5,000	\$ 5,000 - \$10,000
58-1-501(1)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
58-1-501(2)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
R156-31b-502(1)(a)	\$ 500 - \$ 4,000	\$ 4,000 - \$ 8,000
R156-31b-502(1)(b)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
R156-31b-502(1)(f)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
R156-31b-502(1)(e)	\$ 1,000 - \$ 5,000	\$ 5,000 - \$10,000
R156-31b-502(1)(g)	\$ 250 - \$ 1,500	\$ 1,500 - \$10,000
R156-31b-502(1)(h)	\$ 250 - \$ 1,500	\$ 1,500 - \$10,000
58-31b-502.5(1)	\$ 500 - \$ 5,000	\$ 1,500 - \$10,000
Ongoing:\$2,000 per day but not less than the second offense		
58-31b-502.5(2)	\$ 500 - \$ 5,000	\$ 1,500 - \$10,000
Ongoing:\$2,000 per day but not less than the second offense		
58-31b-502.5(3)	\$ 5,000	\$ 10,000
Ongoing:	\$ 2,000 per day but not less than the second offense	
R156-31b-502(1)(i)	\$ 250	second offense \$500 third and subsequent offenses \$1,000
R156-31b-502(1)(j)	\$ 250	second offense \$500 third and subsequent offenses \$1,000

Subsequent offenses. Sanctions for an offense subsequent to second offense, shall be \$10,000 or \$2,000 per day.

- [(1) Initial and second offenses.
- (a) Using a protected title, name, or initials, if the user is not properly licensed under this chapter, in violation of Subsection 58-31b-501(1):
 - initial offense: \$500 - \$4,000
 - second offense: \$4,000 - \$8,000
- (b) Using any name, title, or initials that would cause a reasonable person to believe the user is licensed or certified under this chapter if the user is not properly licensed or certified under this chapter, in violation of Subsection 58-31b-501(2):
 - initial offense: \$500 - \$4,000

- second offense: \$4,000 - \$8,000
- (c) Conducting a nursing education program in the state for the purpose of qualifying individuals to meet requirements for licensure under this chapter without the program having been approved under Section 58-31b-601 or Subsection R156-31b-602, in violation of Subsection 58-31b-501(3):
 - initial offense: \$2,000 - \$7,500
 - second offense: \$7,500 - \$9,500
- (d) Practicing or engaging in, representing oneself to be practicing or engaging in, or attempting to practice or engage in the practice of nursing, if the person is not licensed to do so or exempted from licensure under Utah Code 58-31b et seq. or restricted from doing so by a suspended, revoked, restricted, temporary, probationary, or inactive license, or in violation of restrictions that have been placed on a license, in violation of Subsection 58-1-501(1)(a):
 - initial offense: \$500 - \$5,000
 - second offense: \$5,000 - \$10,000
- (e) Impersonating another licensee, or practicing an occupation or profession under a false or assumed name, in violation of Subsection 58-1-501(1)(b):
 - initial offense: \$500 - \$5,000
 - second offense: \$5,000 - \$10,000
- (f) Knowingly employing a person to practice or engage in or attempt to practice or engage in the practice of nursing if the employee is not licensed to do so, in violation of Subsection 58-1-501(1)(c):
 - initial offense: \$500 - \$5,000
 - second offense: \$5,000 - \$10,000
- (g) Knowingly permitting the person's authority to engage in the practice of nursing to be used by another person, in violation of Subsection 58-1-501(1)(d):
 - initial offense: \$500 - \$5,000
 - second offense: \$5,000 - \$10,000
- (h) Obtaining a passing score on a licensure examination, applying for or obtaining a license, or otherwise dealing with the Division or Board through the use of fraud, forgery, intentional deception, misrepresentation, misstatement, or omission, in violation of Subsection 58-1-501(1)(e):
 - initial offense: \$500 - \$5,000
 - second offense: \$5,000 - \$10,000
- (i) Issuing, or aiding and abetting in the issuance of, an order or prescription for a drug or device to a person located in this state without prescriptive authority conferred by a license, or by an exception to licensure; or with prescriptive authority conferred by an exception or a multistate practice privilege, if the prescription was issued without first obtaining information, in the usual course of professional practice, that is sufficient to establish a diagnosis, to identify underlying conditions and to identify contraindications to the proposed treatment, in violation of Subsection 58-1-501(1)(f)(i):
 - initial offense: \$500 - \$5,000
 - second offense: \$5,000 - \$10,000
- (j) Violating or aiding or abetting any other person to violate any statute, rule, or order regulating the practice of nursing, in violation of Subsection 58-1-501(2)(a):
 - initial offense: \$500 - \$5,000
 - second offense: \$5,000 - \$10,000
- (k) Violating, or aiding or abetting any other person to violate any generally accepted professional or ethical standard

applicable to the practice of nursing, in violation of Subsection 58-1-501(2)(b):

initial offense: \$500 - \$5,000

second offense: \$5,000 - \$10,000

(l) Engaging in conduct that results in conviction or a plea of nolo contendere which is held in abeyance pending the successful completion of probation with respect to a crime of moral turpitude or any other crime that, when considered with the functions and duties of the practice of nursing, bears a reasonable relationship to the licensee's or applicant's ability to safely or competently practice the profession, in violation of Subsection 58-1-501(2)(c):

initial offense: \$500 - \$5,000

second offense: \$5,000 - \$10,000

(m) Engaging in conduct that results in disciplinary action, including reprimand, censure, diversion, probation, suspension, or revocation, by any other licensing or regulatory authority having jurisdiction over the licensee or applicant in the profession of nursing if the conduct would, in the state of Utah, constitute grounds for denial of licensure or disciplinary proceedings under Section 58-1-401, in violation of Subsection 58-1-501(2)(d):

initial offense: \$500 - \$5,000

second offense: \$5,000 - \$10,000

(n) Engaging in conduct, including the use of intoxicants, drugs, narcotics, or similar chemicals, to the extent that the conduct does, or might reasonably be considered to, impair the ability of the licensee or applicant to safely engage in practice of the nursing profession, in violation of Subsection 58-1-501(2)(e):

initial offense: \$500 - \$5,000

second offense: \$5,000 - \$10,000

(o) Practicing or attempting to practice the profession of nursing despite being physically or mentally unfit to do so, in violation of Subsection 58-1-501(2)(f):

initial offense: \$500 - \$5,000

second offense: \$5,000 - \$10,000

(p) Practicing or attempting to practice the profession of nursing through gross incompetence, gross negligence, or a pattern of incompetency or negligence, in violation of Subsection 58-1-501(2)(g):

initial offense: \$500 - \$5,000

second offense: \$5,000 - \$10,000

(q) Practicing or attempting to practice the profession of nursing by any form of action or communication which is false, misleading, deceptive, or fraudulent, in violation of Subsection 58-1-501(2)(h):

initial offense: \$500 - \$5,000

second offense: \$5,000 - \$10,000

(r) Practicing or attempting to practice the profession of nursing beyond the individual's scope of competency, abilities, or education, in violation of Subsection 58-1-501(2)(i):

initial offense: \$500 - \$5,000

second offense: \$5,000 - \$10,000

(s) Practicing or attempting to practice the profession of nursing beyond the scope of licensure, in violation of Subsection 58-1-501(2)(j):

initial offense: \$500 - \$5,000

second offense: \$5,000 - \$10,000

(t) Verbally, physically, mentally, or sexually abusing or exploiting any person through conduct connected with the licensee's practice in the profession of nursing or otherwise facilitated by the licensee's license, in violation of Subsection 58-1-501(2)(k):

initial offense: \$500 - \$5,000

second offense: \$5,000 - \$10,000

(u) Acting as a supervisor without meeting the qualification requirements for that position that are defined by statute or under these rules, in violation of Subsection 58-1-502(2)(l):

initial offense: \$500 - \$5,000

second offense: \$5,000 - \$10,000

(v) Issuing, or aiding and abetting in the issuance of, an order or prescription for a drug or device without first obtaining information in the usual course of professional practice, that is sufficient to establish a diagnosis, to identify conditions, and to identify contraindications to the proposed treatment; or with prescriptive authority conferred by an exception issued under this title, or a multistate practice privilege recognized under this title, if the prescription was issued without first obtaining information, in the usual course of professional practice, that is sufficient to establish a diagnosis, to identify underlying conditions, and to identify contraindications to the proposed treatment, in violation of Subsection 58-1-501(2)(m):

initial offense: \$500 - \$5,000

second offense: \$5,000 - \$10,000

(w) Failing to safeguard a patient's right to privacy as to the patient's person, condition, diagnosis, personal effects, or any other matter about which the licensee is privileged to know because of the licensee's or person with a certification's position, in violation of Subsection 58-31b-502(1):

initial offense: \$500 - \$5,000

second offense: \$5,000 - \$10,000

(x) Failing to provide nursing service in a manner that demonstrates respect for the patient's human dignity and unique personal character and needs without regard to the patient's race, religion, ethnic background, socioeconomic status, age, gender, or nature of the patient's health problem, in violation of Subsection 58-31b-502(2):

initial offense: \$500 - \$5,000

second offense: \$5,000 - \$10,000

(y) Engaging in sexual relations with a patient, in violation of Subsection 58-31b-502(3):

initial offense: \$4,000 - \$8,000

second offense: \$8,000 - \$10,000

(z) Exploiting or using information about a patient or exploiting the professional relationship by use of knowledge of the patient obtained while practicing the occupation or profession, in violation of Subsection 58-31b-502(4):

initial offense: \$2,000 - \$5,000

second offense: \$5,000 - \$10,000

(aa) Unlawfully obtaining, possessing, or using any prescription drug or illicit drug, in violation of Subsection 58-31b-502(5):

initial offense: \$1,000 - \$5,000

second offense: \$5,000 - \$10,000

(bb) Unauthorized taking or personal use of nursing supplies from an employer, in violation of Subsection 58-31b-502(6):

- initial offense: \$1,000 - \$5,000
 second offense: \$5,000 - \$10,000
- (cc) Unauthorized taking or personal use of a patient's personal property, in violation of Subsection 58-31b-502(7):
 initial offense: \$1,000 - \$5,000
 second offense: \$5,000 - \$10,000
- (dd) Knowingly entering into any medical record any false or misleading information or altering a medical record in any way for the purpose of concealing an act, omission, or record of events, medical condition, or any circumstance related to the patient and the medical or nursing care provided, in violation of Subsection 58-31b-502(8):
 initial offense: \$500 - \$5,000
 second offense: \$5,000 - \$10,000
- (ee) Unlawful or inappropriate delegation of nursing care, in violation of Subsection 58-31b-502(9):
 initial offense: \$500 - \$5,000
 second offense: \$5,000 - \$10,000
- (ff) Failing to exercise appropriate supervision of persons providing patient care services under supervision of the licensed nurse, in violation of Subsection 58-31b-502(10):
 initial offense: \$500 - \$5,000
 second offense: \$5,000 - \$10,000
- (gg) Employing or aiding and abetting the employment of unqualified or unlicensed person to practice as a nurse or MAC, in violation of Subsection 58-31b-502(11):
 initial offense: \$500 - \$5,000
 second offense: \$5,000 - \$10,000
- (hh) Failing to file or record any medical report as required by law, impeding or obstructing the filing or recording of such a report, or inducing another to fail to file or record such a report, in violation of Subsection 58-31b-502(12):
 initial offense: \$500 - \$5,000
 second offense: \$5,000 - \$10,000
- (ii) Breaching a statutory, common law, regulatory, or ethical requirement of confidentiality with respect to a person who is a patient, in violation of Subsection 58-31b-502(13):
 initial offense: \$1,000 - \$5,000
 second offense: \$5,000 - \$10,000
- (jj) Failing to pay a penalty imposed by the Division, in violation of Subsection 58-31b-502(14): double the original penalty amount up to \$20,000
- (kk) Prescribing a schedule II-III controlled substance without a consulting physician or outside of a consultation and referral plan, in violation of Subsections 58-31b-502(1)(o), 58-31b-502(1)(r), and Section 58-31b-803:
 initial offense: \$1,000 - \$5,000
 second offense: \$5,000 - \$10,000
- (ll) Failing to confine practice within the limits of competency, in violation of Section 58-31b-801:
 initial offense: \$1,000 - \$5,000
 second offense: \$5,000 - \$10,000
- (mm) Engaging in any other conduct which constitutes unprofessional or unlawful conduct, in violation of Subsection 58-1-501(1) or (2):
 initial offense: \$500 - \$5,000
 second offense: \$5,000 - \$10,000
- (nn) Engaging in a sexual relationship with a patient surrogate concurrent with the professional relationship, in violation of Subsection R156-31b-502(1)(e):
 initial offense: \$1,000 - \$5,000
 second offense: \$5,000 - \$10,000
- (oo) Failing to destroy a license that has expired due to the issuance and receipt of an increased scope of practice license, in violation of Subsection R156-31b-502(1)(a):
 initial offense: \$500 - \$4,000
 second offense: \$4,000 - \$8,000
- (pp) Knowingly accepting or retaining a license that has been issued pursuant to a mistake or on the basis of erroneous information, in violation of Subsection R156-31b-502(1)(b):
 initial offense: \$500 - \$5,000
 second offense: \$5,000 - \$10,000
- (qq) Engaging in practice in a disruptive manner, in violation of Subsection R156-31b-502(1)(f):
 initial offense: \$500 - \$5,000
 second offense: \$5,000 - \$10,000
- (rr) Violating the term of an order governing a license, in violation of Subsection 58-1-501(2)(e):
 initial offense: \$250 - \$4,000
 second offense: \$4,000 - \$8,000
- (ss) Administering sedation or anesthesia intravenously to a patient in an outpatient setting that is not an emergency department, without first obtaining the required consent from the patient in writing, in violation of Subsection 58-31b-502.5(1):
 first offense: \$500 - \$5,000
 second offense: \$1,500 - \$10,000
 ongoing offense(s): \$2,000 per day but not less than the second offense
- (tt) failing to report any adverse event under Section 26-1-40, with respect to the administering of sedation or anesthesia intravenously to a patient in an outpatient setting that is not an emergency department, in violation of Subsection 58-31b-502.5(2):
 first offense: \$500 - \$5,000
 second offense: \$1,500 - \$10,000
 ongoing offense(s): \$2,000 per day but not less than the second offense
- (uu) during a procedure for which sedation or anesthesia will be administered intravenously to a patient in an outpatient setting that is not an emergency department, failing to have access to an advanced cardiac life support crash cart with equipment that is regularly maintained according to guidelines established by the American Heart Association, in violation of Subsection 58-31b-502.5(3):
 first offense: \$5,000
 second offense: \$10,000
 ongoing offense(s): \$2,000 per day but not less than the second offense
- (2) Subsequent offenses. Sanctions for an offense subsequent to the second offense, shall be \$10,000 or \$2,000 per day.]

R156-31b-502. Unprofessional Conduct.

(1) "Unprofessional conduct" includes:

(a) failing to destroy a license that has expired due to the issuance and receipt of an increased scope of practice license;

(b) knowingly accepting or retaining a license that has been issued pursuant to a mistake or on the basis of erroneous information;

(c) as [to]an RN or LPN, issuing a prescription for a prescription drug to a patient, except in accordance with the provisions of Section 58-17b-620[5] or as may be otherwise legally permissible;

(d) failing as the nurse accountable for directing nursing practice of an agency to verify any of the following:

(i) that standards of nursing practice are established and carried out;

(ii) that safe and effective nursing care is provided to patients;

(iii) that guidelines exist for the organizational management and management of human resources needed for safe and effective nursing care to be provided to patients; or

(iv) that the nurses employed by the agency have the knowledge, skills, ability and current competence to carry out the requirements of their jobs;

(e) engaging in sexual contact with a patient surrogate concurrent with the nurse/patient relationship unless the nurse affirmatively shows by clear and convincing evidence that the contact:

(i) did not result in any form of abuse or exploitation of the surrogate or patient; and

(ii) did not adversely alter or affect in any way:

(A) the nurse's professional judgment in treating the patient;

(B) the nature of the nurse's relationship with the surrogate; or

(C) the nature of the nurse's relationship with the patient;

(f) engaging in disruptive behavior in the practice of nursing;

(g) prescribing to oneself any controlled substance drug, in violation of Subsection R156-37-502(1)(a);[and]

(h) violating any federal or state law relating to controlled substances, including self-administering any controlled substance which is not lawfully prescribed by another licensed practitioner having authority to prescribe the drug, in violation of Section R156-37-502;

(i) as an APRN, failing to discuss the risks of using an opiate with a patient or the patient's guardian before issuing an initial opiate prescription in accordance with Section 58-37-19;

(j) as an APRN, violating a provision of Title 26, Chapter 61a, Utah Medical Cannabis Act; and

(k) failing to practice within limits of competency, in violation of Section 58-31b-801.

(2) In accordance with a prescribing practitioner's order and an IHP, a registered nurse who, in reliance on a school's policies or the delegation rule as provided in Sections R156-31b-701 and R156-31b-701a, delegates or trains an unlicensed assistive person to administer medications under Sections 53A-11-601, R156-31b-701 and R156-31b-701a, shall not be considered to have engaged in unprofessional conduct for inappropriate delegation.

KEY: licensing, nurses

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

Notice of Continuation: January 8, 2018

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

Commerce, Occupational and Professional Licensing **R156-37f** Controlled Substance Database Act Rule

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 44120

FILED: 10/08/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: In accordance with H.B. 449, passed in the 2019 General Session, as recommended by the Controlled Substance Advisory Committee, this filing amends Rule R156-37f to have the Controlled Substance Database track the prescription noncontrolled substance Gabapentin. This filing also makes clarifications to this rule as recommended by the Division of Occupational and Professional Licensing (Division).

SUMMARY OF THE RULE OR CHANGE: New Subsection R156-37f-203(7) requires the Utah Controlled Substance Database to track the non-controlled substance prescription drug 1 - (Aminomethyl)-cyclohexaneacetic acid (Gabapentin). New Subsection R156-37f-203(8) clarifies that the Utah Controlled Substance Database tracks derivatives of barbituric acid (Butalbital). New Subsection R156-37f-301(15) clarifies that a designating practitioner, or other person that employs a designee must submit a notice of disassociation of designee to the Division after the designee ceases employment or is otherwise no longer designated.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 58-1-106(1)(a) and Subsection 58-37f-301(1)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The following costs would impact the Division: 1) one time cost of approximately \$75 to print and distribute this rule, and 2) an estimate of one hour a month at \$40 per hour for the Controlled Substance Database Administrator or designee to track the noncontrolled substance Gabapentin within the Controlled Substance Database and to enter the National Drug Code (NDC). This equates to an annual estimated cost of \$480 ongoing.

◆ **LOCAL GOVERNMENTS:** No cost or savings impact is expected for local governments because these amendments will not affect any local governments' practices or procedures.

- ◆ **SMALL BUSINESSES:** Some small business pharmacy dispensers (NAICS 446110) may incur a minimal one-time cost to have their software vendor add an NDC to their programming. However, this is projected to be rare, as most software is built to enable the addition of new NDCs. Any cost is inestimable because data regarding small businesses software capabilities is not available.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No costs or savings impact is expected to any other persons.

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

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: In accordance with H.B. 449 (2019), as recommended by the Controlled Substance Advisory Committee, this filing amends Rule R156-37f to have the Controlled Substance Database track the prescription non-controlled substance Gabapentin. New Subsection R156-37f-203(8) clarifies that the Utah Controlled Substance Database tracks derivatives of barbituric acid (Butalbital). New Subsection R156-37f-301(15) clarifies that a designating practitioner, or other person that employs a designee must submit a notice of disassociation of designee to the Division after the designee ceases employment or is otherwise no longer designated. **Small Businesses (less than 50 employees):** Some small-business pharmacy dispensers (NAICS 446110) may incur a minimal one-time cost to have their software vendor add an NDC to their programming. However, this is projected to be rare, as most software is built to enable the addition of new NDCs. Any cost is inestimable because data regarding small-business software capabilities is not available. The fiscal impact of giving notice of disassociation of a designee is negligible and inestimable. **Regulatory Impact to Non-Small Businesses (50 employees or more):** The Division does not expect these amendments to result in any cost to non-small business pharmacy dispensers (NAICS 446110) because their computer software should have sufficient capability to enable the addition of new NDCs. The fiscal impact of giving notice of disassociation of a designee is negligible and inestimable.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ◆ Jeff Busjahn by phone at 801-530-6789, by FAX at 801-530-6511, or by Internet E-mail at jbusjahn@utah.gov
 ◆ Ronald Larsen by phone at 801-530-6197, by FAX at 801-530-6511, or by Internet E-mail at ronaldlarsen@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/02/2019

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

- ◆ 11/06/2019 11:00 AM, Heber Wells Bldg, 160 E 300 S, Conference Room 475 (fourth floor), Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 12/09/2019

AUTHORIZED BY: Mark Steinagel, Director

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2020	FY 2021	FY 2022
State Government	\$555	\$480	\$480
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Person	\$0	\$0	\$0
Total Fiscal Costs:	\$555	\$480	\$480
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits:	\$0	\$0	\$0
Net Fiscal Benefits:	(\$555)	(\$480)	(\$480)

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

Appendix 2: Regulatory Impact to Non-Small Businesses

The Division does not expect these amendments to result in any cost to non-small business pharmacy dispensers (NAICS 446110) because their software should have sufficient capability to enable the addition of new NDCs.

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

**R156. Commerce, Occupational and Professional Licensing.
 R156-37f. Controlled Substance Database Act Rule.
 R156-37f-203. Submission, Collection, and Maintenance of Data.**

(1) In accordance with Subsection 58-37f-203(1), each pharmacy or pharmacy group shall submit the data required in this section on a daily basis, either in real time or daily batch file reporting. The submitted data shall be from the point of sale date.

(a) If the data is submitted by a single pharmacy entity, the data shall be submitted in chronological order according to the date each prescription was sold.

(b) If the data is submitted by a pharmacy group, the data shall be sorted by individual pharmacy within the group, and the

data of each individual pharmacy within the group shall be submitted in chronological order according to the date each prescription was sold.

(2) In accordance with Subsections 58-37f-203(2), (3), and (6), the data required by this section shall be submitted to the Database through one of the following methods:

(a) electronic data sent via a secured internet transfer method, including sFTP site transfer;

(b) secure web base service; or

(c) any other electronic method approved by the Database administrator prior to submission.

(3) In accordance with Subsections 58-37f-203(2), (3), and (6), the format used for submission to the Database shall be Version 4.2 of the American Society for Automation in Pharmacy (ASAP) Format for Controlled Substances. The Division may approve alternative formats substantially similar to this standard.

(4) In accordance with Subsection 58-37f-203(6), the pharmacist-in-charge and the pharmacist identified in Subsections 58-37f-203(2) and (3) shall provide the following data fields to the Division:

(a) version of ASAP used to send transaction (ASAP 4.2 code = TH01);

(b) transaction control number (TH02);

(c) date transaction created (TH05);

(d) time transaction created (TH06);

(e) file type (production or test) (TH07);

(f) segment terminator character (TH09);

(g) information source identification number (IS01);

(h) information source entity name (IS02);

(i) reporting pharmacy's:

(i) National Provider Identifier (PHA01); and

(ii) identifier assigned by NCPDP/NABP (PHA02), or if none, then DEA registration number (PHA03);

(j) patient last name (PAT07);

(k) patient first name (PAT08);

(l) patient address (PAT12);

(m) patient city of residence (PAT14);

(n) patient zip code (PAT 16);

(o) patient date of birth (PAT18);

(p) dispensing status - new, revised, or void (DSP01);

(q) prescription number (DSP02);

(r) date prescription written by prescriber (DSP03);

(s) number of refills authorized by prescriber (DSP04);

(t) date prescription filled at dispensing pharmacy (DSP05);

(u) if current dispensed prescription is a refill, the number of the refill being dispensed (DSP06);

(v) product identification qualifier (DSP07);

(w) NDC 11-digit drug identification number (DSP08);

(x) quantity of drug dispensed in metric units (DSP09);

(y) days supply dispensed (DSP10)

(z) date drug left the pharmacy, i.e. date sold (DSP17);

(aa) DEA registration number of prescribing practitioner (PRE02);

(bb) state that issued identification of individual picking up dispensed drug (AIR03);

(cc) type of identification used by individual picking up dispensed drug (AIR04);

(dd) identification number of individual picking up dispensed drug (AIR05);

(ee) last name of individual picking up dispensed drug (AIR07);

(ff) first name of individual picking up dispensed drug (AIR08);

(gg) dispensing pharmacist last name or initial (AIR09);

(hh) dispensing pharmacist first name (AIR10);

(ii) number of detail segments included for the pharmacy (TP01);

(jj) transaction control number (TT01); and

(kk) total number of segments included in the transaction (TT02).

(5) In accordance with Subsection 58-37f-203(6), if no controlled substance required to be reported has been dispensed since the previous submission of data, then the pharmacist-in-charge and the pharmacist shall submit a zero report to the Division, which shall include the following data fields:

(a) version of ASAP used to send transaction (TH01);

(b) transaction control number (TH02);

(c) date transaction created (TH05);

(d) time transaction created (TH06);

(e) file type (production or test) (TH07);

(f) segment terminator (TH09);

(g) information source identification number (IS01);

(h) information source entity name (IS02);

(i) date range (IS03);

(j) reporting pharmacy's:

(i) National Provider Identifier (PHA01); and

(ii) identifier assigned by NCPDB/NABP (PHA02), or if none, then DEA registration number (PHA03);

(k) patient last name = "Report" (PAT07);

(l) patient first name = "Zero" (PAT08);

(m) date prescription dispensed at dispensing pharmacy (DSP05);

(n) number of detail segments included for the pharmacy (TP01);

(o) transaction control number (TT01); and

(p) total number of segments included in the transaction (TT02).

(6) In accordance with Subsection 58-37f-203(2), a Class A, B, D, or E pharmacy or pharmacy group that has a controlled substance license but is not dispensing controlled substances and does not anticipate doing so in the immediate future may request a waiver or submit a certification of such, in a form preapproved by the Division, in lieu of daily zero reports:

(a) The waiver or certification must be renewed at the end of each calendar year.

(b) If a pharmacy or pharmacy group that has submitted a waiver or certification under this Subsection dispenses a controlled substance:

(i) the waiver or certification shall immediately and automatically terminate;

(ii) the Database reporting requirements of Subsections 58-37f-203(1) and R156-37f-203(1) shall apply to the pharmacy or pharmacy group immediately upon the dispensing of the controlled substance; and

(iii) the pharmacy or pharmacy group shall notify the Division in writing of the waiver or certification termination within 24 hours or the next business day of the dispensing of the controlled substance, whichever is later.

(7) The Database shall collect information regarding the prescription noncontrolled substance 1-(Aminomethyl)-cyclohexaneacetic acid (Gabapentin), in accordance with Subsection 58-37f-203(8).

(8) The Database shall collect information regarding "any substance which contains any quantity of a derivative of barbituric acid or any salt of any of them" (Butalbital), in accordance with Subsection 58-37-4(2)(c)(ii) which designates this as a Schedule III controlled substance.

R156-37f-301. Access to Database Information.

In accordance with Subsections 58-37f-301(1)(a) and (b):

(1) The Division Director may designate those individuals employed by the Division who may have access to the information in the Database (Database staff).

(2)(a) An applicant to become a registered user of the Database shall apply for an online account and user name only under the specific subparagraph in Subsection 58-37f-301(2) under which he or she qualifies.

(b) A registered user shall not permit another person to have knowledge of or use the registered user's assigned password or PIN.

(3)(a) A request for information from the Database may be made:

(i) directly to the Database by electronic submission, if the requester is registered to use the Database; or

(ii) by written ~~submission~~ request to the Database staff in accordance with the requirements of this section, if the requester is not registered to use the Database.

(b) A written request may be submitted by facsimile, email, regular mail, or in person except as otherwise provided herein.

(c) The Division shall require a requester to verify the requester's identity.

(4) The following Database information may be disseminated to a verified requester who is permitted to obtain the information:

- (a) dispensing/reporting pharmacy ID number/name;
- (b) subject's birth date;
- (c) date prescription was sold;
- (d) prescription (Rx) number;
- (e) metric quantity;
- (f) days supply;
- (g) NDC code/drug name;
- (h) prescriber ID/name;
- (i) subject's last name;
- (j) subject's first name; and
- (k) subject's street address;

(5)(a) Federal, state and local law enforcement authorities and state and local prosecutors requesting information from the Database under Subsection 58-37f-301(2)(m) shall provide a valid search warrant authorized by the courts, which may be provided using one of the following methods:

- (i) in person;
- (ii) email to csd@utah.gov;

(iii) facsimile; or

(iv) U.S. Mail.

(b) A search warrant may include the following information to assist in the search:

(i) for an individual for whom a controlled substance or noncontrolled substance has been prescribed or dispensed, the subject's name and birth date;

(ii) for a prescriber who is the subject of the investigation, the prescriber's full name; and

(iii) the date range to be searched.

(c) Database information provided as a result of the search warrant shall be in accordance with Subsection (4) unless otherwise specified in the search warrant.

(6) In accordance with Subsection 58-37f-301(2)(n), a probation or parole officer employed by the Department of Corrections or a political subdivision may have access to the database without a search warrant, for supervision of a specific probationer or parolee under the officer's direct supervision, if the following conditions have been met:

(a) a security agreement signed by the officer is submitted to the Division for access, which contains:

(i) the agency's:

(A) name;

(B) complete address, including city and zip code; and

(C) ORI number;

(ii) a copy of the officer's driver's license;

(iii) the officer's:

(A) full name;

(B) contact phone number; and

(C) agency email address; and

(b) the online database account includes the officer's:

(i) full name;

(ii) agency email address;

(iii) complete home address, including city and zip code;

(iv) work title;

(v) contact phone number;

(vi) complete work address including city and zip code;

(vii) work phone number; and

(viii) driver's license number.

(7) In accordance with Subsections 58-37f-301(2)(q) and

(r):

(a) An individual may:

(i) obtain the individual's own information and records contained within the Database; and

(ii) unless the individual's record is subject to a pending or current investigation authorized under Subsection 58-37f-301(2)(r), receive an accounting of persons or entities that have requested or received Database information about the individual, to include:

(A) the role of the person that accessed the information;

(B) the date range of the information that was accessed, if available;

(C) the name of the person or entity that requested the information; and

(D) the name of the practitioner on behalf of whom the request was made, if applicable.

(b) The individual may request the information by submitting an original signed and notarized request as furnished by the Division that includes:

(i) the individual's:

(A) full name, including all aliases;
 (B) complete home address;
 (C) telephone number; and
 (D) date of birth;
 (ii) a clearly legible, color copy of government-issued picture identification confirming the individual's identity; and
 (iii) requested date range for the information.
 (c) A third party may request information from the Database on behalf of an individual as provided in Subsection (7) (a), by submitting:
 (i) an original signed and notarized request as furnished by the Division;
 (ii) a clearly legible, color copy of government-issued picture identification confirming the requester's identity; and
 (iii) an original, or certified copy, of properly executed legal documentation acceptable to the Database staff that the requester:
 (A) is the individual's current agent under a power of attorney that:
 (I) authorizes the agent to make health care decisions for the individual;
 (II) allows the agent to have access to the patient's protected health information (PHI) under HIPAA; or
 (III) otherwise grants the agent specific authority to obtain Database information on behalf of the individual;
 (B) is the parent or court-appointed legal guardian of a minor individual;
 (C) is the court-appointed legal guardian of an incapacitated adult individual; or
 (D) has an original, signed, and notarized form for release of records from the individual in a format acceptable to the Database staff, that identifies the purpose of the release with respect to the Database.
 (8) An employee of a licensed practitioner who is authorized to prescribe controlled substances may obtain Database information to the extent permissible under Subsection 58-37f-301(2)(i), if prior to making the request:
 (a) the licensed practitioner has provided to the Division a written designation that includes:
 (i) the practitioner's:
 (A) DEA number; and
 (B) email address account registered with the Database;
 and
 (ii) the designated employee's:
 (A) full name;
 (B) complete home address;
 (C) e-mail address;
 (D) date of birth;
 (E) driver license number or state identification card number; and
 (F) professional license number, if any; and
 (iii) manual signatures from both the practitioner and designated employee.
 (b) the designated employee has registered for an account for access to the Database and provided a unique user identification;
 (c) the designated employee has passed a Database background check of available criminal court and Database records; and

(d) the Database has issued the designated employee a user personal identification number (PIN) and activated the employee's Database account.
 (9) An employee of a business that employs a licensed practitioner who is authorized to prescribe controlled substances may obtain Database information to the extent permissible under Subsection 58-37f-301(2)(i), if prior to making the request:
 (a) the licensed practitioner and employing business have provided to the Division a written designation that includes:
 (i) the practitioner's:
 (A) DEA number; and
 (B) email address account registered with the Database;
 (ii) the name of the employing business; and
 (iii) the designated employee's:
 (A) full name;
 (B) complete home address;
 (C) e-mail address;
 (D) date of birth;
 (E) driver license number or state identification card number; and
 (F) professional license number, if any;
 (b) the designated employee has registered for an account for access to the Database and provided a unique user identification and password;
 (c) the designated employee has passed a Database background check of available criminal court and Database records; and
 (d) the Database has issued the designated employee a user personal identification number (PIN) and activated the employee's Database account.
 (10) An individual who is employed in the emergency department of a hospital that employs a licensed practitioner who is authorized to prescribe controlled substances may obtain Database information to the extent permissible under Subsection 58-37f-301(4)(a) if, prior to making the request:
 (a) the practitioner and the hospital operating the emergency department have provided to the Division a written designation that includes:
 (i) the practitioner's:
 (A) DEA number; and
 (B) email address account registered with the Database;
 (ii) the name of the hospital; and
 (iii) the designated employee's:
 (A) full name;
 (B) complete home address;
 (C) e-mail address;
 (D) date of birth;
 (E) driver license number or state identification card number; and
 (F) professional license number, if any;
 (b) the designated employee has registered for an account for access to the Database and provided a unique user identification and password;
 (c) the designated employee has passed a Database background check of available criminal court and Database records; and
 (d) the Database has issued the designated employee a user personal identification number (PIN) and activated the employee's Database account.

(11) In accordance with Subsection 58-37f-301(5), an individual's requests to the Division regarding third-party notice when a controlled substance or noncontrolled substance prescription is dispensed to that individual, shall be made as follows:

(a) To request that the Division begin providing notice to a third party, or to request that the Division discontinue providing notice to a third party, the individual shall submit an original signed and notarized request form as furnished by the Division, that includes:

- (i) the individual's:
 - (A) full name, including all aliases;
 - (B) birth date;
 - (C) complete home address including city and zip code;
 - (D) email address; and
 - (E) contact phone number;
- (ii) a clearly legible, color copy of government-issued picture identification confirming the individual's identity; and
- (iii) the designated third party's:
 - (A) full name;
 - (B) complete home address, including city and zip code;
 - (C) email address; and
 - (D) contact phone number.

(b) After receiving a request to discontinue third-party notice, the Division shall:

- (i) provide notice to the requesting individual that the discontinuation notice was received; and
- (ii) provide notice to the designated third party that the notification has been rescinded.

(c) An individual may have up to three active designated third parties.

(12) A licensed pharmacy technician or pharmacy intern employed by a pharmacy may obtain Database information to the extent permissible under Subsection 58-37f-301(2)(l) if, prior to making the request:

(a) the pharmacist-in-charge (PIC) has provided to the Division a written designation authorizing access to the pharmacy technician or pharmacy intern on behalf of a licensed pharmacist employed by the pharmacy;

(b) the written designation includes the pharmacy technician's or pharmacy intern's:

- (i) full name;
- (ii) professional license number assigned by the Division;
- (iii) email address;
- (iv) contact phone number;
- (v) pharmacy name and location;
- (vi) pharmacy DEA number;
- (vii) pharmacy phone number;

(c) the written designation includes the pharmacist-in-charge's (PIC's):

- (i) full name;
- (ii) professional license number assigned by the Division;
- (iii) email address;
- (iv) contact phone number;

(d) the written designation includes the assigned pharmacist's:

- (i) full name;
- (ii) professional license number assigned by the Division;
- (iii) email address;

(iv) contact phone number; and

(e) the written designation includes the following signatures:

- (i) pharmacy technician or pharmacy intern;
- (ii) pharmacist-in-charge (PIC); and
- (iii) assigned pharmacist if different than the PIC.

(13) The Utah Department of Health may access Database information for purposes of scientific study regarding public health. To access information, the scientific investigator shall:

(a) demonstrate to the satisfaction of the Division that the research is part of an approved project of the Utah Department of Health;

(b) provide a description of the research to be conducted, including:

- (i) a research protocol for the project; and
- (ii) a description of the data needed from the Database to conduct that research;

(c) provide assurances and a plan that demonstrates all Database information will be maintained securely, with access being strictly restricted to the requesting scientific investigator;

(d) provide for electronic data to be stored on a secure database computer system with access being strictly restricted to the requesting scientific investigator; and

(e) pay all relevant expenses for data transfer and manipulation.

(14) Database information that may be disseminated under Section 58-37f-301 may be disseminated by the Database staff either:

- (a) verbally;
- (b) by facsimile;
- (c) by email;
- (d) by U.S. mail; or
- (e) by electronic access, where adequate technology is in place to ensure that a record will not be compromised, intercepted, or misdirected.

(15)(a) A designating practitioner or other person that employs a designee authorized to obtain Database information, shall submit to the Division a notice of disassociation of designee as soon as practicable after that designee ceases employment or is otherwise no longer designated.

(b) The notice of disassociation of designee shall be on a form provided by the Division, and include:

- (i) the designee's full name;
- (ii) the designee's email address;
- (iii) the designating practitioner's:

- (A) name;
- (B) DEA number;
- (C) DOPL license number;
- (D) email address;

- (iv) the establishment's:
- (A) name;
- (B) phone number, and fax number if any; and
- (C) address;

- (v) the reason for disassociation; and
- (vi) the signature of the designating practitioner or person authorized to sign on their behalf.

R156-37f-302. Other Restrictions on Access to Database.

Subsection 58-37f-302(2), which prohibits any individual or organization with lawful access to the data from being compelled to testify with regard to the data, includes deposition testimony.

R156-37f-303. Access to Opioid Prescription Information Via an Electronic Data System.

In accordance with Subsection 58-37f-301(1) and Section 58-37f-303:

(1) Pursuant to Subsection 58-37f-303(4)(a)(i), to access opioid prescription information in the database, an electronic data system must:

(a) interface with the database through the Division-approved Prescription Monitoring Program (PMP) Hub system; and

(b) comply with all restrictions on database access and use of database information, as established by the Utah Controlled Substances Database Act and the Controlled Substance Database Act Rule.

(2) Pursuant to Subsection 58-37f-303(4)(a)(ii), to access opioid prescription information in the database via an electronic data system (EDS), an EDS user must:

(a) register to use the database by creating an approved account established by the Division pursuant to a memorandum of understanding with the Division;

(b) use the unique user name and password associated with the account created for the EDS user to access database information through the original internet access system;

(c) comply with all restrictions on database access established by the Utah Controlled Substance Database Act and the Controlled Substance Database Act Rule; and

(d) use opioid prescription information in the database only for the purposes and uses designated in Section 58-37f-201, and as more particularly described in the Utah Controlled Substances Database Act and the Controlled Substances Database Act Rule.

(3) The Division may immediately suspend, without notice or opportunity to be heard, an electronic data system's or an EDS user's access to the database, if the Division determines by audit or other means that such access may lead to a violation of Section 58-37f-601 or may otherwise compromise the integrity, privacy, or security of the database's opioid prescription information. This remedy shall be in addition to the criminal and civil penalties imposed by Section 58-37f-601 for unlawful release or use of database information, and the Division's obligation under Subsections 58-37f-303(5) and (6) to immediately suspend or revoke database access and pursue appropriate corrective or disciplinary action against a non-compliant electronic data system or EDS user.

KEY: controlled substance database, licensing

Date of Enactment or Last Substantive Amendment: [December 27, 2018]2019

Notice of Continuation: December 21, 2017

Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-37f-301(1)

Commerce, Occupational and
Professional Licensing
R156-44a
Nurse Midwife Practice Act Rule

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 44117

FILED: 10/07/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Certified Nurse Midwife Board recommends these proposed amendments to clarify and update this rule, and to add a fine for a Certified Nurse Midwife (CNM) who fails to provide an opiate prescription consultation in accordance with new Section 58-37-19 enacted by H.B. 191, passed in the 2019 General Session.

SUMMARY OF THE RULE OR CHANGE: In Section R156-44a-402, these proposed amendments replace the fine schedule language with a table, and add the following sanctions for failure to provide an opiate prescription consultation as required by Section 58-37-19: initial offense \$250; second offense \$500; third and subsequent offenses \$1,000. In Subsection R156-44a-502(1), this proposed amendment updates the referenced "Code of Ethics" published by the American College of Nurse-Midwives to the new June 2015 edition. Subsection R156-44a-502(2) is a new subsection that adds to the list of unprofessional conduct for a CNM, failing to provide an opiate prescription consultation as required by Section 58-37-19.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-44a-101 and Subsection 58-1-106(1)(a) and Subsection 58-1-202(1)(a)

MATERIALS INCORPORATED BY REFERENCE:

- ◆ Updates Code of Ethics, published by American College of Nurse-Midwives, June 2015

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The fiscal note for H.B. 191 (2019) estimated that two prescribers annually would pay a fine of \$500 to \$1,000 for non-compliance, for aggregate revenue of approximately \$1,500 annually. The fiscal note for H.B. 191 (2019) estimated the impact and it is available at: <https://le.utah.gov/~2019/bills/static/HB0191.html>. Any fines levied would be paid into the Certified Nurse Midwife Education and Enforcement Account. The Division of Occupational and Professional Licensing (Division) estimates that these proposed amendments may result in two additional investigations of violations or complaints at a cost of \$300 each for a total of \$600. These amendments are not

expected to impact any existing state practices or procedures, and 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 licensees to experience any measurable fiscal impacts. No other impact to the state is expected beyond a minimal cost to the Division of approximately \$75 to disseminate this rule once these proposed amendments are made effective.

◆ **LOCAL GOVERNMENTS:** The Division estimates that these proposed amendments will have no measurable impact on local governments. None of these amendments are expected to impact existing 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 licensees to experience any measurable fiscal impacts.

◆ **SMALL BUSINESSES:** These proposed amendments will regulate CNMs practicing in Utah, which may indirectly affect the estimated 22 small businesses in Utah comprising establishments of licensed CNMs or who employ CNMs, such as private or group practices, clinics, hospitals, private mental health practices or medical centers (NAICS 621399, 621498, 621111). However, these amendments are not expected to result in any measurable fiscal impact to small businesses. First, the amendments only impose a penalty for noncompliance with Utah Code requirements, and the practices of most small businesses are, or should be, already consistent with existing requirements. Second, these amendments will only affect licensees who violate the statute and are sanctioned, and as described below for other persons, for the typical licensee these amendments will have no 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 sanctioned may face indirect financial costs, it is impossible to estimate what those costs might be because any such violations are unforeseeable, and because any indirect costs that a 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.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are approximately 180 licensed CNMs who may be affected by these proposed amendments. No measurable fiscal impact to these persons are expected. First, these amendments will only affect licensees who violate the statute(s) and are sanctioned, so that most licensees will never be impacted. These amendments only impose a penalty for noncompliance with existing Utah Code requirements, and the practices of most licensees are, or should be, already consistent with existing professional practice requirements. 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 these amendments are expected to have no direct or indirect fiscal impact. Second, although a licensee who is sanctioned 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 person, the Division does not anticipate any compliance costs for any affected person from these proposed amendments.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: These proposed amendments replace the fine schedule language with a table. These amendments clarify and update this rule, and add a fine for a CNM who fails to provide an opiate prescription consultation in accordance with new Section 58-37-19, enacted by H.B. 191 (2019). These proposed amendments update the referenced "Code of Ethics" published by the American College of Nurse-Midwives to the more recent June 2015 edition. Finally, the amendments add to the list of unprofessional conduct for a CNM, the failure to provide an opiate prescription consultation as required by Section 58-37-19. Small Businesses (less than 50 employees): These proposed amendments will regulate CNMs practicing in Utah, which may indirectly affect the estimated 22 small businesses in Utah comprising establishments of licensed CNMs or who employ CNMs, such as private or group practices, clinics, hospitals, private mental health practices, or medical centers (NAICS 621399, 621498, 621111). However, these amendments are not expected to result in any measurable fiscal impact to small businesses. First, these amendments only impose a penalty for noncompliance with Utah Code requirements, and the practices of most small businesses are, or should be, already consistent with existing requirements. Second, these amendments will only affect licensees who violate the statute and are sanctioned. For the typical licensee, these amendments will have no 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 sanctioned may face indirect financial costs, it is impossible to estimate what those costs might be because any such violations are unforeseeable, and because any indirect costs that a 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. Regulatory Impact to Non-Small businesses (50 or more employees): These proposed amendments will regulate CNMs practicing in Utah, which may indirectly affect the estimated 10 non-small

businesses in Utah comprising establishments of CNMs or who employ CNMs, such as private or group practices, hospitals, or medical centers (NAICS 621498 and 621111). However, these proposed amendments are not expected to result in any measurable fiscal impact for non-small businesses for the same reasons as described above for small businesses. They are either inestimable, for the reasons stated, or there is no 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:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/02/2019

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

◆ 11/06/2019 10:00 AM, Heber Wells Bldg, 160 E 300 S, Conference Room 475 (fourth floor), Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 12/09/2019

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

These proposed amendments will regulate CNMs practicing in Utah, which may indirectly affect the estimated 10 non-small businesses in Utah comprising establishments of CNMs, or who employ CNMs, such as private or group practices, hospitals, or medical centers (NAICS 621498 and 621111). However, these proposed amendments are not expected to result in any measurable fiscal impact for non-small businesses. First, these amendments only impose a penalty for noncompliance with the Utah Code requirements, and the practices of most non-small businesses are, or should be, already consistent with existing requirements. Second, these amendments will only affect licensees who violate the statute and are sanctioned, and as described above for other persons, for the typical licensee these amendments will have no 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 sanctioned may face indirect financial costs, it is impossible to estimate what those costs might be because any such violations are unforeseeable, and because any indirect costs that a 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. The relevant data is unavailable and the cost of acquiring any such data is prohibitively expensive.

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

R156. Commerce, Occupational and Professional Licensing.

R156-44a. Nurse Midwife Practice Act Rule.

R156-44a-402. Administrative Penalties.

In accordance with Subsections 58-44a-102(1), ~~and~~ 58-44a-402(1), ~~and~~ 58-44a-503(3), unless otherwise ordered by the presiding officer, the following fine schedule shall apply[-]:

TABLE

FINE SCHEDULE

VIOLATION	FIRST OFFENSE	SUBSEQUENT OFFENSE
58-44a-501(1)	\$ 2,000 - \$ 5,000	\$ 5,000 - \$10,000
58-44a-501(2)	\$ 100 - \$ 500	\$ 200 - \$ 1,000
58-44a-501(3)	\$ 100 - \$ 500	\$ 200 - \$ 1,000
58-44a-501(4)	\$ 2,000 - \$ 5,000	\$ 5,000 - \$10,000
58-44a-502(1)	\$ 100 - \$ 500	\$ 200 - \$ 1,000
58-44a-502(2)	\$ 500 - \$ 2,000	\$ 2,000 - \$10,000
58-44a-502(3)	\$ 500 - \$ 2,000	\$ 2,000 - \$10,000
58-44a-502(4)	\$ 100 - \$ 500	\$ 200 - \$ 1,000
58-44a-502(5)	\$ 200 - \$ 1,000	\$ 500 - \$ 2,000
58-44a-502(6)	Double the original penalty amount, up to \$10,000	
58-44a-502(7)	\$ 500 - \$ 1,000	\$ 500 - \$ 1,000
58-44a-502(8)(a)	\$ 500 - \$ 1,000	\$ 500 - \$ 2,000
58-44a-502(8)(b)	\$ 500 - \$ 1,000	\$ 500 - \$ 2,000
58-1-501(1)(b)	\$ 500 - \$ 2,000	\$ 2,000 - \$10,000
58-1-501(1)(c)	\$ 500 - \$ 1,000	\$ 1,000 - \$ 5,000
58-1-501(1)(d)	\$ 500 - \$ 1,000	\$ 1,000 - \$ 5,000
58-1-501(1)(e)	\$ 500 - \$ 2,000	\$ 2,000 - \$10,000
58-1-502(2)(a)	\$ 500 - \$ 2,000	\$ 2,000 - \$10,000
58-1-502(2)(b)	\$ 500 - \$ 2,000	\$ 2,000 - \$10,000
58-1-502(2)(c)	\$ 500 - \$ 2,000	\$ 2,000 - \$10,000
58-1-502(2)(d)	\$ 100 - \$ 500	\$ 200 - \$ 1,000
58-1-502(2)(e)	\$ 100 - \$ 500	\$ 200 - \$ 1,000
58-1-502(2)(f)	\$ 100 - \$ 500	\$ 200 - \$ 1,000
58-1-502(2)(g)	\$ 500 - \$ 2,000	\$ 2,000 - \$10,000
58-1-502(2)(h)	\$ 100 - \$ 500	\$ 200 - \$ 1,000
58-1-502(2)(i)	\$ 100 - \$ 500	\$ 200 - \$ 1,000
58-1-502(2)(j)	\$ 100 - \$ 500	\$ 200 - \$ 1,000
58-1-502(2)(k)	\$ 100 - \$ 500	\$ 200 - \$ 1,000

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2020	FY 2021	FY 2022
State Government	\$675	\$600	\$600
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Person	\$0	\$0	\$0
Total Fiscal Costs:	\$675	\$600	\$600
Fiscal Benefits			
State Government	\$1,500	\$1,500	\$1,500
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits:	\$1,500	\$1,500	\$1,500
Net Fiscal Benefits:	\$825	\$900	\$900

*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

R156-44a-502(1)	\$ 100 - \$ 500	\$ 200 - \$ 1,000
R156-44a-502(2)	\$ 250	\$ 500 - \$ 1,000
Ongoing offense(s)	\$ 1,000 per day but not less than the second offense.	
Any other conduct which constitutes unprofessional or unlawful conduct:	\$ 100 - \$ 500	\$ 200 - \$ 1,000

~~(1) Engaging in practice as a CNM or RN when not licensed or exempt from licensure: initial offense: \$2,000 - \$5,000
subsequent offense(s): \$5,000 - \$10,000~~

~~(2) Representing oneself as a CNM or RN when not licensed:
initial offense: \$100 - \$500
subsequent offense(s): \$200 - \$1,000~~

~~(3) Using any title that would indicate that one is licensed under this chapter:
initial offense: \$100 - \$500
subsequent offense(s): \$200 - \$1,000~~

~~(4) Practicing or attempting to practice nursing without a license or with a restricted license:
initial offense: \$2,000 - \$5,000
subsequent offense(s): \$5,000 - \$10,000~~

~~(5) Impersonating a licensee or practicing under a false name:
initial offense: \$500 - \$2,000
subsequent offense(s): \$2,000 - \$10,000~~

~~(6) Knowingly employing an unlicensed person:
initial offense: \$500 - \$1,000
subsequent offense(s): \$1,000 - \$5,000~~

~~(7) Knowingly permitting the use of a license by another person:
initial offense: \$500 - \$1,000
subsequent offense(s): \$1,000 - \$5,000~~

~~(8) Obtaining a passing score, applying for or obtaining a license, or otherwise dealing with the Division or board through the use of fraud, forgery, intentional deception, misrepresentation, misstatement, or omission:
initial offense: \$500 - \$2,000
subsequent offense(s): \$2,000 - \$10,000~~

~~(9) Violating or aiding or abetting any other person to violate any statute, rule, or order regulating nurse midwifery:
initial offense: \$500 - \$2,000
subsequent offense(s): \$2,000 - \$10,000~~

~~(10) Violating, or aiding or abetting any other person to violate any generally accepted professional or ethical standard:
initial offense: \$500 - \$2,000
subsequent offense(s): \$2,000 - \$10,000~~

~~(11) Engaging in conduct that results in convictions or, or a plea of nolo contendere to a crime of moral turpitude or other crime:
initial offense: \$500 - \$2,000
subsequent offense(s): \$2,000 - \$10,000~~

~~(12) Engaging in conduct that results in disciplinary action by any other jurisdiction or regulatory authority:
initial offense: \$100 - \$500
subsequent offense(s): \$200 - \$1,000~~

~~(13) Engaging in conduct, including the use of intoxicants, drugs to the extent that the conduct does or may impair the ability to safely engage in practice as a CNM:
initial offense: \$100 - \$500
subsequent offense(s): \$200 - \$1,000~~

~~(14) Practicing or attempting to practice as a CNM when physically or mentally unfit to do so:
initial offense: \$100 - \$500
subsequent offense(s): \$200 - \$1,000~~

~~(15) Practicing or attempting to practice as a CNM through gross incompetence, gross negligence, or a pattern of incompetency or negligence:
initial offense: \$500 - \$2,000
subsequent offense(s): \$2,000 - \$10,000~~

~~(16) Practicing or attempting to practice as a CNM by any form of action or communication which is false, misleading, deceptive, or fraudulent:
initial offense: \$100 - \$500
subsequent offense(s): \$200 - \$1,000~~

~~(17) Practicing or attempting to practice as a CNM beyond the individual's scope of competency, abilities, or education:
initial offense: \$100 - \$500
subsequent offense(s): \$200 - \$1,000~~

~~(18) Practicing or attempting to practice as a CNM beyond the scope of licensure:
initial offense: \$100 - \$500
subsequent offense(s): \$200 - \$1,000~~

~~(19) Verbally, physically, mentally, or sexually abusing or exploiting any person through conduct connected with the licensee's practice:
initial offense: \$100 - \$500
subsequent offense(s): \$200 - \$1,000~~

~~(20) Disregarding for a patient's dignity or right to privacy as to his person, condition, possessions, or medical record:
initial offense: \$100 - \$500
subsequent offense(s): \$200 - \$1,000~~

~~(21) Engaging in an act, practice, or omission which does or could jeopardize the health, safety, or welfare of a patient or the public:
initial offense: \$500 - \$2,000
subsequent offense(s): \$2,000 - \$10,000~~

~~(22) Failing to confine one's practice to those acts permitted by law:
initial offense: \$500 - \$2,000
subsequent offense(s): \$2,000 - \$10,000~~

~~(23) Failure to file or impeding the filing of required reports:
initial offense: \$100 - \$500
subsequent offense(s): \$200 - \$1,000~~

~~(24) Breach of confidentiality:
initial offense: \$200 - \$1,000
subsequent offense(s): \$500 - \$2,000~~

~~(25) Failure to pay a penalty:
Double the original penalty amount up to \$10,000~~

~~(26) Prescribing a Schedule II-III controlled substance without a consulting physician or outside of a consultation and referral plan:
initial offense: \$500 - \$1,000
subsequent offense(s): \$500 - \$2,000~~

~~(27) Failure to have and maintain a safe mechanism for obtaining medical consultation, collaboration, and referral with a consulting physician, including failure to identify one or more consulting physicians in the written documents required by Subsection 58-44a-102(9)(b)(iii):~~

~~initial offense: \$500 – \$1,000~~
~~subsequent offense(s): \$500 – \$2,000~~
~~(28) Representing that the certified nurse midwife is in compliance with Subsection 58-44a-502(8)(a) when the certified nurse midwife is not in compliance with Subsection 58-44a-502(8)(a):~~
~~initial offense: \$500 – \$1,000~~
~~subsequent offense(s): \$500 – \$2,000~~
~~(29) Any other conduct which constitutes unprofessional or unlawful conduct:~~
~~initial offense: \$100 – \$500~~
~~subsequent offense(s): \$200 – \$1,000]~~

R156-44a-502. Unprofessional Conduct.
 "Unprofessional conduct" includes:
 (1) failure to abide by the "Code of Ethics" published by the American College of Nurse-Midwives, [~~October 2008~~June 2015], which is hereby adopted and incorporated by reference;
 (2) failing to discuss the risks of using an opiate with a patient or the patient's guardian before issuing an initial opiate prescription, in accordance with Section 58-37-19.
KEY: licensing, midwifery, certified nurse midwife
Date of Enactment or Last Substantive Amendment: [May 11, 2015]2019
Notice of Continuation: August 28, 2018
Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-202(1)(a); 58-44a-101

Education, Administration
R277-108
 Annual Assurance of Compliance by
 Local School Boards

NOTICE OF PROPOSED RULE
 (Amendment)
 DAR FILE NO.: 44128
 FILED: 10/10/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-108 is being amended to incorporate by reference the updated version of the assurances document that was distributed in July to local education agencies (LEAs).

SUMMARY OF THE RULE OR CHANGE: In Section R277-108-3, incorporation of the Annual Assurances of Compliance has updated the checklist date to reflect the 2019-2020 school year. The assurance document, which lists the required state and federal compliance information for identified programs and funds, is meant to provide local school boards with a list of laws requiring local school board action and a means of assuring that local boards are in

compliance. This document is something LEAs already submit annually.

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

MATERIALS INCORPORATED BY REFERENCE:
 ♦ Updates Local Education Agency (LEA) Compliance and Assurance Checklist, published by Utah State Board of Education, 10/03/2019

ANTICIPATED COST OR SAVINGS TO:
 ♦ **THE STATE BUDGET:** This rule change is not expected to have any fiscal impact on state government revenues or expenditures. This rule is being amended to incorporate by reference the updated version of the assurances document that was distributed in July to LEAs. Thus, this rule change will not have a fiscal impact.
 ♦ **LOCAL GOVERNMENTS:** This rule change is not expected to have any fiscal impact on local governments' revenues or expenditures. This rule is being amended to incorporate by reference the updated version of the assurances document that was distributed in July to LEAs. The assurance document, which lists the required state and federal compliance information for identified programs and funds, is meant to provide local school boards with a list of laws requiring local school board action and a means of assuring that local boards are in compliance. This document is something LEAs already submit annually. Thus, this rule change will not have a fiscal impact.
 ♦ **SMALL BUSINESSES:** This rule change is not expected to have any material fiscal impact on small businesses' revenues or expenditures because this rule is about annual assurance of compliance by local school boards and thus does not apply to small businesses.
 ♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule change is not expected to have any fiscal impact on persons' other than small businesses', businesses', or local government entities' revenues or expenditures. The rule is being amended to incorporate by reference the updated version of the assurances document that was distributed in July to LEAs. Thus, this rule change will not have a fiscal impact.

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

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

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

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

EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY, UT 84111-3272
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Angela Stallings by phone at 801-538-7550, by FAX at 801-538-7768, or by Internet E-mail at angie.stallings@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/02/2019

THIS RULE MAY BECOME EFFECTIVE ON: 12/09/2019

AUTHORIZED BY: Angela Stallings, Deputy Superintendent of Policy

Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits:	\$0	\$0	\$0
Net Fiscal Benefits:	\$0	\$0	\$0

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

Appendix 2: Regulatory Impact to Non-Small Businesses

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

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

Appendix 1: Regulatory Impact Summary Table*

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

R277. Education, Administration.

R277-108. Annual Assurance of Compliance by Local School Boards.

R277-108-1. Authority and Purpose.

(1) This rule is authorized by:
(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board; and

(b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law and allows the Board to interrupt disbursements of state aid to any district which fails to comply with rules adopted in accordance with the law.

(2) The purpose of this rule is to provide local school boards with a list of laws requiring local school board action and a means of assuring that local boards are in compliance.

R277-108-2. Definitions.

(1) "Assurance document" means the Annual Assurances of Compliance list outlined in Subsection R277-108-3.

R277-108-3. Incorporation of Annual Assurances of Compliance.

(1) This rule incorporates by reference the Local Education Agency (LEA) Compliance and Assurance Checklist for [2018-2019]2019-2020 School Year [(09/06/2018)](09/06/2019), which lists the required state and federal compliance information for identified programs and funds, including:

- (a) Board Rule;
 - (b) State statute;
 - (c) Federal Code of Regulations; and
 - (d) Federal Law.
- (2) A copy of the current Annual Assurances of Compliance

List is located at:

- (a)

<https://www.schools.utah.gov/financialoperations/formsapplications?mid=2382&tid=2>; and

(b) the Utah State Board of Education - 250 East 500 South, Salt Lake City, Utah 84111.

R277-108-4. Assurance Document Creation and Availability.

(1) The Superintendent shall provide a list of laws and a list of State Board of Education Administrative Rules which require action or compliance by June 1 of each year to school district superintendents, the superintendent for the Utah School for the Deaf and the Blind and charter school directors.

(2) The list described in Subsection (1) shall be approved by the Board and shall identify laws and rules along with required compliance dates and reporting forms, if different or necessary than or in addition to the annual assurance document.

(3) The Superintendent shall consolidate all required reporting and compliance forms and provide for electronic reporting, to the extent possible and ensure the assurance document is available publicly.

R277-108-5. Process, Procedures, and Penalties.

(1) An LEA shall submit the required annual responses to the assurance document and other compliance forms on or before dates identified by the Board.

(2) An LEA's assurance document shall contain a signed attestation by the appropriate authority attesting to the accuracy and validity of all responses and assurances provided by an LEA.

(3) In the event that an LEA is unable to provide required assurances, compliance information or forms by required dates, an LEA shall provide to the Superintendent a written explanation of the LEA's inability and provide an anticipated submission date.

(4) An LEA's request for additional time to provide the assurance shall be reviewed by the Superintendent and accepted or rejected in a timely manner.

(5) The Superintendent shall request a written explanation from an LEA and identified schools that fail to meet the reporting and compliance deadlines and that have not provided an explanation and request for a delayed submission date.

(6) Following an opportunity to provide explanations and request a delayed submission date, an LEA and identified schools shall be notified of penalties assessed by the Board against the LEA in accordance with rule R277-114, state law, or federal law.

R277-108-6. Reporting Deadlines.

Responses for the assurance document from an LEA are due to the Superintendent no later than July 1 of each year.

R277-108-7. Record Retention.

(1) Responses to the assurance document, as required by the Board, shall be kept on file by the Superintendent for five years, together with letters of explanation and documentation of penalties, as directed by the Board.

KEY: local school boards, compliance

Date of Enactment or Last Substantive Amendment: [~~November 29, 2018~~2019]

Notice of Continuation: September 13, 2017

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

**Education, Administration
R277-306**

**Educator Preparation Programs for
School Psychologists, Audiologists,
Speech-Language Pathologists,
Speech-Language Technicians, and
Counselors**

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 44136

FILED: 10/15/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: In May 2018, Utah State Board of Education (Board) approved Rule R277-301, Educator Licensing. These changes go into effect beginning with the 2020-21 school year. A significant number of rules related to educator licensing will need to be reviewed and revised by the Board prior to the implementation of Rule R277-301. New Rule R277-306 is consistent with the proposed rule revision timeline. The original draft was submitted to stakeholders for feedback on July 25, 2019.

SUMMARY OF THE RULE OR CHANGE: Rule R277-306 has been written based on the original draft and the feedback submitted by the stakeholders from multiple professional organizations, as well as two Utah university-based preparation programs. There were two primary areas of feedback that were received; School Social Worker license areas, and Speech-Language Technicians (SLT) vs. Speech-Language Pathology Assistants (SLPA). This new rule has been drafted per the recommendations in these areas.

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

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** This proposed rule may have a fiscal impact on state government revenues or expenditures. As part of educator licensing revisions, this rule discontinues licensing school social workers by the Board because there is little difference in school social workers and social workers licensed by the Utah Division of Occupational and

Professional Licensing (DOPL), and there are a number of other types of professionals who are employed by local education agencies (LEAs) and provide services in schools who are licensed by DOPL and are not required to hold a Utah Educator License. This change may impact the state budget because the count of full time equivalent (FTE) for school social workers is included in the appropriations formulas for the Professional Staff Cost and Educator Salary Adjustment programs. Thus, removing these FTEs from the formula could lead to less funding needed for these programs. The Professional Staff Cost formula includes a number of educator positions. Thus, if the FTE count in other positions increases then the program funding requirement will not decrease despite not having school social workers to include in the formula. For the Educator Salary Adjustment Program, if nothing else is changed, this rule would mean a decrease in program funding because school social workers are eligible for this salary adjustment, but licensed clinical social workers are not. For both programs, any changes in state funding relative to the total appropriations for the programs would be small because the total FTE for school social workers for the 2018-2019 school year was 159.0 FTE (170 individuals).

♦ LOCAL GOVERNMENTS: This proposed rule may have a fiscal impact on local governments' revenues or expenditures. As part of educator licensing revisions, this rule discontinues licensing school social workers by the Board because there is little difference in school social workers and social workers licensed by DOPL, and there are a number of other types of professionals who are employed by LEAs and provide services in schools who are licensed by DOPL and are not required to hold a Utah Educator License. This rule may impact funding received by LEAs because the count of FTE for school social workers is included in the appropriations formulas for the Professional Staff Cost and Educator Salary Adjustment Programs. For the Professional Staff Cost program, funding is distributed to LEAs on a ratio basis. Thus, removing school social workers from the formula would likely result in a small redistribution of the funding among LEAs. As the total FTE in the formula for the 2018-2019 school year was approximately 36,000, the removal of 159 FTEs would have a minimal impact. The most affected district would be Granite School District which employs 66 of the 170 school social workers. For the Educator Salary Adjustment Program, if nothing else is changed, this rule would mean a decrease in program funding for LEAs because school social workers are eligible for this salary adjustment, but licensed clinical social workers are not. The Educator Salary Adjustment is valued at \$4,200 plus taxes and benefits for a total value of \$5,549.88 per FTE. Canyons, Granite, and Provo districts would be hit hardest by that change, but most LEAs have one or two FTEs in this category at most.

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

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This proposed rule may have a fiscal impact on persons' other than small businesses', businesses', or local government entities' revenues or expenditures. As part of educator licensing revisions, this rule discontinues licensing school social workers by the Board because there is little difference in school social workers and social workers licensed by DOPL, and there are a number of other types of professionals who are employed by LEAs and provide services in schools who are licensed by DOPL and are not required to hold a Utah Educator License. The individuals affected are school social workers who would cease to hold a Utah Educator License. Consequently, these individuals would no longer be eligible for the Educator Salary Adjustment which is valued at \$4,200 plus taxes and benefits for a total value of \$5,549.88 per FTE.

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

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no non-small businesses in the industry in question, Elementary and Secondary Schools (NAICS 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. This proposed rule is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses and it does not require any expenditures of or generate revenue for non-small businesses. This proposed rule has no fiscal impact on small businesses either. This proposed rule may have a fiscal impact on the state budget, local education agencies, and school social workers with local education agencies and school social workers receiving less funding and the state budget requiring less funding for the Professional Staff Cost and Educator Salary Adjustment programs. The Program Analyst at the Utah State Board of Education, Jill Curry, has reviewed and approved this fiscal analysis.

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

EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY, UT 84111-3272
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Angela Stallings by phone at 801-538-7550, by FAX at 801-538-7768, or by Internet E-mail at angie.stallings@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/02/2019

THIS RULE MAY BECOME EFFECTIVE ON: 12/09/2019

AUTHORIZED BY: Angela Stallings, Deputy Superintendent of Policy

Appendix 1: Regulatory Impact Summary Table*

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

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

Appendix 2: Regulatory Impact to Non-Small Businesses

There are no non-small businesses in the industry in question, Elementary and Secondary Schools (NAICS 611110). Because there are no non-small businesses, they do not account for any service delivery for

Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. This proposed rule is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses and it does not require any expenditures of, or generate revenue for, non-small businesses.

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

R277. Education, Administration.

R277-306. Educator Preparation Programs for School Psychologists, Audiologists, Speech-Language Pathologists, Speech-Language Technicians, and Counselors.

R277-306-1. Authority and Purpose.

- (1) This rule is authorized by:
 - (a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;
 - (b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and
 - (c) Subsection 53E-6-201(3)(a), which allows the Board to establish criteria for obtaining educator licenses.
- (2) The purpose of this rule is to establish standards for educator preparation programs for:
 - (a) School Psychologists;
 - (b) Audiologists;
 - (c) Speech-Language Pathologists;
 - (d) Speech-Language Technicians; and
 - (e) School Counselors.

R277-306-2. School Psychologist Preparation Programs.

- (1) A Utah institution of higher education may seek approval by the Board for a school psychologist preparation program if the program:
 - (a) results in a masters degree or higher in school psychology;
 - (b) meets the 2010 Standards for Graduate Preparation of School Psychologists created by the National Association of School Psychologists (NASP);
 - (c) prepares candidates to provide comprehensive and integrated services across the ten general domains of school psychology as defined in the 2010 Model for Comprehensive and Integrated School Psychological Services;
 - (d) prepares candidates to follow the 2010 Principles for Professional Ethics created by NASP; and
 - (e) includes school-based clinical experiences for a candidate to observe, practice skills, and reflect on practices that:
 - (i) are significant in number, depth, breadth, and duration; and
 - (ii) are progressively more complex.
- (2) For a program applicant accepted after January 1, 2020, a school psychologist preparation program shall require multiple opportunities for a program applicant to successfully demonstrate the application of knowledge and skills gained through the program in a school-based setting in each of the following:
 - (a) administering varied models and methods of assessment and data collection for:
 - (i) identifying strengths and needs of students;
 - (ii) developing effective services and programs for students; and

(iii) measuring progress and outcomes for students;
 (b) implementing varied models and strategies of consultation, collaboration, and communication with individuals, families, groups, and systems;
 (c) implementing varied strategies that promote social-emotional functioning and mental health in students; and collecting and analyzing data for evaluation and support of effective practices at the individual, group, and systems levels.
 (3) An individual that holds the Nationally Certified School Psychologist (NCSP) credential issued by NASP meets the out of state licensing requirement for a professional school psychologist license area of concentration detailed in Subsection R277-301-5(3)(c)(ii).

R277-306-3. School Audiologist Preparation Program.

(1) A Utah institution of higher education may seek approval by the Board for a school audiologist preparation program if the program:
 (a) is accredited by the Council on Academic Accreditation in Audiology and Speech-Language Pathology; and
 (b) prepares candidates to provide comprehensive and integrated services in a school setting as detailed in the 2018 Scope of Practice in Audiology created by the American Speech-Language-Hearing Association;
 (2) An individual that completes a program accredited by the Council on Academic Accreditation in Audiology and Speech-Language Pathology outside of Utah qualifies for an associate license with an associate school audiologist license area of concentration detailed in Subsections R277-301-4(5) and (6).
 (3) An individual that holds a current Certificate of Clinical Competence in Audiology (CCC-A) issued by the American Speech-Language-Hearing Association meets the out of state licensing requirement for a professional audiologist license area of concentration detailed in Subsection R277-301-5(3)(c)(ii).

R277-306-4. Speech-Language Pathologist (SLP) Preparation Program.

(1) A Utah institution of higher education may seek approval by the Board for a speech-language pathologist (SLP) preparation program if the program:
 (a) is accredited by the Council on Academic Accreditation in Audiology and Speech-Language Pathology; and
 (b) prepares candidates to provide comprehensive and integrated services in a school setting as detailed in the 2016 Scope of Practice in Speech-Language Pathology created by the American Speech-Language-Hearing Association.
 (2) An individual that completes a program accredited by the Council on Academic Accreditation in Audiology and Speech-Language Pathology outside of Utah qualifies for an associate license with a speech-language pathologist license area of concentration detailed in Subsections R277-301-4(5) and (6).
 (3) An individual that holds a current Certificate of Clinical Competence in Speech-Language Pathology (CCC-SLP) issued by the American Speech-Language-Hearing Association meets the out of state licensing requirements for a professional speech-language pathologist license area of concentration detailed in Subsection R277-301-5(3)(c)(ii).

R277-306-5. Speech-Language Technician (SLT) Preparation Program.

(1) The Superintendent shall create and administer an SLT preparation program that:
 (a) requires applicants to hold a bachelor's degree in communication disorders or the equivalent;
 (b) requires significant clinical experiences under the supervision of an individual holding a professional speech-language pathologist license area of concentration; and
 (c) prepares candidate to provide services in a school setting as detailed in the Utah State Board of Education Handbook for Speech-Language Technicians Working in Utah Public Schools.
 (2) The Superintendent shall periodically review and revise the handbook for SLTs referenced above.

R277-506-6. School Counselor Preparation Programs.

(1) A Utah institution of higher education may seek approval by the Board for a school counselor preparation program if the program:
 (a) prepares candidates to meet the Utah Education School Counselor Standards detailed in Rule R277-530;
 (b) aligns with the 2016 Council for Accreditation of Counseling & Related Educational Program Standards; and
 (c) requires candidates to complete the requirements for the College and Career Readiness Certificate.
 (2) For a program applicant accepted after January 1, 2020, a school counselor preparation program shall require multiple opportunities for a program applicant to successfully demonstrate application of knowledge and skills gained through the program in a school-based setting in each of the following:
 (a) collaborating with learners, families, colleagues, and community members to build or implement a shared vision and supportive professional culture focused on student growth and success;
 (b) delivering a sequential school counseling curriculum aligned with the Utah Model for College and Career Readiness School Counseling Program;
 (c) leading individuals and groups of students and their parents or guardians through the development of educational and career plans;
 (d) counseling individuals and small groups of students with identified needs and concerns;
 (e) developing or maintaining a crisis prevention/youth protection response plan; and
 (f) collecting and analyzing data for the purpose of accountability and program evaluation.

KEY: psychologists, audiologists, speech-language pathologists, counselors

Date of Enactment or Last Substantive Amendment: 2019
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-401(4); 53E-6-201

Education, Administration
R277-407
 School Fees

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 44125

FILED: 10/10/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: On February 8, 2019, the Utah State Board of Education (Board) approved revisions to Rule R277-407 that will become effective January 1, 2020. The revisions include a change to Subsection R277-407-13(2)(a) which states that "an LEA shall: establish a spend plan for the revenue collected from each fee charged: . . ." Due to this new requirement, local education agency's (LEAs) have requested guidance on what is required in establishing a spend plan. In June 2019, the Board assembled a work group including LEA board members, charter school directors, business administrators, superintendents, and finance professionals, to discuss the logistics of a spend plan and develop rule amendments that may be necessary to clarify the spend plan requirement. The work group met six times and reached an agreement on the purpose of a spend plan and changes to Rule R277-407 that will better assist LEAs in understanding and creating spend plans for each school fee. In addition, the group also discussed other new school fee requirements they felt needed further clarification.

SUMMARY OF THE RULE OR CHANGE: Rule R277-407 has been amended to include clarification for new school fee requirements and spend plan collection revisions.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Article X Section 2 and Article X Section 3 and Subsection 53E-3-401(4) and Subsection 53G-7-503(2) and Subsection 53G-7-504

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** These rule changes are not expected to have any fiscal impact on state government revenues or expenditures because this rule is about fees and spend plans for fees for LEAs, and all regulatory functions are already funded. This rule is being amended due to recommended changes from the School Fees Spend Plan Work Group. This group reviewed the requirement for LEAs to file spend plans for fees charged in order to promote transparency and follow up on how school fees are used throughout the year. These rule changes add clarifying language about the purpose of the spend plans and particular information to be identified within the spend plan. These changes will not have an independent fiscal impact.

◆ **LOCAL GOVERNMENTS:** These rule changes are not expected to have any material fiscal impact on local governments' revenues or expenditures. This rule is being amended due to recommended changes from the School Fees Spend Plan Work Group. This group reviewed the requirement for LEAs to file spend plans for fees charged in order to promote transparency and follow up on how school fees are used throughout the year. These rule changes add clarifying language about the purpose of the spend plans and

particular information to be identified within the spend plan. These changes will not have an independent fiscal impact.

◆ **SMALL BUSINESSES:** These rule changes are not expected to have any material fiscal impact on small businesses' revenues or expenditures because this rule is about school fees and spend plans for fees for LEAs and thus will not impact small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** These rule changes are not expected to have any material fiscal impact on persons other than small businesses', businesses', or local government entities' revenues or expenditures. This rule is being amended due to recommended changes from the School Fees Spend Plan Work Group. This group reviewed the requirement for LEAs to file spend plans for fees charged in order to promote transparency and follow up on how school fees are used throughout the year. These rule changes add clarifying language about the purpose of the spend plans and particular information to be identified within the spend plan. These changes will not have an independent fiscal impact.

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

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

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

EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY, UT 84111-3272
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Angela Stallings by phone at 801-538-7550, by FAX at 801-538-7768, or by Internet E-mail at angie.stallings@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/02/2019

THIS RULE MAY BECOME EFFECTIVE ON: 12/09/2019

AUTHORIZED BY: Angela Stallings, Deputy Superintendent of Policy

are no applicable non-small businesses and it does not require any expenditures of or generate revenue for non-small businesses.

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

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2020	FY 2021	FY 2022
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Fiscal Benefits			
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Total Fiscal Benefits:	\$0	\$0	\$0
Net Fiscal Benefits:	\$0	\$0	\$0

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

Appendix 2: Regulatory Impact to Non-Small Businesses

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

R277. Education, Administration.

R277-407. School Fees.

R277-407-1. Authority and Purpose.

- (1) This rule is authorized under:
 - (a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;
 - (b) Article X, Section 2 of the Utah Constitution, which provides that:
 - (i) public elementary schools shall be free; and
 - (ii) secondary schools shall be free, unless the Legislature authorizes the imposition of fees;
 - (c) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law;
 - (d) Subsection 53G-7-503(2), which requires the Board to adopt rules regarding student fees; and
 - (e) Subsection 53G-7-504 which authorizes waiver of fees for eligible students with appropriate documentation.
- (2) This rule also serves to comply with the order arising from the Permanent Injunction issued in Doe v. Utah State Board of Education, Civil No. 920903376 (3rd District 1994).
- (3) The purpose of this rule is to:
 - (a) permit the orderly establishment of a system of reasonable fees;
 - (b) provide adequate notice to students and families of fees and fee waiver requirements; and
 - (c) prohibit practices that would:
 - (i) exclude those unable to pay from participation in school-sponsored activities; or
 - (ii) create a burden on a student or family as to have a detrimental impact on participation.

R277-407-2. Definitions.

- (1) "Co-curricular activity" means an activity, course, or program, outside of school hours, that also includes a required regular school day program or curriculum.
- (2) "Extracurricular activity" means an activity or program for students, outside of the regular school day, that:
 - (a) is sponsored, recognized, or sanctioned by an LEA; and
 - (b) supplements or compliments, but is not part of, the LEA's required program or regular curriculum.
- (3)(a) "Fee" means something of monetary value requested or required by an LEA as a condition to a student's participation in an activity, class, or program provided, sponsored, or supported by a school.
 - (b) "Fee" includes money or something of monetary value raised by a student or the student's family through fundraising.
- (4)(a) "Fundraiser," "fundraising," or "fundraising activity" means an activity or event provided, sponsored, or supported by a school that uses students to generate funds to raise money to:
 - (i) provide financial support to a school or any of the school's classes, groups, teams, or programs; or
 - (ii) benefit a particular charity or for other charitable purposes.

(b) "Fundraiser," "fundraising," or "fundraising activity" may include:

- (i) the sale of goods or services;
- (ii) the solicitation of monetary contributions from individuals or businesses; or
- (iii) other lawful means or methods that use students to generate funds.

(c) "Fundraiser," "fundraising," or "fundraising activity" does not include an alternative method of raising revenue without students.

(5) "Group fundraiser" or "group fundraising" means a fundraising activity where the money raised is used for the benefit of the group, team, or organization.

(6) "Individual fundraiser" or "individual fundraising" means a fundraising activity where money is raised by each individual student to pay the individual student's fees.

(7)(a) "Instructional equipment" means an activity, course, or program-related tool or instrument that:

- (i) is required for a student to use as part of a secondary activity, course, or program;
- (ii) typically becomes the property of the student upon exiting the activity, course, or program; and
- (iii) is subject to fee waiver.

(b) "Instructional equipment" includes:

- (i) shears or styling tools;
- (ii) a band instrument;
- (iii) a camera;
- (iv) a stethoscope; and
- (v) sports equipment, including a bat, mitt, or tennis racquet.

(c) "Instructional equipment" does not include school equipment.

(8)(a) "Instructional supply" means a consumable or non-reusable supply that is necessary for a student to use as part of a secondary activity, course, or program.

(b) "Instructional supply" includes:

- (i) prescriptive footwear;
- (ii) brushes or other art supplies, including clay, paint, or art canvas;
- (iii) wood for wood shop;
- (iv) Legos for Lego robotics;
- (v) film; and
- (vi) filament used for 3D printing.

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

(10) "Noncurricular club" has the same meaning as that term is defined in Section 53G-7-701.

(11) "Non-waivable charge" means a cost, payment, or expenditure that:

- (a) is a personal discretionary charge or purchase, including:
 - (i) a charge for insurance, unless the insurance is required for a student to participate in an activity, class, or program;
 - (ii) a charge for college credit related to the successful completion of:
 - (A) a concurrent enrollment class; or
 - (B) an advanced placement examination; or
 - (iii) except when requested or required by an LEA, a charge for a personal consumable item such as a yearbook, class ring, letterman jacket or sweater, or other similar item;

(b) is subject to sales tax as described in Utah State Tax Commission Publication 35, Sales Tax Information for Public and Private Elementary and Secondary Schools; or

(c) by Utah Code, federal law, or Board rule is designated not to be a fee, including:

- (i) a school uniform as provided in Section 53G-7-801;
- (ii) a school lunch; or
- (iii) a charge for a replacement for damaged or lost school equipment or supplies.

(12)(a) "Provided, sponsored, or supported by a school" means an activity, class, program, fundraiser, club, camp, clinic, or other event that:

- (i) is authorized by an LEA or school, according to local education board policy; or
- (ii) satisfies at least one of the following conditions:

(A) the activity, class, program, fundraiser, club, camp, clinic, or other event is managed or supervised by an LEA or school, or an LEA or school employee in the employee's school employment capacity;

(B) the activity, class, program, fundraiser, club, camp, clinic, or other event uses, more than inconsequentially, the LEA or school's facilities, equipment, or other school resources; or

(C) the activity, class, program, fundraising event, club, camp, clinic, or other event is supported or subsidized, more than inconsequentially, by public funds, including the school's activity funds or minimum school program dollars.

(b) "Provided, sponsored, or supported by a school" does not include an activity, class, or program that meets the criteria of a noncurricular club as described in Title 53G, Chapter 7, Part 7, Student Clubs.

(13)(a) "Provision in lieu of fee waiver" means an alternative to fee payment or waiver of fee payment.

(b) "Provision in lieu of fee waiver" does not include a plan under which fees are paid in installments or under some other delayed payment arrangement.

(14) "Regular school day" has the same meaning as the term "school day" described in Section R277-419-2.

(15) "Requested or required by an LEA as a condition to a student's participation" means something of monetary value that is impliedly or explicitly mandated or necessary for a student, parent, or family to provide so that a student may:

- (a) fully participate in school or in a school activity, class, or program;
- (b) successfully complete a school class for the highest grade; or
- (c) avoid a direct or indirect limitation on full participation in a school activity, class, or program, including limitations created by:
 - (i) peer pressure, shaming, stigmatizing, bullying, or the like; or
 - (ii) withholding or curtailing any privilege that is otherwise provided to any other student.

(16) "School day" has the same meaning as defined in R277-419-2.

(17)(a) "School equipment" means a durable school-owned machine, equipment, or tool used by a student as part of a secondary activity, course, or program.

(b) "School equipment" includes a saw, machine, and 3D printer.

(18)(a) "Something of monetary value" means a charge, expense, deposit, rental, fine, or payment, regardless of how the payment is termed, described, requested or required directly or indirectly, in the form of money, goods or services.

(b) "Something of monetary value" includes:

(i) charges or expenditures for a school field trip or activity trip, including related transportation, food, lodging, and admission charges;

(ii) payments made to a third party that provide a part of a school activity, class, or program;

(iii) classroom supplies or materials; and

(iv) a fine, except for a student fine specifically approved by an LEA for:

(A) failing to return school property;

(B) losing, wasting, or damaging private or school property through intentional, careless, or irresponsible behavior; or

(C) improper use of school property, including a parking violation.

(19)(a) "Student supplies" means items which are the personal property of a student which, although used in the instructional process, are also commonly purchased and used by persons not enrolled in the class or activity in question and have a high probability of regular use in other than school-sponsored activities.

(b) "Student supplies" include:

(i) pencils;

(ii) paper;

(iii) notebooks;

(iv) crayons;

(v) scissors;

(vi) basic clothing for healthy lifestyle classes; and

(vii) similar personal or consumable items over which a student retains ownership.

(c) "Student supplies" does not include items listed in Subsection(18)(b) if the requirement from the school for the student supply includes specific requirements such as brand, color, or a special imprint in order to create a uniform appearance not related to basic function.

(20) "Supplemental kindergarten" means an LEA program for students in kindergarten who voluntarily elect to receive additional hours of instruction beyond the LEA's regular school day for kindergarten students for an additional fee.

(21) "Supplemental Security Income for children with disabilities" or "SSI" means a benefit administered through the Social Security Administration that provides payments for qualified children with disabilities in low income families.

(22) "Temporary Assistance for Needy Families" or "TANF," means a program, formerly known as AFDC, which provides monthly cash assistance and food stamps to low-income families with children under age 18 through the Utah Department of Workforce Services.

(23)(a) "Textbook" means instructional material necessary for participation in a course or program, regardless of the format of the material.

(b) "Textbook" includes:

(i) hardcopy book or printed pages of instructional material, including a consumable workbook;

(ii) computer hardware, software, or digital content;[

~~(iii) the cost of wifi to access school required digital content;]~~ and

~~[(iv)](iii) the maintenance costs of school equipment.~~

(c) "Textbook" does not include:

(i) instructional equipment; or

(ii) instructional supplies.

(24) "Waiver" means a full release from the requirement of payment of a fee and from any provision in lieu of fee payment.

R277-407-3. Classes and Activities During the Regular School Day.

(1) No fee may be charged in kindergarten through grade six for:

(a) materials;

(b) textbooks;

(c) supplies, except for student supplies described in Subsection (6); or

(d) any class or regular school day activity, including assemblies and field trips.

(2)(a) An LEA may charge a fee in connection with an activity, class, or program provided, sponsored, or supported by a school for a student in a secondary school that takes place during the regular school day if the fee is approved as provided in this R277-407.

(b) All fees are subject to the fee waiver provisions of Section R277-407-8.

(3)(a) Notwithstanding, Subsection (1) and except as provided in Subsection (3)(b), a school may charge a fee to a student in grade six if the student attends a school that includes any of grades seven through twelve.

(b) A school that provides instruction to students in grades other than grades six through twelve may not charge fees for grade six unless the school follows a secondary model of delivering instruction to the school's grade six students.

(c) If a school charges fees in accordance with Subsection (3)(a), the school shall annually provide notice to parents that the school will collect fees from grade six students and that the fees are subject to waiver.

(4) If a class is established or approved, which requires payment of fees or purchase of items in order for students to participate fully and to have the opportunity to acquire all skills and knowledge required for full credit and highest grades, the fees or costs for the class shall be subject to the fee waiver provisions of Rule R277-407-8.

(5)(a) In project related courses, projects required for course completion shall be included in the course fee.

(b) A school may require a student at any grade level to provide materials or pay for an additional discretionary project if the student chooses a project in lieu of, or in addition to a required classroom project.

(c) A school shall avoid allowing high cost additional projects, particularly if authorization of an additional discretionary project results in pressure on a student by teachers or peers to also complete a similar high cost project.

(d) A school may not require a student to select an additional project as a condition to enrolling, completing, or receiving the highest possible grade for a course.

(6) An elementary school or elementary school teacher may provide to a student's parent or guardian, a suggested list of student supplies for use during the regular school day so that a parent or guardian may furnish, on a voluntary basis, student supplies for student use, provided that, in accordance with Section 53G-7-503, the following notice is provided with the list:

"NOTICE: THE ITEMS ON THIS LIST WILL BE USED DURING THE REGULAR SCHOOL DAY. THEY MAY BE BROUGHT FROM HOME ON A VOLUNTARY BASIS, OTHERWISE, THEY WILL BE FURNISHED BY THE SCHOOL."

(7) A school may require a secondary student to provide student supplies, subject to the provisions of Section R277-407-8.

(8) Except as provided in Subsection (9), if a school requires special shoes or items of clothing that meet specific requirements, including requesting a specific color, style, fabric, or imprints, the cost of the special shoes or items of clothing are:

- (a) considered a fee; and
- (b) subject to fee waiver.

(9) As provided in Subsection 53G-7-802(4), an LEA's school uniform policy, including a requirement for a student to wear a school uniform, is not considered a fee for either an elementary or a secondary school if the LEA's school uniform policy is consistent with the requirements of Title 53G, Chapter 7, Part 8, School Uniforms.

R277-407-4. School Activities Outside of the Regular School Day.

(1) A school may charge a fee, subject to the provisions of Section R277-407-8, in connection with any school-sponsored activity, that does not take place during the regular school day, regardless of the age or grade level of the student, if participation in the activity is voluntary and does not affect a student's grade or ability to participate fully in any course taught during the regular school day.

(2) A fee related to a co-curricular or extracurricular activity may not exceed the maximum fee amounts for the co-curricular or extracurricular activity adopted by the LEA governing board as described in Subsection R277-407-6(3).

(3) A school may only collect a fee for an activity, class, or program provided, sponsored, or supported by a school consistent with LEA policies and state law.

(4) An LEA that provides, sponsors, or supports an activity, class, or program outside of the regular school day or school calendar is subject to the provisions of this rule regardless of the time or season of the activity, class, or program.

(5)(a) An LEA may charge a ~~[charge]~~ fee related to a student's enrollment in supplemental kindergarten.

(b) An LEA's fee for supplemental kindergarten described in Subsection (5)(a) is subject to fee waiver.

R277-407-5. Fee-Waivable Activities, Classes, or Programs Provided, Sponsored, or Supported by a School.

Fees for the following are waivable:

- (1) an activity, class, or program that is:
 - (a) primarily intended to serve school-age children; and
 - (b) taught or administered, more than inconsequentially, by a school employee as part of the employee's assignment;
- (2) an activity, class, or program that is explicitly or implicitly required:

(a) as a condition to receive a higher grade, or for successful completion of a school class or to receive credit, including a requirement for a student to attend a concert or museum as part of a music or art class for extra credit; or

(b) as a condition to participate in a school activity, class, program, or team, including, a requirement for a student to participate in a summer camp or clinic for students who seek to participate on a school team, such as cheerleading, football, soccer, dance, or another team;

(3) an activity or program that is promoted by a school employee, such as a coach, advisor, teacher, school-recognized volunteer, or similar person, during school hours where it could be reasonably understood that the school employee is acting in the employee's official capacity;

(4) an activity or program where full participation in the activity or program includes:

(a) travel for state or national educational experiences or competitions;

(b) debate camps or competitions; or

(c) music camps or competitions; ~~and~~

(5) a concurrent enrollment, CTE, or AP course ~~[-]; and~~

(6) the cost to access software, digital content, or other instructional materials required as part of an activity, course or program.

R277-407-6. LEA Requirements to Establish a Fee Schedule – Maximum Fee Amounts – Notice to Parents.

(1) An LEA, school, school official, or employee may not charge or assess a fee or request or require something of monetary value in connection with an activity, class, or program provided, sponsored, or supported by, and including for a co-curricular or extracurricular activity, unless the fee:

(a) has been set and approved by the LEA's governing board;

(b) is equal to or less than the maximum fee amount established by the LEA governing board as described in Subsection (4); and

(c) is included in an approved fee schedule or notice in accordance with this rule.

(2)(a) If an LEA charges a fee, on or before April 1 and in consultation with stakeholders, the LEA governing board shall annually adopt a fee schedule and fee policies for the LEA in a regularly scheduled public meeting.

(b) Before approving the LEA's fee schedule described in this Section, an LEA shall provide an opportunity for the public to comment on the proposed fee schedule during a minimum of two public LEA governing board meetings.

(c) An LEA shall:

(i) provide public notice of the meetings described in Subsections (2)(a) and (b) in accordance with Title 52, Chapter 4, Open and Public Meetings Act; and

(ii) encourage public participation in the development of fee schedules and waiver policies.

(d) In addition to the notice requirements of Subsection(2)(c), an LEA shall provide notice to parents and students of the meetings described in Subsections (2)(a) and (b) using the same form of communication regularly used by the LEA to communicate with parents, including notice by e-mail, text, flyer, or phone call.

(e) An LEA shall keep minutes of meetings during which fee and waiver policies are developed or adopted, together with copies of approved policies, in accordance with Section 52-4-203.

(3) After the fee schedule described in Subsection (2)(a) is adopted, an LEA may amend the LEA's fee schedule if the LEA follows the process described in Subsection (2) before approving the amended fee schedule.

(4)(a) As part of an LEA's fee setting process, the LEA shall establish a per student annual maximum fee amount that the LEA's schools may charge a student for the student's participation in all

courses, programs, and activities provided, sponsored, or supported by a school for the year.

(b) An LEA shall establish:

- (i) a maximum fee amount per student for each activity; and
- (ii) a maximum total aggregate fee amount per student per school year.

(c) The amount of revenue raised by a student through an individual fundraiser shall be included as part of the maximum fee amount per student for the activity and maximum total aggregate fee amount per student.

(d) An LEA shall include the total per student amount expected to be received through required group fundraising as part of the maximum fee amount for an activity described in Subsection (4)(b)(i).

~~(d)~~(e) An LEA may establish a reasonable number of activities, courses, or programs that will be covered by the annual maximum fee amount described in Subsection (4)(a).

(5) As part of an LEA's fee setting process described in this Section, the LEA may review and consider the following per school:

- (a) the school's cost to provide the activity, class, or program;
- (b) the school's student enrollment;
- (c) the median income of families:
 - (i) within the school's boundary; or
 - (ii) enrolled in the school;
- (d) the number and monetary amount of fee waivers, designated by individual fee, annually granted within the prior three years;
- (e) the historical participation and school interest in certain activities;
- (f) the prior year fee schedule;
- (g) the amount of revenue collected from each fee in the prior year;
- (h) fund-raising capacity;
- (i) prior year community donors; and
- (j) other resources available, including through donations and fundraising.

(6)(a) An LEA shall annually provide written notice to a parent or guardian of each student who attends a school within the LEA of all current and applicable fee schedules and fee waiver policies.

(7)(a) If an LEA charges a fee, the LEA shall:

- (i) annually publish the LEA's fee waiver policies and fee schedule, including the fee maximums described in Subsection(4), on each of the LEA's schools' websites;
- (ii) annually include a copy of the LEA's fee schedule and fee waiver policies with the LEA's registration materials; and
- (iii) provide a copy of the LEA's fee schedule and fee waiver policies to a student's parent who enrolls a student after the initial enrollment period.

(b) If an LEA's student or parent population in a single language other than English exceeds 20%, the LEA shall also publish the LEA's fee schedule and fee waiver policies in the language of those families.

(c) An LEA representative shall meet personally with each student's parent or family and make available an interpreter for the parent to understand the LEA's fee waiver schedules and policies if:

- (i) the student or parent's first language is a language other than English; and

(ii) the LEA hasn't published the LEA's fee schedule and fee waiver policies in the parent's first language.

(8) A notice described in Subsection (6)(a) shall:

- (a) be in a form approved by the Board; and
- (b) include the following:

(i) for a school serving elementary students:

(A) School Fees Notice for Families of Children in Elementary School;

(B) Fee Waiver applications (Elementary School);

(C) Fee Waiver Decision and Appeals Form; and

(D) the Board's elementary school poster; and

(ii) for a school serving secondary students:

(A) School Fees Notice For Families of Students in a Secondary School;

(B) Fee Waiver Application (Secondary School);

(C) Application for Fee Waivers and Community Service (Secondary School);

(D) Community Service Assignments and Notice of Appeal Rights;

(E) Appeal of Community Service Assignment; and

(F) the Board's secondary school poster.

(9)(a) An LEA policy shall include easily understandable procedures for obtaining a fee waiver and for appealing an LEA's denial of a fee waiver, as soon as possible before the fee becomes due.

(b) If an LEA denies a student or parent request for a fee waiver, the LEA shall provide the student or parent:

(i) the LEA's decision to deny a waiver; and

(ii) the procedure for the appeal in the form approved by the Board.

(10)(a) A school may not deny a present or former student receipt of transcripts or a diploma, nor may a school refuse to issue a grade for a course for failure to pay school fees.

(b) A school may impose a reasonable charge to cover the cost of duplicating, mailing, or transmitting transcripts and other school records.

(c) A school may not charge for duplicating, mailing, or transmitting copies of school records to an elementary or secondary school in which a former student is enrolled or intends to enroll.

(11) To preserve equal opportunity for all students and to limit diversion of money and school and staff resources from the basic school program, each LEA's fee policies shall be designed to limit student expenditures for school-sponsored activities, including expenditures for activities, uniforms, clubs, clinics, travel, and subject area and vocational leadership organizations, whether local, state, or national.

R277-407-7. Donations in Lieu of Fees.

(1)(a) A school may not request or accept a donation in lieu of a fee from a student or parent unless the activity, class, or program for which the donation is solicited will otherwise be fully funded by the LEA and receipt of the donation will not affect participation by an individual student.

(b) A donation is a fee if a student or parent is required to make the donation as a condition to the student's participation in an activity, class, or program.

(c) An LEA may solicit and accept a donation or contribution in accordance with the LEA's policies, but all such requests must clearly state that donations and contributions by a student or parent are voluntary.

(2) If an LEA solicits donations, the LEA:

(a) shall solicit and handle donations in accordance with policies established by the LEA; and

(b) may not place any undue burden on a student or family in relation to a donation.

(3) An LEA may raise money to offset the cost to the LEA attributed to fee waivers granted to students through the LEA's foundation.

(4) An LEA shall direct donations provided to the LEA through the LEA's foundation in accordance with the LEA's policies governing the foundation.

(5) If an LEA accepts a donation, the LEA shall prevent potential inequities in schools within the LEA when distributing the donation.

R277-407-8. Fee Waivers.

(1)(a) All fees are subject to waiver.

(b) Fees charged for an activity, class, or program held outside of the regular school day, during the summer, or outside of an LEA's regular school year are subject to waiver.

(c) Non-waivable charges are not subject to waiver.

(2)(a) Except as provided in Subsection (2)(b), beginning with the 2020-21 school year, an LEA may not use revenue collected through fees to offset the cost of fee waivers by requiring students and families who do not qualify for fee waivers to pay an increased fee amount to cover the costs of students and families who qualify for fee waivers.

(b) An LEA may notify students and families that the students and families may voluntarily pay an increased fee amount or provide a donation to cover the costs of other students and families.

(c) For an LEA with multiple schools, the LEA shall distribute the impact of fee waivers across the LEA so that no school carries a disproportionate share of the LEA's total fee waiver burden.

(3) An LEA shall provide, as part of any fee policy or schedule, for adequate waivers or other provisions in lieu of fee waivers to ensure that no student is denied the opportunity to participate in a class or school-sponsored or supported activity because of an inability to pay a fee.

(4) An LEA shall designate at least one person at an appropriate administrative level in each school to review and grant fee waiver requests.

(5) An LEA shall administer the process for obtaining a fee waiver or pursuing an alternative fairly, objectively, without delay, and in a manner that avoids stigma, embarrassment, undue attention, and unreasonable burdens on students and parents.

(6) An LEA may not treat a student receiving a fee waiver or provision in lieu of a fee waiver differently from other students.

(7) A school may not identify a student on fee waiver to students, staff members, or other persons who do not need to know.

(8)(a) An LEA shall ensure that a fee waiver or other provision in lieu of fee waiver is available to any student whose parent is unable to pay a fee.

(b) A school or LEA administrator shall verify fee waivers consistent with this rule.

(9) An LEA shall submit school fee compliance forms to the Superintendent for each school that affirm compliance with the permanent injunction, consistent with *Doe v. Utah State Board of Education*, Civil No. 920903376 (3rd District 1994).

(10) An LEA shall adopt a fee waiver policy for review and appeal of fee waiver requests which:

(a) provides parents the opportunity to review proposed alternatives to fee waivers;

(b) establishes a timely appeal process, which shall include the opportunity to appeal to the LEA or its designee; and

(c) suspends any requirement that a given student pay a fee during any period for which the student's eligibility for waiver is under consideration or during which an appeal of denial of a fee waiver is in process.

(11) An LEA may pursue reasonable methods for collecting student fees, but may not, as a result of unpaid fees:

(a) exclude a student from a school, an activity, class, or program that is provided, sponsored, or supported by a school during the regular school day;

(b) refuse to issue a course grade; or

(c) withhold official student records, including written or electronic grade reports, diplomas or transcripts.

(12)(a) A school may withhold student records in accordance with Subsection 53G-8-212(2)(a).

(b) Notwithstanding Subsection (12)(a), a school may not withhold any records required for student enrollment or placement in a subsequent school.

(13) A school is not required to waive a non-waivable charge.

R277-407-9. Service In Lieu of Fees -- Voluntary Requests for Installment Plans.

(1) Subject to the provisions of Subsection (2), an LEA may allow a student to perform service in lieu of a fee, but service in lieu of a fee may not be required.

(2) An LEA may allow a student to perform service in lieu of a fee if:

(a) the LEA establishes a service policy that ensures that a service assignment is appropriate to the:

(i) age of the student;

(ii) physical condition of the student; and

(iii) maturity of the student;

(b) the LEA's service policy is consistent with state and federal laws, including:

(i) Section 53G-7-504; and

(ii) the Federal Fair Labor Standards Act, 29 U.S.C. 201;

(c) the service can be performed within a reasonable period of time; and

(d) the service is at least equal to the minimum wage for each hour of service.

(3)(a) A student who performs service may not be treated differently than other students who pay a fee.

(b) The service may not create an unreasonable burden for a student or parent and may not be of such a nature as to demean or stigmatize the student.

(4) An LEA shall transfer a student's service credit to:

(a) another school within the LEA; or

(b) another LEA upon request of the student.

(5)(a) An LEA may make an installment payment plan available to a parent or student to pay for a fee.

(b) An installment payment plan described in Subsection (5)(a) may not be required in lieu of a fee waiver.

(6) An LEA that charges fees shall adopt policies that include at least the following:

(a) a process for obtaining waivers or pursuing alternatives that is administered fairly, objectively, and without delay, and avoids stigma and unreasonable burdens on students and families;

(b) a process with no visible indicators that could lead to identification of fee waiver applicants;

(c) a process that complies with the privacy requirements of The Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 123g (FERPA);

(d) a student may not collect fees or assist in the fee waiver approval process;

(e) a standard written decision and appeal form is provided to every applicant; and

(f) during an appeal the requirement that the fee be paid is suspended.

R277-407-10. Individual and Group Fundraising Requirements.

(1) An LEA governing board shall establish a fundraising policy that includes a fundraising activity approval process.

(2) An LEA's fundraising policy described in Subsection (1):

(a) may not authorize, establish, or allow for required individual fundraising;

(b) may provide optional individual fundraising opportunities for students to raise money to offset the cost of the student's fees;

(c) may allow for required group fundraisers;

(d) may not deny a student membership on a team or group, ~~[or in an activity,]~~ based on the student's non-participation in a fundraiser; ~~[and]~~

(e) shall require compliance with the requirements of Rule R277-113 when using alternative methods of raising revenue that do not include students ~~[; and]~~

(f) shall include a requirement that a school notify parents of required group fundraising, letting parents and students know how and when specific details, as described in Subsection (3), will be provided.

(3) The specific details described in Subsection (2)(f) shall include a description of the nature of the required group fundraiser and the estimated participation time required of the student or parent for the required group fundraiser.

R277-407-11. Fee Waiver Eligibility.

(1) A student is eligible for fee waiver if an LEA receives verification that:

(a) in accordance with Subsection 53G-7-504(4), based on the family income levels established by the Superintendent as described in Subsection (2);

(b) the student to whom the fee applies receives SSI;

(c) the family receives TANF funding;

(d) the student is in foster care through the Division of Child and Family Services; or

(e) the student is in state custody.

(2) The Superintendent shall annually establish income levels for fee waiver eligibility and publish the income levels on the Board's website.

(3) In lieu of income verification, an LEA may require alternative verification under the following circumstances:

(a) If a student's family receives TANF, an LEA may require a letter of decision covering the period for which a fee waiver is sought from the Utah Department of Workforce Services;

(b) If a student receives SSI, an LEA may require a benefit verification letter from the Social Security Administration;

(c) If a student is in state custody or foster care, an LEA may rely on the youth in care required intake form and school enrollment letter or both provided by a case worker from the Utah Division of Child and Family Services or the Utah Juvenile Justice Department.

(d) An LEA may not subject a family to unreasonable demands for re-qualification.

(4) A school may grant a fee waiver to a student, on a case by case basis, who does not qualify for a fee waiver under Subsection (1), but who, because of extenuating circumstances is not reasonably capable of paying the fee.

(5) An LEA may charge a proportional share of a fee or reduced fee if circumstances change for a student or family so that fee waiver eligibility no longer exists.

R277-407-12. Fees for Textbooks and Remediation.

(1) Beginning with the 2022-23 school year, an LEA may not charge a fee for[-:

~~-----~~(a) a textbook as provided in Section 53G-7-603, except for a textbook used for a concurrent enrollment or advanced placement course as described in Subsection (2); ~~]; or~~

~~-----~~(b) a remediation course, if, as described in Subsection 53G-7-504(1)(b):

~~-----~~(i) the student or the student's parent is financially unable to pay the fee;

~~-----~~(ii) the fee for remediation would constitute an extreme financial hardship on the student or student's parent; or

~~-----~~(iii) the student has suffered a long-term illness, death in the family, or other major emergency.]

(2)(a) An LEA may charge a fee for a textbook used for a concurrent enrollment or advanced placement.

(b) A fee for a textbook used for a concurrent enrollment or advanced placement course is fee waivable as described in Section R277-407-8.

R277-407-13. Budgeting and Spending Revenue Collected Through Fees -- Fee Revenue Sharing Requirements.

(1) An LEA shall follow the general accounting standards described in Rule R277-113 for treatment of fee revenue.

(2) An LEA shall:

(a) establish a spend plan for the revenue collected from each fee charged; and

(b) if the LEA has two or more schools within the LEA, share revenue lost due to fee waivers across the LEA.

(3)(a) A spend plan described in Subsection (2)(a) provides students, parents, and employees transparency by identifying a fee's funding uses.

(b) An LEA or school's spend plan shall identify the needs of the activity, course, or program for the fee being charged and shall include a list or description of anticipated types of expenditures, for the current fiscal year or as carryover for use in a future fiscal year, funded by the fee charged.

~~[(3)](4)(a)~~ Financial inequities or disproportional impact of fee waivers may not fall inequitably on any one school within an LEA.

(b) An LEA that has multiple schools shall establish a procedure to identify and address potential inequities due to the impact of the number of students who receive fee waivers within each of the LEA's schools.

R277-407-14. Fee Waiver Reporting Requirements.

(1) An LEA shall attach the following to the LEA's annual year end report for inclusion in the Superintendent's annual report:

- (a) a summary of:
 - (i) the number of students in the LEA given fee waivers;
 - (ii) the number of students who worked in lieu of a waiver;

and

(iii) the total dollar value of student fees waived by the LEA;

- (b) a copy of the LEA's fee and fee waiver policies;
- (c) a copy of the LEA's fee schedule for students; and
- (d) the notice of fee waiver criteria provided by the LEA to a student's parent or guardian.

(e) a fee waiver compliance form approved by the Superintendent for each school and LEA.

R277-407-15. Superintendent and LEA Policy and Training Requirements.

(1) The Superintendent shall provide ongoing training, informational materials, and model policies, as available, for use by LEAs.

(2) The Superintendent shall provide online training and resources for LEAs regarding:

- (a) an LEA's fee approval process;
- (b) LEA notification requirements;
- (c) LEA requirements to establish maximum fees;
- (d) fundraising practices;
- (e) fee waiver eligibility requirements, including requirements to maintain student and family confidentiality; and

(f) community service or fundraising alternatives for students and families who qualify for fee waivers.

(3) An LEA governing board shall annually review the LEA's policies on school fees, fee waivers, fundraising, and donations.

(4) An LEA shall develop a plan for, at a minimum, annual training of LEA and school employees on fee related policies enacted by the LEA specific to each employee's job function.

R277-407-16. Enforcement.

(1) The Superintendent shall monitor LEA compliance with this rule:

(a) through the compliance reports provided in Section R277-407-14; and

(b) by such other means as the Superintendent may reasonably request at any time.

(2) If an LEA fails to comply with the terms of this rule or request of the Superintendent, the Superintendent shall send the LEA a first written notice of non-compliance, which shall include a proposed corrective action plan.

(3) Within 45 days of the LEA's receipt of a notice of non-compliance, the LEA shall:

(a) respond to the allegations of noncompliance described in Subsection (2); and

(b) work with the Superintendent on the Superintendent's proposed corrective action plan to remedy the LEA's noncompliance.

(4)(a) Within fifteen days after receipt of a proposed corrective action plan described in Subsection (3)(b), an LEA may request an informal hearing with the Superintendent to respond to allegations of noncompliance or to address the appropriateness of the proposed corrective action plan.

(b) The form of an informal hearing described in Subsection (4)(a) shall be as directed by the Superintendent.

(5) The Superintendent shall send an LEA a second written notice of non-compliance and request for the LEA to appear before a Board standing committee if:

(a) the LEA fails to respond to the first notice of non-compliance within 60 days; or

(b) the LEA fails to comply with a corrective action plan described in Subsection (3)(b) within the time period established in the LEA's corrective action plan.

(6) If an LEA that failed to respond to a first notice of non-compliance receives a second written notice of non-compliance, the LEA may:

(a)(i) respond to the notice of non-compliance described in Subsection (5); and

(ii) work with the Superintendent on a corrective action plan within 30 days of receiving the second written notice of non-compliance; or

(b) seek an appeal as described in Subsection (8)(b).

(7) If an LEA that failed to respond to a first notice of non-compliance fails to comply with either of the options described in Subsection (6), the Superintendent shall impose one of the financial consequences described in Subsection (10).

(8)(a) Prior to imposing a financial consequence described in Subsection (10), the Superintendent shall provide an LEA thirty days' notice of any proposed action.

(b) The LEA may, within fifteen days after receipt of a notice described in Subsection (8)(a), request an appeal before the Board.

(9) If the LEA does not request an appeal described in Subsection (8)(b), or if after the appeal the Board finds that the allegations of noncompliance are substantially true, the Superintendent may continue with the suggested corrective action, formulate a new form of corrective action or additional terms and conditions which must be met and may proceed with the appropriate remedy which may include an order to return funds improperly collected.

(10) A financial consequence may include:

(a) requiring an LEA to repay an improperly charged fee, commensurate with the level of non-compliance;

(b) withholding all or part of an LEA's monthly Minimum School Program funds until the LEA comes into full compliance with the corrective action plan; and

(c) suspending the LEA's authority to charge fees for an amount of time specified by the Superintendent or Board in the determination.

(11) The Board's decision described in Subsection (9) is final and no further appeals are provided.

R277-407-17. Enforceable Date.

(1) This rule will be enforceable beginning January 1, 2020.

KEY: education, school fees

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

Notice of Continuation: July 19, 2017
Authorizing, and Implemented or Interpreted Law: Art X Sec 2; Art X Sec 3; 53E-3-401(4); 53G-7-503; Doe v. Utah State Board of Education, Civil No. 920903376

Education, Administration
R277-468
Parent/Guardian Review of Public Education Curriculum and Review of Complaint Process

NOTICE OF PROPOSED RULE
 (Amendment)
 DAR FILE NO.: 44126
 FILED: 10/10/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-468 is being amended to require local education agencies (LEAs) to include parents in curriculum material review.

SUMMARY OF THE RULE OR CHANGE: Rule R277-468 is being amended with formatting and technical corrections to comply with the rulewriting manual and language is being added for parental involvement with instructional material.

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

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** These rule changes are not expected to have any fiscal impact on state government revenues or expenditures. Staff have also made formatting and technical corrections to this rule and thus these rule changes will not have a fiscal impact.
- ◆ **LOCAL GOVERNMENTS:** These rule changes are not expected to have any fiscal impact on local governments' revenues or expenditures. Staff have also made formatting and technical corrections to this rule and thus these rule changes will not have a fiscal impact.
- ◆ **SMALL BUSINESSES:** These rule changes are not expected to have any fiscal impact on small businesses' revenues or expenditures. Staff have also made formatting and technical corrections to this rule and thus these rule changes will not have a fiscal impact.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** These rule changes are not expected to have any fiscal impact on persons' other than small businesses', businesses', or local government entities' revenues or expenditures. Staff have also made formatting and technical corrections to this rule and thus these rule changes will not have a fiscal impact.

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

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

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 EDUCATION
 ADMINISTRATION
 250 E 500 S
 SALT LAKE CITY, UT 84111-3272
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ◆ Angela Stallings by phone at 801-538-7550, by FAX at 801-538-7768, or by Internet E-mail at angie.stallings@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/02/2019

THIS RULE MAY BECOME EFFECTIVE ON: 12/09/2019

AUTHORIZED BY: Angela Stallings, Deputy Superintendent of Policy

Appendix 1: Regulatory Impact Summary Table*

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

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

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

Appendix 2: Regulatory Impact to Non-Small Businesses

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

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

R277. Education, Administration.

R277-468. Parents[Guardian] Review of Public Education Curriculum and Review of Complaint Process.

R277-468-1. Authority and Purpose.

(1) This rule is authorized by:

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

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

(2) The purpose of this rule is to direct an LEA to include parents in the adoption and review of an LEA's primary instructional materials including the review of complaints specific to curriculum materials.

R277-468-[1]2. Definitions.

[~~_____~~ A. "Board" means the Utah State Board of Education.]

B. "Instructional materials" means the same as the term is defined in Section 53E-4-401,~~[systematically arranged content in text or digital format which may be used within the state curriculum framework for grade levels or courses of study by students in public schools including text books, workbooks, computer software, online or Internet courses, CDs or DVDs and multiple forms of communication media. Such materials may be used by students or teachers or both as principal sources of study to cover any portion of the grade level or course. These materials:~~

~~_____ (1) shall be designed for student use;~~

~~_____ (2) may be accompanied by or contain teaching guides and study helps;~~

~~_____ (3) shall include all text books, workbooks and student materials and supplements necessary for a student to fully participate in coursework; and~~

~~_____ (4) shall be high quality, research-based and prove to be effective in supporting student learning.~~

~~_____ C. "LEA" means a local education agency, including local school boards/public school districts, charter schools, and, for purposes of this rule, the Utah Schools for the Deaf and the Blind.~~

~~_____ D. "Parent or guardian" means the individual that establishes the residency of the child under Sections 53G-6-302, 53G-6-303, or 53G-6-402 or another applicable Utah guardianship provision.~~

~~_____ E. "Primary instructional materials" means comprehensive or basal Core textbook or integrated instructional program for which a publisher seeks a recommendation for Core subjects as outlined in Sections R277-700 4, 5 or 6.~~

R277-468-2. Authority and Purpose.

~~_____ A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision over public education in the Board, Subsections 53E-3-401(1)(b) and (c) which require the Board to establish rules regarding competency levels, graduation requirements, school accreditation, curriculum and instruction requirements, and school libraries, and Subsection 53E-3-401(3) which allows the Board to adopt rules in accordance with its responsibilities.~~

~~_____ B. The purpose of this rule is to direct LEAs, consistent with the Board's responsibility to involve parents in the adoption and review of LEA primary instructional materials to support Utah Core Standards, and to include parents in reviewing complaints specific to primary curriculum materials.]~~

R277-468-3. [LEA Board Responsibilities]Parental Involvement with Instructional Material.

(1)[A:] [Each]An LEA shall involve parents, who have a student[s] who attends [LEA schools]a school within the LEA, and instructional staff in the consideration of LEA-purchased instructional materials.

(2)[B:] [Each]An LEA shall include parents, who have a student who attends a school within the LEA, in reviewing complaints specific to [primary curriculum]instructional materials.

(3)[C:] An LEA[s] may seek assistance from parent organizations or associations or other groups to recruit and select parent members for the purposes described in subsection (1) and (2) [materials and complaint reviews].

R277-468-4. ~~[USOE Responsibilities]~~ Parental Involvement Resources.

~~[A:](1) [The USOE shall develop and make readily available to]An LEA[s] may request the Board provide the LEA [suggestions]resources for effective parent participation in the instructional materials review or complaint process[and the complaint review process].~~

~~[B:](2) [The USOE shall assist LEAs]An LEA may request the Board assist the LEA in policy development regarding parental involvement in the instructional materials review or complaint process[, upon request and to the extent of resources available].~~

KEY: parents[/~~guardian~~], committees, curriculum, complaints

Date of Enactment or Last Substantive Amendment: ~~[March 10, 2015]~~2019

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; ~~[53E-3-401(1)(b); 53E-3-401(1)(e);]~~53E-3-401(3)

Education, Administration
R277-927
 Teacher and Student Success Act
 (TSSA) Program

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 44127

FILED: 10/10/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Utah State Board of Education (Board) has been informed that the legislative intent of the definition of "early childhood education" in Section 53G-7-1304 was meant to include preschool. This amendment to this rule is to codify the legislative intent.

SUMMARY OF THE RULE OR CHANGE: Subsection R277-927-2(2) is being amended to define "early childhood education" to include preschool programs, which allows program money to be used on preschool.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Article X Section 3 and Section 53F-2-416 and Section 53G-7-1304 and Section 53G-7-1306 and Subsection 53E-3-401(4)

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** This rule change is not expected to have any fiscal impact on state government revenues or expenditures. Since the last amendment to Rule R277-927, staff has been informed that the legislative intent of the definition of "early childhood education" in Section 53G-7-1304 was meant to include preschool. Thus, this rule change

clarifies that early childhood education includes preschool programs. This program is funded through an appropriation from the Legislature's Teacher and Student Success Account and thus this rule change will not have an independent fiscal impact.

♦ **LOCAL GOVERNMENTS:** This rule change is not expected to have any fiscal impact on local governments' revenues or expenditures. Since the last amendment to R277-927, staff has been informed that the legislative intent of the definition of "early childhood education" in Section 53G-7-1304 was meant to include preschool. Thus, this rule change clarifies that early childhood education includes preschool programs. This program is funded through an appropriation from the Legislature's Teacher and Student Success Account and thus this rule change will not have an independent fiscal impact.

♦ **SMALL BUSINESSES:** This rule change is not expected to have any material fiscal impact on small businesses' revenues or expenditures because the rule is about the Teacher and Student Success Act Program which is a state program and thus does not apply to small businesses.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule change is not expected to have any material fiscal impacts on persons' other than small businesses', businesses', or local government entities' revenues or expenditures because this rule is about the Teacher and Student Success Act Program which is a state program and thus does not apply to other individuals.

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

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

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

EDUCATION
 ADMINISTRATION
 250 E 500 S
 SALT LAKE CITY, UT 84111-3272
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Angela Stallings by phone at 801-538-7550, by FAX at 801-538-7768, or by Internet E-mail at angie.stallings@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/02/2019

THIS RULE MAY BECOME EFFECTIVE ON: 12/09/2019

AUTHORIZED BY: Angela Stallings, Deputy Superintendent of Policy

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

Appendix 2: Regulatory Impact to Non-Small Businesses

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

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

Appendix 1: Regulatory Impact Summary Table*

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

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

R277-927. Education, Administration.

R277-927. Teacher and Student Success Act (TSSA) Program.

R277-927-1. Authority and Purpose.

- (1) This rule is authorized by:
 - (a) Utah Constitution Article X, Section 3, which vests general control and supervision of public education in the Board;
 - (b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and
 - (c) Section 53F-2-416, which requires the Board to calculate and distribute student and teacher success program money to LEAs;
 - (d) Section 53G-7-1304, which requires the Board to make rules for an LEA governing board to calculate and distribute a school's allocation of program money for each school within the LEA; and
 - (e) Section 53G-7-1306, which require the Board to determine:
 - (i) a threshold of points under the statewide school accountability system that designates a school as succeeding in school performance and student academic achievement; and
 - (ii) performance standards for certain schools.
- (2) The purpose of this rule is to:
 - (a) set standards for the Board's distribution of student and teacher success program money to LEAs;
 - (b) set standards governing an LEA's distribution of student and teacher success program money to each school within the LEA; and
 - (c) to establish certain accountability standards related to the student and teacher success program.

R277-927-2. Definitions.

- (1) As used in Subsection 53G-7-1304, "capital expenditures" are funds used to acquire, maintain, or upgrade physical assets like property, building, technology, or equipment and may include:
 - (a) improvements to a building or school grounds;
 - (b) a school bus;
 - (c) rent, lease, or bond payments; and
 - (d) a portable classroom or costs related to moving a portable classroom.
- (2) As used in Subsection 53G-7-1304(1), "early childhood education" includes preschool programs.

~~(2)~~3 "Program" means the student and teacher success program created in Section 53G-7-1302.

~~(3)~~4 "Satellite school" means the same as that term is defined in R277-550.

~~(4)~~5 "School personnel who work directly with and support students in an academic role" does not include:

- (a) school level administrative or operational staff;
- (b) building and maintenance staff, including custodial and grounds staff;
- (c) transportation staff;
- (d) child nutrition services staff;
- (e) operational or facility support staff;
- (f) financial staff;
- (g) information technology staff;
- (h) legal staff;
- (i) secretarial staff; or
- (j) other district level staff paid on an administrative salary schedule.

R277-927-3. Program Requirements and Board Distribution of Program Money.

(1)(a) For the 2019-20 school year, the Superintendent shall distribute an LEA's annual program allocation, in equal payment amounts, to an LEA once the LEA submits the LEA's student success framework through the Board's grant management system.

(b) If an LEA amends the LEA's student success framework, the LEA shall submit the amended student success framework through the Board's grant management system.

(2) Beginning with the 2020-21 school year, if the LEA previously submitted a student success framework, before the LEA receives the LEA's annual program allocation, the LEA shall submit annual assurances in accordance with the requirements of R277-108.

(3) If an LEA fails to submit the LEA's student success framework as described in Subsection (1) or annual assurances described in Subsection (2) to the Superintendent by November 1 of a fiscal year:

(a) the LEA may not receive a program allocation for that fiscal year; and

(b) the undistributed balance will be included with the new year appropriation and distributed in the following fiscal year according to the formula described in Subsection 53F-2-416(3).

(4) For purposes of calculating the formula described in Subsection 53F-2-416(3), "weighted pupil units" means:

- (a) for a school district or charter school:
 - (i) the weighted pupil units for the current year budget request for the minimum school basic program; minus
 - (ii) the weighted pupil units allocated to LEAs for foreign exchange students; and
- (b) for the Utah Schools for the Deaf and Blind, USDB's prior year October 1 headcount multiplied by two.

(5) For a new LEA or new charter satellite campus in the LEA or charter school satellite's second year of operation, the Superintendent shall increase or decrease the new LEA or charter school satellite's first year distribution of funds in the LEA or charter school satellite's second year to reflect the LEA or charter school satellite's actual first year October 1 counts.

(6) For purposes of determining whether a school district in a county of the first, second, or third class has an approved board local levy for the maximum amount allowed for the purposes described in Subsection 53G-7-1304(2)(c)(i)(A), the school district meets the property tax requirements of Subsection 53G-7-1304(2)(a)(i) if in the applicable fiscal year:

(a) the school district's rate imposed for the board local levy is equal to the maximum amount allowed under Section 53F-8-302; or

(b)(i) meets or exceeds an amount equal to the certified board local levy rate; and

(ii) the school district's board local levy rate equaled the maximum amount allowed under Section 53F-8-302 sometime within the prior five fiscal years.

(7) For purposes of determining whether a school district in a county of the first, second, or third class increased the school district's board local levy by at least .0001 per dollar of taxable value as described in Subsection 53G-7-1304(2)(c)(i)(B), a school district that does not meet the property tax requirements of Subsection (6), the school district meets the requirements of Subsection 53G-7-1304(2)(c)(i)(B) if the school district's board local levy rate for the current fiscal year is at least .0001 per dollar of taxable value more than the school district's board local levy rate imposed in the prior fiscal year.

(8) For fiscal year 2020, "state average teacher salary" means a weighted calculation of the statewide teacher salary expenditures reported on the annual financial report by LEA from fiscal year 2018 divided by the number of full-time equivalent educators or FTEs from the most recent educator cactus submission.

(9) Except as provided in Subsection (10), for fiscal year 2020, "LEA's average teacher salary" means the LEA's teacher salary expenditures reported on the annual financial report from fiscal year 2018 divided by the LEA's number of full-time equivalent educators or FTEs from the most recent educator cactus submission.

(10) For a new LEA in the new LEA's first or second year of operation, the new LEA's average teacher salary is equal to the state average teacher salary.

R277-927-4. LEA Financial Reporting and Prohibited Uses of Program Funds.

(1) An LEA shall report expenditures of program money by location according to the Board approved chart of accounts.

(2) An LEA may not use program money:

- (a) for a purpose described in Subsection 53G-7-1304(1);
- (b) to support adult education~~[-or preschool programs]~~; or
- (c) to pay for contracted services commonly performed by the following staff:

- (i) school level administration staff;
- (ii) building and maintenance staff, including custodial staff;

- (iii) transportation staff;
- (iv) child nutrition services staff;
- (v) operational or facility support staff; or
- (vi) district level staff.

(3) As used in Subsection 53G-7-1304(2), "district administration costs" does not include salary driven benefits for school personnel charged at the district level.

(4) An LEA may carry over restricted program funds into the next fiscal year to support a purpose identified by the LEA governing board student success framework. Any funds carried over must be reported according to the Board approved chart of accounts.

R277-927-5. LEA Allocations to Schools.

(1) An LEA with two or more schools shall establish a policy that defines how the LEA will calculate and distribute program allocations based on prior year average daily membership as determined by the Superintendent, to all schools within the LEA, including how the LEA will calculate allocations for new schools within the LEA.

(2) For a new school within an LEA, the LEA shall calculate and distribute school's allocation based on the school's projected October 1 headcount for the applicable school year.

(3) After calculating an LEA's school level allocations, an LEA may make adjustments to individual school ADM values and school level allocations due to changes in current year student enrollment for reasons including:

- (a) changes in school boundaries;
- (b) changes to feeder school patterns;
- (c) changes in grade levels offered; or
- (d) significant student growth of 30% or more.

R277-927-6. Accountability Performance Standards.

(1) For purposes of determining the threshold of points that designates a school as succeeding in school performance as described in Subsection 53G-7-1306(1)(a), a school is succeeding in school performance if, in the most recently published overall school accountability ratings the school is designated as a commendable or exemplary school as described in Section R277-497-2.

(2) For purposes of determining the performance standards for a school described in Section 53G-7-1306(1)(b), a school meets the performance standards if the school meets the criteria described in Section 53E-5-203(2).

KEY: [~~Student and Teacher~~]Teacher and Student Success Act (TSSA), program money, allocation

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

Authorizing, and Implemented, or Interpreted Law: Art X Sec 3; 53E-3-401(4), 53F-2-416, 53G-7-1304, 53G-7-1306

Health, Health Care Financing,
Coverage and Reimbursement Policy

R414-303

Coverage Groups

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 44129

FILED: 10/15/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of these changes is to allow foster care children from other states or tribes to receive Former Foster Care coverage.

SUMMARY OF THE RULE OR CHANGE: This amendment allows Former Foster Care coverage for foster care individuals who arrive from any state or tribe, as long as they received Medicaid coverage during the foster care period in which they turned 18 years of age. It also updates federal citations, removes duplicative language, and makes other technical changes.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Pub. L. No. 111-148 and Section 26-1-5 and Section 26-18-3

MATERIALS INCORPORATED BY REFERENCE:

- ◆ Removes 42 CFR 435.115(e)(2), published by Government Printing Office, 10/01/2015
- ◆ Removes Title XIX of the Social Security Act, Section 1931(c)(1) and Section 1931(c)(2), published by Social Security Administration, 01/01/2013
- ◆ Removes 42 CFR 435.112 and 435.115(f), (g) and (h), published by Government Printing Office, 10/01/2012
- ◆ Removes Subsection 1902(a)(10)(A)(i)(I) of the Social Security Act, published by Social Security Administration, 01/01/2014
- ◆ Removes 42 CFR 435.227, published by Government Printing Office, 10/01/2013
- ◆ Removes Subsection 1902(a)(10)(A)(i)(IX) and Subsection 1902(a)(10)(A)(ii)(XVII) of the Social Security Act, published by Social Security Administration, 10/01/2013
- ◆ Removes 42 CFR 435.115(e)(1), published by Government Printing Office, 10/01/2013

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There is an annual cost of about \$56,200 to the state budget.
- ◆ **LOCAL GOVERNMENTS:** There is no impact on local governments because they neither fund nor provide foster care services under the Medicaid program.
- ◆ **SMALL BUSINESSES:** Small businesses may see a share of annual revenue up to \$56,200 with the increase in foster care coverage.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Medicaid providers may see a share of annual revenue up to \$56,200 with the increase in foster care coverage, while individuals who become eligible for the Former Foster Care Individuals Program may see a share of out-of-pocket savings based on that amount.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs because this change can only result in increased revenue and out-of-pocket savings.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Businesses will see a share of revenue with the expansion of foster care coverage.

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 801-237-0750, 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 12/02/2019

THIS RULE MAY BECOME EFFECTIVE ON: 12/09/2019

AUTHORIZED BY: Joseph Miner, MD, Executive Director

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2020	FY 2021	FY 2022
State Government	\$56,200	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Person	\$0	\$0	\$0
Total Fiscal Costs:	\$56,200	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0

Small Businesses	\$16,900	\$0	\$0
Non-Small Businesses	\$39,300	\$0	\$0
Other Persons	\$56,200	\$0	\$0
Total Fiscal Benefits:	\$56,200	\$0	\$0
Net Fiscal Benefits:			
	\$56,200	\$0	\$0

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

Appendix 2: Regulatory Impact to Non-Small Businesses

About 27,000 non-small businesses are Medicaid providers and they may see a share of revenue up to \$39,300, with the increase in foster care coverage.

The Executive Director of the Department of Health, Joseph K. Miner, MD, has reviewed and approved this fiscal analysis.

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

R414-303. Coverage Groups.

R414-303-7. Four-Month Transitional Medicaid.

(1) The Department provides coverage to individuals as described in 42 CFR 435.115. This coverage group is known as the 4 Month Extended program. ~~adopts and incorporates by reference 42 CFR 435.112 and 435.115(f), (g) and (h), October 1, 2012 ed., and Title XIX of the Social Security Act, Section 1931(e)(1) and Section 1931(e)(2) in effect January 1, 2013, to provide four months of extended medical assistance to a household when the parent or caretaker relative is eligible and enrolled in Medicaid as defined in 42 CFR 435.110, and loses eligibility for the reasons defined in 42 CFR 435.112 and 435.115.]~~

(a) A pregnant woman who is eligible and enrolled in Medicaid as defined in 42 CFR 435.116, and who meets the income limit defined in 42 CFR 435.110 for three of the prior six months, is eligible to receive four-month extended coverage. ~~Four-Month Transitional Medicaid for the reasons defined in 42 CFR 435.112 and 435.115.~~

~~(b) Children who live with the parent are eligible to receive Four-Month Transitional Medicaid.]~~

(b[2]) Changes in household composition do not affect eligibility for the four-month extension period. Newborn babies are considered household members even if they are not born the month the household became ineligible for Medicaid. New members added to the case will lose eligibility when the household loses eligibility. Assistance shall be terminated for household members who leave the household.

R414-303-8. ~~Foster Care, Former Foster Care Youth and Independent Foster Care Individuals~~~~Adolescents~~.

(1) ~~The Department adopts and incorporates by reference 42 CFR 435.115(e)(2), October 1, 2015 ed. The Department also adopts and incorporates by reference Subsection 1902(a)(10)(A)(i)(IX) and Subsection 1902(a)(10)(A)(ii)(XVII) of the Social Security Act, effective January 1, 2016.~~

~~(2) Eligibility for foster children who meet the definition of a dependent child under the State Plan for Aid to Families with Dependent Children in effect on July 16, 1996, is not governed by this rule. The Department of Human Services determines eligibility for foster care Medicaid.~~

~~(3) The Department provides coverage to individuals as described in 42 CFR 435.150. The coverage group is known as the Former Foster Care Individuals program, covers individuals who are under the responsibility of any state and meet the criteria of Subsection 1902(a)(10)(A)(i)(IX) of the Social Security Act. Former Foster Care Youth is the name of this coverage group.~~

~~(a) Coverage is available through the month in which the individual turns 26 years of age.~~

~~(b) There is no income or asset test for eligibility under this group.]~~

~~(4) When funds are available, the Department elects to cover individuals who are under 21 years of age as described in 42 CFR 435.226. The coverage group is known as the Foster Care Independent Living program, who are in foster care under the responsibility of the State at the time the individual turns 18 years of age, are not eligible under the Former Foster Care Youth coverage group, and who are 18 years old but not yet 21 years old as described in Subsection 1902(a)(10)(A)(ii)(XVII) of the Social Security Act. This coverage is under the Independent Foster Care Adolescents program. The Department determines eligibility according to the following requirements:~~

~~(a) At the time the individual turns 18 years of age, the individual must be in the custody of the Division of Child and Family Services, or the Department of Human Services if the Division of Child and Family Services is the primary case manager, or a federally recognized Indian tribe, but not in the custody of the Division of Youth Corrections.~~

~~(b) Income and assets of the child are not counted to determine eligibility under the Independent Foster Care Adolescents program.~~

~~(c) When funds are available, an eligible independent foster care adolescent may receive Medicaid under this coverage group until he or she reaches 21 years of age, and through the end of that month.]~~

~~(3) The Department elects to cover an individual under the responsibility of any state or tribe at the time the individual turns 18 years of age, and was enrolled in Medicaid or the 1115 demonstration project at any time during the foster care period in which the individual turned 18.~~

~~(4) There is no income or asset test for eligibility under the Former Foster Care or the Foster Care Independent Living programs.~~

R414-303-9. Foster Care, Subsidized Adoptions, and Kinship Guardianship Children.

(1) The Department provides coverage to foster care, subsidized adoption, and kinship guardianship individuals as described in 42 CFR 435.145.~~The Department adopts and incorporates by~~

~~reference 42 CFR 435.115(e)(1), October 1, 2013 ed, in regard to Subsidized Adoption Medicaid.]~~

(2) The Department elects to cover individuals under a state adoption agreement as defined in 42 CFR 435.227,~~October 1, 2013 ed., which is adopted and incorporated by reference.~~

~~(3) The Department may not impose resource or income tests for a child eligible under a state subsidized adoption agreement.~~

~~(4) The Department adopts and incorporates by reference Subsection 1902(a)(10)(A)(i)(I) of the Social Security Act, effective January 1, 2014, in regard to Kinship Guardianship Medicaid.]~~

(3[5]) The Department of Human Services determines eligibility for Foster Care, [s]Subsidized [a]Adoption, and Kinship Guardianship Medicaid.

KEY: MAGI-based, coverage groups, former foster care youth, presumptive eligibility

Date of Enactment or Last Substantive Amendment: [August 29,] 2019

Notice of Continuation: January 8, 2018

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

Health, Health Care Financing, Coverage and Reimbursement Policy **R414-504-3** Principles of Facility Case Mix Rates and Other Payments

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 44131

FILED: 10/15/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to clarify the Minimum Data Set (MDS) Optional State Assessment (OSA) is required in Utah for purposes of calculating the case mix index needed for rate setting.

SUMMARY OF THE RULE OR CHANGE: This amendment clarifies that each nursing facility must submit the MDS OSA data so the state may calculate the case mix index needed for rate setting.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-1-5 and Section 26-18-3 and Title 26 Chapter 35a

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** There is no impact to the state budget because this change only clarifies the need for MDS OSAs, which is a new method for the facilities to submit similar MDS data as they have done in the past.

- ◆ LOCAL GOVERNMENTS: There is no impact on local governments because this change only clarifies the need for MDS OSAs, which is a new method for the facilities to submit similar MDS data as they have done in the past.
- ◆ SMALL BUSINESSES: There is no impact on small businesses because this change only clarifies the need for MDS OSAs, which is a new method for the facilities to submit similar MDS data as they have done in the past.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no impact on Medicaid providers and Medicaid members because this change only clarifies the need for MDS OSAs, which is a new method for the facilities to submit similar MDS data as they have done in the past.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs to a single Medicaid provider or to a Medicaid member because this change only clarifies the need for MDS OSAs, which is a new method for the facilities to submit similar MDS data as they have done in the past.

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

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 HEALTH
 HEALTH CARE FINANCING,
 COVERAGE AND REIMBURSEMENT POLICY
 CANNON HEALTH BLDG
 288 N 1460 W
 SALT LAKE CITY, UT 84116-3231
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ◆ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-237-0750, 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 12/02/2019

THIS RULE MAY BECOME EFFECTIVE ON: 12/09/2019

AUTHORIZED BY: Joseph Miner, MD, Executive Director

Appendix 1: Regulatory Impact Summary Table*

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

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

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

Appendix 2: Regulatory Impact to Non-Small Businesses

None of the 88 non-small businesses that are nursing facilities will see a fiscal impact as this change only clarifies the need for certain data to calculate the case mix index for rate setting.

The Executive Director of the Department of Health, Joseph K. Miner, MD, has reviewed and approved this fiscal analysis.

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

R414-504. Nursing Facility Payments.

R414-504-3. Principles of Facility Case Mix Rates and Other Payments.

The following principles apply to the payment of freestanding and provider based nursing facilities for services rendered to nursing care level I, II, and III Medicaid patients, as defined in Rule R414-502. This rule does not affect the system for reimbursement for intensive skilled Medicaid patient add-on amounts.

(1) Approximately 59% of total payments in aggregate to nursing facilities for nursing care level I, II and III Medicaid patients are based on a prospective facility case mix rate. In addition, these facilities shall be paid a flat basic operating expense payment equal to

approximately 29% of the total payments. The balance of the total payments will be paid in aggregate to facilities as required by Section R414-504-3 based on other authorized factors, including property and behaviorally complex residents, in the proportion that the facility qualifies for the factor.

(2) Each quarter, the Department shall calculate a new case mix index for each nursing facility. The case mix index is based on three months of MDS assessment data. The newly calculated case mix index is applied to a new rate at the beginning of a quarter according to the following schedule:

(a) January, February and March MDS assessments are used for July 1 rates.

(b) April, May and June MDS assessments are used for October 1 rates.

(c) July, August and September MDS assessments are used for January 1 rates.

(d) October, November and December MDS assessments are used for April 1 rates.

(3) MDS and Optional State Assessment (OSA) data is used in calculating each facility's case mix index and Upper Payment Limit (UPL) gap. This information is required by the State to calculate the case mix index. MDS/OSA is submitted by each facility and, as such, each facility is responsible for the accuracy of its data. The Department may exclude inaccurate or incomplete MDS data from the calculation.

(4)(a) MDS assessments for recipients who are eligible for the "Intensive Skilled" add-on are excluded from the case mix calculation.

(b) The state average case mix index excludes the following:

(i) A facility with less than 20 percent of its total census days as Medicaid days, as reported on its FCP or FRV data report; or

(ii) A facility having less than six (6) months of data reported under Rule R414-401.

(c) The state average case mix index is used to set the rate for the following facilities:

(i) A facility with less than 20 percent of its total census days as Medicaid days, as reported on its FCP or FRV data report; or

(ii) A facility having less than six (6) months of data reported under Rule R414-401.

(5) A facility may apply for a special add-on rate for behaviorally complex residents by filing a written request with the Division of Health Care Financing. The Department may approve an add-on rate if an assessment of the acuity and needs of the patient demonstrates that the facility is not adequately reimbursed by the RUGS score for that patient. The rate is added on for the specific resident's payment and is not subsumed as part of the facility case mix rate. Utah's Bureau of Health Facility Licensure, Certification and Resident Assessment will make the determination as to qualification for any additional payment. The Division of Health Care Financing shall determine the amount of any add-on.

(6) Property costs are paid separately from the RUGS rate.

(7) Reimbursement for nursing home rates is in accordance with Attachment 4.19-D of the Utah Medicaid State Plan, which is incorporated by reference in Rule R414-1.

(8) A sole community provider that is financially distressed may apply for a payment adjustment above the case mix index established rate. The maximum increase will be 7.5% above the average of the most recent Medicaid daily rate for all Medicaid

residents in all freestanding nursing facilities in the state. The maximum duration of this adjustment is for no more than a total of 12 months per facility in any five-year period.

(a) The application shall propose what the adjustment should be and include a financial review prepared by the facility documenting:

(i) the facility's income and expenses for the past 12 months; and

(ii) specific steps taken by the facility to reduce costs and increase occupancy.

(b) Financial support from the local municipality and county governing bodies for the continued operation of the facility in the community is a necessary prerequisite to an acceptable application. The Department, the facility and the local governing bodies may negotiate the amount of the financial commitment from the governing bodies, but in no case may the local commitment be less than 50% of the state share required to fund the proposed adjustment. Any continuation of the adjustment beyond 6 months requires a local commitment of 100% of the state share for the rate increase above the base rate. The applicant shall submit letters of commitment from the applicable municipality or county, or both, committing to make an intergovernmental transfer for the amount of the local commitment.

(i) If the governmental agency receives donations in order to provide the financial contribution, it must document that the donations are "bona fide" as set forth in 42 CFR 433.54.

(c) The Department may conduct its own independent financial review of the facility prior to making a decision whether to approve a different payment rate.

(d) If the Department determines that the facility is in imminent peril of closing, it may make an interim rate adjustment for up to 90 days.

(e) The Department's determination shall be based on maintaining access to services and maintaining economy and efficiency in the Medicaid program.

(f) If the facility desires an adjustment for more than 90 days, it must demonstrate that:

(i) the facility has taken all reasonable steps to reduce costs, increase revenue and increase occupancy;

(ii) despite those reasonable steps the facility is currently losing money and forecast to continue losing money; and

(iii) the amount of the approved adjustment will allow the facility to meet expenses and continue to support the needs of the community it serves, without unduly enriching any party.

(g) If the Department approves an interim or other adjustment, it shall notify the facility when the adjustment is scheduled to take effect and how much contribution is required from the local governing bodies. Payment of the adjustment is contingent on the facility obtaining a fully executed binding agreement with local governing bodies to pay the contribution to the Department.

(h) The Department may withhold or deny payment of the interim or other adjustment if the facility fails to obtain the required agreement prior to the scheduled effective date of the adjustment.

(9) A provider may challenge the rate set pursuant to this rule using the appeal in Rule R410-14. This applies to which rate methodology is used as well as to the specifics of implementation of the methodology. A provider must exhaust administrative remedies before challenging rates in any other forum.

(10) In developing payment rates, the Department may adjust urban and non-urban rates to reflect differences in urban and

non-urban labor costs. The urban labor costs reimbursement cannot exceed 106% of the non-urban labor costs. Labor costs are as reported on the most recent FCP but do not include FCP-reported management, consulting, director, and home office fees.

(11) The Department reimburses swing beds, transitional care unit beds, and small health care facility beds that are used as nursing facility beds, using the prior calendar year state-wide average of the daily nursing facility rate.

(12) Withholding of Title XIX payments

(a) Unless specified otherwise, the Department may withhold Title XIX payments from providers if:

(i) there is a shortage in a resident trust account managed by the facility;

(ii) the facility fails to submit a complete and accurate FCP as required by Utah State Plan Attachment 4.19-D, Section 332;

(iii) the facility fails to submit timely, accurate Minimum Data Set (MDS) data;

(iv) the facility owes money to the Division of Health Care Financing because of an overpayment, nursing care facility assessment, civil money penalty, or other offset; or

(v) the facility fails to respond within 10 business days to a written request for information.

(13) The Department shall provide written notice before withholding payments.

(14) When the Department rescinds withholding of payments to a provider, it will, without notice, resume payments according to the regular claims payment cycle.

(a) For ongoing operations, the Department will provide notice before withholding payments. The Department and provider may negotiate a repayment schedule acceptable to the Department for monies owed to the Department listed in subsection (a)(iv). The repayment schedule may not exceed 180 days.

(b) When the Department rescinds withholding of payments to a facility, it will resume payments according to the regular claims payment cycle.

KEY: Medicaid

Date of Enactment or Last Substantive Amendment: [~~January 1,~~ 2019

Notice of Continuation: October 17, 2017

Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-35a

**Labor Commission; Boiler, Elevator and
Coal Mine Safety
R616-3-10
Hydraulic Elevator Piping**

**NOTICE OF PROPOSED RULE
(Amendment)**

DAR FILE NO.: 44121

FILED: 10/09/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to provide consistency between industry standards and Division of Boiler, Elevator and Coal Mine Safety (Division) rules.

SUMMARY OF THE RULE OR CHANGE: This change removes Subsections R616-3-10(B) and (C).

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 34A-1-101 et seq.

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There is no cost or savings to the state associated with this rule change. This change is bringing this rule in line with currently adopted codes and standards.

◆ **LOCAL GOVERNMENTS:** There is no cost or savings to local governments associated with this rule change. This change is bringing this rule in line with currently adopted codes and standards.

◆ **SMALL BUSINESSES:** There is no cost to small businesses associated with this rule change. This change is bringing this rule in line with currently adopted codes and standards. This rule change could save the small business owners as this rule would no longer require welding by a certified welder and the associated costs of this.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no cost or savings to other persons associated with this rule change. This change is bringing this rule in line with currently adopted codes and standards.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule change will save effected owners approximately \$1,000 - \$1,500 depending on travel time per install by not being required to have certified welder perform welding, and using couplings instead while still meeting required codes and standards.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is minimal savings to the equipment owner on effected items. This change is bringing this rule in line with currently adopted codes and standards.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Ami Windham by phone at 801-530-6850, by FAX at 801-530-6871, or by Internet E-mail at awindham@utah.gov

◆ Pete Hackford by phone at 801-530-7505, by FAX at 801-530-6871, or by Internet E-mail at phackford@utah.gov
 ◆ Rick Sturm by phone at 801-530-6783, by FAX at 801-530-6871, or by Internet E-mail at rsturm@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/02/2019

THIS RULE MAY BECOME EFFECTIVE ON: 12/09/2019

AUTHORIZED BY: Jaceson Maughan, Commissioner

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2020	FY 2021	FY 2022
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Person	\$0	\$0	\$0
Total Fiscal Costs:	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$1,000	\$1,000	\$1,000
Non-Small Businesses	\$1,000	\$1,000	\$1,000
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits:	\$2,000	\$2,000	\$2,000
Net Fiscal Benefits:	\$2,000	\$2,000	\$2,000

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

Appendix 2: Regulatory Impact to Non-Small Businesses

This rule change brings this rule in line with currently adopted codes and standards for elevators. Effected businesses will save the cost of having a certified welder perform welding and using couplings instead while still meeting required codes and standards, which is estimated at \$1,000 per installation.

The head of the department, Jaceson Maughan, has reviewed and approved this fiscal analysis.

R616. Labor Commission; Boiler, Elevator and Coal Mine Safety.

R616-3. Elevator Rules.

R616-3-10. Hydraulic Elevator Piping.

A. This rule establishes minimum standards for hydraulic fluid piping in hydraulic elevators. The piping specifications referred to in this rule are governed by ASME or ASTM piping specifications (e.g. ASME Specification SA-53 Table X2.4).

~~[B. Hydraulic elevators not incorporating a safety valve may use schedule 40 piping.~~

~~C. For newly installed hydraulic elevators that do not incorporate a safety valve:~~

~~1. Where piping is protected by the safety valve, schedule 40 piping may be used;~~

~~2. Where grooved or threaded connections are used in piping that is unprotected by the safety valve, i.e. between the safety valve and the hydraulic jack(s), nominal pipe size (NPS)3 or schedule 80 piping may be used;~~

~~3. Where piping is unprotected by the safety valve, but welded or bolted flange connections are used, schedule 40 piping may be used.]~~

KEY: elevators, certification, safety

Date of Enactment or Last Substantive Amendment: ~~[October 22, 2018]~~2019

Notice of Continuation: August 23, 2016

Authorizing, and Implemented or Interpreted Law: 34A-1-101 et seq.

Lieutenant Governor, Elections
R623-1
Lieutenant Governor's Procedure for Regulation of Lobbyist Activities

NOTICE OF PROPOSED RULE

(Amendment)
 DAR FILE NO.: 44123
 FILED: 10/10/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: In accordance with Section 36-11a-302, establish a process to adjudicate alleged violations and impose statutory penalties for local lobbyists, a new category of lobbyists was created by H.B. 64, passed in the 2019 General Session. These rule amendments clarify the existing adjudicative procedure for all lobbyists and align it with Title 63G, Chapter 4, Administrative Procedures Act; and clean up

the administrative rule by eliminating processes and penalties that are already established by statute or not authorized by statute.

SUMMARY OF THE RULE OR CHANGE: The changes: 1) modify definitions, 2) eliminate processes and penalties in this rule that are established by statute or not authorized by statute, 3) align the adjudicative procedure with practices in Title 63G, Chapter 4, 4) apply the adjudicative procedure process to local lobbyists, and 5) add a new category of lobbyists that was created by H.B. 64 (2019).

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 36-11a-302 and Subsection 36-11-404(1)

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** This rule may pose costs to the Lieutenant Governor's Office if a local lobbyist requests a formal adjudicative proceeding and requests an administrative law judge (ALJ) to preside over it. Based on other statewide contracts for ALJ services, the Lt. Governor's Office estimates it would cost \$83 per hour. Because this is an hourly rate, the total cost would be dependent on the total time ALJ services are necessary. Although hiring ALJs may pose a cost, it is unlikely that the Lt. Governor's Office will need their services. Data from 2017-2019 show that the Lt. Governor's Office assessed penalties on 33 lobbyists (out of approximately 565 lobbyists), but none requested an adjudicative proceeding. This trend, when paired with the fact that there are only 2 registered local lobbyists, suggests that an adjudicative proceeding for a local lobbyist is unlikely.
- ◆ **LOCAL GOVERNMENTS:** Local governments are not regulated or affected by this rule.
- ◆ **SMALL BUSINESSES:** Small businesses are not regulated or affected by this rule.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The proposed rule changes do not impose additional regulations, requirements, or penalties on lobbyists than what is currently outlined in statute. The adjudicative proceeding is optional for all lobbyists.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The adjudicative proceeding is optional for all lobbyists.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Simply put, this rule applies an existing adjudicative procedure to local lobbyists and clarifies the procedure for all lobbyists. Please note that statute establishes penalties and fines. This administrative rule merely outlines procedures to adjudicate potential violations and assess penalties and fines.

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:

- ◆ Derek Brenchley by phone at 801-538-1041, or by Internet E-mail at dbrenchley@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/02/2019

THIS RULE MAY BECOME EFFECTIVE ON: 12/09/2019

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

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

Appendix 2: Regulatory Impact to Non-Small Businesses

These proposed rule changes do not impose additional regulations, requirements, or penalties on non-small businesses or the lobbyists that may represent non-small businesses.

The Director of Elections within the Office of the Utah Lieutenant Governor, Justin Lee, has reviewed and approved this fiscal analysis.

R623. Lieutenant Governor, Elections.

R623-1. Lieutenant Governor's Procedure for Regulation of Lobbyist Activities.

R623-1-1. Purpose.

Pursuant to ~~[Utah Code]~~ Sections 36-11-404 and 36-11a-302, this rule provides procedures for the lieutenant governor~~[s office]~~ to:

- ~~_____~~ A. Issue lobbyist licenses;
 - ~~_____~~ B. Disapprove lobbyist applications;
 - ~~_____~~ C. Suspend and revoke lobbyist licenses;
 - ~~_____~~ D. Reinstate lobbyist licenses; and
 - ~~_____~~ E. Appoint administrative law judges.].
- ~~_____~~ (a) Appoint administrative law judges to adjudicate alleged violations and impose penalties outlined in Title 36, Chapter 11, Lobbyist Disclosure and Regulation Act;
- ~~_____~~ (b) Appoint administrative law judges to adjudicate alleged violations and impose penalties outlined in Title 36, Chapter 11a, Local Government and Board of Education Lobbyist Disclosure and Regulation Act; and
- ~~_____~~ (c) Provide procedures for license applications, disapprovals, suspensions, revocations, and reinstatements that comply with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act.

R623-1-2. Authority.

This rule is ~~[required]~~ authorized by ~~[Utah Code]~~ Sections 36-11-404 and 36-11a-302.

R623-1-3. Definitions.

(1) In addition to the terms defined in ~~[Utah Code]~~ Sections 63G-4-103, 36-11-102, and 36-11a-102, the following definitions apply:

- ~~_____~~ A. "Director" means the director of the state elections office.
 - ~~_____~~ B. "Register" means the process of obtaining a lobbying license as required by Sections 36-11-103 and 36-11-105.
 - ~~_____~~ C. "Report" means any report required under Sections 36-11-201.].
- ~~_____~~ (a) "Director" means the director of elections within the Office of the Lieutenant Governor.
- ~~_____~~ (b) "Licensure Period" means the period beginning January 1 and ending December 31 of each calendar year.
- ~~_____~~ (c) "Lobbyist" means the term lobbyist as defined by Sections 36-11-102 and 36-11a-102.
- ~~_____~~ (d) "Office" means the Office of the Lieutenant Governor.

R623-1-4. [Registration/License—Application—Procedure.] Disapproval of Lobbyist License Application.

- ~~_____~~ A. In order to register and obtain a license, a lobbyist shall:
- ~~_____~~ 1. Pay the registration fee as required by 36-11-103 and successfully complete the training as required by 36-11-307.
 - ~~_____~~ (a) The training for the first year of a two-year license period must be completed before the registration can be approved.
 - ~~_____~~ (b) To maintain the license for the second year in a two-year license period, the training for that year must be completed within the first 60 days of the second year or before engaging in lobbying activity, whichever is first.
 - ~~_____~~ 2. File a registration/license application statement in compliance with the provisions of Section 36-11-103. The lieutenant governor's office shall make available forms that comply with Section 36-11-103. The lobbyist may either:
 - ~~_____~~ (a) Submit the completed form to the lieutenant governor's office; or
 - ~~_____~~ (b) File the lobbyist registration/license application by completing the electronic form available on the Utah Lobbyist Online system; and submit the completed signature authorization form to the lieutenant governor's office.
 - ~~_____~~ B. Upon receipt of a completed lobbyist registration/license application form the lieutenant governor's office shall:
 - ~~_____~~ 1. Review the registration form for accuracy, completeness and compliance with the law;
 - ~~_____~~ 2. Approve or disapprove the registration/license application; and
 - ~~_____~~ 3. Notify the lobbyist in writing within 30 days of approval or disapproval.
 - ~~_____~~ C. An applicant who has not been convicted of any of the offenses listed in Section 36-11-103(4)(a)(i), and who has not had a civil penalty imposed as described in Section 36-11-103(4)(a)(ii), may commence lobbying activities upon filing of a completed registration/license application form with the lieutenant governor's office and payment of the registration fee.
 - ~~_____~~ D. By applying for a license, the lobbyist certifies that the lobbyist intends to engage in lobbying activities under the circumstances stated in the application or supplements filed with the lieutenant governor's office during the time the registration and license are valid:
 - ~~_____~~ 1. If a lobbyist intends to cease all lobbying activities for the remainder of the period of licensure, the lobbyist shall notify the lieutenant governor's office in writing and surrender the license.
 - ~~_____~~ 2. If the lobbyist has a change in circumstances that affects the lobbyist's activities, the lobbyist shall notify the lieutenant governor's office in writing.
 - ~~_____~~ 3. If a lobbyist has surrendered the license and then decides to reengage in lobbying activities, a reissued license without a fee may be requested, if it is within the 2-year period of the original registration.
 - ~~_____~~ 4. The lobbyist must submit a written request to the lieutenant governor's office in order to have the license reissued.
 - ~~_____~~ 5. A reissued license expires on December 31 of each even numbered year in accordance with Section 36-11-103(3)(b).
 - ~~_____~~ E. A lobbyist may add and delete principals and provide other notices electronically as prescribed by the lieutenant governor's office.].

~~(1) The office may disapprove a lobbyist license application described in Section 36-11-103 if:~~

~~(a) The applicant or license application meets any of the disapproval criteria outlined in Section 36-11-103(4);~~

~~(b) The license application is not accurate, complete, or compliant with law;~~

~~(c) If the applicant has not paid a fine imposed under Section 36-11-401 or 36-11a-301; or~~

~~(d) If, at the time of the pending application, the applicant's current lobbyist license is suspended.~~

R623-1-5. [Disapproval of Application.]Suspension of Lobbyist License.

~~[A. A lobbyist who is convicted of violation of any of the offenses listed in Utah Code Section 36-11-103, shall have his application for license disapproved by the lieutenant governor's office and a license will not be issued.~~

~~B. The lobbyist will receive written notice of the license disapproval from the lieutenant governor's office within 30 days.]~~

~~(1) In addition to the penalties outlined in Sections 36-11-401 and 36-11a-301, the office may suspend the lobbyist license of an individual for a period of up to one year if the individual:~~

~~(a) Fails to pay a fine imposed under Section 36-11-401 within 30 calendar days after the day on which the office imposes the fine;~~

~~(b) Fails to file a required report described in Section 36-11-201 and fails to submit the required report within 30 calendar days after the deadline described in Section 36-11-201; or~~

~~(c) Files a license application, report, or other document to the office that contains materially false information or omits material information; including, but not limited to, the failure to list all principals for which the lobbyist works or is hired as an independent contractor.~~

~~(2) If the office suspends a lobbyist license, it shall immediately notify:~~

~~(a) The speaker of the House of Representatives;~~

~~(b) The president of the Senate; and~~

~~(c) The governor.~~

~~(3) If the office suspends an individual's lobbyist license:~~

~~(a) The individual may not lobby during the period of the suspension; and~~

~~(b) Except as provided in Subsection R623-1-5(3)(b)(i), the individual may apply for a lobbyist license after the suspension period expires by following the procedures of Section 36-11-103.~~

~~(i) The individual's lobbyist license is automatically reinstated when the period of suspension ends if the beginning and end of the suspension period is within the same licensure period.~~

R623-1-6. [Suspensions, Revocations and Fines.]Reinstatement.

~~A. Registration and reporting violations:~~

~~1. In addition to any fines imposed under 36-11-401, a lobbyist license may be suspended for any of the following willful and knowing violations of Section 36-11-103, Sections 36-11-201:~~

~~a. Failure to register;~~

~~b. Failure to file a year end or supplemental report on or before the statutory due date;~~

~~c. Failure to file a year end or supplemental report;~~

~~d. Filing a report or other document that contains materially false information or the omission of material information; including,~~

~~but not limited to, the failure to list all principals for which the lobbyist works or is hired as an independent contractor;~~

~~e. Failure to update a registration when a lobbyist accepts a new client for lobbying; or~~

~~f. Otherwise violating Sections 36-11-103, 36-11-201.~~

~~2. If a fine or other penalty is imposed more than once under the immediately preceding section, suspension or permanent revocation of the lobbyist license shall be imposed.~~

~~3. The determination of the penalty to be imposed will be made by following the procedures as provided by Section R623-1-7.~~

~~B. Illegal Activities of lobbyists:~~

~~1. If the lieutenant governor's office discovers or receives evidence of a possible violation of Sections 36-11-301 to 305, the evidence will be sent to the appropriate county attorney or district attorney's office for prosecution.~~

~~2. If a lobbyist is convicted of a violation of Sections 36-11-103, 36-11-201, 36-11-301, 36-11-302, 36-11-303, 36-11-304, 36-11-305 or 36-11-403, the lieutenant governor shall revoke the lobbyist license for one year as required by Subsection 36-11-401(1) and give the lobbyist notice of the same, together with notice of the lobbyist's right to request a hearing under Section R623-1-9.~~

~~3. If the county or district attorney does not prosecute a possible violation under Sections 36-11-302 or 36-11-303, the lieutenant governor's office shall review the evidence to determine if a civil fine or suspension may be appropriate following the procedures for civil enforcement set forth in Section R623-1-7.~~

~~4. If a lobbyist is convicted of a violation of any of the Title 76 Criminal Code Sections referenced in Subsection 36-11-401(4), suspension of up to three years or permanent revocation of the lobbyist license shall be imposed, but no civil fine may be imposed. The determination of whether to revoke or suspend a lobbyist license and for what length of time shall be made following the procedures for civil enforcement as provided by Section R623-1-7.]~~

~~(1) An individual with a suspended license may apply for reinstatement by filing a written request for reconsideration in accordance with Section 63G-4-302.~~

R623-1-7. [Enforcement.]Designation of Formal and Informal Adjudicative Proceedings.

~~A. Any person with evidence of a possible violation of the Lobbyist Disclosure and Regulation Act may provide such evidence to the director in the lieutenant governor's office or may file a complaint with such officer. If the evidence is of a criminal violation, the person may report the information directly to the appropriate county attorney or district attorney.~~

~~B. If the director discovers or receives evidence of a criminal violation, such evidence shall be provided to the appropriate county or district attorney and any civil enforcement actions will proceed as set forth in Subsection R623-1-6(B).~~

~~C. If the director discovers or receives evidence of a violation of a civil provision, the director will investigate the alleged violation and make a determination regarding what fine and/or suspension or revocation should be imposed, if any.~~

~~D. The director shall give notice of the recommended penalty to the lobbyist, and if a complaint was filed, to the complainant.~~

~~E. If either the lobbyist or the complainant desire to contest the recommended penalty, they or either of them may do so by requesting a hearing within fifteen (15) days of receipt of the notice of~~

the recommended penalty. If neither file a request for a hearing within the fifteen day period, the recommended penalty will be the penalty imposed for the violation. The notice of recommended penalty shall include a notice of hearing rights:

F. The administrative law judge for the hearing is not bound by the recommended penalty and may impose a penalty greater or less than the recommended penalty, as seems justified by the evidence.

G. If a lobbyist license is suspended or revoked, the lieutenant governor's office shall remove the lobbyist's name from the official list and notify the following of such:

1. The speaker of the house of representatives;
2. The president of the senate; and
3. The governor.]

(1) Pursuant to 63G-4-202, the office designates all adjudicative proceedings commenced under the authority of Title 36, Chapters 11 and -11a, as proceedings to be conducted as informal proceedings. Except as provided in Subsection R623-1-7(2), all adjudicative proceedings shall be conducted as informal adjudicative proceedings.

(2) An adjudicative proceeding will be conducted as a formal adjudicative proceeding if:

(a) A party submits a written request for a formal adjudicative proceeding to the director within seven calendar days after the day the office provides notice of office action in accordance with Section 63G-4-201; or

(b) The director determines that a formal adjudicative proceeding is in the public interest and does not unfairly prejudice the rights of any party.

~~R623-1-8. [Hearings, Appointment of Administrative Law Judges.] Commencement of Adjudicative Proceedings.~~

~~[A. Hearings will be conducted as informal adjudicative proceedings under the Administrative Procedures Act.~~

~~B. The lieutenant governor's office shall appoint administrative law judges from state agencies to act as presiding officers over adjudicative proceedings.]~~

~~(1) Adjudicative proceedings shall be commenced in accordance with Section 63G-4-201.~~

~~(2) The office shall commence an adjudicative proceeding to:~~

- ~~(a) Impose a civil penalty described in Section 36-11-401;~~
- ~~(b) Impose a civil penalty described in Section 36-11a-301;~~
- ~~(c) Disapprove a lobbyist license application; or~~
- ~~(d) Suspend or revoke a lobbyist's license.~~

~~(3) The office may not commence an adjudicative proceeding to determine alleged criminal violations and will refer complaints and allegations of criminal violations to the appropriate prosecutorial entity.~~

~~R623-1-9. [Reinstatement of a Lobbyist License.] Informal Adjudicative Proceedings.~~

~~[A. A lobbyist whose license is suspended or revoked may apply for reinstatement.~~

~~B. The lieutenant governor's office shall not reinstate any lobbyist license until the lobbyist pays any fines that have been imposed.]~~

~~(1) The office shall hold a hearing for an informal adjudicative proceeding if:~~

~~(a) A hearing is required by statute;~~

~~(b) A hearing is permitted by statute and is requested by a party in writing within 30 calendar days after the day the office provides notice of office action; or~~

~~(c) The director determines a hearing is necessary to issue a decision and order.~~

~~(2) Hearing Procedure.~~

~~(a) The director shall serve as the presiding officer of an informal adjudicative proceeding.~~

~~(b) Notice of the hearing shall be mailed to all parties by regular mail at least 10 business days prior to the hearing date.~~

~~(c) Parties named in the notice shall be permitted to testify, present evidence, and comment on the issues.~~

~~(i) The presiding officer shall accept oral or written testimony from any party.~~

~~(ii) The presiding officer may question and examine any witness called to present testimony.~~

~~(iii) The presiding officer may establish rules to conduct an orderly hearing, provided the rules do not unfairly prejudice the rights of any party.~~

~~(iv) The presiding officer shall weigh the merits of the evidence provided and exclude evidence that is irrelevant, immaterial, unduly, or repetitious.~~

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

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

~~(f) Intervention is prohibited, except when a federal statute or rule requires that a state permits intervention.~~

~~(g) All hearings shall be open to all parties.~~

~~(h) The office may record the hearing, and any party, at the party's own expense, may have a reporter approved by the office to prepare a transcript from the office's record of hearing.~~

~~(i) The director may schedule a conference to encourage settlement before the hearing.~~

~~(3) If no hearing is held for an informal adjudicative proceeding, the presiding officer shall issue a decision and order pursuant to 63G-4-203 within a reasonable time.~~

~~R623-1-10. Formal Adjudicative Proceedings.~~

~~(1) A formal adjudicative proceeding shall be held if the requirements of R623-1-7(2) are met.~~

~~(2) Except as provided in Subsection R623-1-10(2)(a), the director shall serve as the presiding officer of a formal adjudicative proceeding.~~

~~(a) The director shall appoint an administrative law judge to serve as the presiding officer of a formal adjudicative proceeding if the respondent requests the appointment of an administrative law judge in writing when the respondent makes the request described in Subsection R623-1-7(2)(a).~~

~~(3) Formal adjudicative proceedings shall be conducted in accordance with Sections 63G-4-204 through 63G-4-209.~~

~~R623-1-11. Continuance.~~

~~(1) The presiding officer of any adjudicative proceeding may grant a continuance for a hearing if a party or respondent submits a written request for a continuance to the presiding officer no later than one business day before the hearing is scheduled.~~

KEY: lobbyists, lobbyist registration

Date of Enactment or Last Substantive Amendment: [~~August 24, 2015~~2019]

Notice of Continuation: January 28, 2019

Authorizing, and Implemented or Interpreted Law: 36-11-404; 36-11a-302

**Workforce Services, Housing and
Community Development
R990-11
Community Development Block Grants
(CDBG)**

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 44130

FILED: 10/15/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is no longer necessary. The section of the Utah Workforce Services Code, Housing and Community Development Division (Division), concerning the powers and duties of the Division does not authorize the Department of Workforce Services (Department) to make rules concerning Community Development Block Grants. Community Development Block Grant funds are appropriated to the state by the U.S. Department of Housing and Urban Development, and are governed by federal law and regulation (see 24 CFR Part 570, Subpart I). Thus, the Department of Workforce Services (Department) proposes repealing this rule.

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

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-8-202

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: There is no anticipated cost or savings to the state budget. The administration of the Community Development Block Grant will not change with the repeal of this rule.

◆ LOCAL GOVERNMENTS: There is no anticipated cost or savings to local governments. The administration of the Community Development Block Grant will not change with the repeal of this rule.

◆ SMALL BUSINESSES: There is no regulatory impact creating a financial cost to small businesses. This rule is being repealed.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no regulatory impact creating a financial cost to other persons. This rule is being repealed.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. The repeal of this rule requires no action or compliance by any persons.

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

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

WORKFORCE SERVICES
HOUSING AND COMMUNITY DEVELOPMENT
140 E BROADWAY
SALT LAKE CITY, UT 84111-2333
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Amanda McPeck by phone at 801-517-4709, or by Internet E-mail at ampeck@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/02/2019

THIS RULE MAY BECOME EFFECTIVE ON: 12/09/2019

AUTHORIZED BY: Jon Pierpont, Executive Director

Appendix 1: Regulatory Impact Summary Table*

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

Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits:	\$0	\$0	\$0
Net Fiscal Benefits:	\$0	\$0	\$0

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

Appendix 2: Regulatory Impact to Non-Small Businesses

There is no regulatory impact creating financial cost to non-small businesses. This rule is being repealed.

Jon Pierpont, Executive Director of the Department of Workforce Services, has reviewed and approved this fiscal analysis.

R990. Workforce Services, Housing and Community Development.

[R990-11. Community Development Block Grants (CDBG):

R990-11-1. Purpose and Authority.

This rule incorporates by reference 24 CFR 570 (1996) as authorized by Section 35A-8-202.

R990-11-2. State and Regional Funding Processes:

(1) CDBG funds are to be distributed based on regional prioritization of projects by utilizing a rating and ranking system developed and applied by the regional review committees (RRC). The role of each RRC is to receive, review and to prioritize the CDBG applications in its region.

(2) The RRC shall develop a rating and ranking system prior to the receipt of grant application. Upon completion of the rating and ranking process, each RRC shall present to the state a list of:

- (a) all projects submitted to them for ranking;
- (b) copies of ranking result sheets;
- (c) the rationale for not ranking any submitted projects; and
- (d) a summary of all final ranking results.

R990-11-3. Eligible Grant Applicants, National Objectives and Eligible Projects.

(1) Eligible applicants for the State CDBG Program are:

- (a) incorporated cities and towns with populations of less than 50,000, except Clearfield and jurisdictions located in Salt Lake County;
- (b) all of Utah's counties except Salt Lake County;
- (c) units of local government recognized by the Secretary of The Department of Housing and Urban Development (HUD);

(2) National Objective Compliance Pursuant to 24 CFR 570.208.

(a) The national objective may be met in three possible ways:

- (i) activities that benefit low and moderate income individuals, families and communities;
 - (ii) activities aiding in the prevention or elimination of slums or blight;
 - (iii) activities that address urgent health and welfare needs.
- (3) Inclusive Federal Compliance Requirements:
- (a) applicants shall comply with all regulations in 24 CFR part 570 and all applicable federal and state regulations, laws and overlay statutes;
 - (b) additional federal overlay statutes and regulations may apply to the state program if directed by HUD and Congress;
 - (4) Eligible activities are those defined by Section 105 of the Housing and Community Development Act of 1974, as amended.

R990-11-4. Responsibilities of Grantee, Regions and State.

(1) Grantee Responsibilities

(a) Grantees are allowed to take up to 10% of the contract amount for administration purposes. Administrative cost must be broken out from the rest of the project costs when the application and contract budget are prepared.

(b) The formal contract with the state must include an environmental review, federal labor standards and civil rights.

(2) Regional Responsibilities:

(a) Prioritization - Each RRC shall rate and rank all applications based on a set of criteria available to the public for comment.

(b) Public participation - Each RRC is required to hold at least one public hearing yearly to assist applicants and obtain comments and suggestions regarding the CDBG process.

(c) Application completion - Each RRC has the responsibility to assure that applications are completed in full prior to submission to the state.

(d) Administrative Capacity - The RRC will assess the ability of each applicant to administer a CDBG grant.

(3) State Responsibilities:

(a) Public Participation - The state is required to hold at least one public hearing yearly to notify the public, explain the community development program and to receive comments.

(b) Review of Applications - Upon receipt of the CDBG prioritized applications from the regions, the state staff shall begin a review process.

(c) Timely Distribution of Funds - The state is required by HUD to ensure that CDBG funds are allocated and distributed in a timely manner.

(i) Application - Each applicant shall make their final application decision prior to submitting it to the RRC.

(A) Contracts will be sent out in April and Grantees will have until June 1, to sign and return all copies of the contract to the Housing and Community Development Division (HCD) of the Department of Workforce Services.

(B) On a case by case basis, RRCs may allow a one month extension to grantees experiencing unavoidable delays. Grantees must notify their RRC prior to the deadline;

(C) Funds from all contracts not returned to HCD by July 1, will be returned to the appropriate RRC for reallocation;

(D) Any funds not reallocated by the RRC by August 1, will be returned to the State. The State will reallocate the funds to an approved project;

Grantees may not delay the processing of the current application based on the possibility of receiving an allocation in the following year.

(d) ~~Five Percent Withholding~~ - The state reserves the right to withhold five percent of the CDBG grant amount pending a satisfactory final programmatic financial monitoring review of all projects.

(e) ~~Cost Overruns~~ - The state may authorize the funding of project cost overruns requested by the RRC.

(f) ~~Fund Leveraging~~ - One of the state's roles in the CDBG funding process is to provide assistance to grantees in leveraging other available financial resources.

(g) ~~Program Monitoring~~ - During the course of each CDBG contract the state must monitor all grantees.

(h) ~~Grant Close Out~~ - A grant close out packet will be submitted to the state at the completion of each CDBG-funded activity.

R990-11-5. Threshold Requirements.

Minimum threshold requirements are those defined by Section 105(e) of the Housing and Community Development Act of 1974, as amended and as stipulated in section 4 of the State CDBG Application Guide available from HCD:

(1) The determination of eligibility for recipients and activities shall be made by the RRC and State CDBG staff under state and federal criteria and regulations contained in 24 CFR part 500 and the State CDBG Application Guide available by contacting HCD at 140 E 300 S, Salt Lake City, UT 84111.

(2) Each grant application must clearly demonstrate that the project will meet one of the three National Objectives identified in R990-1-3.

(3) Each grant applicant must demonstrate consistency with the Consolidated Plan, available from HCD at 140 E 300 S, Salt Lake City, UT 84111.

(4) Each grant application may contain more than one activity addressing identified needs; however, these activities must be interrelated.

(5) All costs incorporated with the grant must be realistic given the nature and type of activities to be performed.

(6) Program income generated as a result of CDBG activities may be retained by the grantee when income is applied to continue the activity from which the income was derived, or when used for other community development projects eligible under Section 105 of the Housing and Community Development Act of 1974, as amended, and after the preparation of a plan, approved by the state, specifying the proposed activity and stating the method that will be employed for its use.

R990-11-6. Length of Contract and Type of Grants.

(1) All grantees shall have 18 months depending upon contract execution, or until October 31, of the following year to complete their project.

(2) There are two types of grants: Single year and multi-year.

R990-11-7. Adjudicative Proceedings to Appeal Decisions of RRC.

(1) ~~Classification of Actions.~~ Adjudicative proceeding to appeal decisions of RRC by CDBG applicant agencies shall be conducted in accordance with section 63G-4-203.

(2) ~~Commencement of Appeals Procedure.~~ An applicant agency requesting an appeal hearing from HCD, shall submit a request:

(a) in writing;

(b) signed by the chief elected official; and

(c) include the following information:

(i) the names and addresses of all persons to whom a copy of the request for a hearing is being sent;

(ii) the RRC file number;

(iii) the name of the adjudicative proceeding;

(iv) the date the request for an appeals hearing was mailed;

(v) a statement of the legal authority and jurisdiction under which CDBG action is requested;

(vi) a statement of relief sought from HCD; and

(vii) a statement of facts and reasons forming the basis for relief.

(d) The request for an appeals hearing must be submitted within ten days following the notice of decision by the RRC. At this point it shall be necessary for HCD to place a hold on processing any contracts from the region in which the dispute has occurred until the matter is settled.

(3) ~~Notification of interested parties.~~

(a) The CDBG applicant agency that requests an appeals hearing shall file the request with the Director of HCD and shall send a copy by mail to each person known to have a direct interest in the requested hearing.

(b) The Director of HCD, or a hearing officer appointed by the Director of HCD, will within five working days after the appeals request, set the time and date for an appeals hearing. The Director of HCD or the hearing officer shall promptly give notice by mail to all parties, stating the following:

(i) HCD and RRC file number;

(ii) the name of the proceeding;

(iii) a statement indicating that the proceeding is to be conducted informally and according to the provisions of rules enacted under Sections 63G-4-203 authorizing informal proceedings;

(iv) the time and place of the scheduled appeals hearing, the purpose of the hearing, and that a party may be held in default if failing to attend or participate in the hearing;

(v) the name, title, mailing address and telephone number of the director of HCD or the hearing officer.

(vi) ~~Hearing Procedures~~

(a) hearing shall be held only after notice to interested parties is given in conformance with R990-7-1C;

(b) no answer or other pleading responsive to the request for a hearing need be filed.

(c) the following issues shall be reviewed at the appeals hearing:

(i) whether reasonable and equitable criteria are established for reviewing CDBG applications by the RRC

(ii) whether the priority ranking process is fair to all applicants;

(iii) whether the criteria and process were applied equitably and consistently to all applicants.

(d) in the appeals hearing, the parties named in the request for a hearing shall be permitted to testify, present evidence, and comment on the issues.

~~(e) discovery is prohibited, and HCD may not issue subpoenas or other discovery orders.~~

~~(f) all parties shall have access to information contained in HCD's files and to all materials and information gathered by any investigation to the extent permitted by law.~~

~~(g) any intervention is prohibited.~~

~~(h) all hearings shall be open to all parties.~~

~~(i) within 21 days after the close of the hearing, the Director of HCD shall issue a signed order in writing that states:~~

~~(i) the decision;~~

~~(ii) the reason for the decision;~~

~~(iii) a notice of any right for administrative or judicial review available to the parties; and~~

~~(iv) the time limits for filing a request for reconsideration or judicial review.~~

~~(j) the Director of HCD's order shall be based on the facts appearing in HCD's files and on the facts presented in evidence at the appeals hearing.~~

~~(k) a copy of the Director of HCD's order shall be promptly mailed to the parties.~~

~~(l) all hearings shall be recorded at the expense of HCD. Any party, at his own expense, may have a reporter approved by HCD prepare a transcript from HCD's record of the hearing.~~

~~(5) Default~~

~~(a) the Director of HCD may enter an order of default against a party if a party fails to participate in the adjudicative proceeding.~~

~~(b) the order shall include a statement of the grounds of default and shall be mailed to all parties.~~

~~(e) a defaulted party may seek to have HCD set aside the default order according to procedures outlined in the Utah Rules of Civil Procedure.~~

~~(d) after issuing the order of default, the Director of HCD will conduct any further proceedings necessary to complete the adjudicative proceeding without the participation of the party in default and will determine all issues in the adjudicative proceeding, including those affecting the defaulted party.~~

~~(6) Reconsideration by HCD. Within ten days after the date that a final order is issued by the Director of HCD, any party may file a written request for reconsideration in accordance with the provisions of the Administrative Procedures Act, Section 63G-4-302. Upon receipt of the request, the disposition by the Director of HCD of that written request shall be in accordance with Section 63G-4-302. With the exception of reconsideration, all orders issued by the Director of HCD shall be final. There shall be no other review except for judicial review as provided below.~~

~~(7) Judicial Review. An aggrieved party may also obtain judicial review of final HCD orders by filing a petition for judicial review of that order in compliance with the provisions and requirements of the Utah Administrative Procedures Act, Sections 63G-4-401 and 63G-4-402.~~

~~**KEY: community development, grants**~~

~~**Date of Enactment or Last Substantive Amendment: July 9, 2012**~~

~~**Notice of Continuation: July 6, 2017**~~

~~**Authorizing, and Implemented or Interpreted Law: 35A-8-202]**~~

End of the Notices of Proposed Rules Section

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the agency is required to review the rule. This review is intended to help the agency determine, and to notify the public, that the administrative rule in force is still authorized by statute and necessary. Upon reviewing a rule, an agency may: repeal the rule by filing a **PROPOSED RULE**; continue the rule as it is by filing a **FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (REVIEW)**; or amend the rule by filing a **PROPOSED RULE** and by filing a **REVIEW**. By filing a **REVIEW**, the agency indicates that the rule is still necessary.

A **REVIEW** is not followed by the rule text. The rule text that is being continued may be found in the online edition of the *Utah Administrative Code* available at <https://rules.utah.gov/>. The rule text may also be inspected at the agency or the Office of Administrative Rules. **REVIEWS** are effective upon filing.

REVIEWS are governed by Section 63G-3-305.

Agriculture and Food, Plant Industry **R68-3** Utah Fertilizer Act Governing Fertilizers and Soil Amendments

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 44135
FILED: 10/15/2019

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 4-13-104 establishes requirements for the labeling of fertilizer. Section 4-13-106 allows the Department of Agriculture and Food (Department) to set penalties for deficiencies. Additionally, Section 4-2-103 allows the Department to establish rules necessary to administer agricultural laws. This rule is necessary for the Department to effectively enforce the Fertilizer Act.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Department 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 ensure that fertilizer is being properly labeled in accordance with Utah law. Additionally, it is necessary to ensure that Utah consumers are educated as to what is in the products they are purchasing. Therefore, this rule should be continued.

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

AGRICULTURE AND FOOD
PLANT INDUSTRY
350 N REDWOOD RD
SALT LAKE CITY, UT 84116-3034
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Bracken Davis by phone at 801-538-7188, or by Internet E-mail at brackendavis@utah.gov
- ◆ Kelly Pehrson by phone at 801-538-7102, or by Internet E-mail at kwpehrson@utah.gov
- ◆ Robert Hougaard by phone at 801-538-7180, by FAX at 801-538-7189, or by Internet E-mail at rhougaard@utah.gov

AUTHORIZED BY: Kerry Gibson, Commissioner

EFFECTIVE: 10/15/2019

Commerce, Administration **R151-1** Department of Commerce General Provisions

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 44116
FILED: 10/03/2019

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Utah Constitution, Article IV,

Section 10, sets forth the oath that must be taken by appointed board/commission members. This rule requires the oath to be given to board/commission members within the Department of Commerce. Subsection 53-13-101(12) defines the term "sworn" as it relates to a person who is required to take an oath of office, including the Department of Commerce board/commission members. Subsection 13-1-6(1) gives the Department of Commerce general rulemaking authority. Subsection 13-1-2(1)(b) requires the Department of Commerce to execute and administer state laws regulating business activities and occupations affecting the public interest. Board/commission members, who are required to take an oath of office, are key players in executing and administering those laws. Meetings with board/commission members are frequently conducted electronically. Section 52-4-103 sets forth definitions that are related to boards/commissions and their meetings. This rule reflects those definitions. Section 52-4-207 sets forth the requirements that apply generally to electronic meetings. This rule adopts those requirements as being applicable to electronic meeting conducted by the Department of 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: No comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is authorized and mandated by state law. Therefore, this rule should be continued.

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:
♦ Masuda Medcalf by phone at 801-530-7663, by FAX at 801-530-6446, or by Internet E-mail at mmedcalf@utah.gov

AUTHORIZED BY: Francine Giani, Executive Director

EFFECTIVE: 10/03/2019

Education, Administration
R277-468
Parent/Guardian Review of Public
Education Curriculum and Review of
Complaint Process

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 44118
FILED: 10/07/2019

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized by Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the State Board of Education (Board); and Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

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 were no written comments received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be necessary because it directs a local education agency (LEA) to include parents in the adoption and review of an LEA's primary instructional materials, including the review of complaints specific to curriculum materials. Therefore, this rule should be continued.

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

EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY, UT 84111-3272
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Angela Stallings by phone at 801-538-7550, by FAX at 801-538-7768, or by Internet E-mail at angie.stallings@schools.utah.gov

AUTHORIZED BY: Angela Stallings, Deputy Superintendent of Policy

EFFECTIVE: 10/07/2019

**Regents (Board of), University of Utah,
Administration
R805-4**

**Illegal, Harmful, and Disruptive
Behavior on University of Utah Property**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 44124
FILED: 10/10/2019

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is enacted and justified under Sections 53B-2-106, 63G-4-102, and 76-8-701.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR

OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued because it places visitors to the University of Utah (University) campus on notice of the University's behavioral expectations, of the possible sanctions that may be imposed for violations of those behavioral standards, and of the process that the University will follow (an informal adjudicative process pursuant to Utah Administrative Rule R765-134) in the event that it needs to exclude a visitor from campus for extended periods of time.

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

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

AUTHORIZED BY: Robert Payne, Associate General Counsel

EFFECTIVE: 10/10/2019

End of the Five-Year Notices of Review and Statements of Continuation Section

NOTICES OF RULE EFFECTIVE DATES

State law provides for agencies to make their administrative rules effective and enforceable after publication in the *Utah State Bulletin*. In the case of **PROPOSED RULES** or **CHANGES IN PROPOSED RULES** with a designated comment period, the law permits an agency to make a rule effective no fewer than seven calendar days after the close of the public comment period, nor more than 120 days after the publication date. In the case of **CHANGES IN PROPOSED RULES** with no designated comment period, the law permits an agency to make a rule effective on any date including or after the thirtieth day after the rule's publication date, but not more than 120 days after the publication date. If an agency fails to file a **NOTICE OF EFFECTIVE DATE** within 120 days from the publication of a **PROPOSED RULE** or a related **CHANGE IN PROPOSED RULE** the rule lapses.

Agencies have notified the Office of Administrative Rules that the rules listed below have been made effective.

NOTICES OF EFFECTIVE DATE are governed by Subsection 63G-3-301(12), Section 63G-3-303, and Sections R15-4-5a and R15-4-5b.

Abbreviations

AMD = Amendment
CPR = Change in Proposed Rule
NEW = New Rule
R&R = Repeal & Reenact
REP = Repeal

Agriculture and Food

Animal Industry
No. 43911 (AMD): R58-1. Admission, Identification, and Inspection of Livestock, Poultry, and Other Animals
Published: 08/15/2019
Effective: 10/09/2019

Attorney General

Administration
No. 43836 (NEW): R105-4. Child Protection Registry
Published: 07/15/2019
Effective: 10/02/2019

Commerce

Consumer Protection
No. 43991 (REP): R152-32a. Pawnshop and Secondhand Merchandise Transaction Information Act Rule
Published: 09/01/2019
Effective: 10/09/2019

Occupational and Professional Licensing

No. 43954 (AMD): R156-24b. Physical Therapy Practice Act Rule
Published: 09/01/2019
Effective: 10/08/2019

No. 43953 (REP): R156-31c. Nurse Licensure Compact Rule
Published: 09/01/2019
Effective: 10/08/2019

Education

Administration
No. 43983 (NEW): R277-318. Teacher Salary Supplement Program
Published: 09/01/2019
Effective: 10/08/2019

No. 43984 (REP): R277-402. School Readiness Initiative
Published: 09/01/2019
Effective: 10/08/2019

No. 43990 (AMD): R277-407. School Fees
Published: 09/01/2019
Effective: 10/08/2019

No. 43968 (AMD): R277-474. School Instruction and Sex Education
Published: 09/01/2019
Effective: 10/08/2019

No. 43985 (AMD): R277-504. Early Childhood, Elementary, Secondary, Special Education (K-12), and Preschool Special Education (Birth-Age 5) Licensure
Published: 09/01/2019
Effective: 10/08/2019

No. 43986 (REP): R277-523. Teacher Salary Supplement Program
Published: 09/01/2019
Effective: 10/08/2019

No. 43967 (AMD): R277-607. Truancy Prevention
Published: 09/01/2019
Effective: 10/08/2019

No. 43969 (AMD): R277-704. Financial and Economic Literacy: Integration into Core Curriculum and Financial and Economic Literacy Student Passports
Published: 09/01/2019
Effective: 10/08/2019

NOTICES OF RULE EFFECTIVE DATES

No. 43982 (AMD): R277-706. Public Education Regional Service Centers
Published: 09/01/2019
Effective: 10/08/2019

No. 43987 (REP): R277-711. High Quality School Readiness Expansion
Published: 09/01/2019
Effective: 10/08/2019

No. 43988 (AMD): R277-713. Concurrent Enrollment of High School Students in College Courses
Published: 09/01/2019
Effective: 10/08/2019

No. 43950 (NEW): R277-927. Teacher and Student Success Act (TSSA) Program
Published: 08/15/2019
Effective: 10/08/2019

No. 43989 (NEW): R277-928. High-Need Schools Grant
Published: 09/01/2019
Effective: 10/08/2019

Environmental Quality

Waste Management and Radiation Control, Waste Management

No. 43971 (AMD): R315-260. Hazardous Waste Management System
Published: 09/01/2019
Effective: 10/15/2019

No. 43972 (AMD): R315-261. General Requirements — Identification and Listing of Hazardous Waste
Published: 09/01/2019
Effective: 10/15/2019

No. 43973 (AMD): R315-262. Hazardous Waste Generator Requirements
Published: 09/01/2019
Effective: 10/15/2019

No. 43974 (AMD): R315-263. Standards Applicable to Transporters of Hazardous Waste and Standards Applicable to Emergency Control of Spills for All Hazardous Waste Handlers
Published: 09/01/2019
Effective: 10/15/2019

No. 43975 (AMD): R315-264. Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities
Published: 09/01/2019
Effective: 10/15/2019

No. 43976 (AMD): R315-265. Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities
Published: 09/01/2019
Effective: 10/15/2019

No. 43977 (AMD): R315-266. Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities
Published: 09/01/2019
Effective: 10/15/2019

No. 43978 (AMD): R315-273. Standards for Universal Waste Management
Published: 09/01/2019
Effective: 10/15/2019

Governor

Economic Development

No. 43992 (AMD): R357-24. Utah Works Program Rule
Published: 09/01/2019
Effective: 10/15/2019

Health

Health Care Financing, Coverage and Reimbursement Policy
No. 43955 (AMD): R414-200. Non-Traditional Medicaid Health Plan Services
Published: 09/01/2019
Effective: 10/10/2019

End of the Notices of Rule Effective Dates Section

**RULES INDEX
BY AGENCY (CODE NUMBER)
AND
BY KEYWORD (SUBJECT)**

The Rules Index is a cumulative index that reflects all effective changes to Utah's administrative rules. The current Index lists changes made effective from January 2, 2019 through October 15, 2019. The Rules Index is published in the Utah State Bulletin and in the annual Utah Administrative Rules Index of Changes. Nonsubstantive changes, while not published in the Bulletin, do become part of the Utah Administrative Code (Code) and are included in this Index, as well as 120-Day (Emergency) rules that do not become part of the Code. The rules are indexed by Agency (Code Number) and Keyword (Subject).

Questions regarding the index and the information it contains should be addressed to the Office of Administrative Rules (801-538-3003).

A copy of the **RULES INDEX** is available for public inspection at the Office of Administrative Rules (5110 State Office Building, Salt Lake City, UT), or may be viewed online at the Office's web site (<https://rules.utah.gov/>).

RULES INDEX - BY AGENCY (CODE NUMBER)

ABBREVIATIONS

AMD = Amendment (Proposed Rule)	LNR = Legislative Nonreauthorization
CPR = Change in Proposed Rule	NEW = New Rule (Proposed Rule)
EMR = 120-Day (Emergency) Rule	NSC = Nonsubstantive Rule Change
EXD = Expired Rule	R&R = Repeal and Reenact (Proposed Rule)
EXP = Expedited Rule	REP = Repeal (Proposed Rule)
EXT = Five-Year Review Extension	5YR = Five-Year Notice of Review and Statement of Continuation
GEX = Governor's Extension	

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
ADMINISTRATIVE SERVICES					
<u>Administration</u>					
R13-2	Management of Records and Access to Records	43744	5YR	05/29/2019	2019-12/135
<u>Child Welfare Parental Defense (Office of)</u>					
R19-1	Parental Defense Counsel Training	43705	REP	07/08/2019	2019-11/4
<u>Debt Collection</u>					
R21-1	Transfer of Collection Responsibility of State Agencies	43801	AMD	08/07/2019	2019-13/6
R21-2	Office of State Debt Collection Administrative Procedures	43802	AMD	08/07/2019	2019-13/8
R21-3	Debt Collection Through Administrative Offset	43803	AMD	08/07/2019	2019-13/12
<u>Facilities Construction and Management</u>					
R23-3	Planning, Programming, Request for Capital Development Projects and Operation and Maintenance Reporting for State Owned Facilities	43524	NSC	03/01/2019	Not Printed
R23-3	Planning, Programming, Request for Capital Development Projects and Operation and Maintenance Reporting for State Owned Facilities	43569	5YR	03/06/2019	2019-7/59
R23-23	Health Reform -- Health Insurance Coverage in State Contracts -- Implementation	43642	5YR	04/11/2019	2019-9/79
R23-29	Delegation of Project Management	43525	NSC	03/01/2019	Not Printed
R23-29	Delegation of Project Management	43567	5YR	03/06/2019	2019-7/60
R23-33	Rules for the Prioritization and Scoring of Capital Improvements by the Utah State Building Board	43568	5YR	03/06/2019	2019-7/60
<u>Finance</u>					
R25-7	Travel-Related Reimbursements for State Employees	43656	AMD	07/01/2019	2019-9/4
R25-10	State Entities' Posting of Financial Information to the Utah Public Finance Website	43404	AMD	01/23/2019	2018-24/6
R25-11	Utah Transparency Advisory Board, Procedures for Electronic Meetings	43471	5YR	01/07/2019	2019-3/43
<u>Purchasing and General Services</u>					
R33-1	Utah Procurement Rules, General Procurement Provisions	43859	5YR	07/08/2019	2019-15/33
R33-2	Rules of Procedure for Procurement Policy Board	43854	5YR	07/08/2019	2019-15/33

R33-3	Procurement Organization	43855	5YR	07/08/2019	2019-15/34
R33-4	Supplemental Procurement Procedures	43856	5YR	07/08/2019	2019-15/34
R33-5	Other Standard Procurement Processes	43857	5YR	07/08/2019	2019-15/35
R33-6	Bidding	43858	5YR	07/08/2019	2019-15/35
R33-7	Request for Proposals	43860	5YR	07/08/2019	2019-15/36
R33-8	Exceptions to Standard Procurement Process	43861	5YR	07/08/2019	2019-15/36
R33-9	Cancellations, Rejections, and Debarment	43862	5YR	07/08/2019	2019-15/37
R33-10	Preferences	43864	5YR	07/08/2019	2019-15/37
R33-11	Form of Bonds	43863	5YR	07/08/2019	2019-15/38
R33-12	Terms and Conditions, Contracts, Change Orders and Costs	43865	5YR	07/08/2019	2019-15/38
R33-13	General Construction Provisions	43866	5YR	07/08/2019	2019-15/39
R33-14	Procurement of Design-Build Transportation Project Contracts	43867	5YR	07/08/2019	2019-15/39
R33-15	Procurement of Design Professional Services	43868	5YR	07/08/2019	2019-15/40
R33-16	Protests	43869	5YR	07/08/2019	2019-15/40
R33-17	Procurement Appeals Panel	43870	5YR	07/08/2019	2019-15/41
R33-18	Appeals to Court and Court Proceedings	43871	5YR	07/08/2019	2019-15/41
R33-19	General Provisions Related to Protest or Appeal	43872	5YR	07/08/2019	2019-15/42
R33-20	Records	43873	5YR	07/08/2019	2019-15/42
R33-21	Interaction Between Procurement Units	43875	5YR	07/08/2019	2019-15/43
R33-22	Reserved	43874	5YR	07/08/2019	2019-15/43
R33-23	Reserved	43876	5YR	07/08/2019	2019-15/44
R33-24	Unlawful Conduct and Ethical Standards	43877	5YR	07/08/2019	2019-15/44
R33-25	Executive Branch Insurance Procurement	43879	5YR	07/08/2019	2019-15/45
R33-26	State Surplus Property	43878	5YR	07/08/2019	2019-15/45
<u>Records Committee</u>					
R35-1	State Records Committee Appeal Hearing Procedures	43760	5YR	06/03/2019	2019-13/111
R35-1a	State Records Committee Definitions	43761	5YR	06/03/2019	2019-13/111
R35-2	Declining Appeal Hearings	43762	5YR	06/03/2019	2019-13/112
R35-4	Compliance with State Records Committee Decisions and Orders	43763	5YR	06/03/2019	2019-13/112
R35-4-1	Authority and Purpose	43766	NSC	06/12/2019	Not Printed
R35-5	Subpoenas Issued by the Records Committee	43764	5YR	06/03/2019	2019-13/113
R35-6	Expedited Hearing	43765	5YR	06/03/2019	2019-13/113
<u>Risk Management</u>					
R37-4	Adjusted Utah Governmental Immunity Act Limitations on Judgments	43235	AMD	01/18/2019	2018-21/2
AGRICULTURE AND FOOD					
<u>Animal Industry</u>					
R58-1	Admission, Identification, and Inspection of Livestock, Poultry, and Other Animals	43911	AMD	10/09/2019	2019-16/10
R58-18	Elk Farming	43754	AMD	07/22/2019	2019-12/6
R58-18	Elk Farming	43909	NSC	08/01/2019	Not Printed
R58-20	Domesticated Elk Hunting Parks	43469	5YR	01/07/2019	2019-3/43
R58-20	Domesticated Elk Hunting Parks	43752	AMD	07/22/2019	2019-12/13
R58-20	Domesticated Elk Hunting Parks	43910	NSC	08/01/2019	Not Printed
<u>Conservation Commission</u>					
R64-1	Agriculture Resource Development Loans (ARDL)	43907	5YR	07/23/2019	2019-16/103
R64-3	Utah Environmental Stewardship Certification Program (UESCP), a.k.a Agriculture Certification of Environmental Stewardship (ACES)	43685	5YR	04/30/2019	2019-10/115
<u>Horse Racing Commission (Utah)</u>					
R52-7	Horse Racing	43753	AMD	07/22/2019	2019-12/4
<u>Marketing and Development</u>					
R65-1	Utah Apple Marketing Order	43546	NSC	03/13/2019	Not Printed

RULES INDEX

R65-1	Utah Apple Marketing Order	44024	5YR	08/30/2019	2019-18/89
R65-5	Utah Red Tart and Sour Cherry Marketing Order	43547	NSC	03/13/2019	Not Printed
R65-8	Management of the Junior Livestock Show Appropriation	43545	NSC	03/13/2019	Not Printed
R65-11	Utah Sheep Marketing Order	43548	NSC	03/13/2019	Not Printed
R65-12	Utah Small Grains and Oilseeds Marketing Order	43549	NSC	03/13/2019	Not Printed
R65-12	Utah Small Grains and Oilseeds Marketing Order	43641	5YR	04/11/2019	2019-9/79
<u>Plant Industry</u>					
R68-1	Utah Bee Inspection Act Governing Inspection of Bees	43908	NSC	08/01/2019	Not Printed
R68-3	Utah Fertilizer Act Governing Fertilizers and Soil Amendments	44135	5YR	10/15/2019	Not Printed
R68-25	Industrial Hemp Research Pilot Program for Processors	43571	NSC	03/21/2019	Not Printed
R68-27	Cannabis Cultivation	43686	EMR	05/03/2019	2019-10/107
R68-27	Cannabis Cultivation	43684	NEW	08/29/2019	2019-10/4
R68-27	Cannabis Cultivation	43684	CPR	08/29/2019	2019-14/68
R68-28	Cannabis Processing	43758	NEW	07/22/2019	2019-12/16
R68-29	Quality Assurance Testing on Cannabis	43842	NEW	08/29/2019	2019-14/4
R68-30	Independent Cannabis Testing Laboratory	43843	NEW	08/29/2019	2019-14/7
<u>Regulatory Services</u>					
R70-101	Bedding, Upholstered Furniture and Quilted Clothing	44115	NSC	10/15/2019	Not Printed
R70-310	Grade A Pasteurized Milk	43775	5YR	06/07/2019	2019-13/114
R70-310	Grade A Pasteurized Milk	43777	AMD	08/13/2019	2019-13/16
R70-440	Egg Products Inspection	44085	EXD	09/17/2019	2019-20/149
R70-440	Egg Products Inspection	44091	EMR	09/20/2019	2019-20/135
R70-910	Registration of Servicepersons for Commercial Weighing and Measuring Devices	44026	5YR	08/30/2019	2019-18/89
R70-910	Registration of Servicepersons for Commercial Weighing and Measuring Devices	44027	NSC	09/12/2019	Not Printed
R70-960	Weights and Measures Fee Registration	44025	5YR	08/30/2019	2019-18/90
ALCOHOLIC BEVERAGE CONTROL					
<u>Administration</u>					
R81-1-23	Sales Restrictions on High Demand Products of Limited Availability	43944	AMD	09/25/2019	2019-16/17
R81-1-33	Alcohol Content	43943	AMD	09/25/2019	2019-16/19
R81-1-34	Transfer Agreements	43940	AMD	09/25/2019	2019-16/20
R81-10-2	Off-Premise Beer Retailer State License and Master Off-Premise Beer Retailer State License	43942	AMD	09/25/2019	2019-16/22
ATTORNEY GENERAL					
<u>Administration</u>					
R105-4	Child Protection Registry	43836	NEW	10/02/2019	2019-14/13
AUDITOR					
<u>Administration</u>					
R123-6	Allocation of Money in the Property Tax Valuation Agency Fund	44046	NSC	09/20/2019	Not Printed
CAPITOL PRESERVATION BOARD (STATE)					
<u>Administration</u>					
R131-13	Health Reform -- Health Insurance Coverage in State Contracts -- Implementation	43662	5YR	04/17/2019	2019-10/115
R131-13	Health Reform -- Health Insurance Coverage in State Contracts -- Implementation	43517	AMD	06/13/2019	2019-5/6

COMMERCE

Administration

R151-1 Department of Commerce General Provisions 44116 5YR 10/03/2019 Not Printed

Consumer Protection

R152-32a Pawnshop and Secondhand Merchandise 43991 REP 10/09/2019 2019-17/2

Transaction Information Act Rule

R152-34a Utah Postsecondary School State Authorization 43612 5YR 04/01/2019 2019-8/101

Act Rule

R152-39 Child Protection Registry Rule 43845 REP 08/22/2019 2019-14/15

Occupational and Professional Licensing

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R661-8-101	Objective	44076	NSC	09/25/2019	Not Printed
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R746-310	Uniform Rules Governing Electricity Service by Electric Utilities	43603	AMD	05/22/2019	2019-8/49
R746-401	Reporting of Construction, Purchase, Acquisition, Sale, Transfer or Disposition of Assets	43966	5YR	08/07/2019	2019-17/227

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R746-460	Rules Governing Customer Information and Marketing for Large-Scale Electric and Gas Utilities	43811	NEW	08/07/2019	2019-13/95
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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R765-604	New Century Scholarship	43901	5YR	07/17/2019	2019-16/107
R765-615	Talent Development Incentive Loan Program	43405	NEW	03/14/2019	2018-24/33
R765-620	Access Utah Promise Scholarship Program	43853	NEW	09/10/2019	2019-15/12
R765-621	T. H. Bell Education Scholarship Program	43780	NEW	09/23/2019	2019-13/98
R765-622	Career and Technical Education Scholarship Program	43778	NEW	09/23/2019	2019-13/101

Salt Lake Community College

R784-1	Government Records Access and Management Act Rules	43594	5YR	03/17/2019	2019-8/107
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University of Utah, Administration

R805-3	Overnight Camping and Campfires on University of Utah Property	43541	5YR	02/25/2019	2019-6/46
R805-3	Overnight Camping and Campfires on University of Utah Property	43566	AMD	05/22/2019	2019-7/38
R805-4	Illegal, Harmful, and Disruptive Behavior on University of Utah Property	44124	5YR	10/10/2019	Not Printed
R805-6	University of Utah Shooting Range Access and Use Requirements	43499	5YR	02/04/2019	2019-5/102

University of Utah, Museum of Natural History (Utah)

R807-1	Curation of Collections from State Lands	43535	5YR	02/22/2019	2019-6/47
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SCHOOL AND INSTITUTIONAL TRUST LANDS

Administration

R850-5-300	Royalties	43613	AMD	06/01/2019	2019-8/54
R850-21	Oil, Gas and Hydrocarbon Resources	43616	R&R	06/01/2019	2019-8/55
R850-21	Oil, Gas and Hydrocarbon Resources	43903	NSC	08/01/2019	Not Printed
R850-70	Sales of Forest Products From Trust Lands Administration Lands	43792	AMD	08/07/2019	2019-13/103

SYSTEM OF TECHNICAL COLLEGES (UTAH)

Bridgerland Technical College

R947-1	Student Grievance	43926	NEW	10/01/2019	2019-16/75
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Davis Technical College

R949-1	Student Due Process	43936	NEW	09/23/2019	2019-16/77
R949-2	Free Expression on Campus	43938	NEW	09/23/2019	2019-16/79

Dixie Technical College

R951-1	Campus Access Rule	43887	NEW	09/26/2019	2019-15/19
R951-2	Student Free Expression Rule	43888	NEW	09/26/2019	2019-15/21
R951-3	Student Grievance Rule	43889	NEW	09/26/2019	2019-15/22

Mountainland Technical College

R953-1	Due Process	43925	NEW	09/23/2019	2019-16/80
R953-2	Free Expression on Campus	43924	NEW	09/23/2019	2019-16/82

Ogden-Weber Technical College

R955-1	Student Due Process	43929	NEW	09/27/2019	2019-16/84
R955-2	Free Expression on Campus	43927	NEW	09/27/2019	2019-16/85
R955-3	Weapons on Campus	43928	NEW	09/27/2019	2019-16/87

Southwest Technical College

R957-1	Student Due Process	43931	NEW	09/23/2019	2019-16/88
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R957-2	Free Expression on Campus	43932	NEW	09/23/2019	2019-16/90
<u>Tooele Technical College</u>					
R959-1	Student Due Process	43941	NEW	09/23/2019	2019-16/92
R959-2	Free Expression on Campus	43945	NEW	09/23/2019	2019-16/93
<u>Uintah Basin Technical College</u>					
R961-1	Student Due Process	43904	NEW	09/23/2019	2019-16/95
R961-2	Free Expression on Campus	43905	NEW	09/23/2019	2019-16/96
R961-3	Weapons on Campus	43906	NEW	09/23/2019	2019-16/98
TAX COMMISSION					
<u>Administration</u>					
R861-1A-9	State Board of Equalization Procedures Pursuant to Utah Code Ann. Sections 59-2-212, 59-2-1004, and 59-2-1006	43838	AMD	08/22/2019	2019-14/50
R861-1A-46	Procedures for Purchaser Refund Requests Pursuant to Utah Code Ann. Sections 59-1-1410 and 59-12-110	43883	AMD	09/12/2019	2019-15/23
<u>Auditing</u>					
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
R865-19S-93	Waste Tire Recycling Fee Pursuant to Utah Code Ann. Section 19-6-808	43884	AMD	09/12/2019	2019-15/26
<u>Motor Vehicle</u>					
R873-22M-17	Standards for State Impound Lots Pursuant to Utah Code Ann. Section 41-1a-1101	43840	AMD	08/22/2019	2019-14/53
<u>Property Tax</u>					
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-24	Form for Notice of Property Valuation and Tax Changes Pursuant to Utah Code Ann. Sections 59-2-918.5 through 59-2-924	43885	AMD	09/12/2019	2019-15/28
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
TECHNOLOGY SERVICES					
<u>Administration</u>					
R895-7	Acceptable Use of Information Technology Resources	43467	5YR	01/03/2019	2019-3/45
R895-9	Utah Geographic Information Systems Advisory Council	43697	5YR	05/02/2019	2019-11/45
R895-13	Access to the Identity Theft Reporting Information System Database	43681	REP	06/21/2019	2019-10/105

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TRANSPORTATION

Administration

R907-66	Incorporation and Use of Federal Acquisition Regulations on Federal-Aid and State-Financed Transportation Projects	43490	R&R	03/26/2019	2019-4/31
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Motor Carrier

R909-2	Utah Size and Weight Rule	43735	5YR	05/22/2019	2019-12/141
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

Operations, Aeronautics

R914-4	Challenging Corrective Action Orders	43722	NEW	07/23/2019	2019-12/106
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Operations, Construction

R916-5	Health Reform -- Health Insurance Coverage in State Contracts -- Implementation	44084	EXD	09/17/2019	2019-20/149
R916-5	Health Reform -- Health Insurance Coverage in State Contracts -- Implementation	44087	EMR	09/18/2019	2019-20/140

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R918-4	Using Volunteer Groups and Third Party Contractors for the Adopt-a-Highway and Sponsor-a-Highway Litter Pickup Programs	43489	AMD	03/26/2019	2019-4/36
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R920-4-9	Minimum Liability Coverage, Waiver and Release of Damages Form, and Indemnification Form Completion Requirements	43769	NSC	06/19/2019	Not Printed
R920-50	Ropeway Operation Safety	43444	AMD	02/07/2019	2019-1/63

Preconstruction

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

Program Development

R926-12	Share the Road Bicycle Support Restricted Account	44089	5YR	09/18/2019	2019-20/147
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

TRANSPORTATION COMMISSION

Administration

R940-1	Establishment of Toll Rates	43841	AMD	08/26/2019	2019-14/59
R940-8	Establishment of Road Usage Charge (RUC) Rates	43846	NEW	08/26/2019	2019-14/61

UTECH BOARD OF TRUSTEES

Administration

R945-1	UTech Scholarship	43617	AMD	07/16/2019	2019-8/96
R945-2	Institutional Civil Liberties Policy Review	43898	NEW	09/24/2019	2019-15/30

WORKFORCE SERVICES

Employment Development

R986-100-117	Disqualification Periods And Civil Penalties For Intentional Program Violations (IPVs)	43481	AMD	06/01/2019	2019-3/33
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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
R986-700	Child Care Assistance	43934	AMD	10/01/2019	2019-16/99
<u>Housing and Community Development</u>					
R990-200	Private Activity Bonds	43746	NEW	07/30/2019	2019-12/128
R990-300	Evaluation Process for Plan for Moderate Income Housing Reports	43849	NEW	08/21/2019	2019-14/63
<u>Unemployment Insurance</u>					
R994-305-801	Wage List Requirement	43558	AMD	07/01/2019	2019-6/35
R994-309	Nonprofit Organizations	43818	5YR	06/17/2019	2019-14/80
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>account</u> Transportation, Program Development	44089	R926-12	5YR	09/18/2019	2019-20/147

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<u>accounting</u>						
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<u>accounts receivable</u>						
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	43802	R21-2	AMD	08/07/2019	2019-13/8	
	43803	R21-3	AMD	08/07/2019	2019-13/12	
<u>accreditation</u>						
Education, Administration	43985	R277-504	AMD	10/08/2019	2019-17/34	
<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	43609	R277-102	REP	05/23/2019	2019-8/4	
Environmental Quality, Drinking Water	43378	R309-100-9	AMD	01/15/2019	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	
School and Institutional Trust Lands, Administration	43616	R850-21	R&R	06/01/2019	2019-8/55	
	43903	R850-21	NSC	08/01/2019	Not Printed	
	43792	R850-70	AMD	08/07/2019	2019-13/103	
<u>administrative proceedings</u>						
Public Safety, Driver License	43606	R708-22	5YR	03/28/2019	2019-8/106	
<u>administrative rules</u>						
Human Resource Management, Administration	43679	R477-13	AMD	07/01/2019	2019-10/62	
<u>adopt-a-highway</u>						
Transportation, Operations, Maintenance	43489	R918-4	AMD	03/26/2019	2019-4/36	
<u>adoption</u>						
Human Services, Child and Family Services	43518	R512-43	AMD	04/08/2019	2019-5/85	
<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	
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Commerce, Consumer Protection	43845	R152-39	REP	08/22/2019	2019-14/15	
<u>aeronautics</u>						
Transportation, Operations, Aeronautics	43722	R914-4	NEW	07/23/2019	2019-12/106	
<u>air pollution</u>						
Environmental Quality, Air Quality	43372	R307-101-2	AMD	02/07/2019	2018-23/49	
	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
	43806	R307-110-31	AMD	09/05/2019	2019-13/54
	43807	R307-110-36	AMD	09/05/2019	2019-13/55
	43588	R307-150-3	AMD	06/25/2019	2019-7/5
	43589	R307-401-10	AMD	06/06/2019	2019-7/6
	44038	R307-501	5YR	09/05/2019	2019-19/118
	44039	R307-502	5YR	09/05/2019	2019-19/118
	44040	R307-503	5YR	09/05/2019	2019-19/119
	44041	R307-504	5YR	09/05/2019	2019-19/120
<u>air quality</u>					
Environmental Quality, Air Quality	44037	R307-125	5YR	09/05/2019	2019-19/117
	43808	R307-204	AMD	09/05/2019	2019-13/56
	44050	R307-204	NSC	09/20/2019	Not Printed
	43211	R307-511	NEW	03/05/2019	2018-19/32
	43211	R307-511	CPR	03/05/2019	2019-3/41
<u>air travel</u>					
Administrative Services, Finance	43656	R25-7	AMD	07/01/2019	2019-9/4
<u>aircraft</u>					
Tax Commission, Motor Vehicle	43840	R873-22M-17	AMD	08/22/2019	2019-14/53
<u>alcohol</u>					
Education, Administration	43448	R277-910	NEW	02/07/2019	2019-1/24
Human Services, Substance Abuse and Mental Health	43576	R523-13-4	AMD	06/27/2019	2019-7/29
Public Safety, Highway Patrol	44022	R714-500	5YR	08/29/2019	2019-18/97
<u>alcoholic beverages</u>					
Alcoholic Beverage Control, Administration	43944	R81-1-23	AMD	09/25/2019	2019-16/17
	43943	R81-1-33	AMD	09/25/2019	2019-16/19
	43940	R81-1-34	AMD	09/25/2019	2019-16/20
	43942	R81-10-2	AMD	09/25/2019	2019-16/22
<u>alimony</u>					
Human Services, Recovery Services	43727	R527-450	5YR	05/20/2019	2019-12/139
<u>allocation</u>					
Education, Administration	43950	R277-927	NEW	10/08/2019	2019-16/27
Governor, Economic Development	43755	R357-8	REP	07/26/2019	2019-12/63
Workforce Services, Housing and Community Development	43746	R990-200	NEW	07/30/2019	2019-12/128
<u>alternate multiple stage bid process</u>					
Administrative Services, Purchasing and General Services	43879	R33-25	5YR	07/08/2019	2019-15/45
<u>alternative fuel vehicles</u>					
Transportation, Program Development	43847	R926-17	NEW	08/26/2019	2019-14/55
Transportation Commission, Administration	43846	R940-8	NEW	08/26/2019	2019-14/61
<u>alternative language services</u>					
Education, Administration	43731	R277-716	AMD	07/31/2019	2019-12/56
<u>alternative licensing</u>					
Education, Administration	43733	R277-503	AMD	07/31/2019	2019-12/45
<u>annuity disclosure</u>					
Insurance, Administration	44002	R590-229	5YR	08/20/2019	2019-18/97
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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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Commerce, Consumer Protection	43612	R152-34a	5YR	04/01/2019	2019-8/101
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Tax Commission, Property Tax	43437	R884-24P-19	AMD	03/28/2019	2019-1/51
	43640	R884-24P-19	NSC	04/24/2019	Not Printed
	43885	R884-24P-24	AMD	09/12/2019	2019-15/28
	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
<u>appropriate behavior</u>					
Education, Administration	43787	R277-322	NEW	08/19/2019	2019-13/25
<u>approval orders</u>					
Environmental Quality, Air Quality	43589	R307-401-10	AMD	06/06/2019	2019-7/6
<u>archaeological</u>					
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<u>architects</u>					
Administrative Services, Purchasing and General Services	43868	R33-15	5YR	07/08/2019	2019-15/40
<u>armored car company</u>					
Commerce, Occupational and Professional Licensing	43319	R156-63b	AMD	05/13/2019	2018-22/96
	43319	R156-63b	CPR	05/13/2019	2019-7/53
	43578	R156-63b	NSC	05/14/2019	Not Printed
<u>armored car security officers</u>					
Commerce, Occupational and Professional Licensing	43319	R156-63b	AMD	05/13/2019	2018-22/96
	43319	R156-63b	CPR	05/13/2019	2019-7/53
	43578	R156-63b	NSC	05/14/2019	Not Printed
<u>assessment</u>					
Governor, Energy Development (Office of)	43419	R362-5	NEW	01/23/2019	2018-24/15
<u>assessments</u>					
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Public Service Commission, Administration	43550	R746-8-301	AMD	04/30/2019	2019-6/27
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<u>autism spectrum</u>						
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	43701	R277-528	AMD	08/19/2019	2019-11/6	
<u>background</u>						
Human Services, Administration	43719	R495-885	EMR	05/14/2019	2019-11/30	
	43690	R495-885	AMD	07/18/2019	2019-10/69	
<u>background screening</u>						
Human Services, Administration, Administrative Services, Licensing	43718	R501-14	EMR	05/14/2019	2019-11/33	
	43691	R501-14	AMD	07/18/2019	2019-10/73	
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Insurance, Administration	43694	R590-186	AMD	06/21/2019	2019-10/79	
<u>ballots</u>						
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<u>basic training</u>						
Public Safety, Peace Officer Standards and Training	43534	R728-502	5YR	02/21/2019	2019-6/45	
<u>beam limitation</u>						
Environmental Quality, Waste Management and Radiation Control, Radiation	43253	R313-28-31	AMD	01/14/2019	2018-21/52	
	43530	R313-28-31	AMD	04/15/2019	2019-5/50	
<u>bear</u>						
Natural Resources, Wildlife Resources	43492	R657-33	AMD	03/25/2019	2019-4/27	
<u>bed allocations</u>						
Human Services, Substance Abuse and Mental Health	43505	R523-2-9	AMD	04/17/2019	2019-5/92	
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Agriculture and Food, Plant Industry	43908	R68-1	NSC	08/01/2019	Not Printed	
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Technology Services, Administration	43697	R895-9	5YR	05/02/2019	2019-11/45
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	43917	R597-1	R&R	09/23/2019	2019-16/55
	43500	R597-3	5YR	02/05/2019	2019-5/100
	43919	R597-3	R&R	09/23/2019	2019-16/59
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	43917	R597-1	R&R	09/23/2019	2019-16/55
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	43683	R277-493	AMD	07/02/2019	2019-10/9
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	43725	R657-62	AMD	07/22/2019	2019-12/104	
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	43885	R884-24P-24	AMD	09/12/2019	2019-15/28	
	43371	R884-24P-27	AMD	01/10/2019	2018-23/119	
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	42976	R307-110-17	AMD	01/03/2019	2018-13/35	
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Navajo Trust Fund, Trustees	44075	R661-3-101	NSC	09/25/2019	Not Printed	
<u>residential support</u>						
Health, Disease Control and Prevention, Environmental Services	43660	R392-110	R&R	07/16/2019	2019-10/12	
<u>residential treatment</u>						
Health, Disease Control and Prevention, Environmental Services	43660	R392-110	R&R	07/16/2019	2019-10/12	
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Regents (Board of), University of Utah, Museum of Natural History (Utah)	43535	R807-1	5YR	02/22/2019	2019-6/47	
<u>restricted</u>						
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<u>retail tobacco specialty businesses</u>						
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<u>retirement</u>						
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Public Safety, Peace Officer Standards and Training	44036	R728-205	5YR	09/04/2019	2019-19/121	
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<u>reviews</u>						
Transportation, Operations, Aeronautics	43722	R914-4	NEW	07/23/2019	2019-12/106	
<u>revocations</u>						
Public Safety, Peace Officer Standards and Training	43666	R728-409	AMD	06/24/2019	2019-10/100	
<u>revolving account</u>						
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	43647	R277-480	AMD	07/02/2019	2019-9/31
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Education, Administration	43511	R277-117	REP	04/08/2019	2019-5/19
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Transportation, Preconstruction	43742	R930-7	AMD	07/23/2019	2019-12/109
<u>right-of-way</u>					
Transportation, Preconstruction	43745	R930-8	AMD	07/23/2019	2019-12/124
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Human Services, Services for People with Disabilities	43892	R539-3	5YR	07/15/2019	2019-15/48
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Administrative Services, Risk Management	43235	R37-4	AMD	01/18/2019	2018-21/2
<u>road races</u>					
Transportation, Operations, Traffic and Safety	43769	R920-4-9	NSC	06/19/2019	Not Printed
<u>road usage charge (RUC)</u>					
Transportation, Program Development	43847	R926-17	NEW	08/26/2019	2019-14/55
Transportation Commission, Administration	43846	R940-8	NEW	08/26/2019	2019-14/61
<u>ropeways</u>					
Transportation, Operations, Traffic and Safety	43444	R920-50	AMD	02/07/2019	2019-1/63
<u>royalties</u>					
School and Institutional Trust Lands, Administration	43613	R850-5-300	AMD	06/01/2019	2019-8/54
<u>RUC program</u>					
Transportation, Program Development	43847	R926-17	NEW	08/26/2019	2019-14/55
<u>RUC rates</u>					
Transportation Commission, Administration	43846	R940-8	NEW	08/26/2019	2019-14/61
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Education, Administration	43479	R277-100	AMD	03/13/2019	2019-3/2
<u>rules and procedures</u>					
Education, Administration	43609	R277-102	REP	05/23/2019	2019-8/4
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Human Resource Management, Administration	43670	R477-1	AMD	07/01/2019	2019-10/25
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<u>rules of procedure</u>					
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Governor, Economic Development	43948	R357-25	NEW	09/23/2019	2019-16/32
<u>rural manufacturing</u>					
Governor, Economic Development	43949	R357-26	NEW	09/23/2019	2019-16/35
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	43443	R909-19	AMD	02/07/2019	2019-1/56
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Education, Administration	43983	R277-318	NEW	10/08/2019	2019-17/18
	43986	R277-523	REP	10/08/2019	2019-17/40
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Tax Commission, Auditing	43884	R865-19S-93	AMD	09/12/2019	2019-15/26
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<u>satellite</u>					
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	43394	R277-552	NEW	01/09/2019	2018-23/26
	43623	R277-552	AMD	05/23/2019	2019-8/19
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Regents (Board of), Administration	43853	R765-620	NEW	09/10/2019	2019-15/12
	43780	R765-621	NEW	09/23/2019	2019-13/98
	43778	R765-622	NEW	09/23/2019	2019-13/101
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	43990	R277-407	AMD	10/08/2019	2019-17/22
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Education, Administration	43794	R277-305	NEW	08/19/2019	2019-13/22
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	43795	R277-600	AMD	08/19/2019	2019-13/41
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	43690	R495-885	AMD	07/18/2019	2019-10/69
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	43577	R156-63a	NSC	05/14/2019	Not Printed
	43319	R156-63b	AMD	05/13/2019	2018-22/96
	43319	R156-63b	CPR	05/13/2019	2019-7/53
	43578	R156-63b	NSC	05/14/2019	Not Printed
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	43692	R590-268	AMD	06/21/2019	2019-10/85	
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<u>State Board of Education</u>						
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Commerce, Occupational and Professional Licensing	43902	R156-74	AMD	09/23/2019	2019-16/24	
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	43828	R698-5	5YR	06/26/2019	2019-14/79	
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	43763	R35-4	5YR	06/03/2019	2019-13/112	
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	43365	R994-403-109b	AMD	03/31/2019	2018-23/122	
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	43476	R277-487	AMD	03/13/2019	2019-3/4	
	44055	R277-487	5YR	09/09/2019	2019-19/117	
	43702	R277-709	AMD	08/19/2019	2019-11/9	
	43988	R277-713	AMD	10/08/2019	2019-17/51	
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	43791	R277-522	AMD	08/19/2019	2019-13/38	
<u>teaching</u>						
Regents (Board of), Administration	43780	R765-621	NEW	09/23/2019	2019-13/98	
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Regents (Board of), Administration	43778	R765-622	NEW	09/23/2019	2019-13/101	
<u>technical college</u>						
System of Technical Colleges (Utah), Bridgerland Technical College	43926	R947-1	NEW	10/01/2019	2019-16/75	
System of Technical Colleges (Utah), Davis Technical College	43936	R949-1	NEW	09/23/2019	2019-16/77	
System of Technical Colleges (Utah), Mountainland Technical College	43938	R949-2	NEW	09/23/2019	2019-16/79	
	43925	R953-1	NEW	09/23/2019	2019-16/80	
System of Technical Colleges (Utah), Ogden-Weber Technical College	43924	R953-2	NEW	09/23/2019	2019-16/82	
	43929	R955-1	NEW	09/27/2019	2019-16/84	
	43927	R955-2	NEW	09/27/2019	2019-16/85	
	43928	R955-3	NEW	09/27/2019	2019-16/87	
System of Technical Colleges (Utah), Southwest Technical College	43931	R957-1	NEW	09/23/2019	2019-16/88	
System of Technical Colleges (Utah), Tooele Technical College	43932	R957-2	NEW	09/23/2019	2019-16/90	
	43941	R959-1	NEW	09/23/2019	2019-16/92	
System of Technical Colleges (Utah), Uintah Basin Technical College	43945	R959-2	NEW	09/23/2019	2019-16/93	
	43904	R961-1	NEW	09/23/2019	2019-16/95	
	43905	R961-2	NEW	09/23/2019	2019-16/96	
	43906	R961-3	NEW	09/23/2019	2019-16/98	
UTech Board of Trustees, Administration	43617	R945-1	AMD	07/16/2019	2019-8/96	
	43898	R945-2	NEW	09/24/2019	2019-15/30	
<u>technical education</u>						
System of Technical Colleges (Utah), Bridgerland Technical College	43926	R947-1	NEW	10/01/2019	2019-16/75	
System of Technical Colleges (Utah), Davis Technical College	43936	R949-1	NEW	09/23/2019	2019-16/77	
System of Technical Colleges (Utah), Mountainland Technical College	43938	R949-2	NEW	09/23/2019	2019-16/79	
	43925	R953-1	NEW	09/23/2019	2019-16/80	
System of Technical Colleges (Utah), Ogden-Weber Technical College	43924	R953-2	NEW	09/23/2019	2019-16/82	
	43929	R955-1	NEW	09/27/2019	2019-16/84	
	43927	R955-2	NEW	09/27/2019	2019-16/85	
	43928	R955-3	NEW	09/27/2019	2019-16/87	
System of Technical Colleges (Utah), Southwest Technical College	43931	R957-1	NEW	09/23/2019	2019-16/88	
System of Technical Colleges (Utah), Tooele Technical College	43932	R957-2	NEW	09/23/2019	2019-16/90	
	43941	R959-1	NEW	09/23/2019	2019-16/92	

	43945	R959-2	NEW	09/23/2019	2019-16/93
System of Technical Colleges (Utah), Uintah Basin Technical College	43904	R961-1	NEW	09/23/2019	2019-16/95
	43905	R961-2	NEW	09/23/2019	2019-16/96
	43906	R961-3	NEW	09/23/2019	2019-16/98
UTech Board of Trustees, Administration	43898	R945-2	NEW	09/24/2019	2019-15/30
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Technology Services, Administration	43697	R895-9	5YR	05/02/2019	2019-11/45
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	43800	R156-60b	5YR	06/13/2019	2019-13/115
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Education, Administration	43619	R277-115	NEW	05/23/2019	2019-8/10
<u>timber</u>					
School and Institutional Trust Lands, Administration	43792	R850-70	AMD	08/07/2019	2019-13/103
<u>timelines</u>					
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	43394	R277-552	NEW	01/09/2019	2018-23/26
	43623	R277-552	AMD	05/23/2019	2019-8/19
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Insurance, Title and Escrow Commission	43781	R592-6	5YR	06/10/2019	2019-13/119
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Insurance, Title and Escrow Commission	43782	R592-7	5YR	06/10/2019	2019-13/120
<u>title insurance recovery assessment</u>					
Insurance, Title and Escrow Commission	43784	R592-9	5YR	06/10/2019	2019-13/121
<u>titles</u>					
Natural Resources, Water Rights	43922	R655-3	5YR	07/27/2019	2019-16/105
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Transportation Commission, Administration	43841	R940-1	AMD	08/26/2019	2019-14/59
<u>total coliform</u>					
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